

**AMENDED AND RESTATED
REQUEST FOR PROPOSALS
FOR DESIGN-BUILD RELOCATION
OF CERTAIN INTENSIVE CARE UNIT ROOMS**

Notice is given hereby that Greene County General Hospital, an Indiana county hospital (the "Hospital") will open and consider written proposals (each a "Proposal") for relocation of certain intensive care unit rooms from the first floor to the third floor of the Hospital (the "ICU Relocation"), which is located upon a parcel of real estate commonly known as 1185 N 1000 W, Linton, IN 47441. Hospital will open the ICU Relocation Proposals at 5:30 p.m. local time, on November 18, 2022 in the Office of the Facilities Director at the Hospital (the "Hospital Offices"). This request for proposals ("RFP") by Hospital for the ICU Relocation is made on the conditions set forth below (the "Conditions for ICU Relocation").

Need for Facility: Relocating the intensive care unit ("ICU") rooms to the third floor of the Hospital will help the Hospital with staffing needs because the relocated ICU will be on the same floor as the general inpatient rooms. Consolidating the patient units will also help with infection control measures by modernizing the ICU rooms to meet the current healthcare design guidelines and modernizing the HVAC systems to modern codes. Relocating the ICU rooms also allows for the expansion of the ICU rooms to better care for patients needing additional medical equipment and provide more space for patient caregivers. The relocated ICU rooms will also better accommodate larger sized patients by providing patient lifts in certain rooms. Also, the relocated ICU rooms will contain one dedicated airborne infection isolation room that can be dedicated to infectious patients to help ensure patient and caregiver safety withing the ICU department. The project will require the installation of a new air handler unit (AHU) and modification of ductwork for existing air capacity. Additionally, options for ICU headwalls and finishes that meet infection control and FGI standards will be required. Lastly, the relocated ICU will better respond to current and future pandemic conditions by locating each patient in fully private rooms that can more easily accommodate pandemic response efforts.

Existing Facilities: The existing ICU is located on the first floor of Greene County General Hospital and consists of five ICU patient beds. The existing ICU department is located away from the current general inpatient rooms, which causes staffing and supply inefficiencies. The existing ICU rooms do not contain hand-washing stations within the room. Additionally, the current ICU is located in the same space that post- and pre-op patients from the operating room ("OR") are housed, which creates potential concerns from an infection control perspective. The existing air handler capacity is not sufficient for the ICU rooms; upgrading the operating room air handling unit will allow for the Hospital to have additional capacity to supply the necessary air to the new ICU rooms. The OR air handler unit ("OR AHU") should be broken out in the bidder's cost estimate.

Proposed Facilities: The proposed project relocates the existing ICU rooms and creates five ICU rooms on the Hospital's third floor. Support space for a nurse station outside the rooms would also be created. Additional doors would also be added to the corridors to create an ICU department that would be separated from the general inpatient areas; this is considered best practice in healthcare design guidelines to prohibit unrelated traffic from going through the ICU department. The ICU rooms would each be for a single patient and would fully comply with modern healthcare design guidelines and regulations. Three of the rooms would have permanently installed patient lifts to help promote staff and patient safety. One of the ICU rooms would be dedicated to being an airborne infection isolation rooms and contain accommodations for bariatric patients. All the rooms would have private restrooms with shower facilities. All ICU patient rooms would be updated to contain hand-washing stations in each room.

- Building Site:** There is no change planned to the site or exterior of the Hospital. All work is within the existing footprint of the building.
- Challenges to be Addressed:**
1. Construction lead times – The ongoing pandemic has disrupted supply lines for certain construction materials. Bidders to detail construction planning and scheduling to help overcome this obstacle.
 2. Adjacent occupied areas – The area around the construction limits will be occupied by patients. Bidders should provide special attention to sound generating activities, dust control, and other best practices including the completion of Infection Control Risk Assessment standards.
 3. Existing floor to floor heights – The existing floor to floor heights will require detailed coordination among the engineers, architects, and contractor to ensure there are no above-ceiling conflicts.
- Contract Award:** The contract will be awarded only to a responsible party possessing the potential ability to perform successfully under the terms and conditions of this RFP. Consideration will be given to the following (which is an inexhaustive list): integrity; record of past performance; financial and technical resources; and accessibility to other necessary resources. No consideration will be made for parties who have been suspended or debarred from government contracting or financing programs.
- Code of Conduct:** Hospital may implement a written code or standards of conduct which shall govern the performance of the officers, employees, agents, and contractors of the successful bidder hereunder.
- Contracting Method:** Hospital seeks a design-build contract which shall be in the form of (i) AIA Document A141-2014, Standard Form of Agreement Between Owner and Design-Builder with a not-to-exceed budget as set forth below, (ii) AIA Document A141-2014 Exhibit A (Design-Build Amendment), (iii) AIA Document A141-2014, Exhibit B (Insurance and Bonds), all of which shall include Hospital's standard edits and USDA requirements as to such forms, (iv) the USDA Form RD 400-6, (v) the USDA Form RD 400-1 (agreement with the terms thereof), and (vi) any additional forms or documents required by USDA (collectively, the "Project Agreement"). For the avoidance of doubt, the design-builder shall bear the risk for cost overruns over the not-to-exceed budget amount, including extra costs which may result from errors or omissions in the services provided (subject to change orders and other cost increases in accordance with the terms of the A141). It should be noted that payment bonds and performance bonds will be required, as will compliance with the requirements and procedures contained in the Davis-Bacon and Related Acts, as published in the U.S. Department of Labor regulations (29 CFR parts 1, 3, and 5). The forms of A141, A141-Exhibit A, A141-Exhibit B, and USDA documents to be used are attached hereto. Questions may be directed to Kyle Cross, Facilities Director, Phone: 812-847-5202; Email: kyle.cross@mygcgh.org.
- Financing Contingency:** Hospital seeks partial financing for the ICU Relocation from the U.S. Department of Agriculture ("USDA"). The successful bidder will work cooperatively with Hospital and USDA to ensure the greatest chance of success in obtaining USDA funding. The ICU Relocation is contingent upon receipt of such funds. Bidders understand that USDA requires resident inspections during construction, and the successful bidder must comply with USDA rules and regulations, including USDA's Community Facilities Instructions.

Hospital Work

Schedule: The successful bidder shall construct the ICU Relocation in compliance with a schedule jointly established by Hospital and the successful bidder that coordinates work performed by Hospital with work performed by the successful bidder.

Deadline for Proposals: All responses to this RFP shall be received on or before January 13, 2023 at 4 pm. The opening date for review of proposals will be January 17, 2023, at 1 pm at the Hospital.

Completion Date: The ICU Relocation must be completed by November 10, 2023.

Not-To-Exceed Budget: \$2.5 million. Bidder to provide a fee percentage on the cost of work. All costs will be open book with complete detailed breakdowns. The Owner shall have the right to review and sign off on design, logistics, infection control measures, bids, all indirect costs, and schedule prior to any work being released.

Proposal

Requirements: Each ICU Relocation Proposal must comply with the requirements of this RFP, and each ICU Relocation Proposal must include a GMP estimate, a detailed timeline, any preliminary design and construction plans, a description of the qualifications of the bidder, information about past performance on similar projects, and a description of financial and technical resources. Please state whether the bidder is a small business, minority-owned business, women-owned business, or headquartered in a Labor Surplus Area (as defined by The U.S. Department of Labor).

Requests for information concerning this RFP, as well as any requests for access to the Hospital to inspect the facilities should be directed to: Kyle Cross, Facilities Director, Phone: 812-847-5202; Email: kyle.cross@mygcgh.org.

Each ICU Relocation Proposal must: (a) be submitted on the prescribed form included in this RFP; (b) include all of the information requested in this RFP; (c) if submitted by a trust (as defined in Ind. Code § 30-4-1-1(a)), identify: (i) each beneficiary of the trust; and (ii) each settlor empowered to revoke or modify the trust; and (d) be received in its entirety in the Hospital Offices by 5:00 p.m. local time, on the Deadline for Proposals set forth above (the "Proposal Requirements").

Hospital reserves the right to: (a) consider or reject without consideration any ICU Relocation Proposals that do not satisfy the Proposal Requirements; (b) reject any or all ICU Relocation Proposals; and (c) make an award to the lowest and most qualified bidder, as described more particularly in this RFP, even if the ICU Relocation Proposal submitted by the lowest and most qualified bidder does not satisfy all of the Conditions for ICU Relocation. In determining the lowest and most qualified bidder, Hospital shall take into consideration the following:

- (a) The cost of the work, fee, and guaranteed maximum price, as proposed in each ICU Relocation Proposal.
- (b) The cost to Hospital of satisfying its obligations with respect to the ICU Relocation, as described in each ICU Relocation Proposal.
- (c) The size, character, and quality of the improvements to be constructed by a bidder as part of the ICU Relocation, including, without limitation, the degree of compliance with any applicable development guidelines and the other Conditions for ICU Relocation.
- (d) The schedule for completion of the ICU Relocation.

- (e) The general business reputation of the bidder.
- (f) The experience of the bidder with respect to the development and construction of projects similar to the ICU Relocation (the "Similar Projects").
- (g) The record of the bidder with respect to the completion of Similar Projects on schedule, within budget, and in compliance with plans, permits, and laws.
- (h) The current ability of the bidder to complete the ICU Relocation on schedule, within budget, and in compliance with plans, permits, and laws.
- (i) The financial resources of the bidder and its principals, including, without limitation, the financial resources available to complete the ICU Relocation.
- (j) The financial resources of the bidder's equity investors and construction lender, including, without limitation, the financial resources committed and available to fund completion of the ICU Relocation.
- (k) The development and site plans for the ICU Relocation and any other related improvements, and the compatibility of such plans with existing facilities.
- (l) Satisfaction by the bidder of the Proposal Requirements; compliance of the bidder with the Conditions for ICU Relocation, including, without limitation, any applicable development guidelines; and satisfaction by the bidder of any additional requirements of this RFP.
- (m) Any other factors that Hospital determines to be important in carrying out and serving: (i) the Conditions for ICU Relocation, including, without limitation, implementing any applicable development guidelines; (ii) the legal purposes of Hospital; and (iii) the interests of Linton, Greene County, Indiana, and its residents, from the standpoint of both human and economic welfare.

A successful bidder will be required to execute a binding Project Agreement with Hospital, committing the bidder to: (i) satisfying the Conditions for ICU Relocation, including, without limitation, implementing any applicable development guidelines; and (ii) fulfilling the commitments made by the bidder in its ICU Relocation Proposal. Such Project Agreement shall include the terms and conditions outlined herein.

Dated: November 18, 2022

GREENE COUNTY GENERAL HOSPITAL

Revised: December 16, 2022

Exhibit A

AIA Document A141-2014 (Standard Form of Agreement Between Owner and Design-Builder)

[See attached.]

DRAFT AIA® Document A141™ - 2014

Standard Form of Agreement Between Owner and Design-Builder

AGREEMENT made as of the « » day of « » in the year « »
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

«[The Board of Trustees of Greene County Hospital](#)
[A Body corporate and politic organized under Indiana Code 16-22-1](#)
-»«-»
«[1185 County Road 1000 W](#)-»
«[Linton, IN 47441](#) »
« »

and the Design-Builder:
(Name, legal status, address and other information)

« »« »
« »
« »
« »

for the following Project:
(Name, location and detailed description)

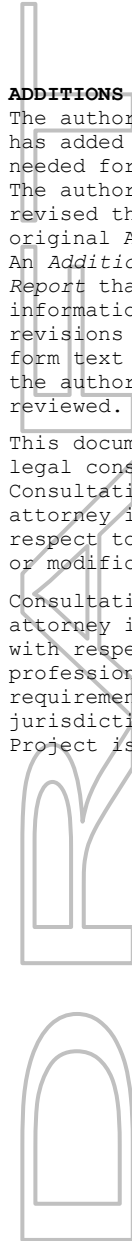
«[Relocation of ICU Rooms](#) »
«[1185 County Road 1000 W](#) »
«[Linton, IN 47441](#) »

The Owner and Design-Builder agree as follows.

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.



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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Owner's Criteria

This Agreement is based on the Owner's Criteria and is concurred with by the Agency set forth in this Section 1.1. Owner and Design-Builder recognize that Owner does not warrant the plans and specifications of the design documents provided by Owner (including, without limitation, the Owner's program for the Project set forth below), and Design-Builder shall be responsible for evaluating the constructability of any plans, specifications or other design documents provided by Owner or Owner's Consultants. Notwithstanding the foregoing, Owner acknowledges that, as to inspection reports or other due diligence documents that are an Owner responsibility, the Owner will provide a reasonable and equitable adjustment in the Contract Time and Contract Sum to account for any inaccuracies or deficiencies in those documents that were not caused by the Design-Builder or one of its subcontractors or subconsultants.

(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable" or "unknown at time of execution." If the Owner intends to provide a set of design documents, and the requested information is contained in the design documents, identify the design documents and insert "see Owner's design documents" where appropriate.)

[See Exhibit 1 for Approved Design Documents](#)

§ 1.1.1 The Owner's program for the Project:

(Set forth the program, identify documentation in which the program is set forth, or state the manner in which the program will be developed.)

[«See Exhibit 2 for Contractor Approved Budget»](#)

§ 1.1.2 The Owner's design requirements for the Project and related documentation:

(Identify below, or in an attached exhibit, the documentation that contains the Owner's design requirements, including any performance specifications for the Project.)

« »

§ 1.1.3 The Project's physical characteristics:

(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

[«See Exhibit 1 Design Documents»](#)

§ 1.1.4 The Owner's anticipated Sustainable Objective for the Project, if any:

(Identify the Owner's Sustainable Objective for the Project such as Sustainability Certification, benefit to the environment, enhancement to the health and well-being of building occupants, or improvement of energy efficiency. If the Owner identifies a Sustainable Objective, incorporate AIA Document A141™-2014, Exhibit C, Sustainable Projects, into this Agreement to define the terms, conditions and Work related to the Owner's Sustainable Objective.)

« -> »

§ 1.1.5 Incentive programs the Owner intends to pursue for the Project, including those related to the Sustainable Objective, and any deadlines for receiving the incentives that are dependent on, or related to, the Design-Builder's services, are as follows:

(Identify incentive programs the Owner intends to pursue for the Project and deadlines for submitting or applying for the incentive programs.)

[«None»](#)

§ 1.1.6 The Owner's budget for the Work to be provided by the Design-Builder is set forth below:

(Provide total for Owner's budget, and if known, a line item breakdown of costs.)

[«See Exhibit 2 Approved Contractor Budget»](#)

§ 1.1.7 The Owner's design and construction milestone dates:

.1 Design phase milestone dates:

«- »

.2 Submission of Design-Builder Proposal:

«- »

.3 Phased completion dates:

« »

- 4 Substantial Completion date: If the Work is not substantially complete on or before this date, or within this period of time, or extension thereof granted by the Owner, the Design/Builder shall pay to the Owner liquidated damages in the sum of \$ _____ for each calendar day of delay. Any sums that may be due the Owner as liquidated damages may be deducted from any monies due or to become due the Design/Builder under the Contract or may be collected from the Design/Builder's surety

« »

- 5 Other milestone dates:

« »

§ 1.1.8 The Owner requires the Design-Builder to retain the following Architect, Consultants and Contractors at the Design-Builder's cost:

(List name, legal status, address and other information.)

- .1 Architect

« »

- .2 Consultants

« »

- .3 Contractors

« »

Design-Builder shall also be responsible and liable to Owner for all deficiencies in the performance of the Design-Builder, its Architects, Consultants, Contractors, and Subcontractors. All of Design-Builder's Architects, Consultants, Contractors, and Subcontractors must be approved by Owner in advance of the Architect, Consultant, Contractor, or Subcontractor beginning to perform Work relating to the Project. Design-Builder shall not change or replace the designated Architect, Consultants, Contractors, or Subcontractors without Owner's written approval. In the event the Owner directs the Design-Builder to remove any of Design-Builder's Architects, Consultants, Contractors or Subcontractors, the Design-Builder shall do so promptly and in no event in more than 3 days from the Owner's direction.

§ 1.1.9 Additional Owner's Criteria upon which the Agreement is based:

(Identify special characteristics or needs of the Project not identified elsewhere, such as historic preservation requirements.)

« »

§ 1.1.10 The Design-Builder shall confirm and be responsible to the Owner to ensure that the information included in the Owner's Criteria complies with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

§ 1.1.10.1 If the Owner's Criteria conflicts with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner of the conflict.

§ 1.1.11 If there is a change in the Owner's Criteria, the Owner, the Agency, and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 1.1.12 If the Owner and Design-Builder intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions. Unless otherwise agreed, the parties will use AIA Document E203™–2013 to establish the protocols for the development, use, transmission, and exchange of digital data and building information modeling. Notwithstanding the foregoing, the delivery of the Design-Build Documents in electronic format is for the benefit of the Owner, for

whom the design services have been performed. Nothing in this transfer should be construed to provide any right of the Contractor to rely on the information provided or that the use of this electronic information implies the review and approval by the design professional of any drawing based on the information. It is the Architect's professional opinion that this electronic information provides design information current as of the date of its release. Any use of this information is at the sole risk and liability of the user, who is also responsible for updating the information to reflect any changes in the design following the preparation date of this information.

§ 1.2 Project Team

§ 1.2.1 The Owner identifies the following representative in accordance with Section 7.1.1:
(List name, address and other information.)

« »
« »
« »
« »
« »
« »

§ 1.2.2 The persons or entities, in addition to the Owner's representative, who are required to review the Design-Builder's Submittals are as follows:
(List name, address and other information.)

«[Kyle Cross](#)
[Brenda Reetz](#)
[Green County Hospital](#)
[1185 County Road 1000 W](#)
[Linton, IN 47441](#)
»

§ 1.2.3 The Owner will retain the following consultants and separate contractors:
(List discipline, scope of work, and, if known, identify by name and address.)

«None-»

§ 1.2.4 The Design-Builder identifies the following representative in accordance with Section 3.1.2:
(List name, address and other information.)

« »
« »
« »
« »
« »
« »

§ 1.2.5 Neither the Owner's nor the Design-Builder's representative shall be changed without ten days' written notice to the other party.

§ 1.3 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Section 14.3, the method of binding dispute resolution shall be the following:

(Check the appropriate box. If the Owner and Design-Builder do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

[] Arbitration pursuant to Section 14.4

[] Litigation in a court of competent jurisdiction

[« »] Other: (Specify)

« »

§ 1.4 Definitions

§ 1.4.1 Design-Build Documents. The Design-Build Documents consist of this Agreement between Owner and Design-Builder and its attached Exhibits (hereinafter, the "Agreement"); other documents listed in this Agreement; and Modifications [agreed by both parties in writing](#) issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, including the Design-Build Amendment, (2) a Change Order, or (3) a Change Directive.

§ 1.4.2 The Contract. The Design-Build Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Design-Build Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Design-Builder.

§ 1.4.3 The Work. The term "Work" means the design, construction and related services required to fulfill the Design-Builder's obligations under the Design-Build Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Design-Builder [and all work incidental to or reasonably inferable that is necessary to produce the results intended by the Design-Build Documents and such services as are necessary to complete other services required under the Contract](#). The Work may constitute the whole or a part of the Project.

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

§ 1.4.5 Instruments of Service. Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Design-Builder, Contractor(s), Architect, and Consultant(s) under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models and other similar materials.

§ 1.4.6 Submittal. A Submittal is any submission to the Owner for review and approval demonstrating how the Design-Builder proposes to conform to the Design-Build Documents for those portions of the Work for which the Design-Build Documents require Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples. Submittals are not Design-Build Documents unless incorporated into a Modification.

§ 1.4.7 Owner. The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative.

§ 1.4.8 Design-Builder. The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Design-Builder" means the Design-Builder or the Design-Builder's authorized representative.

§ 1.4.9 Consultant. A Consultant is a person or entity providing professional services for the Design-Builder for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. To the extent required by the relevant jurisdiction, the Consultant shall be lawfully licensed to provide the required professional services.

§ 1.4.10 Architect. The Architect is a person or entity providing design services for the Design-Builder for all or a portion of the Work, and is lawfully licensed to practice architecture in the applicable jurisdiction. The Architect is referred to throughout the Design-Build Documents as if singular in number.

§ 1.4.11 Contractor. A Contractor is a person or entity performing all or a portion of the construction, required in connection with the Work, for the Design-Builder. The Contractor shall be lawfully licensed, if required in the

jurisdiction where the Project is located. The Contractor is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor.

§ 1.4.12 Confidential Information. Confidential Information is information containing confidential or business proprietary information that is clearly marked as "confidential."

§ 1.4.13 Contract Time. Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, as set forth in the Design-Build Amendment for Substantial Completion of the Work.

§ 1.4.14 Day. The term "day" as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

§ 1.4.15 Contract Sum. The Contract Sum is the amount to be paid to the Design-Builder for performance of the Work after execution of the Design-Build Amendment, as identified in Article A.1 of the Design-Build Amendment.

§ 1.4.16 Agency. The term "Agency," as used in this Agreement, shall mean the United States of America, acting through United States Department of Agriculture.

§ 1.4.17 Independent Inspector. The term "Independent Inspector," as used in this Agreement, shall mean the Inspector independent from the Design/Builder hired by the Owner to represent the Owner's interests. The Agency requires a construction inspector independent of the Design/Builder.

.1 The Independent Inspector shall be a representative of and shall advise and consult with the Owner during construction until final payment is due to the Design/Builder, and at the Owner's direction during the period of correction of the Work described in the design/build documents. The Independent Inspector shall furnish consultations necessary to identify construction defects and correct unforeseen conditions encountered during this period. The Independent Inspector shall assist the Owner in performing a review of the Project during the 11th month after the date of Substantial Completion.

.2 The Independent Inspector shall conduct an inspection prior to the issuance of the Acknowledgement of Substantial Completion and shall submit a written report to the Owner, Agency and the Design/Builder about Work to be completed prior to final acceptance. Such services shall be coordinated with the Agency. Prior to submitting the final Application for Payment, the Independent Inspector shall conduct an inspection, submit a Statement of Completion, and receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Design/Builder.

.3 Visits to the site shall be documented in writing on standard inspection report forms with copies furnished to the Owner, Design/Builder and Agency. Visits to the site shall be in accordance with Agency requirements and procedures.

ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS

§ 2.1 Compensation for Work Performed Prior To Execution of Design-Build Amendment

§ 2.1.1 Unless otherwise agreed in writing, payments for Work performed prior to Execution of the Design-Build Amendment shall be made monthly. For the Design-Builder's performance of Work prior to the execution of the Design-Build Amendment, the Owner shall compensate the Design-Builder as follows:

(Insert amount of, or basis for, compensation, including compensation for any Sustainability Services, or indicate the exhibit in which the information is provided. If there will be a limit on the total amount of compensation for Work performed prior to the execution of the Design-Build Amendment, state the amount of the limit.)

«Within 30 days of submission. Submission will be the 10th of every month-»

§ 2.1.2 The hourly billing rates for services of the Design-Builder and the Design-Builder's Architect, Consultants and Contractors, if any, are set forth below.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Individual or Position

Rate

§ 2.1.3 Compensation for Reimbursable Expenses Prior To Execution of Design-Build Amendment

§ 2.1.3.1 Reimbursable Expenses are in addition to compensation set forth in Section 2.1.1 and 2.1.2 and include expenses, directly related to the Project, incurred by the Design-Builder and the Design-Builder's Architect, Consultants, and Contractors, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner in writing;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner in writing;
- .8 All taxes levied on professional services and on reimbursable expenses; and
- .9 Other Project-related expenditures, if authorized in advance by the Owner in writing.

§ 2.1.3.2 For Reimbursable Expenses, the compensation shall be the expenses the Design-Builder and the Design-Builder's Architect, Consultants and Contractors incurred, plus an administrative fee of ~~« zero »~~ ~~« two and a half »~~ percent (~~« 02.5 »~~ %) of the expenses incurred.

§ 2.1.4 Payments to the Design-Builder Prior To Execution of Design-Build Amendment

§ 2.1.4.1 Payments are due and payable upon within 30 days of presentation of the Design-Builder's invoice. Amounts unpaid ~~« sixty »~~ (~~« 60 »~~ ~~« thirty »~~ (~~« 30 »~~)) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Design-Builder. Interest at 1% per month or 12% per year for pay estimates outstanding for 60 days will be paid to the Design/Builder.

(Insert rate of monthly or annual interest agreed upon.)

~~« »~~ % ~~« »~~ None

§ 2.1.4.2 Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times for a period of two years following execution of the Design-Build Amendment or termination of this Agreement, whichever occurs first.

§ 2.2 Contract Sum and Payment for Work Performed After Execution of Design-Build Amendment

For the Design-Builder's performance of the Work after execution of the Design-Build Amendment, the Owner shall pay to the Design-Builder the Contract Sum in current funds as agreed in the Design-Build Amendment and as required by Article 9.

ARTICLE 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT

§ 3.1 General

§ 3.1.1 The Design-Builder shall comply with any applicable licensing requirements in the jurisdiction where the Project is located.

§ 3.1.2 The Design-Builder shall designate in writing a representative who is authorized to act on the Design-Builder's behalf with respect to the Project.

§ 3.1.3 The Design-Builder shall perform the Work in accordance with the Design-Build Documents. The Design-Builder shall not be relieved of the obligation to perform the Work in accordance with the Design-Build Documents by the activities, tests, reviews, inspections or approvals of the Owner.

§ 3.1.3.1 The Design-Builder shall perform the Work in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder performs Work contrary to

applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction. ~~The Design-Builder shall be entitled to an equitable adjustment to the Contract Sum and Project Schedule, as the case may be, to the extent that changes in laws, or interpretations by public authorities, result in the Contractor incurring additional costs or time.~~

§ 3.1.3.2 Neither the Design-Builder nor any Contractor, Consultant, or Architect shall be obligated to perform any act which they believe will violate any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder determines that implementation of any instruction received from the Owner, including those in the Owner's Criteria, would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner in writing. Upon verification by the Owner that a change to the Owner's Criteria is required to remedy the violation, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 3.1.3.3 The Design/Builder shall advise the Owner of required tests, inspections and reports, shall furnish coordination of such tests and inspections, and shall advise the Owner and Agency of the results of same. Copies of test results shall be furnished to the Owner, Owner's Independent Inspector and Agency, as appropriate.

§ 3.1.4 The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Architect, Consultants, Contractors, and their agents and employees, and other persons or entities performing portions of the Work. Any extra cost that may result from any such acts and omissions will be the responsibility of the Design/Builder.

§ 3.1.5 **General Consultation.** The Design-Builder shall schedule and conduct periodic meetings with the Owner to review matters such as procedures, progress, coordination, and scheduling of the Work. The Design/Builder shall conduct a Preconstruction Conference prior to the beginning of construction to familiarize all parties involved with the necessary work. This meeting shall be held with the Design/Build representative, Owner, Owner's Independent Inspector, Agency representative(s) and other interested parties as appropriate. The Agency 'Record of Preconstruction Conference' may be used to document the meeting.

§ 3.1.6 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals. The Design-Builder shall have the Owner named as a third-party beneficiary in its agreements with any architects or design professionals. The Owner understands and agrees that the services of the Design-Builder's Architect and the Design-Builder's other Consultants are performed in the sole interest of, and for the exclusive benefit of, the Design-Builder. The Design-Builder's Architects, Consultants, Contractors, Subcontractors and material suppliers shall not be deemed beneficiaries of this Agreement or of the Contract in any way.

§ 3.1.7 The Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project, provided that the Design-Builder shall be responsible for obtaining the necessary approvals of those governmental authorities.

§ 3.1.7.1 The Design/Builder shall consult with the Agency Architect or Engineer about the Agency's requirements and procedures.

§ 3.1.8 Progress Reports

§ 3.1.8.1 The Design-Builder shall keep the Owner informed of the progress and quality of the Work. On a monthly basis, or otherwise as agreed to by the Owner and Design-Builder, the Design-Builder shall submit written progress reports to the Owner, showing estimated percentages of completion and other information identified below:

- .1 Work completed for the period;
- .2 Project schedule status;
- .3 Submittal schedule and status report, including a summary of outstanding Submittals;
- .4 Responses to requests for information to be provided by the Owner;
- .5 Approved Change Orders and Change Directives;
- .6 Pending Change Order and Change Directive status reports;
- .7 Tests and inspection reports;
- .8 Status report of Work rejected by the Owner;
- .9 Status of Claims previously submitted in accordance with Article 14;

- .10 Cumulative total of the Cost of the Work to date including the Design-Builder's compensation and Reimbursable Expenses, if any;
- .11 Current Project cash-flow and forecast reports; and
- .12 Additional information as agreed to by the Owner and Design-Builder.
- .13 The Design/Builder shall conduct on-site pay/progress meetings no less than once a month during the periods of active construction. These meetings shall be held with the Design/Build representative, Owner, Owner's Independent Inspector, Agency representative(s) and other interested parties as appropriate, to review and discuss the application for payment, work progress schedule, construction problems or disputes and other appropriate matters.

§ 3.1.8.2 In addition, where the Contract Sum is the Cost of the Work with or without a Guaranteed Maximum Price, the Design-Builder shall include the following additional information in its progress reports:

- .1 Design-Builder's work force report;
- .2 Equipment utilization report; and
- .3 Cost summary, comparing actual costs to updated cost estimates.

§ 3.1.9 Design-Builder's Schedules

§ 3.1.9.1 The Design-Builder, promptly after execution of this Agreement, shall prepare and submit for the Owner's information a schedule for the Work using the Critical Path Method of scheduling. The schedule, including the time required for design and construction, shall not exceed time limits current under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

§ 3.1.9.2 The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to and approved by the Owner.

§ 3.1.10 **Certifications.** Upon the Owner's written request, the Design-Builder shall obtain from the Architect, Consultants, and Contractors, and furnish to the Owner, certifications with respect to the documents and services provided by the Architect, Consultants, and Contractors (a) that ~~to the best of their knowledge, information and belief,~~ the documents or services to which the certifications relate (i) are consistent with the Design-Build Documents, except to the extent specifically identified in the certificate, and (ii) comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications. The Design-Builder's Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 3.1.11 Design-Builder's Submittals

§ 3.1.11.1 Prior to submission of any Submittals, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the Owner's approval. The Owner's approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (1) be coordinated with the Design-Builder's schedule provided in Section 3.1.9.1, (2) allow the Owner reasonable time to review Submittals, and (3) be periodically updated to reflect the progress of the Work. If the Design-Builder fails to submit a Submittal schedule, the Design-Builder shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of Submittals.

§ 3.1.11.2 By providing Submittals the Design-Builder represents to the Owner that it has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Design-Build Documents.

§ 3.1.11.3 The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require Submittals until the Owner has approved the respective Submittal and written concurrence by the Agency has been issued Two (2) sets of submittals for the Agency are required. . The Owner is not responsible for any errors or omissions in those documents and is reviewing those documents solely for its own benefit.

§ 3.1.11.4 The Work shall be in accordance with approved Submittals except that the Design-Builder shall not be relieved of its responsibility to perform the Work consistent with the requirements of the Design-Build Documents. The Work may deviate from the Design-Build Documents only if the Design-Builder has notified the Owner in writing of a deviation from the Design-Build Documents at the time of the Submittal and a Modification is executed authorizing the identified deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in Submittals by the Owner's approval of the Submittals.

§ 3.1.11.5 All professional design services or certifications to be provided by the Design-Builder, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. The Owner and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ 3.1.12 **Warranty.** The Design-Builder warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Design-Build Documents require or permit otherwise. The Design-Builder further warrants that the Work will conform to the requirements of the Design-Build Documents and will be free from defects, ~~except for those inherent in the quality of the Work or otherwise expressly permitted by the Design-Build Documents.~~ Work, materials, or equipment not conforming to these requirements may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse by the Owner, alterations to the Work not executed by the Design-Builder or its contractors, subcontractors, or suppliers, improper or insufficient maintenance by the Owner, improper operation by the Owner, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The Design-Builder shall require all manufacturers to name the Owner as an additional obligee on all manufacturers' warranties. In addition, the Design-Builder shall assign to the Owner all manufacturer's warranties.

§ 3.1.13 **Royalties, Patents and Copyrights**

§ 3.1.13.1 The Design-Builder shall pay all royalties and license fees.

§ 3.1.13.2 The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and its separate contractors and consultants harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Owner, or where the copyright violations are required in the Owner's Criteria. However, if the Design-Builder has reason to believe that the design, process or product required in the Owner's Criteria is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner. If the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the Design-Builder, the Owner shall give prompt written notice to the Design-Builder.

§ 3.1.14 **Indemnification**

§ 3.1.14.1 To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, including the Owner's officers, trustees, directors, agents and employees (the "Indemnitees"), from and against claims, demands (whether valid or invalid), damages, losses, actions, proceedings, liabilities, and expenses, including but not limited to attorneys' fees, court costs, and investigative costs (collectively, the "Damages"), arising out of or resulting from (a) performance of the Work, (b) Design-Builder's failure to comply with its responsibilities under this Agreement or to comply with all applicable laws, ordinances, and regulations, (c) the inaccuracy of any representation or warranty of the Design-Builder contained in the Contract Documents, or (d) other act or omission of Design-Builder, but only to the extent not arising out of the intentional acts of the Indemnitees. Such indemnification shall apply regardless of whether the Damages alleged are caused by the ~~negligent~~ acts or omissions of the Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to ~~a party or person described in this Section 3.1.14~~ an Indemnitee.

§ 3.1.14.2 The indemnification obligation under this Section 3.1.14 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Design-Builder, Architect, a Consultant, a Contractor,

or anyone directly or indirectly employed by them, under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.1.14.3 The Design-Builder shall insure specifically the indemnity contained in this Section 3.1.14 and shall include the Indemnitees as additional insureds by causing amendments, riders, or endorsements to be attached to the Design-Builder's commercial general liability or other appropriate insurance policies.

§ 3.1.15 Contingent Assignment of Agreements

§ 3.1.15.1 Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause, pursuant to Sections 13.1.4 or 13.2.2, and only for those agreements that the Owner accepts by written notification to the Design-Builder and the Architect, Consultants, and Contractors whose agreements are accepted for assignment; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of an agreement, the Owner assumes the Design-Builder's rights and obligations under the agreement.

§ 3.1.15.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Design-Builder's compensation under the assigned agreement shall be equitably adjusted for increases in cost resulting from the Design-Builder's reasonable increased direct costs attributable to the suspension.

§ 3.1.15.3 Upon such assignment to the Owner under this Section 3.1.15, the Owner may further assign the agreement to a successor design-builder or other entity. If the Owner assigns the agreement to a successor design-builder or other entity, the Owner shall nevertheless remain legally responsible for all of the successor design-builder's or other entity's obligations under the agreement.

§ 3.1.16 **Design-Builder's Insurance and Bonds.** The Design-Builder shall purchase and maintain insurance and provide bonds as set forth in Exhibit B. Notwithstanding the foregoing, the parties waive all rights against each other and any subcontractors, sub-subcontractors, agents, and employees, each of the other for damages caused by fire, or other causes of loss, to the extent of actual recovery of insurance proceeds obtained from property insurance required by the Agreement or any property insurance applicable to the Project, except such rights as they have to proceeds of such insurance.

ARTICLE 4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 4.1 General

§ 4.1.1 Any information submitted by the Design-Builder, and any interim decisions made by the Owner, shall be for the purpose of facilitating the design process and shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.1.2 The Design-Builder shall advise the Owner on proposed site use and improvements, selection of materials, and building systems and equipment. The Design-Builder shall also provide the Owner with recommendations, consistent with the Owner's Criteria, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 4.2 Evaluation of the Owner's Criteria

§ 4.2.1 The Design-Builder shall schedule and conduct meetings with the Owner and any other necessary individuals or entities to discuss and review the Owner's Criteria as set forth in Section 1.1. The Design-Builder shall thereafter again meet with the Owner to discuss a preliminary evaluation of the Owner's Criteria. The preliminary evaluation shall address possible alternative approaches to design and construction of the Project and include the Design-Builder's recommendations, if any, with regard to accelerated or fast-track scheduling, procurement, or phased construction. The preliminary evaluation shall consider cost information, constructability, and procurement and construction scheduling issues.

§ 4.2.2 After the Design-Builder meets with the Owner and presents the preliminary evaluation, the Design-Builder shall provide a written report to the Owner, summarizing the Design-Builder's evaluation of the Owner's Criteria. The report shall also include

- .1 allocations of program functions, detailing each function and their square foot areas;
- .2 a preliminary estimate of the Cost of the Work, and, if necessary, recommendations to adjust the Owner's Criteria to conform to the Owner's budget;
- .3 a preliminary schedule, which shall include proposed design milestones; dates for receiving additional information from, or for work to be completed by, the Owner; anticipated date for the Design-Builder's Proposal; and dates of periodic design review sessions with the Owner; and
- .4 the following:
(List additional information, if any, to be included in the Design-Builder's written report.)
- .5 Design Sign Off at 100% CD's by Owner



§ 4.2.3 The Owner shall review the Design-Builder's written report and, if acceptable, provide the Design-Builder with written consent to proceed to the development of the Preliminary Design as described in Section 4.3. The consent to proceed shall not be understood to modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification in writing.

§ 4.3 Preliminary Design

§ 4.3.1 Upon the Owner's issuance of a written consent to proceed under Section 4.2.3, the Design-Builder shall prepare and submit a Preliminary Design to the Owner. The Preliminary Design shall include a report identifying any deviations from the Owner's Criteria, and shall include the following:

- .1 Confirmation of the allocations of program functions;
- .2 Site plan;
- .3 Building plans, sections and elevations;
- .4 Structural system;
- .5 Selections of major building systems, including but not limited to mechanical, electrical and plumbing systems; and
- .6 Outline specifications or sufficient drawing notes describing construction materials.

The Preliminary Design may include some combination of physical study models, perspective sketches, or digital modeling.

§ 4.3.2 The Owner shall review the Preliminary Design and, if acceptable, provide the Design-Builder with written consent to proceed to development of the Design-Builder's Proposal. The Preliminary Design shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification in writing.

§ 4.4 Design-Builder's Proposal

§ 4.4.1 Upon the Owner's issuance of a written consent to proceed under Section 4.3.2, the Design-Builder shall prepare and submit the Design-Builder's Proposal to the Owner. The Design-Builder's Proposal shall include the following:

- .1 A list of the Preliminary Design documents and other information, including the Design-Builder's clarifications, assumptions and deviations from the Owner's Criteria, upon which the Design-Builder's Proposal is based;
- .2 The proposed Contract Sum, including the compensation method, ~~and, if based upon the Cost of the Work plus a fee, a written statement of estimated cost organized by trade categories, allowances, contingencies, Design Builder's Fee, and other items that comprise the Contract Sum;~~
- .3 The proposed date the Design-Builder shall achieve Substantial Completion and all milestone dates;
- .4 An enumeration of any qualifications and exclusions, if applicable;
- .5 A list of the Design-Builder's key personnel, Contractors and suppliers; and
- .6 The date on which the Design-Builder's Proposal expires, which shall not be less than 60 days from the Proposal submission date.

§ 4.4.2 Submission of the Design-Builder's Proposal shall constitute a representation by the Design-Builder that it has visited the site and become familiar with local conditions under which the Work is to be completed, all subsurface site conditions for the Work, and all applicable federal, state and local statutes, laws, regulations,

[ordinances, and orders. Design-Builder agrees it will be responsible for all such site conditions, site and subsurface conditions, statutes, laws, regulations, ordinances and orders it becomes aware of or should have become aware of.](#)

§ 4.4.3 If the Owner and Design-Builder agree on a proposal, the Owner and Design-Builder shall execute the Design-Build Amendment setting forth the terms of their agreement.

ARTICLE 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 5.1 Construction Documents

§ 5.1.1 Upon the execution of the Design-Build Amendment, the Design-Builder shall prepare Construction Documents. The Construction Documents shall establish the quality levels of materials and systems required. The Construction Documents shall be consistent with the Design-Build Documents.

§ 5.1.2 The Design-Builder shall provide the Construction Documents to the Owner for the Owner's information. If the Owner discovers any deviations between the Construction Documents and the Design-Build Documents, the Owner shall promptly notify the Design-Builder of such deviations in writing. The Construction Documents shall not modify the Design-Build Documents unless the Owner and Design-Builder execute a Modification [in writing](#). The failure of the Owner to discover any such deviations shall not relieve the Design-Builder of the obligation to perform the Work in accordance with the Design-Build Documents.

§ 5.2 Construction

§ 5.2.1 **Commencement.** Except as permitted in Section 5.2.2, construction shall not commence prior to execution of the Design-Build Amendment.

§ 5.2.2 If the Owner and Design-Builder agree in writing, construction may proceed prior to the execution of the Design-Build Amendment. However, such authorization shall not waive the Owner's right to reject the Design-Builder's Proposal.

§ 5.2.3 The Design-Builder shall supervise and direct the Work, using the Design-Builder's best skill and attention. The Design-Builder shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, unless the Design-Build Documents give other specific instructions concerning these matters.

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

[§ 5.2.5 The Design-Builder shall have the Owner named as a third-party beneficiary in its agreement with the Contractor or any contractors or subcontractors engaged by the Design-Builder.](#)

§ 5.3 Labor and Materials

§ 5.3.1 Unless otherwise provided in the Design-Build 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 proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.

§ 5.3.2 When a material or system is specified in the Design-Build Documents, the Design-Builder may make substitutions only in accordance with Article 6.

§ 5.3.3 The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Work. The Design-Builder shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. [Design-Builder shall remove from the Project site any person the Owner deems unfit or not properly skilled within 1 day of notice from the Owner to remove the person.](#)

[§ 5.3.4 The Design/Builder shall not contract with any person or entity declared ineligible under Federal laws or regulations from participating in federally assisted construction projects for to whom the Owner has made reasonable objection. The Design/Builder shall not be required to contract with anyone to whom the Design/Builder has reasonable objection.](#)

§ 5.4 Taxes

The Design-Builder shall pay sales, consumer, use and similar taxes, only if applicable, for the Work provided by the Design-Builder, that are legally enacted when the Design-Build Amendment is executed, whether or not yet effective or merely scheduled to go into effect. The Owner is organized and operated exclusively for charitable purposes and has been issued a sales tax exemption identification number. A copy of the exemption certificate will be provided upon request. The Contractor is responsible for compliance with state and local sales tax laws.

§ 5.5 Permits, Fees, Notices and Compliance with Laws

§ 5.5.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall secure and pay for the building permit as well as any other permits, fees, licenses, and inspections by government agencies, necessary for proper execution of the Work and Substantial Completion of the Project. All costs of permits, fees, licenses, and inspections shall be included in Design-Builder's price under the Design-Build Amendment.

§ 5.5.2 The Design-Builder shall comply with and give notices required by all applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, and all other legal requirements applicable to performance of the Work~~applicable to performance of the Work. The Contractor shall be entitled to an equitable adjustment to the Contract Sum and Project Schedule, as the case may be, to the extent that changes in laws result in the Design-Builder incurring additional costs or time, as set forth in Articles 6, 8, and 14.~~

§ 5.5.3 **Concealed or Unknown Conditions.** If the Design-Builder encounters conditions at the site that it could not have discovered from a diligent surface and subsurface site investigation as required by the Contract and that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build Documents or observable from the required inspections or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, the Design-Builder shall promptly provide notice to the Owner before conditions are disturbed and in no event later than 21-2 business days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents or physical conditions not unusual in nature, or that the Design-Builder should have discovered such conditions before executing the Design-Build Amendment, and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Design-Builder in writing, stating the reasons. If the Design-Builder disputes the Owner's determination or recommendation, the Design-Builder may proceed as provided in Article 14.

§ 5.5.4 If, in the course of the Work, the Design-Builder encounters human remains, or recognizes the existence of burial markers, archaeological sites, or wetlands, not indicated in the Design-Build Documents, the Design-Builder shall immediately suspend any operations that would affect them and shall notify the Owner. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Design-Builder shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 14.

§ 5.6 Allowances

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

§ 5.6.2 Unless otherwise provided in the Design-Build Documents,

- .1 allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 the Design-Builder's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts, shall be included in the Contract Sum but not in the allowances; and

- 3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 5.6.2.1 and (2) changes in Design-Builder's costs under Section 5.6.2.2.

§ 5.6.3 The Owner shall make selections of materials and equipment with reasonable promptness for allowances requiring Owner selection.

§ 5.7 Key Personnel, Contractors and Suppliers

§ 5.7.1 The Design-Builder shall not employ personnel, or contract with Contractors or suppliers to whom the Owner has made reasonable and timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable and timely objection.

§ 5.7.2 If the Design-Builder changes any of the personnel, Contractors or suppliers identified in the Design-Build Amendment, the Design-Builder shall notify the Owner and provide the name and qualifications of the new personnel, Contractor or supplier. The Owner may reply within 14 days to the Design-Builder in writing, stating (1) whether the Owner has reasonable objection to the proposed personnel, Contractor or supplier or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.7.3 Except for those persons or entities already identified or required in the Design-Build Amendment, the Design-Builder, ~~as soon as practicable~~ within 5 days after execution of the Design-Build Amendment, shall furnish in writing to the Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work and whether any such persons or entities is a related party of the Design-Builder. The Owner may reply within 14 days to the Design-Builder in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

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

§ 5.8 Documents and Submittals at the Site

The Design-Builder shall maintain at the site for the Owner one copy of the Design-Build Documents and a current set of the Construction Documents, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Submittals. The Design-Builder shall deliver these items to the Owner in accordance with Section 9.10.2 as a record of the Work as constructed.

§ 5.9 Use of Site

The Design-Builder shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment.

§ 5.10 Cutting and Patching

The Design-Builder shall not cut, patch or otherwise alter fully or partially completed construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

§ 5.11 Cleaning Up

§ 5.11.1 The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Design-Builder shall

remove waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 5.11.2 If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Design-Builder.

§ 5.12 Access to Work

The Design-Builder shall provide the Owner and its separate contractors and consultants access to the Work in preparation and progress wherever located. The Design-Builder shall notify the Owner regarding Project safety criteria and programs, which the Owner, and its contractors and consultants, shall comply with while at the site.

§ 5.13 Construction by Owner or by Separate Contractors

§ 5.13.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 5.13.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces; and to award separate contracts in connection with other portions of the Project, or other construction or operations on the site, under terms and conditions identical or substantially similar to this Contract, including those terms and conditions related to insurance and waiver of subrogation. The Owner shall notify the Design-Builder promptly after execution of any separate contract. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make a Claim as provided in Article 14.

§ 5.13.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Design-Builder" in the Design-Build Documents in each case shall mean the individual or entity that executes each separate agreement with the Owner.

§ 5.13.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces, and of each separate contractor, with the Work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Design-Builder shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Design-Builder, separate contractors and the Owner until subsequently revised.

§ 5.13.1.4 Unless otherwise provided in the Design-Build Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or separate contractors, the Owner shall be deemed to be subject to the same obligations, and to have the same rights, that apply to the Design-Builder under the Contract.

§ 5.13.1.5 If applicable, the Design-Builder shall be responsible for the installation of certain equipment furnished by the Owner as indicated in the Contract Documents. It shall be the Design-Builder's responsibility to receive, unload, store, protect, set in place and connect each piece of equipment. Any equipment damaged or lost after receipt by the Contractor shall be replaced or repaired by the Owner and the cost shall be deducted from the Design-Builder's fee. The Design-Builder shall forward a Receiving Notice to the Owner the same day such equipment is received. The Receiving Notice shall be sufficient in detail to allow the Owner and the Architect to match the Receiving Notice to the Purchase Order and Vendor Invoice.

§ 5.14 Mutual Responsibility

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

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

§ 5.14.3 The Design-Builder shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Design-Builder's delays, improperly timed activities or defective construction. The Owner

shall be responsible to the Design-Builder for costs the Design-Builder incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 5.14.4 The Design-Builder shall promptly remedy damage the Design-Builder wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 5.14.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching the Work as the Design-Builder has with respect to the construction of the Owner or separate contractors in Section 5.10.

§ 5.15 Owner's Right to Clean Up

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

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 General

§ 6.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order or Change Directive, subject to the limitations stated in this Article 6 and elsewhere in the Design-Build Documents.

§ 6.1.2 A Change Order shall be based upon agreement between the Owner, Agency and Design-Builder. The Owner may issue a Change Directive without agreement by the Design-Builder.

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

§ 6.1.4 Except as permitted herein, the modification of the Contract Sum and Contract Time shall only be accomplished by a Change Order. No course of dealing, express or implied contract, estoppel, waiver, or claim of unjust enrichment or quantum meruit shall be the basis of any claim to an increase in the Contract Sum or the Contract Time.

§ 6.2 Change Orders A change order is a written order to the Design/Builder utilizing Form RD 1924-7, "Contract Change Order," signed by the Owner, Independent Inspector, Design/Builder, and the Agency representative. It is issued after the execution of the Contract, authorizing a change in the Work or an adjustment in the Contract Sum or the Contract Time. The Contract Sum and the Contract Time may be changed only by Change Order. The Design/Builder's signing of the change order indicates complete agreement therein.

~~§ 6.2.1~~ A Change Order is a written instrument signed by the Owner and Design-Builder stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 6.2.2 Any additive adjustment to the Contract Sum shall include such markups for overhead and profit as follows:

- a) If the Change is to Work self-performed by the Design-Builder that was awarded based on competitive bidding, Design-Builder shall receive ten percent (10%) overhead and ~~five percent (2.5%) Fee~~;
- b) If the Change is to Work self-performed by the Design-Builder that was not awarded by competitive bidding, Contractor shall receive as its fee the Design-Builder's Fee as set forth in the Agreement. This Fee shall also apply to changes in the Work performed by a Subcontractor under Sections (c) and (d), below;
- c) Work performed by a Subcontractor shall include ten percent (10%) overhead and ~~five percent (2.5%) Fee~~;
and
- d) Work performed by a Sub-subcontractor shall include ten percent (10%) overhead and ~~five percent (2.5%)~~

Fee, plus a ~~five percent (2.5%)~~ Fee to the Subcontractor

§ 6.2.4 The Design-Builder's signature on a Change Order, even where the Design-Builder attempts to reserve any rights, constitutes a full, final, and complete waiver, release, and settlement of any and all claims, demands, and causes of action the Design-Builder has, or may have in the future, arising out of or relating to the Change Order and the occurrences, acts, omissions, or events upon which the Change Order is based. In the event that a change in the work necessitates an adjustment in the Contract Time, the extent of the adjustment can be delayed until the next subsequent update of the Project schedule. Notwithstanding the foregoing, the Design-Builder is not precluded from requesting and obtaining a Change Order for events or circumstances related to a previous Change Order that were unknown at the time the previous Change Order was executed.

§ 6.3 Change Directives

§ 6.3.1 A Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time. The Owner may by Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time being adjusted accordingly. A Construction Change Directive may be used only for a change in response to an emergency, as described in paragraph 10.4.

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

~~§ 6.3.3 If the Change Directive provides for an adjustment to the Contract Sum or, if prior to execution of the Design-Build Amendment, an adjustment in the Design-Builder's compensation, the adjustment shall be based on one of the following methods:~~

- ~~.1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;~~
- ~~.2 Unit prices stated in the Design-Build Documents or subsequently agreed upon;~~
- ~~.3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or~~
- ~~.4 As provided in Section 6.3.7.~~

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

~~§ 6.3.5 Upon receipt of a Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design-Builder's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time.~~

§ 6.3.6 A Change Directive signed by the Design-Builder indicates the Design-Builder's agreement therewith, including adjustment in Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

~~§ 6.3.7 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the method for adjustment in the Design-Builder's compensation, the Owner shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In the Contract Sum, the terms "Costs" shall mean the Cost of Work as defined in Section A.5 of the Agreement and the term "Fee" and a reasonable allowance for "Overhead and Profit" shall mean the Design-Builder's Fee as defined in Section A.1.3.2 of the Agreement. In such case, and also under Section 6.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together~~

~~with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section 6.3.7 shall be limited to the following:~~

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

~~The Owner shall have the right to audit the records of the Design-Builder, Architect, Contractor, Subcontractors, or Suppliers to verify the costs of the changed work.~~

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

§ 6.3.9 Pending final determination of the total cost of a Change Directive to the Owner, the Design-Builder may request payment for Work completed under the Change Directive in Applications for Payment. The Owner will make an interim determination for purposes of certification for payment for those costs deemed to be reasonably justified. The Owner's interim determination of cost shall adjust the Contract Sum or, if prior to execution of the Design-Build Amendment, the Design-Builder's compensation, on the same basis as a Change Order, subject to the right of Design-Builder to disagree and assert a Claim in accordance with Article 14.

§ 6.3.10 When the Owner and Design-Builder agree with a determination concerning the adjustments in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Owner and Design-Builder shall execute a Change Order. Change Orders may be issued for all or any part of a Change Directive.

§ 6.3.11 Design-Builder shall not be obligated to perform additional or extra Work without an executed Change Order as directed by the Owner (even if such direction is contrary to, or a waiver of, another term of these Design-Build Documents) or by a Construction Change Directive if the aggregate cost of all such additional Work that has not been converted to an executed change Order exceeds fifty percent (50%) of the Design-Builder's Fee as calculated using the current GMP.

ARTICLE 7 OWNER'S RESPONSIBILITIES

§ 7.1 General

§ 7.1.1 The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization. [The Owner shall provide the Design/Builder with Agency standard Contract Document Guides.](#)

§ 7.1.2 The Owner shall render decisions in a timely manner and in accordance with the Design-Builder's schedule agreed to by the Owner. The Owner shall furnish to the Design-Builder, within 15 days after receipt of a written request, information necessary and relevant for the Design-Builder to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 7.2 Information and Services Required of the Owner

§ 7.2.1 The Owner shall furnish information or services required of the Owner by the Design-Build Documents with reasonable promptness.

§ 7.2.2 The Owner shall provide, to the extent under the Owner's control and if not required by the Design-Build Documents to be provided by the Design-Builder, a "stamped" permit set of Plans and As-Built Drawings, if applicable, for renovation and/or expansion Work, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems; chemical, air and water pollution; hazardous materials; or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site. Upon receipt of a written request from the Design-Builder, the Owner shall also provide surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site under the Owner's control.

§ 7.2.3 The Owner shall promptly obtain easements, zoning variances, and legal authorizations or entitlements regarding site utilization where essential to the execution of the Project.

§ 7.2.4 The Owner shall cooperate with the Design-Builder in securing building and other permits, licenses and inspections.

§ 7.2.5 The services, information, surveys and reports required to be provided by the Owner under this Agreement, shall be furnished at the Owner's expense, and except as otherwise specifically provided in this Agreement or elsewhere in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing, the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof. In no event shall the Design-Builder be relieved of its responsibility to exercise proper precautions relating to the safe performance of the Work.

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

§ 7.2.7 Prior to the execution of the Design-Build Amendment, the Design-Builder may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Design-Build Documents and the Design-Builder's Proposal. Thereafter, the Design-Builder may only request such evidence if (1) the Owner fails to make payments to the Design-Builder as the Design-Build Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Design-Builder identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Design-Builder.

§ 7.2.8 Except as otherwise provided in the Design-Build Documents or when direct communications have been specially authorized, the Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder.

§ 7.2.9 Unless required by the Design-Build Documents to be provided by the Design-Builder, the Owner shall, upon request from the Design-Builder, furnish the services of geotechnical engineers or other consultants for investigation of subsurface, air and water conditions when such services are reasonably necessary to properly carry out the design services furnished by the Design-Builder. In such event, the Design-Builder shall specify the services required. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

§ 7.2.10 The Owner shall purchase and maintain insurance as set forth in Exhibit B.

§ 7.3 Submittals

§ 7.3.1 The Owner shall review and approve or take other appropriate action on Submittals. Review of Submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities; or for substantiating instructions for installation or performance of equipment or systems; or for determining that the Submittals are in conformance with the Design-Build Documents, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents. The Owner's action will be taken in accordance with the submittal schedule approved by the Owner or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Owner's judgment to permit adequate

review. The Owner's review of Submittals shall not relieve the Design-Builder of the obligations under Sections 3.1.11, 3.1.12, and 5.2.3. The Owner's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Owner, of any construction means, methods, techniques, sequences or procedures. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component. Owner shall approve in writing the Architect's design documents in terms of aesthetic effect and non-technical compliance with the Project Design Criteria, which is set forth at Exhibit A.3.1.2.

§ 7.3.2 Upon review of the Submittals required by the Design-Build Documents, the Owner shall notify the Design-Builder of any non-conformance with the Design-Build Documents the Owner discovers.

§ 7.4 Visits to the site by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quality or quantity of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, because these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents.

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

§ 7.6 The Owner has the authority to reject Work that does not conform to the Design-Build Documents. The Owner shall have authority to require inspection or testing of the Work in accordance with Section 15.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the Design-Builder, the Architect, Consultants, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 7.7 The Owner shall determine the date or dates of Substantial Completion in accordance with Section 9.8 and the date of final completion in accordance with Section 9.10.

§ 7.8 Owner's Right to Stop Work

If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section 11.2 or persistently fails to carry out Work in accordance with the Design-Build Documents [or the construction schedule](#), the Owner may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity, except to the extent required by Section 5.13.1.3.

§ 7.9 Owner's Right to Carry Out the Work

If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents [or the construction schedule](#) and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost [and expenses](#) of correcting such deficiencies. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

ARTICLE 8 TIME

§ 8.1 Progress and Completion

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

§ 8.1.2 The Design-Builder shall not, except by agreement of the Owner in writing, commence the Work prior to the effective date of insurance, other than property insurance, required by this Contract. The Contract Time shall not be adjusted as a result of the Design-Builder's failure to obtain insurance required under this Contract.

§ 8.1.3 The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.2 Delays and Extensions of Time

§ 8.2.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a consultant or separate contractor employed by the Owner; or by changes ordered in the Work by the Owner; or by labor disputes, fire, unusual delay in deliveries, ~~services only provided by public utilities, pandemic, epidemic, declared emergency, government orders or directives, or changes in the law that impact the performance of the Work,~~ unavoidable casualties or other causes beyond the Design-Builder's control; or by delay authorized by the Owner pending mediation and binding dispute resolution or by other causes that the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine. However, the Contract Time shall only be extended where Work on the critical path is delayed or Work that could and actually does affect the critical path is delayed, the Design-Builder did not cause the delay, and the Design-Builder could not have anticipated and avoided or mitigated the effect of the delay. ~~and Contract Sum shall be reasonably adjusted by Change Order.~~

§ 8.2.2 Claims relating to time shall be made in accordance with applicable provisions of Article 14.

§ 8.2.3 This Section 8.2 does not preclude recovery of damages for delay by either party under other provisions of the Design-Build Documents. Notwithstanding anything to the contrary in the Design-Build Documents, an extension in the Contract Time, to the extent permitted under Section 8.2.1 shall be the sole remedy of the Design-Builder for any (1) delay in the commencement, prosecution, or completion of the Work; (2) hindrance or obstruction in the performance of the Work; (3) loss of productivity or acceleration; or (4) other similar claims (collectively referred to in this Section 8.2.3 as Delays) whether or not such Delays are foreseeable, unless a Delay is caused by the Owner's intentional or active interference with the Design-Builder's performance of the Work, and only to the extent such acts continue after the Design-Builder furnishes the Owner with notice of such interference. In no event shall the Design-Builder be entitled to any compensation or recovery of any damages in connection with any Delay, including, without limitation, consequential damages, lost opportunity costs, impact damages, acceleration costs, or other similar remuneration. The Owner's exercise of any of its rights or remedies under the Design-Build Documents (including, without limitation, ordering changes in the Work, or directing suspension, rescheduling, or correction of the Work), regardless of the extent or frequency of the Owner's exercise of such rights or remedies, shall not be construed as intentional or active interference with the Design-Builder's performance of the Work.

ARTICLE 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION

§ 9.1 Contract Sum

The Contract Sum is stated in the Design-Build Amendment.

§ 9.2 Schedule of Values

Where the Contract Sum is based on a stipulated sum or Guaranteed Maximum Price, the Design-Builder, prior to the first Application for Payment after execution of the Design-Build Amendment shall submit to the Owner a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 On the last day of the month, the Design-Builder shall submit to the Owner an itemized Application for Payment using AIA Document G-702, 'Application and Certificate for Payment' or Form RD 1924-18, 'Partial Payment Estimate' for completed portions of the Work through that month. Owner shall review the Application and pay all amounts properly owing to the Design-Builder in accordance with the current schedule of values. The application shall be notarized, if required, and supported by data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from the Architect, Consultants, Contractors, and material suppliers, and shall reflect retainage if provided for in the Design-Build Documents. As a condition of payment by the Owner, the Design-Builder shall submit with its Application for Payment lien and claim waivers for previous payments made by the Owner on behalf of itself, the Contractor, and major subcontractors.

§ 9.3.1.1 As provided in Section 6.3.9, Applications for Payment may include requests for payment on account of changes in the Work that have been properly authorized by Change Directives, or by interim determinations of the Owner, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay the Architect, Consultant, Contractor, material supplier, or other persons or entities providing services or work for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay.

§ 9.3.1.3. The Design/Builder shall obtain Agency concurrence on all Applications of Payment before payment is made.

§ 9.3.2 Unless otherwise provided in the Design-Build Documents, payments shall be made for services provided as well as materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner in writing, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Design-Builder with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

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

§ 9.4 Certificates for Payment

The Owner shall, within seven days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a Certificate for Payment indicating the amount the Owner determines is properly due, and notify the Design-Builder in writing of the Owner's reasons for withholding certification in whole or in part as provided in Section 9.5.1. Agency concurrence is required on all Certificates of Payment before payment is made.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Owner may withhold a Certificate for Payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Design-Builder's Application for Payment, or the quality of the Work is not in accordance with the Design-Build Documents. If the Owner is unable to certify payment in the amount of the Application, the Owner will notify the Design-Builder as provided in Section 9.4. If the Design-Builder and Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount that the Owner deems to be due and owing. The Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible because of

- .1 defective Work, including design and construction, not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design-Builder;
- .3 failure of the Design-Builder to make payments properly to the Architect, Consultants, Contractors or others, for services, labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- or
- .7 repeated failure to carry out the Work in accordance with the Design-Build Documents.

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

§ 9.5.3 If the Owner withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Design-Builder and to the Architect or any Consultants, Contractor, material or equipment suppliers, or other persons or entities providing services or work for the Design-Builder to whom the Design-Builder failed to make payment for Work properly performed or material or equipment suitably delivered.

§ 9.6 Progress Payments

§ 9.6.1 After the Owner has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Design-Build Documents. Progress and Final Payments shall be made to Contractor in accordance with Exhibit 9.6.1, Design-Builder's Remittance Information.

§ 9.6.1.1 Provided an Application for Payment is received by the Owner not later than the last day of the month, the Owner shall make payment to the Design-Builder not later than the 30th day of the next month. If an Application for Payment is received by the Owner after the Application date fixed above, payment shall be made by the Owner not later than thirty (30) days after the Owner receives the Application for Payment.

§ 9.6.1.2 With each Application for Payment, the Design-Builder shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that the cash disbursements already made by the Design-Builder on account of the Cost of Work equal or exceed (1) progress payments already received by the Design-Builder; less (2) that portion of those payments attributable to the Design-Builder's Fee; plus (3) payrolls for the period covered by the current Application for Payment; plus (4) retention as provided in this Agreement, applicable to prior progress payments.

§ 9.6.1.3 Each Application for Payment shall be based upon the most recent Schedule of Values submitted by the Design-Builder in accordance with the Contract Documents. The Schedule of Values shall allocate the entire GMP among the various portions of the Work, except the Design-Builder's Fee shall be shown as a single, separate item. The Schedule of Values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This Schedule shall be used as a basis for reviewing the Design-Builder's Applications for Payment, and together with the GMP Report and Design-Builder's Clarifications, is set forth at Exhibit 4.4.3.1.

§ 9.6.1.4 Applications for Payment shall show the percentage completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage completion shall be the lesser of (1) the percentage of that portion of the Work which has actually be completed, or (2) the percentage obtained by dividing (a) the expense which has actually be incurred by the Design-Builder or on account of that portion of the Work for which the Design-Builder has made or intends to make actual payments prior to the next Application for Payment by (b) the share of the GMP allocated to that portion of the Work in the Schedule of Values.

§ 9.6.1.5 Work performed by the Design-Builder's labor force will be billed on a Lump-Sum basis, using the percentage of Work completed. On the final Application, the billing will be prepared on a detailed basis for the entire Project.

§ 9.6.1.6 Ten percent (10%) retention will be held on all Applications until fifty percent (50%) of the Work is completed. Thereafter, no additional retention will be withheld except to adjust the retention for Change Orders. No retention shall be held on Architect's Fee, materials or General Conditions' items.

§ 9.6.1.6 If the Project is located in the State of Illinois, ten percent (10%) retainage shall be held on any payment made prior to the completion of fifty percent (50%) of the Work in accordance with applicable law. Thereafter, retainage withheld shall be reduced so that no more than five percent (5%) is held. Owner shall release payment to Design-Builder for work completed by a subcontractor prior to fifty (50%) completion of the entire Work under this Agreement.

§ 9.6.1.7 On the first Application, the Design-Builder will furnish its Partial Waiver of Lien for the next amount of the Application. Assuming prior partial Applications have been paid, the Design-Builder will furnish with each succeeding partial Application its current Waiver of Lien and the applicable Waivers of Lien and Affidavits from Architect and Subcontractors for the previous partial Application. On the final Application, the Design-Builder will furnish the applicable Waivers and Affidavits from Architect and Subcontractors for the previously paid partial Application. At the time the final Application is approved and funds are available for payment, the Design-Builder will furnish its final

Waiver of Lien and the applicable Final Waivers and Affidavits from the Architect and Subcontractors. In the event a Subcontractor, Sub-subcontractor or material supplier fails to provide a Waiver of Lien for any Application for Payment, the Design-Builder may furnish, either directly or through the appropriate Subcontractor, a bond in lieu of Subcontractor's absent Waiver of Lien. Such bond shall be for one hundred seventy five percent (175%) of the amount of the disputed claim.

§ 9.6.1.8 In taking action on the Design-Builder's Application for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to represent that the Owner has made a detailed examination, audit, or arithmetic verification of the documentation submitted or other supporting data. Any examinations of the site, audits, and verifications, if required by the Owner, will be performed by the Owner's accountants acting in the sole interest of the Owner.

§ 9.6.2 The Design-Builder shall pay each Architect, Consultant, Subcontractor, and other person or entity providing services or work for the Design-Builder no later than the time period required by applicable law, but in no event more than seven days after receipt of payment from the Owner the amount to which the Architect, Consultant, Subcontractor, and other person or entity providing services or work for the Design-Builder is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the portion of the Work performed by the Architect, Consultant, Subcontractor, or other person or entity. The Design-Builder shall, by appropriate agreement with each Architect, Consultant, Subcontractor, and other person or entity providing services or work for the Design-Builder, require each Architect, Consultant, Subcontractor, and other person or entity providing services or work for the Design-Builder to make payments to subconsultants and subcontractors in a similar manner.

§ 9.6.3 The Owner will, on request and if practicable, furnish to the Architect, a Consultant, Subcontractor, or other person or entity providing services or work for the Design-Builder, information regarding percentages of completion or amounts applied for by the Design-Builder and action taken thereon by the Owner on account of portions of the Work done by such Architect, Consultant, Subcontractor or other person or entity providing services or work for the Design-Builder.

§ 9.6.4 The Owner has the right to request written evidence from the Design-Builder that the Design-Builder has properly paid the Architect, Consultants, Subcontractors, or other person or entity providing services or work for the Design-Builder, amounts paid by the Owner to the Design-Builder for the Work. If the Design-Builder fails to furnish such evidence within seven days, the Owner shall have the right to contact the Architect, Consultants, and Subcontractors to ascertain whether they have been properly paid. The Owner shall have no obligation to pay or to see to the payment of money to a Consultant or Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Design-Builder payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Design-Build Documents.

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

§ 9.7 Failure of Payment

If the Owner does not issue a Certificate for Payment, through no fault of the Design-Builder, within the time required by the Design-Build Documents, then the Design-Builder may, upon ~~seven~~ **ten (10)** additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Design-Build Documents.

§ 9.8 Substantial Completion No progress payments will be made that deplete the retainage, place in escrow any funds that are required for retainage, or invest the retainage for the benefit of the Design/Builder.

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work for its intended use without unscheduled disruption, and upon receipt of all permits, approvals, and licenses to be provided by the Design-Builder necessary for the Owner to occupy and utilize the Project. ~~This date shall be confirmed by an Acknowledgement of Substantial Completion.~~ The date of Substantial Completion is the date certified by the Owner in accordance with this Section 9.8.

§ 9.8.2 When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall prepare and submit to the Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Design-Build Documents.

§ 9.8.3 Upon receipt of the Design-Builder's list, the Owner shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not included on the Design-Builder's list, which is not sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Design-Builder shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner. In such case, the Design-Builder shall then submit a request for another inspection by the Owner to determine Substantial Completion.

§ 9.8.4 Prior to issuance of the Certificate of Substantial Completion under Section 9.8.5, the Owner and Design-Builder shall discuss and then determine the parties' obligations to obtain and maintain property insurance following issuance of the Certificate of Substantial Completion.

§ 9.8.5 When the Work or designated portion thereof is substantially complete, the Design-Builder will prepare ~~in~~ collaboration with the Agency Architect or Engineer for the Owner's signature a Certificate of Substantial Completion that shall, upon the Owner's signature, establish the date of Substantial Completion; establish responsibilities of the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Design-Builder shall finish all items on the list accompanying the Certificate. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Design-Builder's warranties required by the Contract Documents shall commence on the date of Substantial Completion regardless of the warranty dates established by equipment manufacturers or vendors.

§ 9.8.6 ~~The Certificate of Substantial Completion shall be submitted by the Design-Builder to the Owner for written acceptance of responsibilities assigned to it in the Certificate. Upon the Owner's acceptance, and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents. The certificate of substantial completion shall be submitted by the Design-Builder to the Owner and the Agency for written acceptance of responsibilities assigned to it in the certificate. When the Work has been substantially completed, except for the work which cannot be completed because of weather conditions, lack of materials or other reasons, which, in the judgment of the Owner, are valid reasons for non-completion, the Owner may make additional payments, retaining at all times an amount sufficient to cover the estimated cost of the work still to be completed.~~

§ 9.9 Partial Occupancy or Use

§ 9.9.1 ~~The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to, by endorsement or otherwise, by the insurer providing property insurance and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under~~

~~Section 9.8.2. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Design-Builder. The Design/Builder agrees to the use and occupancy of a portion or unit of the Project before formal acceptance by the Owner under the following conditions:~~

§ 9.9.1.1 A Certificate of Substantial Completion shall be prepared and executed as provided in subparagraph 9.8.4, except that when, in the opinion of the Inspecting Architect, the Design/Builder is chargeable with unwarranted delay in completing the Work or the Contract requirements, the signature of the Design/Builder will not be required. The Certificate of Substantial Completion shall be accompanied by copies of Design/Builder's insurance policies, written endorsements of the Design/Builder's insurance carrier, and the surety permitting occupancy by the Owner during the remaining period of the Project Work. Occupancy and use by the Owner shall not commence until authorized by public authorities having jurisdiction over the Work.

§ 9.9.1.2 Occupancy by the Owner shall not be construed by the Design/Builder as being an acceptance of that part of the Project to be occupied.

§ 9.9.1.3 The Design/Builder shall not be held responsible for any damage to the occupied part of the Project resulting from the Owner's occupancy.

§ 9.9.1.4 Occupancy by the Owner shall not be deemed to constitute a waiver of existing claims in behalf of the Owner or Design/Builder against each other.

§ 9.9.1.5 If the Project consists of more than one building, and one of the buildings is to be occupied, the Owner, prior to occupancy of that building, shall secure permanent property insurance on the building to be occupied and necessary permits which may be required for use and occupancy.

§ 9.9.2 With the exception of clause 9.9.1.5, use and occupancy by the Owner prior to Project acceptance does not relieve the Design/Builder of the responsibility to maintain all insurance and bonds required of the Design/Builder under the Contract Documents until the Project is completed and accepted by the Owner. Immediately prior to such partial occupancy or use, the Owner and Design-Builder shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Design-Build Documents.

§ 9.10 Final Completion and Final Payment

~~§ 9.10.1 Upon receipt of the Design-Builder's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection. When the Owner finds the Work acceptable under the Design-Build Documents and the Contract fully performed, the Owner will, subject to Section 9.10.2, promptly issue a final Certificate for Payment. Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner, Owner's Independent Inspector and Agency representative shall promptly make such inspection and, and when the Owner finds the Work acceptable under the Design/Build documents and fully performed, the Owner with Agency concurrence shall, subject to Section A.9.10.2, promptly make final payment to the Design/Builder.~~

§ 9.10.1.1 Final payment to the Design-Builder will not be made until all guarantees, warranties, operating manuals, parts list, instructions and record (as-built) drawings have been received by the Owner.

§ 9.10.1.2 The Owner shall have the right to require an audit of the Design-Builder's records and the Contractor's records. The audit shall be conducted by the Owner or its authorized representative. The Owner reserves the right to audit at any time during construction and within four years after the Substantial Completion of the Work.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which the Owner or the Owner's property might be responsible or encumbered, (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect, (3) a written

statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, (5) as-constructed record copy of the Construction Documents marked to indicate field changes and selections made during construction, (6) manufacturer's warranties, product data, and maintenance and operations manuals, and (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, or releases and waivers of liens, claims, security interests, or encumbrances, arising out of the Contract, to the extent and in such form as may be designated by the Owner. ~~If an Architect, a Consultant, or a Contractor, or other person or entity providing services or work for the Design Buildersubcontractor, refuses to furnish a release or waiver required by the Owner, the Design Builder mayshall furnish a bond at One Hundred Seventy-Fifty percent (175%) of the disputed claim and—satisfactory to the Owner to indemnify the Owner against such liens, claims, security interests, or encumbrances. If such liens, claims, security interests, or encumbrances remains unsatisfied after payments are made, the Design Builder shall refund to the Owner all money that the Owner may be compelled to pay in discharging such liens, claims, security interests, or encumbrances, including all costs and reasonable attorneys' fees, lien or absent waiver.~~

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of Change Orders affecting final completion, the Owner shall, upon application by the Design-Builder, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder to the Owner prior to issuance of payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 ~~The making of final payment shall constitute a waiver of Claims by the Owner except those arising from~~
~~.1 — liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;~~
~~.2 — failure of the Work to comply with the requirements of the Design-Build Documents; or~~
~~.3 — terms of special warranties required by the Design-Build Documents~~ N/A.

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

§ 9.10.6 Final payment shall be made by the Owner to the Design-Builder when (1) the Contract has been fully performed by the Design-Builder except for the Design-Builder's responsibility to correct defective or nonconforming Work, and to satisfy other requirements, if any, which necessarily survive payment; and (2) a final Application for Payment and a final accounting of the Cost of Work have been submitted by the Design-Builder and reviewed by the Owner. Final payment shall be made by the Owner not more than thirty (30) days after Owner's approval of the Final Application.

§ 9.10.7 The amount of payment shall be calculated as follows:

§ 9.10.7.1 Take the sum of the Cost of Work substantiated by the Design-Builder's final accounting and the Design-Builder's Fee, but not more than the GMP;

§ 9.10.7.2 Subtract amounts if any, which the Owner withholds, in whole or in part, for incomplete, defective, or nonconforming Work as provided for in this Agreement; and

§ 9.10.7.3 Subtract the aggregate of previous payments made by the Owner. If the final Application for Payment and the aggregate of previous payments made by the Owner exceeds the GMP as adjusted, the Owner shall only be responsible to pay the balance due to equal the GMP. The Design-Builder shall reimburse the Owner for any funds paid in excess to the GMP as adjusted.

§ 9.10.8 The Owner's accountant will review and report in writing on the Design-Builder's final accounting within thirty (30) days after delivery of the final accounting to the Owner by the Design-Builder. Based upon such Cost of Work as the Owner's accountants report to be substantiated by the Design-Builder's final accounting, and provided the other conditions of Section A.9.10.2, above, have been met, the Owner will, within seven (7) days after receipt

of the written report of its accountants, either make final payment to the Design-Builder, or notify the Design-Builder in writing of the reasons for withholding a part or all of the payment.

§ 9.10.9 If the Owner's accountants report the Cost of Work substantiated by the Design-Builder's final accounting to be less than that claimed by the Design-Builder, the Design-Builder shall be entitled to demand arbitration of the disputed amount. Such demand for arbitration shall be made by the Design-Builder within thirty (30) days after the Design-Builder's receipt of a notice of nonpayment in whole or part. Pending a final resolution by arbitration, the Owner shall pay the Design-Builder the undisputed amounts due up to, but not exceeding, the GMP.

§ 9.10.10 If subsequent to final payment and at the Owner's request, the Design-Builder incurs costs described in Article A.5.1, and not excluded by Article A.5.2, to correct defective or nonconforming Work, the Owner shall reimburse the Design-Builder such costs and the Design-Builder's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the GMP.

§ 9.10.11 The Design-Builder shall keep full and detailed accounts and exercise such control as may be necessary for the proper financial management under this Contract; the accounting and control system shall be satisfactory to the Owner. The Owner and the Owner's accountant shall be afforded access to the Design-Builder's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Contract, which shall be preserved for a period of three (3) years after final payment, or for such longer period as may be required by law. Wages, salaries and all associated taxes, costs and benefits that are combined as a comprehensive unit of pay described as "Supervisory and Administrative Personnel Rates", "Labor Rates" and "Equipment Rental Rates" as described in Article A.5.1, constitute the primary data for accounting and auditing purposes.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Design-Builder shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Design-Builder shall be responsible for precautions for the safety of, and reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby, [including third parties who enter the site due to failure by Design-Builder to properly secure it;](#)
- .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 or the Architect, Consultants, or Contractors, or other person or entity providing services or work for the Design-Builder; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, or structures and utilities not designated for removal, relocation or replacement in the course of construction.

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

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

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

§ 10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3, caused in whole or in part by the Design-Builder, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the

Design-Builder is responsible under Sections 10.2.1.2 and 10.2.1.3; except damage or loss attributable to acts or omissions of the Owner, or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section 3.1.14.

§ 10.2.6 The Design-Builder shall designate a responsible member of the Design-Builder's organization, at the site, whose duty shall be the prevention of accidents. This person shall be the Design-Builder's superintendent unless otherwise designated by the Design-Builder in writing to the Owner.

§ 10.2.7 The Design-Builder shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

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

§ 10.3 Hazardous Materials

§ 10.3.1 The Design-Builder is responsible for compliance with any requirements included in the Design-Build Documents regarding hazardous materials. If the Design-Builder encounters a hazardous material or substance not addressed in the Design-Build Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing.

§ 10.3.2 Upon receipt of the Design-Builder's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Design-Build Documents, the Owner shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Design-Builder will promptly reply to the Owner in writing stating whether or not the Design-Builder has reasonable objection to the persons or entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Design-Builder. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Design-Builder's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Design-Builder, the Architect, Consultants, and Contractors, and employees of any of them, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to, or destruction of, tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity or a third person, and except to the extent the Design-Builder knew or should have known of the harmful substance or condition.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Design-Builder brings to the site unless such materials or substances are required by the Owner's Criteria. The Owner shall be responsible for materials or substances required by the Owner's Criteria, except to the extent of the Design-Builder's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Design-Builder shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Design-Builder brings to the site and negligently handles, or (2) where the

Design-Builder fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

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

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss.

ARTICLE 11 UNCOVERING AND CORRECTION OF WORK

§ 11.1 Uncovering of Work

The Owner may request to examine a portion of the Work that the Design-Builder has covered to determine if the Work has been performed in accordance with the Design-Build Documents. If such Work is in accordance with the Design-Build Documents, the Owner and Design-Builder shall execute a Change Order to adjust the Contract Time and Contract Sum, as appropriate. If such Work is not in accordance with the Design-Build Documents, the costs of uncovering and correcting the Work shall be at the Design-Builder's expense and the Design-Builder shall not be entitled to a change in the Contract Time unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs and the Contract Time will be adjusted as appropriate.

§ 11.2 Correction of Work

§ 11.2.1 Before or After Substantial Completion. The Design-Builder shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for any design consultant employed by the Owner whose expenses and compensation were made necessary thereby, shall be at the Design-Builder's expense.

§ 11.2.2 After Substantial Completion

§ 11.2.2.1 In addition to the Design-Builder's obligations under Section 3.1.12, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found not to be in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of the Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 7.9.

§ 11.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 11.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section 11.2.

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

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

§ 11.2.5 Nothing contained in this Section 11.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder has under the Design-Build Documents, or other rights the Owner may have to assert claims against the Design-Builder, including but not limited to claims for defective work or breach of contract. Establishment of the one-year period for correction of Work as described in Section 11.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

§ 11.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 12 COPYRIGHTS AND LICENSES

§ 12.1 Drawings, specifications, and other documents furnished by the Design-Builder, including those in electronic form, are Instruments of Service. The Design-Builder, and the Architect, Consultants, Contractors, and any other person or entity providing services or work for any of them, shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements, or for similar purposes in connection with the Project, is not to be construed as publication in derogation of the reserved rights of the Design-Builder and the Architect, Consultants, and Contractors, and any other person or entity providing services or work for any of them.

§ 12.2 The Design-Builder and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 12.3 Upon execution of the Agreement, the Design-Builder grants to the Owner a limited, irrevocable and non-exclusive license to use the Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under the Design-Build Documents. The license granted under this section permits the Owner to authorize its consultants and separate contractors to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Design-Builder rightfully terminates this Agreement for cause as provided in Section 13.1.4 or 13.2.1 the license granted in this Section 12.3 shall terminate.

§ 12.3.1 The Design-Builder shall obtain non-exclusive licenses from the Architect, Consultants, and Contractors, that will allow the Design-Builder to satisfy its obligations to the Owner under this Article 12. The Design-Builder's licenses from the Architect and its Consultants and Contractors shall also allow the Owner, in the event this Agreement is terminated for any reason other than the default of the Owner or in the event the Design-Builder's Architect, Consultants, or Contractors terminate their agreements with the Design-Builder for cause, to obtain a limited, irrevocable and non-exclusive license solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner (1) agrees to pay to the Architect, Consultant or Contractor all amounts due, and (2) provide the Architect, Consultant or Contractor with the Owner's written agreement to indemnify and hold harmless the Architect, Consultant or Contractor from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service.

§ 12.3.2 In the event the Owner alters the Instruments of Service without the author's written authorization or uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all claims and causes of action arising from or related to such uses. The Owner, to the extent permitted by law, further agrees to indemnify, defend and hold harmless the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the

extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service under this Section 12.3.2. The terms of this Section 12.3.2 shall not apply if the Owner rightfully terminates this Agreement for cause under Sections 13.1.4 or 13.2.2.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination or Suspension Prior to Execution of the Design-Build Amendment

§ 13.1.1 If the Owner fails to make payments to the Design-Builder for Work prior to execution of the Design-Build Amendment in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Design-Builder's option, cause for suspension of performance of services under this Agreement. If the Design-Builder elects to suspend the Work, the Design-Builder shall give seven days' written notice to the Owner before suspending the Work. In the event of a suspension of the Work, the Design-Builder shall have no liability to the Owner for delay or damage caused by the suspension of the Work. Before resuming the Work, the Design-Builder shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.2 If the Owner improperly suspends the Project, the Design-Builder shall be compensated for the Work performed prior to notice of such suspension. When the Project is resumed, the Design-Builder shall be compensated for expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.3 If the Owner suspends the Project for more than 90 cumulative days for reasons ~~other than the fault of the Design-Builder~~ that are solely due to a breach of the Design-Build Documents by the Owner, the Design-Builder may terminate this Agreement by giving not less than seven days' written notice.

§ 13.1.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 13.1.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Design-Builder for the Owner's convenience and without cause.

§ 13.1.6 In the event of termination not the fault of the Design-Builder, the Design-Builder shall be compensated for Work performed prior to termination, together with Reimbursable Expenses then due and any other expenses directly attributable to termination for which the Design-Builder is not otherwise compensated. In no event shall the Design-Builder's compensation under this Section 13.1.6 be greater than the compensation set forth in Section 2.1, and the Design-Builder shall not be entitled to profit or overhead on design services not executed.

§ 13.2 Termination or Suspension Following Execution of the Design-Build Amendment

§ 13.2.1 Termination by the Design-Builder

§ 13.2.1.1 The Design-Builder may terminate the Contract if the Work is stopped for a period of ~~30~~ 60 consecutive days through no act or fault of the Design-Builder, the Architect, a Consultant, or a Subcontractor, or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Owner has not issued a Certificate for Payment and has not notified the Design-Builder of the reason for withholding certification as provided in Section 9.5.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Design-Build Documents; or
- .4 The Owner has failed to furnish to the Design-Builder promptly, upon the Design-Builder's request, reasonable evidence as required by Section 7.2.7.

§ 13.2.1.2 The Design-Builder may terminate the Contract if, through no act or fault of the Design-Builder, the Architect, a Consultant, a Contractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 13.2.3 constitute in the aggregate more than

100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 13.2.1.3 If one of the reasons described in Section 13.2.1.1 or 13.2.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, [documented reasonable](#) costs incurred by reason of such termination, and damages. [The Design-Builder shall not be entitled to profit or overhead on design services or Work not executed.](#)

§ 13.2.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder or any other persons or entities performing portions of the Work under contract with the Design-Builder because the Owner has repeatedly failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon seven additional days' written notice to the Owner, terminate the Contract and recover from the Owner as provided in Section 13.2.1.3.

§ 13.2.2 Termination by the Owner For Cause

§ 13.2.2.1 The Owner may terminate the Contract if the Design-Builder

- .1 fails to submit the Proposal by the date required by this Agreement, or if no date is indicated, within a reasonable time consistent with the date of Substantial Completion;
- .2 repeatedly refuses or fails to supply an Architect, or enough properly skilled Consultants, Subcontractors, or workers or proper materials;
- .3 fails to make payment to the Architect, Consultants, or Subcontractors for services, materials or labor in accordance with their respective agreements with the Design-Builder;
- .4 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .5 is otherwise guilty of substantial breach of a provision of the Design-Build Documents.

§ 13.2.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, seven days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:

- .1 Exclude the Design-Builder from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;
- .2 Accept assignment of the Architect, Consultant and Contractor agreements pursuant to Section 3.1.15; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 13.2.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 13.2.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished.

§ 13.2.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner. The obligation for such payments shall survive termination of the Contract.

[§ 13.2.2.5 If the Owner's cause for termination is deemed wrongful, the termination will be automatically converted to a termination for convenience.](#)

§ 13.2.3 Suspension by the Owner for Convenience

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

§ 13.2.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 13.2.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

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

§ 13.2.4 Termination by the Owner for Convenience

§ 13.2.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

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

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

§ 13.2.4.3 In case of such termination for the Owner's convenience, the Design-Builder shall be entitled to receive payment for Work executed, and documented reasonable costs incurred by reason of such termination, along with reasonable overhead and profit on the Work ~~not~~ executed. The Design-Builder shall not be entitled to profit or overhead on design services or Work not executed.

ARTICLE 14 CLAIMS AND DISPUTE RESOLUTION

§ 14.1 Claims

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

§ 14.1.2 **Time Limits on Claims.** The Owner and Design-Builder shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other, arising out of or related to the Contract in accordance with the requirements of the binding dispute resolution method selected in Section 1.3, within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Design-Builder waive all claims and causes of action not commenced in accordance with this Section 14.1.2.

§ 14.1.3 Notice of Claims

§ 14.1.3.1 **Prior To Final Payment.** Prior to Final Payment, Claims by either the Owner or Design-Builder must be initiated by written notice to the other party within 21 days after occurrence of the event giving rise to such Claim or within ~~21-30~~ days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 14.1.3.2 **Claims Arising After Final Payment.** After Final Payment, Claims by either the Owner or Design-Builder that have not otherwise been waived pursuant to Sections ~~9.10.4 or~~ 9.10.5, must be initiated by prompt written notice to the other party. The notice requirement in Section 14.1.3.1 and the Initial Decision requirement as a condition precedent to mediation in Section 14.2.1 shall not apply.

§ 14.1.4 **Continuing Contract Performance.** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 13, the Design-Builder shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

§ 14.1.5 **Claims for Additional Cost.** If the Design-Builder intends to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the portion of the Work that relates to the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 14.1.5.1 If the Contractor believes additional cost is involved for reasons including but not limited to (1) an order by the Owner to stop the Work where the Contractor was not at fault, (2) a written order for the Work issued by the Owner, (3) failure of payment by the Owner, (4) termination of the Agreement by the Owner, (5) Owner's suspension, (6) a delay or price increase of material, equipment, or energy, or (7) other reasonable grounds, Contractor may file a Claim in accordance with this Article 14.

§ 14.1.6 Claims for Additional Time

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

§ 14.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 14.1.7 Claims for Consequential Damages

~~The Design-Builder and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes~~

- ~~1 — damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and~~
- ~~2 — damages incurred by the Design-Builder for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.~~

The Design-Builder and the Owner mutually limit consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement to the amount of the limit of the Design-Builder's professional liability and other applicable insurance policies. The Owner's liability for consequential damages shall be limited to the same amount as the Design-Builder's liability under this paragraph.

This mutual waiver limitation is applicable, without limitation, to all consequential damages due to either party's termination, except as specifically provided in Section 13.2.1.3 in accordance with Article 13. Nothing contained in this Section 14.1.7 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Design-Build Documents.

§ 14.2 Initial Decision

§ 14.2.1 An initial decision shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder initiated prior to the date final payment is due, excluding those arising under Sections 10.3 and 10.4 of the Agreement and Sections B.3.2.9 and B.3.2.10 of Exhibit B to this Agreement, unless 30 days have passed after the Claim has been initiated with no decision having been rendered. Unless otherwise mutually agreed in writing, the Owner shall render the initial decision on Claims.

§ 14.2.2 Procedure

§ 14.2.2.1 **Claims Initiated by the Owner.** If the Owner initiates a Claim, the Design-Builder shall provide a written response to Owner within ten days after receipt of the notice required under Section 14.1.3.1. Thereafter, the Owner shall render an initial decision within ten days of receiving the Design-Builder's response: (1) withdrawing the Claim in whole or in part, (2) approving the Claim in whole or in part, or (3) suggesting a compromise.

§ 14.2.2.2 **Claims Initiated by the Design-Builder.** If the Design-Builder initiates a Claim, the Owner will take one or more of the following actions within ten days after receipt of the notice required under Section 14.1.3.1: (1) request additional supporting data, (2) render an initial decision rejecting the Claim in whole or in part, (3) render an initial decision approving the Claim, (4) suggest a compromise or (5) indicate that it is unable to render an initial decision because the Owner lacks sufficient information to evaluate the merits of the Claim.

§ 14.2.3 In evaluating Claims, the Owner may, but shall not be obligated to, consult with or seek information from persons with special knowledge or expertise who may assist the Owner in rendering a decision. The retention of such persons shall be at the Owner's expense.

§ 14.2.4 If the Owner requests the Design-Builder to provide a response to a Claim or to furnish additional supporting data, the Design-Builder shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Owner when the response or supporting data will be furnished or (3) advise the Owner that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Owner will either reject or approve the Claim in whole or in part.

§ 14.2.5 The Owner's initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) identify any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 14.2.6 Either party may file for mediation of an initial decision at any time, ~~subject to the terms of Section 14.2.6.1.~~

§ 14.2.6.1 ~~Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.~~ Intentionally omitted.

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

§ 14.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 14.3 Mediation

§ 14.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections ~~9.10.4~~, 9.10.5; and 14.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 14.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, and delivered to the other party to the Contract, and filed with the person or entity administering the mediation. Once mediation is requested, the parties shall select a mediator from one of the following: (1) a private mediation service in the city of the Project; (2) any experienced private construction mediator; or (3) if the parties cannot agree on a private mediation service or a private construction mediator, the American Arbitration Association. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this Section 14.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

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

§ 14.4 Arbitration

§ 14.4.1 If the parties have selected arbitration as the method for binding dispute resolution in Section 1.3, any Claim subject to, but not resolved by, mediation ~~shall~~may be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration to the other party to the Design-Build Contract. Once arbitration is demanded, the parties shall elect an arbitrator from one of the following: (1) any experienced private construction arbitrator; or (2) if the parties cannot agree on a private construction arbitrator, the American Arbitration Association. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 14.4.1.1 ~~A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations or statute of repose. For statute of limitations or statute of repose purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.~~ The arbitration

provisions in this subsection may be initiated by either party to this Contract by filing with the other party a written request for arbitration. The other party may accept or reject the request by filing a written answering statement with the requesting party within fourteen (14) calendar days of the receipt of such request. If the request is accepted the provisions of this section shall apply. If the request is rejected or an answering statement is not filed within the fourteen (14) day period, the provisions in this subsection will not apply.

~~§ 14.4.1.2 The arbitration hearing shall be held in the place where the Project is located, unless another location is mutually agreed upon in writing.~~ Within fourteen (14) calendar days or any mutually agreeable time period thereafter, each party to this Contract will appoint one arbitrator. Within fourteen (14) calendar days or any mutually agreeable time period thereafter, the two arbitrators will select a third arbitrator. Failure to appoint an arbitrator within the mutually agreeable time periods will terminate further actions under this subsection.

§ 14.4.1.3 The arbitrators will select a hearing location as close to the Owner's locale as possible.

§ 14.4.2 The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§1, et seq. ~~§ 14.4.2~~ The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

§ 14.4.3 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 14.4.4 Consolidation or Joinder

§ 14.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 14.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 14.4.4.3 The Owner and Design-Builder grant to any person or entity made a party to an arbitration conducted under this Section 14.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Design-Builder under this Agreement.

§ 14.4.4.4 Discovery

§ 14.4.4.4.1 The rules governing discovery for claims must be established immediately following initiation of the arbitration and selection of the arbitrator(s). If the Parties do not agree on the scope of discovery, the rules governing discovery will be established by the arbitrator(s), consistent with the American Arbitration Association's Construction Industry Arbitration Rules and the Federal Arbitration Act, 9 U.S.C. §§1, et seq. The arbitrator(s) shall conduct a pre-hearing conference as soon as possible at the start of the case to be attended by Party representatives as well as outside counsel to discuss the scope of discovery.

§ 14.4.4.4.2 Document requests by a Party will be limited to documents that are directly relevant to significant issues in the claim or to the claim's outcome, and will be restricted in terms of time frames, subject matter, and persons or entities to which the request pertain. Requests should not include broad phraseology such as "all documents directly or indirectly related to".

§ 14.4.4.4.3 Electronic Discovery

§ 14.4.4.4.3.1 There shall be production of electronic documents only from sources used in the ordinary course of business. Absent a showing of compelling need, no such documents are required to be produced from back-up servers, tapes, or other media.

§ 14.4.4.4.3.2 Absent a showing of compelling need, the production of electronic documents shall normally be made on the basis of generally available technology in a searchable format which is usable by the party receiving the

[electronic documents and convenient and economical for the producing party. Absent a showing of compelling need, the parties need not produce metadata, with the exception of header fields for email correspondence.](#)

[§ 14.4.4.3.3 Where the costs and burden of electronic discovery are disproportionate to the nature and gravity of the dispute or the relevance of the materials requested, the arbitrator\(s\) will either deny such requests or order disclosure on condition that the requesting party advance the reasonable cost of production to the producing party, subject to further allocation of costs in the final award.](#)

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 14.4.

§ 15.2 Successors and Assigns

§ 15.2.1 The Owner and Design-Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section 15.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract. [This Agreement will not become effective until concurred with in writing by the Agency. Such concurrence shall be evidenced by the signature of a duly authorized representative of the Agency in the space provided at the end of this Agreement. The concurrence so evidenced by the Agency shall in no way commit the Agency to render financial assistance to the Owner and is without liability to the Agency for payment hereunder.](#)

[But in the event such financial assistance is provided, the Agency concurrence shall signify the provisions of this Agreement are consistent with the requirements of the Agency.](#)

§ 15.2.2 The Owner may, without consent of the Design-Builder, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Design-Build Documents. The Design-Builder shall execute all consents reasonably required to facilitate such assignment.

§ 15.2.3 If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute certificates, other than those required by Section 3.1.10, the Owner shall submit the proposed language of such certificates for review at least 14 days prior to the requested dates of execution. If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute consents reasonably required to facilitate assignment to a lender, the Design-Builder, Architect, Consultants, or Contractors shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to them for review at least 14 days prior to execution. The Design-Builder, Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 15.3 Written Notice

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 15.4 Rights and Remedies

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

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

§ 15.5 Tests and Inspections

§ 15.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Design-Build Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Design-Builder shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Design-Builder.

§ 15.5.2 If the Owner determines that portions of the Work require additional testing, inspection or approval not included under Section 15.5.1, the Owner will instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section 15.5.3, shall be at the Owner's expense.

§ 15.5.3 If such procedures for testing, inspection or approval under Sections 15.5.1 and 15.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure shall be at the Design-Builder's expense.

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

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

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

§ 15.6 Confidential Information

If the Owner or Design-Builder transmits Confidential Information, the transmission of such Confidential Information constitutes a warranty to the party receiving such Confidential Information that the transmitting party is authorized to transmit the Confidential Information. If a party receives Confidential Information, the receiving party shall keep the Confidential Information strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 15.6.1. [The Parties shall identify information and documents as "confidential" when transmitting.](#)

§ 15.6.1 A party receiving Confidential Information may disclose the Confidential Information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Information as set forth in this Contract.

§ 15.7 Capitalization

Terms capitalized in the Contract include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 15.8 Interpretation

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

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

§ 15.9 Additional Provisions EQUAL OPPORTUNITY REQUIREMENTS – Non-discrimination in Employment by Federally Assisted Construction Contractors, by Executive Order 11246.

§ 15.9.1 Compliance with Laws, Regulations, and Accreditation - The Parties believe and intend that this Agreement complies with all relevant federal and state laws as well as relevant regulations and accreditation standards, including but not limited to Federal Health Care Program (as defined under 42 U.S.C. § 1320a-7b(f)) fraud and abuse laws (including the Anti-Kickback Statute and the Stark Law), and all of the rules and regulations promulgated pursuant to, and all of the cases or opinions interpreting such statutes and laws (collectively, "Laws").

This section summarized Executive Order 11246, as amended, which prohibits employment discrimination and requires employers holding non-exempt Federal contracts and subcontracts and federally-assisted construction contracts and subcontracts in excess of \$10,000 to take affirmative action to ensure equal employment opportunity without regard to race, color, religion, sex, or national origin. The Executive Order requires, as a condition for the approval of any federally assisted construction contract, that the applicant incorporate nondiscrimination and affirmative action clauses into its non-exempt federally assisted construction contracts.

§ 15.9.2 Exclusion From Federal Health Care Programs

The Design-Builder represents and warrants to the Owner that it is not: excluded from participation in any Federal Health Care Program; debarred, suspended or otherwise excluded from participating in any other federal or state procurement or nonprocurement program or activity; or designated a Specially Designated National or Blocked Person by the Office of Foreign Asset Control of the U.S. Department of Treasury. The listing of Design-Builder or any of its employees on the Office of Inspector General's exclusion list (OIG website), the General Services Administration's Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs (GSA website) for excluded individuals or entities shall constitute "exclusion" for purposes of this paragraph. The term "Federal Health Care Program" means the Medicare program, the Medicaid program, TRICARE, any health care program of the Department of Veterans Affairs, the Maternal and Child Health Services Block Grant program, any state social services block grant program, any state children's health insurance program, or any similar program. The Design-Builder further represents and warrants to the Owner that to its knowledge, there are no pending or threatened governmental investigations that may lead to such exclusion. Design-Builder shall notify Owner in writing upon the commencement of any such exclusion or investigation within seven (7) business days of receiving first notice of such exclusion or investigation. Owner shall have the right to terminate this Agreement immediately upon learning of any such exclusion and shall be kept informed of the status of any such investigation.

Executive Order 11246, as amended, is administered and enforced by the Office of Federal Contract Compliance Programs (OFCCP), an agency in the U.S. Department of Labor's Employment Standards Administration. OFCCP has issued regulations at 41 CFR chapter 60 implementing the Executive Order. The regulations at 41 CFR part 60-4 establish the procedures which the Agency, as an administering agency, must follow when making grants, contracts, loans, insurance or guarantees involving federally assisted construction which is not exempt from the requirements of Executive Order 11246. The regulations which apply to Federal or federally assisted construction contractors also are published at 41 CFR part 60-4.

§ 15.9.3 Joint Commission – Design-Builder hereby agrees to perform services in accordance with policies and procedures of Owner and in conformance to the standards established by the Joint Commission and all applicable state hospital licensure laws and regulations. Design-Builder will also provide services in accordance with the Medicare Conditions of Participation for Hospitals and agrees to provide information relating to ensuring and improving quality of patient care upon the request of Owner. Design-Builder agrees to submit individual credential and relevant competency validation to Owner upon request for any staff involved in patient services that are not subject to Allied Health Credentialing processes of Owner.

OFCCP has established numerical goals for minority and female utilization in construction work. The goals are expressed in percentage terms for the contractor's aggregate workforce in each trade. OFCCP has set goals for minority utilization based on the percentage of minorities in the civilian labor force in the relevant area. There is a single nationwide goal of 6.9 percent for utilization for women. The goals to all construction work in the covered geographic area, whether or not it is federal, federally assisted or non-federal. A notice advises bidders of the applicable goals for the area where the project is to be located

§ 15.9.4 HIPAA - The Parties agree that each shall comply with the Standards for Privacy of Individually Identifiable Health Information and all other regulations promulgated under Section 264 of the Health Insurance Portability and

Accountability Act of 1996 ("HIPAA") and other state or federal health information privacy and security laws (collectively, "Privacy Laws"). Furthermore, the Parties shall promptly amend the Agreement to conform with any new or revised Privacy Laws in order to ensure that Owner is at all times in conformance with all Privacy Laws. Design-Builder acknowledges and agrees it is a participant in Owner's organized health care arrangement ("OHCA") under HIPAA, and further agrees to act in accordance with such OHCA designation.

Application. This section applies to all of a construction contractor's or subcontractor's employees who are engaged in on-site construction including those construction employees who work on a non-Federal or non-Federally assisted construction site.

§ 15.9.4.1 Agency officials will notify the appropriate Regional Director of OFCCP that an Agency financed construction contract has been awarded, and that the equal opportunity clauses are included in the contract documents.

§ 15.9.4.2 The Regional Director, OFCCP-DOL, will enforce the non-discrimination requirements of Executive Order 11246.

§ 15.9.4.3 The prospective contractor or subcontractor must comply with the Immigration Reform and Control Act of 1986 by completing and retaining Form I-9, "Employment Eligibility Verification," for employees hired. This form is available from the Immigration and Naturalization Service, and Department of Justice.

§ 15.9.4.4. The prospective contractor or subcontractor must submit Form RD 400-6, "Compliance Statement," to the applicant and an Agency official as part of the bid package, prior to any contract bid negotiations and comply with the Executive Order 11246 as stated in the contract documents.

§ 15.9.5 Amendments. This Agreement may be amended only by an instrument in writing signed by the Parties.

§ 15.9.6 Nondiscrimination. Contractor shall not discriminate against the Owner's or Contractor's worker, employee, applicant, or any member of the public because of race, creed, color, religion, age, sex, handicap, sexual orientation, or national origin. The Contractor also agrees to comply with the requirements and procedures contained in the Davis-Bacon and Related Acts, as published in the U.S. Department of Labor regulations (29 CFR parts 1, 3, and 5).

§ 15.9.7 Third Party Rights. Except as otherwise expressly stated herein, the Parties do not intend to create any enforceable rights in any third party under this Agreement and there are no third party beneficiaries to this Agreement.

§ 15.10 STATUTES.

§ 15.10.1 The Design/Builder and each subcontractor shall comply with the following statutes (and the regulations issued pursuant thereto, which are incorporated herein by reference):

§ 15.10.2 The Design/Builder agrees to abide by the requirements of 2 CFR part 417 and under Executive Order 12549, which pertains to the debarment or suspension of a person from participating in a Federal program or activity. If the total compensation exceeds \$25,000, the Design/Builder shall complete the relevant certification form provided by the Owner.

§ 15.10.3 If applicable, the Design/Builder shall comply with Section 319 of Public Law 101-121, as supplemented by the Department of Agriculture regulations (2 CFR part 418 and DR 2400-5). This Law pertains to restrictions on lobbying and applies to the recipients of Contracts and Subcontracts that exceed \$100,000 at any tier under a Federal loan that exceeds \$150,000 or a Federal grant that exceeds \$100,000. If applicable, the Design/Builder must complete a certification form on lobbying activities related to a specific Federal loan or grant that is a funding for this Contract. The certification and disclosure forms shall be provided by the Owner.

§ 15.10.4 Copeland Anti-Kickback Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). This Act provides that each Contractor shall be prohibited from inducing, by any means, any person in connection with the construction to give up any part of the compensation to which the person is otherwise entitled.

§ 15.10.5 Clean Air Act (42 U.S.C. 7414), section 114, and the Water Pollution Control Act (33 U.S.C. 1813), section 308. Under Executive Order 11738 and Environmental Protection Agency (EPA) regulations 40 CFR part 15, all Contracts in excess of \$100,000 are required to comply with these Acts. The Acts require the Contractor to:

§15.10.5.1 Notify the Owner of the receipt of any communication from EPA indicating that a facility to be utilized in the performance of the Contract is under consideration to be listed on the EPA list of Violating Facilities.

§15.10.5.2 Certify that any facility to be utilized in the work by any nonexempt contractor or subcontractor is not listed on the EPA list of Violating Facilities as of the date of the Contract Award

§ 15.10.5.3 Include or cause to be included the above criteria and requirements of clauses A.13.3.5.1 and A.13.3.5.2 in every nonexempt Subcontract, and that the Contractor will take such actions as the Agency may direct as a means of enforcing such provisions.

§ 15.10.6 The Contractor shall be required to comply with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) entitle "Safety and Health Regulations for Construction" (29 CFR Part 1926) to the extent that any resulting Contract involves construction.

§ 15.11 ENVIRONMENTAL REQUIREMENTS

§ 15.11.1 Mitigation Measures – The Design/Builder shall comply with applicable mitigation measures established in the environmental assessment for the project. These may be obtained from the Agency representative.

§ 15.11.2 The Design/Builder, when constructing a Project involving trenching, excavating, or other earth moving activity, shall comply with the following environmental constraints:

§ 15.11.2.1 Endangered Species, Historic Preservation, Human Remains and Cultural Items, Hazardous Materials, and Paleontology – Any excavation or other earth moving activity by the Design/Builder that provides evidence of the presence of endangered or threatened species or their critical habitat, uncovers a historical or archaeological artifact, human remains or cultural items, hazardous materials, a fossil or other paleontological materials will require the Design/Builder to:

- .1 Temporarily stop work;
- .2 Provide immediate notice to the Architect and the Agency, and in the case of potentially hazardous materials, provide immediate notice to local first responders and take such measures as necessary to protect the public and workers;
- .3 Take reasonable measures as necessary to protect the discovered materials or protected resource;
- .4 Abide by such direction as provided by the Agency, or Agencies responsible for resource protection or hazardous materials management; and
- .5 Resume work only upon notice from the Architect and the Agency.

§ 15.12 Compliance with all Federal, State, and local requirements effective on the contract execution date will be the responsibility of the Design/Builder.

§ 15.13 RECORDS

§ 15.13.1 If the Contract is based on a negotiated Bid, the Owner, the United States Department of Agriculture, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Design/Builder which are directly pertinent to a specific Federal loan program for the purpose of making audit, examination, excerpts, and transcriptions. The Design/Builder shall maintain records for at least three years after the Owner makes final payment and all other pending matters are closed.

ARTICLE 16 SCOPE OF THE AGREEMENT

§ 16.1 This Agreement is comprised of the following documents listed below:

- .1 AIA Document A141™-2014, Standard Form of Agreement Between Owner and Design-Builder
- .2 AIA Document A141™-2014, Exhibit A, Design-Build Amendment, if executed
- .3 AIA Document A141™-2014, Exhibit B, Insurance and Bonds
- .4 ~~AIA Document A141™-2014, Exhibit C, Sustainable Projects, if completed~~ [1, Design Documents](#)
- .5 ~~In the event a virtual design model is implemented for the coordinated design and construction of the Project, the parties may execute a BIM Addendum on a form to be agreed to by the parties. The Owner shall cause an identical BIM Addendum to be appended or incorporated into all written agreements between the Owner and any design professional performing obligations to be modeled~~ [Exhibit 2, Approved Contractor Budget.](#)
- .6 [Exhibit 3, Management Labor Rates.](#)

[Payment Bond](#)

[Performance Bond](#)

[Compliance Statement \(Form RD 400-6\)](#)

[Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier](#)

[Covered Transactions \(Form AD 1048\)](#)

[Disclosure of Lobbying Activities \(SF-LLL\)](#)

[Certification for Contracts, Grants and Loans \(RD Instruction 1940-Q, Exhibit A-1](#)

~~.6 Other:~~

~~«Exhibit 9.6.1 — Design Builder's Remittance Information»~~



This Agreement entered into as of the day and year first written above.

OWNER (Signature)

«»«»

(Printed name and title)

DESIGN-BUILDER (Signature)

«»«»

(Printed name and title)

This Agreement is entered into as of the day and year first written above and is executed in at least three original copies, of which one is to be delivered to the Design/Builder, one to the Owner and one to the Agency. Concurrence in the Contract by the Agency is required before the contract is effective.

OWNER: _____

ATTEST: _____ BY: _____

Print Name: _____ Print Name: _____

Title: _____ Title: _____

Date: _____ Date: _____

DESIGN/BUILDER: _____

ATTEST: _____ BY: _____

Print Name: _____ Print Name: _____

Title: _____ Title: _____

Date: _____ Date: _____

OWNER'S ATTORNEY REVIEW:

I have examined this design/build contract and have received verification that the proper performance and payment bond(s) will be issued and executed thereof, and I am of the opinion that each of the aforesaid agreements are adequate and has been duly executed by the proper parties thereto acting through their duly authorized representatives; that said representatives have full power and authority to execute said agreements on behalf of the respective parties named thereon; and that the foregoing agreements constitute valid and legally binding obligations upon the parties executing the same in accordance with terms, conditions, and provisions thereof.

By: _____

Print Name: _____

Date: _____

AGENCY CONCURRENCE:

Approved as lender or insurer of fund to defray the costs of this contract and without liability for any payments thereunder, the USDA Rural Development hereby concurs in the award of this contract.

By: _____ Title: _____

Print Name: _____ Date: _____



Exhibit B

AIA Document A141-2014 Exhibit A (Design-Build Amendment)

[See attached.]

Exhibit A

Design-Build Amendment

This Amendment is incorporated into the accompanying AIA Document A141™-2014, Standard Form of Agreement Between Owner and Design-Builder dated the « » day of « » in the year « » (the "Agreement") (In words, indicate day, month and year.)

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

« Relocation of ICU Rooms » « 1185 County Road 1000 W Linton, IN 47441 »

THE OWNER: (Name, legal status and address)

« The Board of Trustees of Greene County Hospital - » « A Body corporate and politic organized under Indiana Code 16-22-1 Linton, IN 47441 »

THE DESIGN-BUILDER: (Name, legal status and address)

« » « »

The Owner and Design-Builder hereby amend the Agreement as follows.

TABLE OF ARTICLES

- A.1 CONTRACT SUM
A.2 CONTRACT TIME
A.3 INFORMATION UPON WHICH AMENDMENT IS BASED
A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS
A.5 COST OF THE WORK

ARTICLE A.1 CONTRACT SUM

§ A.1.1 The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Contract after the execution of this Amendment. The Contract Sum shall be one of the following and shall not include compensation the Owner paid the Design-Builder for Work performed prior to execution of this Amendment:

ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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



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(Check the appropriate box.)

Stipulated Sum, in accordance with Section A.1.2 below

Cost of the Work plus the Design-Builder's Fee, in accordance with Section A.1.3 below

Cost of the Work plus the Design-Builder's Fee with a Guaranteed Maximum Price, in accordance with Section A.1.4 below

(Based on the selection above, complete Section A.1.2, A.1.3 or A.1.4 below.)

§ A.1.2 Stipulated Sum

§ A.1.2.1 The Stipulated Sum shall be (\$), subject to authorized adjustments as provided in the Design-Build Documents and Contractor's Clarifications attached at Exhibit A.1.2.1 and incorporated by reference hereto.

§ A.1.2.2 The Stipulated Sum is based upon the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in Stipulated Sum for each and the deadline by which the alternate must be accepted.)

«See Exhibit A.1.2.2, List of Alternates »

§ A.1.2.3 Unit prices, if any:

(Identify item, state the unit price, and state any applicable quantity limitations.)

Item	Units and Limitations	Price per Unit (\$0.00)
See Exhibit A.1.2.3, List of Unit Prices		

§ A.1.3 Cost of the Work Plus Design-Builder's Fee

§ A.1.3.1 The Cost of the Work is as defined in Article A.5, Cost of the Work.

§ A.1.3.2 The Design-Builder's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee, and the method for adjustment to the Fee for changes in the Work.)

« »

§ A.1.4 Cost of the Work Plus Design-Builder's Fee With a Guaranteed Maximum Price

§ A.1.4.1 The Cost of the Work is as defined in Article A.5, Cost of the Work.

§ A.1.4.2 The Design-Builder's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee and the method for adjustment to the Fee for changes in the Work.)

« »

§ A.1.4.3 Guaranteed Maximum Price

§ A.1.4.3.1 The sum of the Cost of the Work and the Design-Builder's Fee is guaranteed by the Design-Builder not to exceed (\$), subject to additions and deductions for changes in the Work as provided in the Design-Build Documents. Costs that would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner.

(Insert specific provisions if the Design-Builder is to participate in any savings.)

If not inserted above, the Guaranteed Maximum Price shall be established upon completion of the Drawings and Specifications. Should as determined by final accounting, the Cost of the Work (as defined in Article 7), plus the Contractor's Fee (as defined in Article 5) be less than the GMP as adjusted by Change Order, the resulting savings shall be shared between Owner and Contractor on a _____ / _____ % basis, respectively.

« »

§ A.1.4.3.2 Itemized Statement of the Guaranteed Maximum Price

Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the Design-Builder’s Fee, and other items that comprise the Guaranteed Maximum Price.

(Provide information below or reference an attachment.)

« »

§ A.1.4.3.3 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in the Cost of the Work and Guaranteed Maximum Price for each and the deadline by which the alternate must be accepted.)

« »

§ A.1.4.3.4 Unit Prices, if any:

(Identify item, state the unit price, and state any applicable quantity limitations.)

Item	Units and Limitations	Price per Unit (\$0.00)

§ A.1.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

« »

§ A.1.5 Payments

§ A.1.5.1 Progress Payments

§ A.1.5.1.1 Based upon Applications for Payment submitted to the Owner by the Design-Builder, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

§ A.1.5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month. Any "Pencil Draw" review or pre-approved review of a monthly Application for Payment prior to the end of the current month’s Work shall include Work reasonably estimated to be completed at the end of such month.

« »

§ A.1.5.1.3 Provided that an Application for Payment is received not later than the ~~«last 20th»~~ day of the month, the Owner shall make payment of the certified amount to the Design-Builder not later than the ~~«2030th»~~ day of the ~~«following next»~~ month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than ~~«thirty forty-five»~~ (~~«3045»~~) days after the Owner receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ A.1.5.1.4 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence (except for approved costs estimated through the end of the billing period) required by the Owner to demonstrate that cash disbursements already made by the Design-Builder on account of the Cost of the Work equal or exceed (1) progress payments already received by the Design-Builder, less (2) that portion of those payments attributable to the Design-Builder’s Fee; plus (3) payrolls for the period covered by the present Application for Payment. In addition to the other required items, each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner and in compliance with applicable statutes of the state where the Project is located:

(A) A current sworn statement from the Design-Builder setting forth all Architects, Consultants, Contractors, Subcontractors, and material suppliers with whom the Design-Builder has contracted or subcontracted, the amount of each contract or subcontract, the amount requested for any contractor, subcontractor, or material supplier in the Application for Payment, and the amount to be paid by the Design-Builder from such progress payment to Architects, Consultants, Contractors, Subcontractors, and material suppliers, together with a current duly executed waiver of mechanics' and material suppliers' liens from the Design-Builder establishing receipt of payment for satisfaction of the payments requested by the Design-Builder in the current Application for Payment. In its sole discretion, the Owner shall be entitled to pay directly any or all of the Design-Builder's Architects, Consultants, Contractors, Subcontractors and material suppliers and charge those payments against the Contract Sum. In the event the amounts paid by Owner to Design-Builder's Architects, Consultants, Contractors, Subcontractors, and material suppliers exceed the amounts remaining due under the Design-Build Contract to Design-Builder then Owner shall be entitled to collect from Design-Builder those amounts.

(B) Commencing with the second Application for Payment submitted by a Contractor, duly executed so-called "after-the- fact" waivers of mechanics' and material suppliers' liens from all Architects, Consultants, Contractors, Subcontractors, material suppliers, and, when appropriate, lower tier subcontractors and material suppliers, acknowledging receipt of payment or satisfaction of payment of all amounts requested on behalf of such entities and disbursed prior to submittal by the Design-Builder of the current Application for Payment, plus sworn statements from all Architects, Consultants, Contractors, Subcontractors, material suppliers, and where appropriate, lower tier subcontractors and material suppliers, covering all amounts described in this Section A.1.5.1.4.

(C) Such other information, documentation, and materials as the Owner, the Owner's Consultants, the Owner's lender, or the title insurer may require.

(D) Such other information, documentation, and materials as are required elsewhere in the Contract to be submitted with Applications for Payment.

(E) Should any lien or claim of lien develop before or after all payments are made hereunder, the Design-Builder shall refund to the Owner within ten (10) days of demand therefor all monies that the Owner shall be compelled to pay in discharging or satisfying such claims or liens and all costs, including reasonable attorneys' fees incurred in collecting said monies from the Design-Builder. Owner shall have the right in its sole judgment to satisfy or file a bond to discharge a claim of lien or other claim and to deduct all amounts paid to satisfy or discharge a claim of lien or other claim plus Owner's attorneys' fees and expenses from any amounts remaining due under the Design-Build Contract to Design-Builder or to collect from Design-Builder those amounts to the extent those amounts exceed the amount remaining in the Contract Sum.

(F) No progress payments made to Design-Builder under this Agreement shall be conclusive evidence of the performance of this Agreement either in whole or in part, and no such payment shall be construed to be acceptance of defective work or improper materials.

§ A.1.5.1.5 With each Application for Payment where the Contract Sum is based upon a Stipulated Sum or Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services, if any, shall be shown separately. Where the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder's Fee shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment. In addition to the other required items, each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner and in compliance with applicable statutes of the state where the Project is located:

(A) A current sworn statement from the Design-Builder setting forth all Architects, Consultants, Contractors, Subcontractors, and material suppliers with whom the Design-Builder has contracted or subcontracted, the amount of each contract or subcontract, the amount requested for any contractor,

subcontractor, or material supplier in the Application for Payment, and the amount to be paid by the Design-Builder from such progress payment to Architects, Consultants, Contractors, Subcontractors, and material suppliers, together with a current duly executed waiver of mechanics' and material suppliers' liens from the Design-Builder establishing receipt of payment for satisfaction of the payments requested by the Design-Builder in the current Application for Payment. In its sole discretion, the Owner shall be entitled to pay directly any or all of the Design-Builder's Architects, Consultants, Contractors, Subcontractors and material suppliers and charge those payments against the Contract Sum. In the event the amounts paid by Owner to Design-Builder's Architects, Consultants, Contractors, Subcontractors, and material suppliers exceed the amounts remaining due under the Design-Build Contract to Design-Builder then Owner shall be entitled to collect from Design-Builder those amounts.

(B) Commencing with the second Application for Payment submitted by a Contractor, duly executed so-called "after-the- fact" waivers of mechanics' and material suppliers' liens from all Architects, Consultants, Contractors, Subcontractors, material suppliers, and, when appropriate, lower tier subcontractors and material suppliers, acknowledging receipt of payment or satisfaction of payment of all amounts requested on behalf of such entities and disbursed prior to submittal by the Design-Builder of the current Application for Payment, plus sworn statements from all Architects, Consultants, Contractors, Subcontractors, material suppliers, and where appropriate, lower tier subcontractors and material suppliers, covering all amounts described in this Section A.1.5.1.5.

(C) Such other information, documentation, and materials as the Owner, the Owner's Consultants, the Owner's lender, or the title insurer may require.

(D) Such other information, documentation, and materials as are required elsewhere in the Contract to be submitted with Applications for Payment.

(E) Should any lien or claim of lien develop before or after all payments are made hereunder, the Design-Builder shall refund to the Owner within ten (10) days of demand therefor all monies that the Owner shall be compelled to pay in discharging or satisfying such claims or liens and all costs, including reasonable attorneys' fees incurred in collecting said monies from the Design-Builder. Owner shall have the right in its sole judgment to satisfy or file a bond to discharge a claim of lien or other claim and to deduct all amounts paid to satisfy or discharge a claim of lien or other claim plus Owner's attorneys' fees and expenses from any amounts remaining due under the Design-Build Contract to Design-Builder or to collect from Design-Builder those amounts to the extent those amounts exceed the amount remaining in the Contract Sum.

(F) No progress payments made to Design-Builder under this Agreement shall be conclusive evidence of the performance of this Agreement either in whole or in part, and no such payment shall be construed to be acceptance of defective work or improper materials.

§ A.1.5.1.6 In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections A.1.5.1.4 or A.1.5.1.5, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ A.1.5.1.7 Except with the Owner's prior approval, that shall not be unreasonably withheld with respect to long-lead or other materials customarily fabricated and available in order to maintain progress of the Work, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ A.1.5.2 Progress Payments—Stipulated Sum

§ A.1.5.2.1 Applications for Payment where the Contract Sum is based upon a Stipulated Sum shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ A.1.5.2.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage as set forth in Section A.1.5.2.4, below on the Work. Pending final determination of cost to the Owner of Changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage as set forth in Section A.5.1.2.4, below;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, the Owner has withheld or nullified, as provided in Section 9.5 of the Agreement.

§ A.1.5.2.3 The progress payment amount determined in accordance with Section A.1.5.2.2 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Owner shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and
(Section 9.8.6 of the Agreement discusses release of applicable retainage upon Substantial Completion of Work.)
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Design-Builder, any additional amounts payable in accordance with Section 9.10.3 of the Agreement.

§ A.1.5.2.4 Reduction or limitation of retainage, if any, shall be as follows:

(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections A.1.5.2.2.1 and A.1.5.2.2.2 above, and this is not explained elsewhere in the Design-Build Documents, insert provisions here for such reduction or limitation.)

Ten percent (10%) retainage will be held on all individual line items until fifty percent (50%) of that Work is completed and approved by Owner. Thereafter, no additional retainage will be withheld except to adjust the retainage for Change Orders.

« »

§ A.1.5.3 Progress Payments—Cost of the Work Plus a Fee

§ A.1.5.3.1 Where the Contract Sum is based upon the Cost of the Work plus a fee without a Guaranteed Maximum Price, Applications for Payment shall show the Cost of the Work actually incurred by the Design-Builder through the end of the period covered by the Application for Payment and for which Design-Builder has made or intends to make actual payment prior to the next Application for Payment.

§ A.1.5.3.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take the Cost of the Work as described in Article A.5 of this Amendment;
- .2 Add the Design-Builder's Fee, less retainage of « ten » percent (« 10 » %). The Design-Builder's Fee shall be computed upon the Cost of the Work described in the preceding Section A.1.5.3.2.1 at the rate stated in Section A.1.3.2; or if the Design-Builder's Fee is stated as a fixed sum in that Section, an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in that Section bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract retainage of « ten » percent (« 10 » %) from that portion of the Work that the Design-Builder self-performs;
- .4 Subtract the aggregate of previous payments made by the Owner;
- .5 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section A.1.5.1.4 or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Subtract amounts, if any, for which the Owner has withheld or withdrawn a Certificate of Payment as provided in the Section 9.5 of the Agreement.

§ A.1.5.3.3 The Owner and Design-Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on agreements with the Architect, Consultants, and Contractors, and the Design-Builder shall execute agreements in accordance with those terms.

§ A.1.5.4 Progress Payments—Cost of the Work Plus a Fee with a Guaranteed Maximum Price

§ A.1.5.4.1 Applications for Payment where the Contract Sum is based upon the Cost of the Work Plus a Fee with a Guaranteed Maximum Price shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Design-Builder on account of that portion of the Work for which the Design-Builder has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ A.1.5.4.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement.
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Design-Builder's Fee, ~~less retainage of « » percent (« » %).~~ no retainage on fee. The Design-Builder's Fee shall be computed upon the Cost of the Work at the rate stated in Section A.1.4.2 or, if the Design-Builder's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of ~~«five ten-»~~ percent (~~«510»~~ %) from that portion of the Work that the Design-Builder self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section A.1.5.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Owner has withheld or nullified a payment as provided in Section 9.5 of the Agreement.

§ A.1.5.4.3 The Owner and Design-Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on agreements with the Architect, Consultants, and Contractors; and the Design-Builder shall execute agreements in accordance with those terms.

§ A.1.5.5 Final Payment

§ A.1.5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder not later than 30 days after the Design-Builder has fully performed the Contract and the requirements of Section 9.10 of the Agreement have been satisfied, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment.

§ A.1.5.5.2 If the Contract Sum is based on the Cost of the Work, the Owner's auditors will review and report in writing on the Design-Builder's final accounting within 30 days after the Design-Builder delivers the final accounting to the Owner. Based upon the Cost of the Work the Owner's auditors report to be substantiated by the Design-Builder's final accounting, and provided the other conditions of Section 9.10 of the Agreement have been met, the Owner will, within seven days after receipt of the written report of the Owner's auditors, either issue a final

Certificate for Payment, or notify the Design-Builder in writing of the reasons for withholding a certificate as provided in Section 9.5.1 of the Agreement.

ARTICLE A.2 CONTRACT TIME

§ A.2.1 Contract Time, as defined in the Agreement at Section 1.4.13, is the period of time, including authorized adjustments, for Substantial Completion of the Work.

§ A.2.2 Provided that all applicable permits and licenses for the Project have been obtained. The Design-Builder shall achieve Substantial Completion of the Work not later than << >> (<< >>) days from the date of this Amendment, or as follows:

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

<< >>

Portion of Work

Substantial Completion Date

, subject to adjustments of the Contract Time as provided in the Design-Build Documents.

(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)

<<->

ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

§ A.3.1 The Contract Sum and Contract Time set forth in this Amendment are based on the following:

§ A.3.1.1 The Supplementary and other Conditions of the Contract:

[See Exhibit 2 Approved Contractor Budget](#)

Document

Title

Date

Pages

§ A.3.1.2 The Specifications:

(Either list the specifications here or refer to an exhibit attached to this Amendment.)

<<See Exhibit A.3.1.2 for List of SpecificationsSee Exhibit 2 Approved Contractor Budget->>

Section

Title

Date

Pages

§ A.3.1.3 The Drawings:

(Either list the drawings here or refer to an exhibit attached to this Amendment.)

<<See Exhibit A.3.1.3 for List of DrawingsExhibit 1 Design Documents->>

Number

Title

Date

§ A.3.1.4 The Sustainability Plan, if any:

(If the Owner identified a Sustainable Objective in the Owner's Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner's and Design-Builder's roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews,

testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Exhibit C to the Agreement.)

Title	Date	Pages
None		

Other identifying information:

« »

§ A.3.1.5 Allowances and Contingencies:

(Identify any agreed upon allowances and contingencies, including a statement of their basis.)

.1 Allowances

«None »

.2 Contingencies

« »

§ A.3.1.6 Design-Builder's assumptions and clarifications:

« »

§ A.3.1.7 Deviations from the Owner's Criteria as adjusted by a Modification:

« »

§ A.3.1.8 To the extent the Design-Builder shall be required to submit any additional Submittals to the Owner for review, indicate any such submissions below:

« »

ARTICLE A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS

§ A.4.1 The Design-Builder's key personnel are identified below:

(Identify name, title and contact information.)

.1 Superintendent

« »

.2 Project Manager

« »

.3 Others

« »

§ A.4.2 The Design-Builder shall retain the following Consultants, Contractors and suppliers, identified below:
(List name, discipline, address and other information.)

«Per Bid Results »

ARTICLE A.5 COST OF THE WORK

§ A.5.1 Cost To Be Reimbursed as Part of the Contract

§ A.5.1.1 Labor Costs

§ A.5.1.1.1 Wages of construction workers directly employed by the Design-Builder to perform the construction of the Work at the site or, with the Owner’s prior approval, at off-site workshops. Together with prevailing union wage scale, including welfare pension and other fringe contributions, payroll taxes, Workers’ Compensation Insurance charges, and overhead are combined into a single rate for each classification of field labor and attached as part of this Agreement at Exhibit A.5.1.1.1, Design Builder’s Comprehensive Trade Rates. Such rates shall be revised annually as of June 1.

§ A.5.1.1.2 With the Owner’s prior approval, wages or salaries of the Design-Builder’s supervisory and administrative personnel At Design-Builder’s Comprehensive Management Rates for the positions identified in Exhibit A.5.1.1.2 at the jobsite, in the home office to the extent directly engaged in the supervision of the administration of the Work, and in shops or on the road when expediting or inspecting the production of materials or equipment (or their transportation to) the Project. These rates, which are revised annually as of January 1, are inclusive of salary, all fringe benefits, incentives, payroll taxes, Workers Compensation insurance and overhead charges.

(If it is intended that the wages or salaries of certain personnel stationed at the Design-Builder’s principal or other offices shall be included in the Cost of the Work, identify below the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

[See Exhibit 3 Management Labor Rates](#)

Person Included	Status (full-time/part-time)	Rate (\$0.00)	Rate (unit of time)

§ A.5.1.1.3 Intentionally Deleted.

§ A.5.1.1.4 Intentionally deleted.

§ A.5.1.1.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Design-Builder or paid to the Architect or any Consultant, Contractor or supplier, with the Owner’s prior approval.

§ A.5.1.2 Contract Costs. Payments made by the Design-Builder to the Architect, Consultants, Subcontractors and suppliers in accordance with the requirements of their subcontracts.

§ A.5.1.3 Costs of Materials and Equipment Incorporated in the Completed Construction

§ A.5.1.3.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ A.5.1.3.2 Costs of materials described in the preceding Section A.5.1.3.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner’s property at the completion of the Work.

§ A.5.1.4 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ A.5.1.4.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Design-Builder shall mean fair market value.

§ A.5.1.4.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Design-Builder-owned item may not exceed the purchase price of any comparable item. Rates of Design-Builder-owned equipment and quantities of equipment shall

be in accord with Exhibit A.5.1.4.2, Design-Builder's Equipment Rental Rates and Practices, which may be revised annually by Design-Builder.

§ A.5.1.4.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ A.5.1.4.4 Costs of document reproductions, electronic communications, postage and parcel delivery charges, dedicated data and communications services, teleconferences, Project websites, extranets and reasonable petty cash expenses of the site office.

§ A.5.1.4.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, with the Owner's prior approval.

§ A.5.1.5 Miscellaneous Costs

§ A.5.1.5.1 Costs of insurance and bond premiums that Design Builder is required by this Design-Build Contract to produce and maintain. The Commercial General Liability Insurance premium is \$12.00/\$1,000.00 of the Cost of the work. Premium costs for all subcontracts included in Contractor's Subcontractors Default Insurance ("SDI") Program will be charged at the rate of \$12.50 per thousand dollars of subcontract value.

§ A.5.1.5.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work for which the Design-Builder is liable.

§ A.5.1.5.3 Unless excluded in the Design-Builder's Clarifications set forth at Exhibit A.3.1.6, fees and assessments for the building permit and for other permits, licenses and inspections for which the Design-Builder is required by the Design-Build Documents to pay.

§ A.5.1.5.4 Fees of laboratories for tests required by the Design-Build Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 15.5.3 of the Agreement or by other provisions of the Design-Build Documents, and which do not fall within the scope of Section A.5.1.6.3.

§ A.5.1.5.5 Royalties and license fees paid for the use of a particular design, process or product required by the Design-Build Documents; the cost of defending suits or claims for infringement of patent rights arising from Owner's proprietary specifications; and payments made in accordance with legal judgments against the Design-Builder resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Design-Builder's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the second to last sentence of Section 3.1.13.2 of the Agreement or other provisions of the Design-Build Documents, then they shall not be included in the Cost of the Work.

§ A.5.1.5.6 With the Owner's prior approval, costs for electronic equipment and software directly related to the Work.

§ A.5.1.5.7 Deposits lost for causes other than the Design-Builder's negligence or failure to fulfill a specific responsibility in the Design-Build Documents.

§ A.5.1.5.8 With the Owner's prior approval, which shall not be unreasonably withheld, legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Design-Builder, reasonably incurred by the Design-Builder after the execution of the Agreement and in the performance of the Work.

§ A.5.1.5.9 With the Owner's prior approval, expenses incurred in accordance with the Design-Builder's standard written personnel policy for relocation, and temporary living allowances of, the Design-Builder's personnel required for the Work.

§ A.5.1.5.10 That portion of the reasonable expenses of the Design-Builder's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ A.5.1.6 Other Costs and Emergencies

§ A.5.1.6.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ A.5.1.6.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

§ A.5.1.6.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Design-Builder, Contractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Design-Builder and only to the extent that the cost of repair or correction is not recovered by the Design-Builder from insurance, sureties, Contractors, suppliers, or others.

§ A.5.1.6.4 Data processing costs related to the Work.

§ A.5.1.6.5 Costs of materials and equipment rental furnished by Design-Builder for General Conditions or self-performed, non-Lump Sum Work are subject to ten percent (10%) mark-up for overhead. This overhead factor is not applied to Subcontractor costs or Design-Builder's self-performed trade work when priced as a Lump Sum.

§ A.5.1.6.6 In re-executing Work that is unique or difficult or aesthetically subjective in order to meet Specifications that is performed by construction workers in the employ of the Design-Builder or its Subcontractors, provided such Work is consistent with efforts of good workmanship for the materials and finishes involved and did not result from the fault or negligence of the Design-Builder or the Design-Builder's foreman, engineers, superintendents or other supervisory, administrative or managerial personnel of the Design-Builder.

§ A.5.1.6.7 Costs of correcting defective or nonconforming Work performed or supplied by a Subcontractor or material supplier and not corrected by them, provided such defective or nonconforming Work did not result from the neglect of the Design-Builder or the Design-Builder's personnel to adequately supervise and direct the Work of the Subcontractor or material supplier, and only to the extent that the cost of correcting the defective or nonconforming Work is not recoverable by the Design-Builder or from the Subcontractor or material supplier.

§ A.5.1.6.8 Costs arising from (1) pandemic, epidemic, or declared emergency; (2) compliance with laws, codes, and regulations; (3) an unanticipated increase in the cost of materials or (4) any order or action of public authorities that impact the operations of the Project.

§ A.5.1.7 Related Party Transactions

§ A.5.1.7.1 For purposes of Section A.5.1.7, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Design-Builder; any entity in which any stockholder in, or management employee of, the Design-Builder owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Design-Builder. The term "related party" includes any member of the immediate family of any person identified above.

§ A.5.1.7.2 If any of the costs to be reimbursed arise from a transaction between the Design-Builder and a related party, the Design-Builder shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Design-Builder shall procure the Work, equipment, goods or service from the related party, as a Contractor, according to the terms of Section A.5.4. If the Owner fails to authorize the transaction, the Design-Builder shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Section A.5.4.

§ A.5.2 Costs Not to Be Reimbursed as Part of this Contract

The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Design-Builder's personnel stationed at the Design-Builder's principal office or offices other than the site office, except as specifically provided in Section A.5.1.1;
- .2 Expenses of the Design-Builder's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Section A.5.1;

- .4 The Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work;
- .5 Except as provided in Section A.5.1.6.3 of this Agreement, costs due to the negligence or failure of the Design-Builder, Contractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Section A.5.1; and
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

§ A.5.3 Discounts, Rebates, and Refunds

§ A.5.3.1 Cash discounts obtained on payments made by the Design-Builder shall accrue to the Owner if (1) before making the payment, the Design-Builder included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Design-Builder with which to make payments; otherwise, cash discounts shall accrue to the Design-Builder. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Design-Builder shall make provisions so that they can be obtained.

§ A.5.3.2 Amounts that accrue to the Owner in accordance with Section A.5.3.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ A.5.4 Other Agreements

§ A.5.4.1 When the Design-Builder has provided a Guaranteed Maximum Price, and a specific bidder (1) is recommended to the Owner by the Design-Builder; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Design-Build Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Design-Builder may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Design-Builder and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ A.5.4.2 Agreements between the Design-Builder and Contractors shall conform to the applicable payment provisions of the Design-Build Documents, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If an agreement between the Design Builder and a Contractor is awarded on a cost plus a fee basis, the Design-Builder shall provide in the agreement for the Owner to receive the same audit rights with regard to the Cost of the Work performed by the Contractor as the Owner receives with regard to the Design-Builder in Section A.5.5, below.

§ A.5.4.3 The agreements between the Design-Builder and Architect and other Consultants identified in the Agreement shall be in writing. These agreements shall be promptly provided to the Owner upon the Owner's written request.

§ A.5.5 Accounting Records

The Design-Builder shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under the Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Design-Builder's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Contractor's proposals, purchase orders, vouchers, memoranda and other data relating to the Contract. The Design-Builder shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law. Wages, salaries and all associated taxes, costs and benefits that are combined as a comprehensive unit of part described as "Management Rates", "Field Labor Rates", or "Equipment Rental Rates", as described in Section A.5.1, above, constitute the primary data for auditing and accounting purposes.

§ A.5.6 Relationship of the Parties

The Design-Builder accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to exercise the Design-Builder's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an

adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests.

This Amendment to the Agreement entered into as of the day and year first written above.

OWNER *(Signature)*

« »« »

(Printed name and title)

DESIGN-BUILDER *(Signature)*

« »« »

(Printed name and title)

AMENDMENT

Exhibit C

AIA Document A141-2014, Exhibit B (Insurance and Bonds)

[See attached.]

DRAFT AIA® Document A141™ - 2014

Exhibit B

Insurance and Bonds

for the following PROJECT:

(Name and location or address)

« [Greene County Relocation of ICU Rooms](#) »
« [1185 County Road 1000 W](#)
[Linton, IN 47441](#) »

THE OWNER:

(Name, legal status and address)

« [The Board of Trustees of Greene County Hospital](#), » « [A Body corporate and politic organized under Indiana Code 16-22-1](#) »
« [Linton, IN 47441](#) »

THE DESIGN-BUILDER:

(Name, legal status and address)

« » « »
« »

THE AGREEMENT

This Insurance Exhibit is part of the accompanying agreement for the Project, between the Owner and the Design-Builder (hereinafter, the Agreement), dated the « » day of « » in the year « ».

(In words, indicate day, month and year.)

TABLE OF ARTICLES

- B.1 GENERAL
- B.2 DESIGN BUILDER'S INSURANCE AND BONDS
- B.3 OWNER'S INSURANCE
- B.4 SPECIAL TERMS AND CONDITIONS

ARTICLE B.1 GENERAL

The Owner and Design-Builder shall purchase and maintain insurance and provide bonds as set forth in this Exhibit B. Where a provision in this Exhibit conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Exhibit will prevail.

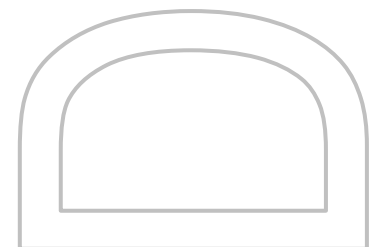
ARTICLE B.2 DESIGN BUILDER'S INSURANCE AND BONDS

§ B.2.1 The Design-Builder shall purchase and maintain the following types and limits of insurance from a company or companies lawfully authorized to do business in the jurisdiction where the Project is located. The Design-Builder shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 11.2.2.1 of the Agreement, unless a different duration is stated below:

(If the Design-Builder is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)

ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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



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§ B.2.1.1 Commercial General Liability with policy limits of not less than « Ten Million Dollars » (\$ « 10,000,000 ») for each occurrence and « Ten Million Dollars » (\$ « 10,000,000 ») in the aggregate providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury;
- .3 damages because of injury to or destruction of tangible property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 contractual liability applicable to the Design-Builder's obligations under Section 3.1.14 of the Agreement.
- .6 The Owner shall be named as co-insured on the liability insurance.

§ B.2.1.2 Automobile Liability covering vehicles owned, leased, or hired by the Design-Builder and non-owned vehicles used by the Design-Builder with policy limits of not less than « Two Million Dollars » (\$ « 2,000,000 ») per claim and « Two Million Dollars » (\$ « 2,000,000 ») in the aggregate for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles specified in this Section B.2.1.2, along with any other statutorily required automobile coverage.

§ B.2.1.3 The Design-Builder may achieve the required limits and coverage for Commercial General Liability, Employer's Liability, and Automobile Liability through a combination of primary and excess liability insurance, provided such primary and excess insurance policies result in the same or greater coverage as those required under Sections B.2.1.1 and B.2.1.2.

§ B.2.1.4 Workers' Compensation at statutory limits.

§ B.2.1.5 Employers' Liability with policy limits as provided below:

« Policy limits not less than one million dollars (\$ 1,000,000.00) each accident, one million dollars (\$1,000,000.00) each employee, and «one million dollars (\$1,000,000.00) policy limit. »

§ B.2.1.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than « Five Million Dollars » (\$ « 5,000,000 ») per claim and « Five Million Dollars » (\$ « 5,000,000 ») in the aggregate.

§ B.2.1.7 Pollution Liability covering performance of the Work, with policy limits of not less than « Five Million Dollars » (\$ « 5,000,000 ») per claim and « Five Million Dollars » (\$ « 5,000,000 ») in the aggregate.

§ B.2.1.7.1 The Design-Builder may obtain a combined Professional Liability and Pollution Liability policy to satisfy the requirements set forth in Sections B.2.1.6 and B.2.1.7, with combined policy limits that are not less than « Ten Million Dollars » (\$ « 10,000,000 ») per claim and « Ten Million Dollars » (\$ « 10,000,000 ») in the aggregate.

§ B.2.1.8 The Design-Builder shall provide written notification to the Owner of the cancellation or expiration of any insurance required by this Article B.2. The Design-Builder shall provide such written notice within five (5) business days of the date the Design-Builder is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

§ B.2.1.9 **Additional Insured Obligations.** The Owner and its consultants and contractors and the Indemnitees (as defined in the Agreement) shall be additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, Automobile Liability and Pollution Liability. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations. The policy limits applicable to the additional insureds shall be the same amount applicable to the named insured or, if the policy provides otherwise, policy limits not less than the amounts required under this Agreement.

§ B.2.1.10 Certificates of Insurance. The Design-Builder shall provide to the Owner certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.2: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 of the Agreement and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section B.2.1. The certificates will show the Owner ~~and its consultants and contractors as additional insureds~~ as an additional insured on the Design-Builder's primary and excess insurance policies for Commercial General Liability, Automobile Liability, and Pollution Liability. Information concerning reduction of coverage on account of revised limits, claims paid under the General Aggregate or both, shall be furnished by the Design-Builder with reasonable promptness.

§ B.2.1.11 The insurance required in subparagraph B.2.1 shall be written for not less than the following limits, or greater if required by law:

.1 Workers' Compensation:

(a)	State:	Statutory
(b)	Applicable Federal (E.g. Longshoremen's)	Statutory
(c)	Employer's Liability:	\$ per Accident
		\$ Disease, Policy Limit
		\$ Disease, Each Employee

.2 Comprehensive or Commercial General Liability (Including Premises-Operations; Independent Design/Builders' Protective; Products and Completed Operations; Broad Form Property Damage):

(a)	Bodily Injury:	\$	Each Occurrence
		\$	Aggregate
(b)	Property Damage	\$	Each Occurrence
		\$	Aggregate
(c)	Products and Completed Operations to be maintained for years after final payment:	\$	Aggregate
(d)	Property Damaged Liability Insurance shall provide X, C and U coverage.		
(e)	Broad Form Property Damage Coverage shall include Completed Operations.		

.3 Contractual Liability:

(a)	Bodily Injury	\$	Each Occurrence
		\$	Aggregate
(b)	Property Damage	\$	Each Occurrence
		\$	Aggregate

.4 Personal Injury, with Employment Exclusion deleted:

		\$	Aggregate
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.5 Business Auto Liability (including owned, non-owned and hired vehicles):

(a)	Bodily Injury	\$	Each Person
		\$	Each Occurrence
(b)	Property Damage	\$	Each Occurrence

.6 If the General Liability Coverages are provided by a Commercial Liability policy, the:

(a)	General Aggregate shall be not less than \$	and it shall apply, in total, to this Project only.
(b)	Fire Damage Limit shall be not less than \$	on any one fire.
(c)	Medical Expense Limit shall be not less than \$	on any one person

.7 Umbrella Excess Liability:

\$ _____ over primary insurance

\$ _____ retention for self-insured hazards each occurrence.

.8 If an exposure exists, Aircraft Liability (owned and non-owned) and Watercraft Liability (owned and non-owned) with limits approved by the Owner shall be provided.

§ B.2.2 Performance Bond and Payment Bond

The Design-Builder shall provide surety bonds as follows:

(Specify type and penal sum of bonds.)

Type

[The Owner requires the Design-Builder to carry payment bonds and performance bonds with a penal sum not less than the full Contract Sum.]

Penal Sum (\$0.00)

[Insert Contract Sum once established.]

§ B.2.2.1 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the Design-Builder shall promptly furnish a copy of the bonds or shall permit a copy to be made.

§ B.2.2.2 The Design/Builder shall furnish the Owner Bonds covering faithful performance of the Contract and payment of obligations arising thereunder with such bonds dated on or before the date of this agreement. The surety company executing the Bonds must hold a certificate of authority as an acceptable surety on Federal Bonds as listed in Treasury Circular 570, as amended, and be authorized to transact business in the State where the Project is located. The Bonds (using the latest AIA forms) shall each be equal to the amount of the Contract Sum. The cost of these Bonds shall be included in the Contract Sum.

§ B.2.2.3 The Design/Builder shall require the attorney-in-fact who executes the required Bonds on behalf of the surety to affix thereto a certified and current power of attorney.

§ B.2.2.4 If at any time a surety on any such Bond is declared bankrupt or loses its right to do business in the State in which the Work is to be performed or is removed from the list of surety companies accepted on Federal Bonds, the Design/Builder shall within ten (10) calendar days after notice from the Owner to do so, substitute an acceptable Bond in such form and sum and signed by such other surety or sureties as may be satisfactory to the Owner. The premiums of such Bond shall be paid by the Design/Builder. No further payment shall be deemed due nor shall be made until the new surety or sureties shall have furnished an acceptable Bond to the Owner.

ARTICLE B.3 OWNER'S INSURANCE

§ B.3.1 Owner's Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ B.3.2 Property Insurance

§ B.3.2.1 ~~Unless otherwise provided, at the time of execution of the Design-Build Amendment,~~ The Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus the value of subsequent Modifications and cost of materials supplied or installed by others, comprising the total value for the entire Project at the site on a replacement cost basis without optional deductibles. If any construction that is part of the Work shall commence prior to execution of the Design-Build Amendment, the Owner shall, prior to commencement of construction, purchase and maintain property insurance as described above in an amount sufficient to cover the total value of the Work at the site on a replacement cost basis without optional deductibles. The insurance required under this section shall include interests of the Owner, Design-Builder, Architect, Consultants, Contractors, and Subcontractors in the Project. The property insurance shall be maintained, unless otherwise provided in the Design-Build Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of the insurance, until the Owner has issued a Certificate of Substantial Completion in accordance with Section 9.8 of the Agreement. Unless the parties agree otherwise, upon issuance of a Certificate of Substantial Completion, the Owner shall replace the insurance policy required under this Section B.3.2 with another property insurance policy written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 11.2.2 of the Agreement.

§ B.3.2.1.1 The insurance required under Section B.3.2.1 shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the Design-Builder's services and expenses required as a result of such insured loss.

§ B.3.2.1.2 If the insurance required under Section B.3.2.1 requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ B.3.2.1.3 The insurance required under Section B.3.2.1 shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ B.3.2.1.4 Partial occupancy or use in accordance with Section 9.9 of the Agreement shall not commence until the insurance company or companies providing the insurance required under Section B.3.2.1 have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Design-Builder shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ B.3.2.1.5 If the Owner's property insurance requires deductibles, the Design-Builder shall pay such costs if the Design-Builder or anyone for whom the Design-Builder is liable caused the loss. The Design-Builder's contribution toward the Owner's deductible shall not exceed \$25,000 per occurrence.

§ B.3.2.2 **Boiler and Machinery Insurance.** The Owner shall purchase and maintain boiler and machinery insurance, which shall specifically cover commissioning, testing, or breakdown of equipment required by the Work, if not covered by the insurance required in Section B.3.2.1. This insurance shall include the interests of the Owner, Design-Builder, Architect, Consultants, Contractor and Subcontractors in the Work, and the Owner and Design-Builder shall be named insureds.

§ B.3.2.3 If the Owner does not intend to purchase the insurance required under Sections B.3.2.1 and B.3.2.2 with all of the coverages in the amounts described above, the Owner shall inform the Design-Builder in writing prior to any construction that is part of the Work. The Design-Builder may then obtain insurance that will protect the interests of the Owner, Design-Builder, Architect, Consultants, Contractors, and Subcontractors in the Work. The cost of the insurance shall be charged to the Owner by an appropriate Change Order. If the Owner does not provide written notice, and the Design-Builder is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, the Owner shall bear all reasonable costs and damages attributable thereto.

§ B.3.2.4 **Loss of Use Insurance.** At the Owner's option, the Owner may purchase and maintain insurance to insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. ~~The Owner waives all rights of action against the Design-Builder for loss of use of the Owner's property, including consequential losses due to fire or other hazards covered under the property insurance required under this Exhibit B to the Agreement.~~

~~§ B.3.2.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section B.3.2.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.~~

§ B.3.2.6 Before an exposure to loss may occur, the Owner shall file with the Design-Builder a copy of each policy that includes insurance coverages required by this Section B.3.2. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. The Owner shall provide written notification to the Design-Builder of the cancellation or expiration of any insurance required by this Article B.3. The Owner shall provide such written notice within five (5) business days of the date the Owner is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

§ B.3.2.7 Waivers of Subrogation. The Owner and Design-Builder waive all rights against (1) each other and any of their consultants, subconsultants, contractors and subcontractors, agents and employees, each of the other, and (2) any separate contractors described in Section 5.13 of the Agreement, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to Section B.3.2 or other property insurance applicable to the Work and completed construction, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Design-Builder, as appropriate, shall require of the separate contractors described in Section 5.13 of the Agreement, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of the other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ B.3.2.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section B.3.2.10. The Design-Builder shall pay the Architect, Consultants and Contractors their just shares of insurance proceeds received by the Design-Builder, and by appropriate agreements, written where legally required for validity, the Design-Builder shall require the Architect, Consultants and Contractors to make payments to their consultants and subcontractors in similar manner.

§ B.3.2.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Design-Builder. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Design-Builder after notification of a Change in the Work in accordance with Article 6 of the Agreement.

§ B.3.2.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of a loss to the Owner's exercise of this power. If an objection is made, the dispute shall be resolved in the manner selected by the Owner and Design-Builder as the method of binding dispute resolution in the Agreement. If the Owner and Design-Builder have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

§ B.3.2.11 If, during the Project construction period, the Owner insures existing improvements situated on the site or adjoining or adjacent to the site by property insurance under policies separate from those insuring the Project, or, if after the final payment, property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in if and to the extent those rights would be waived under the terms of Section B.3.2.7 for damages caused by the fire or other perils covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ B.3.2.11.1 A waiver of subrogation endorsement shall be included in favor of the Contractor and subcontractors (all tiers) to the extent the cause of loss to the existing structure is covered by the Owner's Commercial Property policy. If the waiver of subrogation endorsement is not available, Contractor shall have the right to obtain a Builder's Risk Difference in Conditions policy at the Owner's expense as a suitable coverage replacement.

§ B.3.2.12 Upon Substantial Completion and/or beneficial occupancy of the building and prior to termination of the All Risk Builder's Risk Insurance coverage, the Owner will secure and place in force permanent fire and extended coverage insurance, including consequential loss and any other perils covered under a Builder's Risk Policy and will have the Design-Builder named as an Additional Insured as its interests may appear. The Owner and the Design-Builder shall take reasonable steps to obtain consent of the insurance company or companies and shall not, without mutual written consent, take any action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of coverage.

ARTICLE B.4 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

« § B.4.1 Cyber Liability Design-Builder shall provide, and shall cause all Subcontractors to provide the same, Network Security and Privacy Protection Liability coverage ("Cyber Liability") in circumstances where physical or wireless connection will be made to any Design-Builder's network (including a Guest internet connection) or Owner's Network at the site of the Project. Such networks include, without limitation, Building Automation, Computer Maintenance Management, HVAC, MEP, Building Security/Access Controls, Fire Protections/Alarm, and Telecommunication/Data Management systems. Design-Builder shall provide evidence of Cyber Liability with limits of not less than \$2,000,000 per occurrence and \$2,000,000 annual aggregate. Coverage shall be sufficiently broad to respond to the cyber and network liability exposure resulting from or arising out of Design-Builder's performance of its duties and obligations under this Agreement, and shall provide coverage for loss occurrences which include, but are not limited to, claims involving invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion, network security, installation of malware/ransomware, loss of network use, and infringement of intellectual property (including infringement of copyright, trademark, and trade dress). The policy shall provide coverage sufficient to defend and indemnify the Additional Insureds and shall also provide coverage for breach response costs, regulatory fines and penalties, and credit monitoring expenses. »

Exhibit D

USDA Form RD 400-6 (Compliance Statement)

[See attached.]

COMPLIANCE STATEMENT

This statement relates to a proposed contract with _____

(Name of borrower or grantee)

who expects to finance the contract with assistance from either the Rural Housing Service (RHS), Rural Business-Cooperative Service (RBS), or the Rural Utilities Service (RUS) or their successor agencies, United States Department of Agriculture (whether by a loan, grant, loan insurance, guarantee, or other form of financial assistance). I am the undersigned bidder or prospective contractor, I represent that:

1. I have have not, participated in a previous contract or subcontract subject to Executive Order 11246 (regarding equal employment opportunity) or a preceding similar Executive Order.
2. If I have participated in such a contract or subcontract, I have, have not, filed all compliance reports that have been required to file in connection with the contract or subcontract.
 If the proposed contract is for \$50,000 or more: or if the proposed nonconstruction contract is for \$50,000 or more and I have 50 or more employees, I also represent that:
3. I have, have not previously had contracts subject to the written affirmative action programs requirements of the Secretary of Labor.
4. If I have participated in such a contract or subcontract, I have, have not developed and placed on file at each establishment affirmative action programs as required by the rules and regulations of the Secretary of Labor.

I understand that if I have failed to file any compliance reports that have been required of me, I am not eligible and will not be eligible to have my bid considered or to enter into the proposed contract unless and until I make an arrangement regarding such reports that is satisfactory to either the RHS, RBS or RUS, or to the office where the reports are required to be filed.

I also certify that I do not maintain or provide for my employees any segregated facilities at any of my establishments, and that I do not permit my employees to perform their services at any location, under my control, where segregated facilities are maintained. I certify further that I will not maintain or provide for my employees any segregated facilities at any of my establishments, and that I will not permit my employees to perform their services at any location, under my control, where segregated facilities are maintained. I agree that a breach of this certification is a violation of the Equal Opportunity clause in my contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and wash rooms, restaurants and other eating areas time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise. I further agree that (except where I have obtained identical certifications for proposed subcontractors for specific time periods) I will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause; that I will retain such certifications in my files; and that I will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. The OMB Control Number for this information collection is 0575-0018. Public reporting for this collection of information is estimated to be approximately 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information. All responses to this collection of information are voluntary. However, in order to obtain or retain a benefit, the information in this form is required 7 CFR 1901-E. Rural Development has no plans to publish information collected under the provisions of this program. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, Rural Development Innovation Center, Regulations Management Division at ICRMTRequests@usda.gov.

**NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENTS FOR
CERTIFICATIONS OF NON-SEGREGATED FACILITIES**

A certification of Nonsegregated Facilities, as required by the May 9, 1967, order (32F.R. 7439, May 19, 1967) on Elimination of Segregated Facilities, by the Secretary of Labor, must be submitted prior to the award of a subcontract exceeding \$ 10,000 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

Date _____

(Signature of Bidder or Prospective Contractor)

Address (including Zip Code)

Exhibit E

USDA Form RD 400-1 (Equal Opportunity Agreement)

[See attached.]

EQUAL OPPORTUNITY AGREEMENT

This agreement, dated _____ between _____

(herein called "Recipient" whether one or more) and United States Department of Agriculture (USDA), pursuant to the rules and regulations of the Secretary of Labor (herein called the 'Secretary') issued under the authority of Executive Order 11246 as amended, witnesseth:

In consideration of financial assistance (whether by a loan, grant, loan guaranty, or other form of financial assistance) made or to be made by the USDA to Recipient, Recipient hereby agrees, if the cash cost of construction work performed by Recipient or a construction contract financed with such financial assistance exceeds \$10,000 - unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965.

1. To incorporate or cause to be incorporated into any contract for construction work, or modification thereof, subject to the relevant rules, regulations, and orders of the Secretary or of any prior authority that remain in effect, which is paid for in whole or in part with the aid of such financial assistance, the following "Equal Opportunity Clause":

During the performance of this contract, the contractor agrees as follows:

- (a) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited, to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the USDA setting forth the provisions of this nondiscrimination clause.
- (b) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- (c) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the USDA, advising the said labor union or workers' representative of the contractor's commitments under this agreement and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (d) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of all rules, regulations and relevant orders of the Secretary of Labor.
- (e) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, rules, regulations, and orders, or pursuant thereto, and will permit access to his books, records, and accounts by the USDA Civil Rights Office, and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (f) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by Law.
- (g) The contractor will include the provisions of paragraph 1 and paragraph (a) through (g) in every subcontract or purchase order, unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the USDA may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the USDA, the contractor may request the United States to enter into such litigation to protect the interest of the United States.

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collections is 0575-0018. The time required to complete this information collection is estimated to average 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

2. To be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the organization so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.
3. To notify all prospective contractors to file the required 'Compliance Statement', Form RD 400-6, with their bids.
4. Form AD-425, Instructions to Contractors, will accompany the notice of award of the contract. Bid conditions for all nonexempt federal and federally assisted construction contracts require inclusion of the appropriate "Hometown" or "Imposed" plan affirmative action and equal employment opportunity requirements. All bidders must comply with the bid conditions contained in the invitation to be considered responsible bidders and hence eligible for the award.
5. To assist and cooperate actively with USDA and the Secretary in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and rules, regulations, and relevant orders of the Secretary, that will furnish USDA and the Secretary such information such as , but not limited to, Form AD-560, Certification of Nonsegregated Facilities, to submit the Monthly Employment Utilization Report, Form CC-257, as they may require for the supervision of such compliance, and that it will otherwise assist USDA in the discharge of USDA's primary responsibility for securing compliance.
6. To refrain from entering into any contract or contract modification subject to such Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and Federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by USDA or the Secretary of Labor pursuant to Part II, Subpart D, of the Executive Order.
7. That if the recipient fails or refuses to comply with these undertakings, the USDA may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the organization under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such organization; and refer the case to the Department of Justice for appropriate legal proceedings.

Signed by the Recipient on the date first written above.

Recipient

Recipient

(CORPORATE SEAL)

Name of Corporate Recipient

Attest:

Secretary

By _____
President

Exhibit F

**USDA Form AD-1048 (Certification Regarding Debarment, Suspension,
Ineligibility and Voluntary Exclusion)**

[See attached.]

U.S. DEPARTMENT OF AGRICULTURE

**Certification Regarding Debarment, Suspension, Ineligibility
and Voluntary Exclusion - Lower Tier Covered Transactions**

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 7 CFR Part 3017, Section 3017.510, Participants' responsibilities. The regulations were published as Part IV of the January 30, 1989, **Federal Register** (pages 4722-4733). Copies of the regulations may be obtained by contacting the Department of Agriculture agency with which this transaction originated.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name

PR/Award Number or Project Name

Name(s) and Title(s) of Authorized Representative(s)

Signature(s)

Date

Instructions for Certification

1. By signing and submitting this form, the prospective lower tier participant is providing the certification set out on the reverse side in accordance with these instructions.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this form that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Exhibit G

USDA RD Instruction 1940-Q, Exhibit A-1 (Certification for Contracts, Grants and Loans)

[See attached.]

CERTIFICATION FOR CONTRACTS, GRANTS AND LOANS

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant or Federal loan, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant or loan.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant or loan, the undersigned shall complete and submit Standard Form - LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including contracts, subcontracts, and subgrants under grants and loans) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(name)

(date)

(title)

oOo