

AIA[®] Document A141[®] – 2024

Standard Form of Agreement Between Owner and Design-Builder for a Traditional Design-Build Project

AGREEMENT made as of the Sixteenth day of February in the year Two Thousand Twenty Six.

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

BETWEEN the Owner:

(Name, legal status, address, and other information)

Town of Swansboro
601 W. Corbett Avenue
Swansboro, NC 28584

and the Design-Builder:

(Name, legal status, address, and other information)

Bobbitt Construction, Inc., a North Carolina corporation
2400 Weston Pkwy
Cary, NC 27513
North Carolina General Contractors License Number 3673

for the following Project:

(Name, location, and detailed description)

Swansboro Public Safety Building
Parcel Pin: 536405191852
Swansboro, NC 28584

The Owner and Design-Builder agree as follows.

ADDITIONS AND DELETIONS:
The author of this document may have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added to or deleted from the original AIA text.

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 set forth in this Section 1.1. The Owner’s Criteria is fixed as of the date of this Agreement.

(For each item in Section 1.1.1 through 1.1.10, insert the information or a statement such as “not applicable” or “unknown at the time of execution.”)

§ 1.1.1 The Owner’s program for the Project:

(Identify below, or in an attached exhibit, the documentation in which the program is set forth, or state the manner in which the program will be developed.)

The Owner seeks a new Public Safety Building with Police, Fire and an Emergency Operations Center on an undeveloped site of approximately 4.93 acres. The new facility shall sustain all Emergency Operations for the Town during all disasters up to Category 4 storms.

§ 1.1.2 The Owner’s design requirements for the Project:

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

The Design-Builder shall design and construct a facility that provides the following:

- I) Houses the Fire and Police Departments.
- II) Complete the project in a timely and fiscally responsible manner.
- III) Incorporate high-performance systems in design and construction that will allow personnel to work in a safe, comfortable, and operational facility.
- IV) Minimize operating and maintenance costs; maximize energy efficiency.
- V) Prioritize workplace safety and reduce job related exposure to carcinogens and other substances in Emergency Management Services Environment.
- VI) Provide a facility that promotes resilience in planning, responding and mitigating or recovering from disasters.
- VII) As a Team, work with the Town to plan and implement processes to maximize efficiency, quality, and cost savings.

§ 1.1.3 The Project’s physical characteristics:

(Identify or describe below, or in an attached exhibit, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical or environmental reports; site, boundary, topographic, or existing building surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; Project and site requirements; etc.)

The project will be located on Parcel ID 1783-81-0000. The Owner has provided a Boundary/Topographic Map dated 8/30/2021 by Tidewater Associates, Inc.

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

(Identify below, or in an attached exhibit, 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®–2024, Standard Form of Agreement between Owner and Design-Builder for a Traditional Design-Build Project, Exhibit C, Sustainable Projects Exhibit, into this Agreement to define the terms, conditions, and Work related to the Owner’s Sustainable Objective.)

Not applicable.

§ 1.1.5 The Owner’s building information modeling requirements for the Project, if any:

(Identify below, or in an attached exhibit, the Owner’s building information modeling requirements for the Project, such as the requirement that the Design-Builder provide a model for subsequent use by the Owner or share models with the Owner’s Consultants and Separate Contractors. If the parties agree upon protocols for transmission of, use of, and reliance on information or documentation in digital form, then identify and attach that document.)

Not applicable.

§ 1.1.6 The Owner’s budget for the Work to be provided by the Design-Builder is set forth below. This is a non-binding budget:

(Provide the Owner’s total budget for the Design Services, Construction Work, related services, and reasonable contingencies, required to fulfill the Design-Builder’s obligations under the Design-Build Documents following execution of the Design Build Amendment. If known, include a line-item breakdown of costs.)

The Owner's Budget for this project is Eight Million Five Hundred Thousand Dollars (\$8,500,000.00) for Design, Procurement, and Construction.

§ 1.1.7 The Owner's anticipated design and construction milestones:

- .1 Design Builder's Proposal submission date:

The Design-Build Amendment is anticipated to be submitted in June 2027

- .2 Construction commencement date:

Construction is anticipated to commence in August 2027

- .3 Substantial Completion date or dates:

Substantial Completion is anticipated to occur in October 2028

- .4 Other milestone dates:

(Include other dates, such as milestones for Evaluation of the Owner's Criteria, Preliminary Design, the anticipated start of construction, or phased completion dates.)

To be coordinated with the Owner in ongoing manner throughout the project lifecycle.

§ 1.1.8 In the event the Owner requires the Design-Builder to retain a specific person or entity to perform a portion of the Work, such as an architect, consultant, or subcontractor, those persons or entities shall be identified below:
(List name, legal status, address and other information.)

N/A

§ 1.1.9 Additional Owner's Criteria upon which this Agreement is based:
(Identify below, or in an attached exhibit, special characteristics or needs of the Project not identified elsewhere.)

N/A

§ 1.1.10 The Owner's requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction are set forth below:
(Identify any requirements for fast-track scheduling, multiple bid packages, or phased construction.)

N/A

§ 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.)

Jonathan Barlow	Town's Owner's Rep
Swansboro Town Manager	Andy Miller
601 W. Corbett Avenue	McDonough Bolyard Peck
Swansboro, NC 28584	4700 Falls of Neuse Road, Suite 370
(910) 326-4428	Raleigh, NC
tnmrg@ci.swansboro.nc.us	919-875-0124
	amiller@mbpce.com

§ 1.2.2 The Owner will retain the following consultants and Separate Contractors:

(List name, address, and other information.)

.1 Land Surveyor:

N/A
[Redacted]
[Redacted]
[Redacted]

.2 Geotechnical Engineer:

N/A
[Redacted]
[Redacted]
[Redacted]

.3 Other consultants:

(List any other consultants, e.g., Cost Consultant, Scheduling Consultant, to be retained by the Owner.)

The Town will need to hire a Testing Consultant for Special Inspections.

.4 Separate Contractors:

(List any Separate Contractors to be retained by the Owner.)

None at this time.

§ 1.2.3 The Design-Builder identifies the following representative in accordance with Section 3.1.2:

(List name, address and other information.)

Andrew Speck
Sr. Integrated Project Developer
Bobbitt Construction
2400 Weston Parkway
Cary, NC 27513
(910) 852-9268
Andy.speck@Bobbitt.com

§ 1.2.4 In addition to those persons or entities identified in Section 1.1.8, the Design-Builder shall retain the Architect, Consultants, Subcontractors, and suppliers, identified below:

(List name, discipline, address, and other information.)

Bailey Allred	Les Parker
Principal Architect	Project Architect
Bobbitt A&E, PLLC	Bobbitt A & E, PLLC
2400 Weston Parkway	2400 Weston Parkway
Cary, NC 27513	Cary, NC 27513

Cape Fear Engineering	SKA Consulting Engineers	Optima Engineering
Civil Eng/Surveyor/Geotech Eng/Mtls Testing	Structural Engineer of Record	PM&E+FA Eng of Record
151 Poole Road, 3100	7900 Triad Center Drive, #200	434 Fayetteville Street, #2450
Leland, NC 28451	Greensboro, NC 27409	Raleigh, NC 27601

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

§ 1.3 Dispute Resolution

§ 1.3.1 Initial Resolution of Claims. Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Construction Work set forth in Section 12.2.2, or arising under Sections 10.3 and 10.4, shall be:

(Check the appropriate box.)

[X] Subject to a Meet and Confer obligation in accordance with Section 15.2.1.

[] Referred to the following Project Neutral for an initial decision in accordance with Section 15.2.2.
(Insert name, address, and contact information for Project Neutral.)

[]

§ 1.3.2 Binding Dispute Resolution. For any Claim subject to, but not resolved by, mediation pursuant to Section 15.3, the method of binding dispute resolution shall be the following:

(Check the appropriate box.)

[] Arbitration pursuant to Section 15.4

[X] Litigation in a court of competent jurisdiction

[] Other: (Specify)

[]

§ 1.4 Definitions

§ 1.4.1 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.

§ 1.4.2 Confidential Information. Confidential Information is information containing confidential or business proprietary information that is designated as “confidential.”

§ 1.4.3 Consultant. A Consultant is a person or entity providing 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. If the Consultant provides professional services, the Consultant shall be lawfully licensed to provide such services, as required by the applicable jurisdiction.

§ 1.4.4 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. In case of any inconsistency, conflict, or ambiguity among the Design-Build Documents, the documents shall govern in the following order: (a) Change Orders, Modifications, and written amendments to this Agreement; (b) this Agreement; (c) the Drawings (large scale governing over small scale), Specifications, and addenda; and (d) other Design-Build Documents listed in this Agreement. Among categories of documents having the same order of precedence, the term or provision that includes the latest date shall control.

§ 1.4.5 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 set forth in the Design-Build Amendment. The Owner and Design-Builder agree that the Stipulated Sum does not include any increases or escalation in pricing due to tariffs or anti-dumping and

countervailing duties (collectively herein “Tariff”) not legally enacted as of the Design-Build Amendment. In the event of the enactment of an applicable Tariff after the execution of the Design-Build Amendment, the Stipulated Sum shall be increased by the amount by which said Tariff exceeds those in effect as of the execution of the Design-Build Amendment. The Design-Builder shall not be entitled to additional fee or general conditions on any Change Order to the extent based on a Tariff enacted or increased after the execution of the Design-Build Amendment. Notwithstanding any other provisions of the Design-Build Documents, the Contract Sum is based on the current market prices and availability of the building materials and components required for the Work (for example only, and without limitation, concrete, plywood, lumber, drywall, plumbing and electrical products containing copper, appliances, etc.) (collectively, “Building Materials”). The Owner and Design-Builder recognize that the market for these Building Materials can be volatile, and sudden increases in the price of the Building Materials and Building Materials shortages can occur based on national and international events that affect the market for such Building Materials. Accordingly, if following the date of this Agreement an increase in the cost of Building Materials occurs, through no fault of the Design-Builder, then the Design-Builder shall be entitled to a Change Order increasing the Contract Sum and Stipulated Sum Price in the amount of the actual additional cost incurred by Design-Builder to obtain the Building Materials.

§ 1.4.6 Contract Time. The Contract Time is the period of time identified in the Design-Build Amendment, measured from the date for commencement of the Construction Work, including authorized adjustments, established as the period for the Design-Builder to achieve Substantial Completion of the Work.

§ 1.4.7 Subcontractor. A Subcontractor is a person or entity performing all or a portion of the construction, required in connection with the Work, for the Design-Builder. Each Subcontractor shall be lawfully licensed, if required in the jurisdiction where the Project is located.

§ 1.4.8 Cost of the Work. The Cost of the Work includes all costs reasonably incurred by the Design-Builder in the proper performance of the Work as described in Section 6.3.1.

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

§ 1.4.10 Design-Build Documents. The Design-Build Documents consist of this Agreement between Owner and Design-Builder (hereinafter, this Agreement), other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. A Modification is (1) a written amendment to the Contract signed by both parties, including the Design-Build Amendment, or (2) a Change Order. The Design-Build Documents will also include the Drawings, Specifications, and other documents listed in the Design-Build Amendment.

§ 1.4.11 Design-Builder. The Design-Builder is the person or entity identified as such in this 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.

§ 1.4.12 Work. “Work” means the (a) services required of the Design-Builder prior to the execution of the Design-Build Amendment, (b) Design Services, and (c) Construction Work.

§ 1.4.12.1 Design Services. “Design Services” are the professional services, including those services that are rendered by architects and engineers, which are required to fulfill the Design-Builder’s obligations under the Design-Build Documents. Design Services do not include professional or other services necessary to support Construction Work which are provided by Subcontractors engaged by the Design-Builder.

§ 1.4.12.2 Construction Work. “Construction Work” is the construction, and services to support construction, required by the Design-Build Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided, or to be provided, by the Design-Builder to fulfill the Design-Builder’s obligations under the Design-Build Documents.

§ 1.4.13 Early Release Work. “Early Release Work” is a limited, predetermined portion of the Project or scope of the Work that the Owner authorizes the Design-Builder to commence before the parties execute the Design-Build Amendment.

§ 1.4.14 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, Subcontractors, Architect, or Consultants under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.4.15 Notice

§ 1.4.15.1 Except as otherwise provided in Section 1.4.15.2, where the Design-Build Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission as set forth below:

(Insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission. If the parties agree upon protocols for electronic transmission of notice, identify and attach that document.)

Email for Owner's Representative: tmggr@ci.swansboro.nc.us; amiller@mbpce.com

Email for Design-Builder's Representative: Andy.Speck@bobbitt.com

§ 1.4.15.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.4.16 Owner. The Owner is the person or entity identified as such in this 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.

§ 1.4.17 The Project. The Project is comprised of all 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.

§ 1.4.18 Contingency. The Stipulated Sum or Stipulated Sum, as set forth in Exhibit B, includes a Construction Contingency for the Design-Builder's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order ("Construction Contingency"). Any documented and verified savings on a particular trade or other line item within the Stipulated Sum or Stipulated Sum may be reallocated to another line item or to the Construction Contingency for use toward reimbursable Costs of the Work. The Design-Builder shall accurately record the expenditure of all Construction Contingency funds and shall report the same to the Owner on a monthly basis. The Construction Contingency shall be identified and drawn for within the Design-Builder's Applications for Payment. This Construction Contingency is included to provide funds for unanticipated costs resulting from (1) cost overruns in the purchasing of subcontracts; (2) costs incurred to pay fines/violations or to repair non-conforming work not recoverable from a Subcontractor; (3) costs incurred due to the default or non-performance of a subcontractor which are not recoverable from such subcontractor (without resorting to litigation), however Design-Builder shall be responsible for filing such claims under subcontractors default insurance and shall then promptly replenish Construction Contingency upon payment of any such claims; (4) direct schedule recovery costs incurred due to delays or potential delays in achieving a milestone event for which the Design-Builder is not otherwise being compensated; (5) General Conditions Costs; (6) casualty losses and related expenses not compensated by insurance or otherwise and sustained by Design-Builder in connect with the Work; (7) others costs which may constitute a part of the Cost of the Work under the Agreement but not reimbursable as a Change Order; (8) Work items reasonably inferable but not clearly identifiable in the Design-Build Documents and not identified by the Design-Builder prior to the establishment of the Stipulated Sum; (9) costs incurred for the settlement or resolution of claims brought by Subcontractors, consistent with the interests of the Project, for which Design-Builder is not otherwise entitled to a Change Order under the Agreement; (10) payment of deductibles under Owner's builder's risk insurance policy where Design-Builder is unable to identify and backcharge the appropriate Subcontractor; and (11) payment of the Early Completion Bonus (if applicable). The Construction Contingency shall not be available to fund changes in scope, unforeseen conditions, unsuitable soils, systems, kinds, quality and quantities of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order. Until Final Completion, all Construction Contingency funds are controlled by Design-Builder.

§ 1.5 The Owner and Design-Builder may rely on the Owner’s Criteria set forth in Article 1. If the Owner’s Criteria materially changes after execution of this Agreement, the Owner and the Design-Builder shall execute a Modification to adjust the Project schedule, the Design-Builder’s services, and the Design Builder’s compensation. The Owner shall adjust the Owner’s budget in Section 1.1.6 and the Owner’s anticipated design and construction milestones, as necessary, to accommodate material changes in the Owner’s Criteria.

ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS

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

§ 2.1.1 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, 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.)

PreConstruction Stipulated Sum : \$ 952,741 (Nine hundred fifty-two thousand, seven hundred forty one dollars and no cents. Services included are:

- Site testing to include Phase I Environmental Assessment, Geotechnical Testing & Hydraulic Calculations
- Design Fees from Programming through Construction Documents: Civil Engineering, Landscape Architecture, Building Architectural design, Mechanical Engineering, Electrical Engineering, Plumbing Engineering, Fire Alarm Design and Fire Protection Design.
- PreConstruction Management, Estimating, Code/Permitting Research, Constructability Reviews
- Generate imagery to illustrate proposed design concepts
- Three-Dimensional Renderings of the building exterior prior to Design Development
- Assistance with Defense Community Infrastructure Program (DCIP) Grant to include generation of alternate floor plan, project renderings for inclusion with the grant application and cost estimate for the alternate building plan.
- Two schematic design revisions included. Revisions within Design Development or Construction Documents phase may result in revised cost.
- Project budget increases of 10 % or greater may result in additional design fees being assessed.

§ 2.1.2 The hourly billing rates for services of the Design-Builder and the Design-Builder’s Architect, Consultants, and Subcontractors, if any, are set forth below. The rates shall be adjusted in accordance with the Design-Builder’s, Architect’s, Consultants’, and Subcontractors’ normal review practices.

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

See Exhibit D – Design-Builder’s Rate Schedule

Individual or Position	Rate
N/A	

§ 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 Subcontractors, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Dedicated data and communication services, teleconferences, and Project web sites and cloud services;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and 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;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 All taxes and duties levied on professional services and on reimbursable expenses; and
- .9 Other Project-related expenditures, if authorized in advance by the Owner.

§ 2.1.3.2 For Reimbursable Expenses, the compensation shall be the expenses the Design-Builder and the Design-Builder's Architect, Consultants, and Subcontractors incurred, plus fifteen percent (15 %) of the expenses incurred.

§ 2.1.4 **Additional Services.** With the Owner's written approval, the Design-Builder shall provide services not included in Article 4 for additional compensation. Such services may include

- .1 services necessitated by a change in the Owner's Criteria, or previous instructions or approvals given by the Owner;
- .2 services necessitated by a material change in the Project made at the Owner's request, including (1) a change in Project size, quality, or complexity, or (2) a change in the Owner's schedule or budget;
- .3 changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations, or official interpretations; and
- .4 services necessitated by a failure to complete the services under Article 4 within Eight (8) months of the date of this Agreement through no fault of the Design-Builder.

§ 2.1.4.5 **Compensation for Additional Services.** If the Owner authorizes the Design-Builder to perform additional services under Section 2.1.4, the Owner shall compensate the Design-Builder for such additional services as follows:

(Insert amount of, or basis for, compensation.)

See Exhibit D – Design-Builder's Rate Schedule

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

§ 2.1.5.1 Unless otherwise agreed, payments for Work prior to execution of the Design-Build Amendment shall be made monthly upon presentation of the Design-Builder's invoice.

§ 2.1.5.1.1 Amounts unpaid 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.

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

1.5 % per month

§ 2.1.5.2 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 **Payment for Early Release Work**

For the Design-Builder's performance of Early Release Work, the Owner shall pay the Design-Builder in accordance with the authorization for the Early Release Work, unless otherwise agreed to by the parties.

§ 2.3 **Compensation for Work Performed After Execution of Design-Build Amendment**

§ 2.3.1 For the Design-Builder's performance of Work after execution of the Design-Build Amendment, the Owner shall pay to the Design-Builder the Contract Sum as set forth in Article 9 and the Design-Build Amendment.

§ 2.3.2 **Liquidated Damages**

The Design-Builder's liability for liquidated damages resulting from the Design-Builder's failure to achieve Substantial Completion within the Contract Time shall be as follows:

(For each item in Section 2.3.2.1 through 2.3.2.4, insert the information or a statement such as "not applicable".)

- .1 Insert the monetary amount of liquidated damages, if any, to be assessed:
(Identify the monetary amount of liquidated damages, the incremental period of time for each assessment, and whether that amount is uniform or variable over time.)

\$100 per day

- .2 Insert the date(s) or event(s), if any, that triggers the commencement of the assessment of liquidated damages, if

other than the date of Substantial Completion of the entire Project:

Substantial Completion date plus 30 day grace period for the benefit of the Design-Builder.

- .3 Insert the limit, if any, on the total amount of liquidated damages:

Liquidated damages shall be capped at \$35,000. (Thirty-Five Thousand Dollars).

- .4 Insert any other terms for liquidated damages:

The Substantial Completion Date will be based upon the Commencement Date. The date of Commencement shall be defined as the latest date of receipt of: 1) The Design-Build Amendment, Exhibit B, fully executed by all parties, 2) Owner Confirmation of Funding Received, 3) Land disturbance approval from all Authorities Having Jurisdiction (AHJ), 4) Building permits fully issued and paid in full. If any approval is unreasonably withheld by Planning and Zoning, Building Department, and/or any other municipal, state, or federal reviewers, then an adjustment to Contract Time and Contract Sum will be made.

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 shall have express authority to bind the Design-Builder with respect to all matters under this Agreement.

§ 3.1.3 The Design-Builder shall perform the Work in accordance with the Design-Build Documents.

§ 3.1.4 The Design-Builder shall perform the Work in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities (collectively, "Applicable Laws"). If the Design-Builder performs Work contrary to Applicable Laws, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.

§ 3.1.4.1 Neither the Design-Builder nor any Contractor, Consultant, or Architect shall be obligated to perform any act which they believe will violate any Applicable Law. 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 Law, 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. Design-Builder shall not be required by Owner to perform any Work that is contrary to Applicable Laws.

§ 3.1.5 The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Architect, Consultants, Subcontractors, and their agents and employees, and any other persons or entities performing portions of the Work for, or on behalf of, the Design-Builder.

§ 3.1.6 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.

§ 3.1.7 The Design-Builder shall furnish the services of Architects, Consultants, Subcontractors, and suppliers identified in Article 1 or otherwise required to fulfill its obligations under the Design-Build Documents. The Owner understands and agrees that the services of such parties are performed in the sole interest of, and for the exclusive benefit of, the Design-Builder. When Applicable Law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified and licensed professionals.

§ 3.1.8 The Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of authorities having jurisdiction over the Project.

§ 3.1.9 Progress Reports

§ 3.1.9.1 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 Requests for information to be provided by the Owner, including those that are outstanding;
- .5 Approved Change Orders;
- .6 Pending Change Order status reports;
- .7 Tests and inspection reports;
- .8 Status report of Work rejected by the Owner;
- .9 Status of submissions and approvals required by authorities having jurisdiction over the Project;
- .10 Status of Claims previously submitted in accordance with Article 15;
- .11 Cumulative total of the Cost of the Work to date including the Design-Builder's compensation and Reimbursable Expenses, if any;
- .12 Current Project cash-flow and forecast reports;
- .13 A cost summary, comparing actual costs to updated cost estimates, if the Contract Sum is the Cost of the Work with or without a Stipulated Sum;
- .14 Contingency log; and
- .15 Additional information as agreed to by the Owner and Design-Builder.

§ 3.1.10 Design-Builder's Schedule

§ 3.1.10.1 The Design-Builder shall prepare and submit for the Owner's information a Project schedule. The Project schedule shall (1) include the time required for design and construction, (2) not exceed time limits set forth under the Design-Build Documents, (3) be revised at appropriate intervals as required by the conditions of the Work and the Design-Build Documents, (4) include allowances for periods of time required for the Owner's review, and (5) include allowances for approval of submissions by authorities having jurisdiction over the Project.

§ 3.1.10.2 The Design-Builder shall perform the Work in general accordance with the most recent Project schedule provided to the Owner.

§ 3.1.11 Standard of Care

The Design-Builder shall perform Design Services and Construction Work consistent with the degree of skill and care ordinarily provided by Design-Builders performing the same services in the same or similar locality under the same or similar circumstances.

§ 3.1.12 Warranty

The Design-Builder warrants to the Owner that the Construction Work furnished under the Contract will be of good quality and new unless the Design-Build Documents require or permit otherwise. 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 further warrants that the Construction Work, for a period of one (1) year following Substantial Completion, will conform to the requirements of the Design-Build Documents and will be free from defects, except for those inherent in their quality or otherwise expressly permitted by the Design-Build Documents. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, alterations to the materials, equipment, or construction not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage.

§ 3.1.12.1 Design-Builder's warranty expressly excludes materials, equipment or systems that are specified or selected for the Project or which are covered by a manufacturer or supplier warranty, including items specified by manufacturer, model number, catalog number, trade name, grade or quality, or similar identification, or which are supplied by the Owner, and such materials, equipment, and systems shall be covered exclusively by the applicable manufacturer or supplier warranty (which, to the extent possible, shall be assigned to Owner upon payment therefor). Design-Builder does not separately warrant or guarantee such materials, equipment, or systems and shall not be responsible for the performance, useful life, function, or fitness of such materials, equipment or systems, except to the extent that coverage is excluded because of Design-Builder's

failure to install in conformance with the Design-Build Documents. To the extent that manufacturer or supplier warranties provide for material or equipment replacement only, Owner shall be responsible for costs of labor and installation.

§ 3.1.12.2 Except as provided in Section 12.2.2, Design-Builder's warranty under this Section shall be Owner's exclusive rights and remedy with respect to any claim for defect or deficiency in the Work or failure of the Work to conform to the requirements of the Design-Build Documents following Substantial Completion, including any resulting claim for breach of contract or warranty. Except in the event of an emergency, prior to commencing any alteration or disturbance of any portion of the Work to which a claim is made under the warranty or otherwise commencing any formal dispute resolution proceeding (which in the event a proceeding has been commenced prior to discovery of a claim shall be stayed pending fulfillment of this section), Owner shall provide written notice to Design-Builder within seven (7) days of discovery any items of the Work that Owner identifies as failing to conform to the requirements of the warranty. Upon receipt of notice, Design-Builder shall be provided thirty (30) days to perform an inspection of the items and may commence remedy or repair of the claim. Design-Builder's right to inspect and commence and complete remedy or cure shall be for Design-Builder's benefit and to mitigate the costs of any repairs. Design-Builder's undertaking of any inspection or work to remedy or cure, shall not be deemed an admission or acceptance of liability with respect to any claim, and shall not be deemed a waiver of any rights or defense with respect to Owner's warranty claim. Owner waives any right to claims for breach of contract or warranty for any defect or deficiency in the Work for which Owner fails to provide the required notice and opportunity to cure such warranty claims.

§ 3.1.12.3 No Other Items Warranties. EXCEPT FOR THE WARRANTY PROVIDED IN THIS SECTION, NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, USE, HABITABILITY, AND FITNESS FOR PARTICULAR PURPOSE OR ANY STATUTORY WARRANTIES SHALL APPLY TO THE WORK AND THE OWNER HEREBY WAIVES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED.

§ 3.1.13 Royalties, Patents and Copyrights

§ 3.1.13.1 The Design-Builder shall pay all royalties and license fees for designs, processes, or products, required by the Design-Build Documents.

§ 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 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 contained 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 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, the Owner's consultants, and agents and employees of any of them, from and against third-party claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, but only to the extent caused by the negligent acts or omissions of the Design-Builder, a Subcontractor, Architect, consultant, 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. The Design-Builder's obligation to indemnify and hold the Owner, the Owner's consultants, and agents and employees of any of them, harmless does not include a duty to defend.

§ 3.1.14.2 In claims against any person or entity indemnified under this Section 3.1.14 by an employee of the Design-Builder, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.1.14 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Design-Builder or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

§ 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

- 14.1.4 or 14.2.2 and only for those agreements that the Owner accepts by notifying the Design-Builder and the Architect, Consultants, and Subcontractors 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 compensation under the assigned agreement shall be equitably adjusted for increases in cost resulting from the suspension.

§ 3.1.15.3 Upon 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 Article 11 and AIA Document A141®–2024, Standard Form of Agreement Between Owner and Design-Builder for a Traditional Design-Build Project, Exhibit A, Insurance and Bonds.

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 and make recommendations to the Owner on proposed site use and improvements, selection of materials, building systems, and equipment, and temporary Project facilities. 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 visit the Project site to become generally familiar with local conditions under which the Work is to be performed.

§ 4.2.2 The Design-Builder shall schedule and conduct meetings with the Owner and other necessary individuals or entities to discuss and review the Owner's Criteria as set forth in Section 1.1.

§ 4.2.3 The Design-Builder shall prepare and submit a written report to the Owner, summarizing the Design-Builder's evaluation of the Owner's Criteria. The report shall also include:

- .1 A description of local conditions under which the Work is to be performed, including conditions that may affect performance of the Work;
- .2 Allocations of program functions, detailing each function and their square foot areas;
- .3 A preliminary estimate of the Contract Sum, and, if necessary, recommendations to adjust the Owner's Criteria to conform to the Owner's budget for the Work;
- .4 A preliminary estimate of the compensation for Design Services to be performed after execution of the Design Build Amendment;
- .5 A Project schedule, which shall include proposed dates for (i) design milestones; (ii) receiving additional information from, or for work to be completed by, the Owner; (iii) submission of the Design-Builder's Proposal; (iv) the Owner's review and approval of Design Phase submissions; and (v) review and approval of submissions by authorities having jurisdiction; and
- .6 If necessary, recommendations to adjust the Owner's Criteria to conform to the Owner's schedule.

§ 4.2.4 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.

§ 4.2.5 If the Owner's consent granted pursuant to Section 4.2.4 includes any changes to the Owner's Criteria, then the Owner and the Design-Builder shall execute a Modification pursuant to Article 6.

§ 4.3 Preliminary Design

§ 4.3.1 Upon the Owner's issuance of a written consent to proceed under Section 4.2.4, 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.

§ 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 with a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto;
- .2 A list of all Submittals that will be submitted to the Owner in accordance with Section 5.3.2;
- .3 A list of the clarifications and assumptions made by the Design-Builder in the preparation of the Design-Builder's Proposal;
- .4 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;
- .5 The Design-Builder's Project schedule for the Work, showing the anticipated date of Substantial Completion upon which the Design-Builder's Proposal is based;
- .6 A list of the Design-Builder's key personnel, Subcontractors, and suppliers; and
- .7 A date by which the Owner must accept the Design-Builder's Proposal.

§ 4.4.2 The Design-Builder shall meet with the Owner to review the Design-Builder's Proposal. In the event that the Owner discovers any inconsistencies or inaccuracies in the information presented, the Owner shall promptly notify the Design-Builder, who shall make appropriate adjustments to the Design-Builder's Proposal, its basis, or both.

§ 4.4.3 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.

§ 4.5 Design-Build Amendment

§ 4.5.1 If the Owner and Design-Builder agree on the Design-Builder's Proposal, the Owner and Design-Builder shall execute the Design-Build Amendment setting forth the Contract Sum with the information and assumptions upon which it is based, the Contract Time, and the terms of their agreement.

§ 4.5.2 The Design-Builder shall not incur any cost to be paid as part of the Contract Sum prior to the execution of the Design-Build Amendment, except Preconstruction Costs identified in Article 1.1.6, unless the Owner provides prior authorization for such costs.

§ 4.5.3 Any agreement to commence Early Release Work shall not waive the Owner's right to reject the Design-Builder's

Proposal.

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. 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 Work

§ 5.2.1 **Commencement.** Except for any Early Release Work described in Section 5.2.2, construction shall not commence prior to execution of the Design-Build Amendment. Thereafter, construction may only commence upon Design-Builder's receipt of a written, dated, and signed Notice to Proceed from Owner instructing Design-Builder to begin construction. To become effective, the Notice to Proceed must be countersigned by Design-Builder and returned to Owner.

§ 5.2.2 Early Release Work

§ 5.2.2.1 The Design-Builder may prepare, for the Owner's review and acceptance, a procurement proposal for Early Release Work which includes (a) portions of the Design Services or Construction Work that will be issued for procurement and construction in advance of the Design-Build Amendment, and (b) materials or equipment that must be procured prior to execution of the Design-Build Amendment.

§ 5.2.2.2 If the Owner accepts the Design-Builder's procurement proposal for Early Release Work, the Design-Builder shall prepare, for the Owner's review and acceptance, an authorization to proceed with Early Release Work describing the scope, schedule for performance, compensation, payments, retainage, insurance and bonds, and other terms and conditions applicable to procurement and performance of the Early Release Work. The Design-Builder has no obligation to commence procurement and performance of Early Release Work until the Owner and Design-Builder execute such authorization.

§ 5.2.2.3 Following execution of the authorization, the Design-Builder shall expedite and coordinate the procurement and performance of Early Release Work in accordance with this Agreement and such authorization. Following execution of the Design-Build Amendment, compensation for the Early Release Work shall be included in the Contract Sum and the time for performing the Early Release Work shall be included in the Contract Time.

§ 5.2.2.4 Early Procurement of Materials or Equipment by Owner

§ 5.2.2.4.1 If the Owner agrees to procure any materials or equipment prior to execution of the Design-Build Amendment, the Owner shall procure the materials or equipment on terms and conditions acceptable to the Design-Builder.

§ 5.2.3 **Supervision.** The Design-Builder shall supervise and direct the Construction 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 Construction Work under the Contract, unless the Design-Build Documents provide other specific instructions concerning these matters.

§ 5.3 Submittals

§ 5.3.1 Submittals consist of Shop Drawings, Product Data, and Samples.

- .1 **Shop Drawings.** Shop Drawings are drawings, diagrams, schedules, calculations, and other data specially prepared for the Construction Work by the Design-Builder or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor, to illustrate some portion of the Construction Work.
- .2 **Product Data.** Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Design-Builder to illustrate materials or equipment for some portion of the Construction Work.

- .3 Samples.** Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Construction Work will be judged.

§ 5.3.1.4 Submittals are not Design-Build Documents. Their purpose is to demonstrate how the Design-Builder proposes to conform to the information given and the design concept expressed in the Design-Build Documents for those portions of the Construction Work for which the Design-Build Documents require submittals. Review by the Owner is subject to the limitations of Section 5.3.3.1. Informational submittals upon which the Owner is not expected to take responsive action may be so identified in the Design-Build Documents. Submittals that are not required by the Design-Build Documents may be returned by the Owner without action.

§ 5.3.1.5 Submittal Schedule. If the Design-Build Documents require the Design-Builder to submit Submittals to the Owner during performance of the Construction Work, the Design-Builder, prior to submitting any submittals, and thereafter as necessary to maintain a current submittal schedule, shall provide a submittal schedule for the Owner's approval. The Owner's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Design-Builder's construction schedule, and (2) allow the Owner reasonable time to review submittals. If the Design-Builder fails to submit a submittal schedule or fails to provide submittals in accordance with the approved submittal schedule, the Design-Builder shall not be entitled to any increase in the Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 5.3.1.6 Documents and Submittals at the Site

The Design-Builder shall make available, at the Project site, the Design-Build Documents, including Change Orders, Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during performance of the Construction Work, and the approved Submittals. These shall be in electronic form or paper copy, available to the Owner, and delivered to the Owner upon completion of the Work as a record of the Construction Work as constructed.

§ 5.3.2 Design-Builder's Submittal Responsibilities

§ 5.3.2.1 The Design-Builder shall review for compliance with the Design-Build Documents, approve, and submit to the Owner, Submittals required by the Design-Build Documents, in accordance with the submittal schedule approved by the Owner or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Construction Work or in the activities of the Owner or of Separate Contractors.

§ 5.3.2.2 By submitting Submittals, the Design-Builder represents to the Owner that the Design-Builder 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 Construction Work and of the Design-Build Documents.

§ 5.3.2.3 The Design-Builder shall perform no portion of the Construction Work for which the Design-Build Documents require submittal and review of Submittals, until the respective submittal has been approved by the Owner.

§ 5.3.2.4 The Construction Work shall be in accordance with approved submittals except that the Design-Builder shall not be relieved of responsibility for deviations from the requirements of the Design-Build Documents by the Owner's approval of Submittals, unless the Design-Builder has specifically notified the Owner of such deviation at the time of submittal and (1) the Owner has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Change Directive has been issued authorizing the deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in Submittals by the Owner's approval thereof.

§ 5.3.2.5 The Design-Builder shall direct specific attention, in writing or on resubmitted Submittals, to revisions other than those requested by the Owner on previous submittals.

§ 5.3.3 Owner's Submittal Responsibilities

§ 5.3.3.1 The Owner will review, approve, or take other appropriate action upon, the Design-Builder's Submittals, but only for the limited purpose of checking for conformance with the information and design concept expressed in 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 to permit adequate

review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents. The Owner's review shall not constitute approval of safety precautions or 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.

§ 5.3.3.2 Upon review of the submittals required by the Design-Build Documents, the Owner shall notify the Design-Builder within 7 days of receipt of the submittals, of any non-conformance with the Design-Build Documents the Owner discovers.

§ 5.3.3.3 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.)

[Andy Miller
McDonough Bolyard Peck
4700 Falls of Neuse Road, Suite 370
Raleigh, NC 27609
amiller@mbpce.com

§ 5.4 Services Necessary to Support Construction Work

§ 5.4.1 The Design-Builder shall provide the services required to complete the Construction Work including services required to carry out the Design-Builder's responsibilities for construction means, methods, techniques, sequences, and procedures. The Design-Builder shall perform such services in compliance with Applicable Law.

§ 5.4.2 If the Design-Build Documents require services, certifications, or approvals by a licensed design professional during Construction, the drawings, calculations, specifications, certifications, Shop Drawings, and other Submittals prepared under the Design-Build Documents shall be signed and sealed by such design professional.

§ 5.4.3 The Owner shall be entitled to rely upon the services, certifications, and approvals provided by the design professionals under Section 5.4.2. The Owner shall provide prompt notice to the Design-Builder if the Owner observes or otherwise becomes aware of any errors, omissions, or inconsistencies in such services or information. The Owner is not required to ascertain that the services, certifications, and approvals performed or provided by the Design-Builder or the licensed design professional in connection with the Construction Work are in accordance with Applicable Laws, but the Owner shall promptly report to the Design-Builder any nonconformity discovered by, or made known to, the Owner.

§ 5.5 Labor and Materials

§ 5.5.1 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 Construction Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the construction.

§ 5.5.2 When a material or system is specified in the Design-Build Documents, the Design-Builder may make substitutions only with the consent of the Owner and in accordance with a Change Order.

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

§ 5.6 Taxes

The Design-Builder shall pay sales, consumer, use, import taxes or tariffs, and similar taxes, for the Work provided by the Design-Builder, that are legally enacted as of the date of the Agreement; Owner shall be responsible for any taxes or tariffs, and any cost impact of such taxes and tariffs on the Work, enacted after the date of the Agreement.

§ 5.7 Permits, Fees, Notices and Compliance with Laws

§ 5.7.1 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 Construction Work and Substantial Completion of the Project.

§ 5.7.2 The Design-Builder shall comply with and give notices required by Applicable Laws applicable to performance of the Construction Work.

§ 5.7.3 Concealed or Unknown Conditions. If the Design-Builder encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build Documents, (2) changed physical conditions that differ materially from those originally existing at the Project site or indicated in the Design-Build Documents, including changes in field and soil conditions or site access due to weather or otherwise, or (3) 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. 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, the Contract Sum or Contract Time, or both, shall be equitably adjusted. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Design-Builder, stating the reasons. If the Design-Builder disputes the Owner's determination, the Design-Builder may submit a Claim as provided in Article 15.

§ 5.7.4 If, in the course of the Construction 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 15.

§ 5.8 Allowances

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

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

- .1 allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes and tariffs, 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 items, 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 5.8.2.1 and (2) changes in Design-Builder's costs under Section 5.8.2.2. Approval of a Change Order due to an allowance being exceeded shall not be unreasonably withheld by Owner.

§ 5.8.3 The Owner shall make selections of materials and equipment with reasonable promptness for allowances requiring Owner selection, and pursuant to any reasonable schedule set by the Design-Builder. Design-Builder makes no warranty or guaranty regarding the sufficiency of any amount budgeted for any allowance or contingency identified for the Work.

§ 5.9 Subcontracts and Other Agreements

§ 5.9.1 Those portions of the Construction Work that the Design-Builder does not customarily perform with the Design-Builder's own personnel shall be performed under subcontracts or other appropriate agreements with the Design-Builder. The Owner may designate specific persons from whom, or entities from which, the Design-Builder shall obtain bids. The Design-Builder shall obtain bids from subcontractors, and from suppliers of materials or equipment fabricated especially for the Construction Work, who are qualified to perform that portion of the Construction Work in accordance with the requirements

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of the Design-Build Documents. The Design-Builder shall deliver such bids to the Owner with an indication as to which bids the Design-Builder intends to accept. The Owner then has the right to review the Design-Builder's list of proposed subcontractors and suppliers and, subject to Section 5.9.1.1, to object to any subcontractor or supplier. Any approval or objection by the Owner shall not relieve the Design-Builder of its responsibility to perform the Construction Work in accordance with the Design-Build Documents. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has reasonable objection.

§ 5.9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Design-Builder; (2) is qualified to perform that portion of the Construction 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 Contract Sum 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.

§ 5.9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Design-Builder shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Design-Builder in Article 9.

§ 5.10 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.

§ 5.11 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 Separate Contractor. Consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold, from the Owner or Separate Contractor, its consent to cutting or otherwise altering the Construction Work.

§ 5.12 Cleaning Up

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

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

§ 5.13 Access to Construction Work

The Design-Builder shall provide the Owner and its Separate Contractors and consultants with access to the Construction 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 Separate Contractors and consultants, shall comply with while at the site.

§ 5.14 Construction Work by Owner or by Separate Contractors

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

§ 5.14.1.1 The term "Separate Contractor(s)" shall mean contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under provisions substantially similar to those of this Agreement, including those terms and conditions related to insurance and waiver of subrogation. The Owner will identify in the Design-Build Amendment the extent of construction or operations related to the Project that will be performed by Separate Contractors, and will notify the Design-Builder promptly after execution of any agreement with a Separate Contractor. 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 15.

§ 5.14.1.2 The Owner shall coordinate the activities of the Owner's own forces, and of each Separate Contractor, with the Construction Work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate in a joint review of the construction schedules of the Owner and any Separate Contractors and after mutual agreement the Design-Builder shall revise its construction schedule. The construction schedules shall then constitute the schedules to be used by the Design-Builder, Separate Contractors, and the Owner until subsequently revised.

§ 5.14.1.3 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 with Separate Contractors, the Owner shall be deemed to be subject to the same obligations that and have the same rights as the Design-Builder has under the Contract.

§ 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, which shall be determined in Owner's reasonable discretion.

§ 5.16 Mutual Responsibility

§ 5.16.1 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.

§ 5.16.2 If part of the Design-Builder's Construction Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Design-Builder shall, prior to proceeding with that portion of the Construction Work, promptly notify the Owner of 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 Construction Work. Failure of the Design-Builder to notify the Owner of apparent discrepancies or defects prior to proceeding with the Construction Work shall not constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction or operations is fit and proper to receive the Design-Builder's Construction Work. The Design-Builder shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor.

§ 5.16.3 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 Work. 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 Construction Work or defective Construction Work.

§ 5.16.4 The Design-Builder shall promptly remedy damage that the Design-Builder causes to completed or partially completed Construction Work or to property of the Owner or Separate Contractors as provided in Section 10.2.5.

§ 5.16.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching the Construction Work as the Design-Builder has with respect to the Construction Work of the Owner or Separate Contractors in Section 5.11.

§ 5.16.5.1 The Owner shall be responsible for failures by its Separate Contractors to comply with the obligations in this Agreement.

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, 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 and Design-Builder.

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

§ 6.2 Change Orders

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.

In any Change Order, Design-Builder shall be entitled to an addition of no less than one business day to the Contract Time.

§ 6.3.1 Cost to be Reimbursed as Part of the Contract or any Change Order.

§ 6.3.1.1 Labor Costs

§ 6.3.1.1.1 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 at the rates set forth Exhibit D – Design-Builder’s Rate Schedule.

§ 6.3.1.1.2 With the Owner’s prior approval, wages or salaries of the Design-Builder's supervisory and administrative personnel when stationed at the site or at Design-Builder’s home office for time spent directly for the benefit of the Project at the rates set forth in Exhibit D.

(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.)

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

§ 6.3.1.1.3 Wages and salaries of the Design-Builder's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work, at the rates set forth in Exhibit D.

§ 6.3.1.1.4 Costs paid or incurred by the Design-Builder for taxes, tariffs, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under the Design-Build Amendment (if executed).

§ 6.3.1.1.5 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, Subcontractor or supplier, with the Owner's prior approval.

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

§ 6.3.1.3 Costs of Materials and Equipment Incorporated in the Completed Construction

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

§ 6.3.1.3.2 Costs of materials described in the preceding Section 6.3.1.3.1 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 or, at the Owner's option, shall be sold by the Design-Builder. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.3.1.4 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 6.3.1.4.1 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.

§ 6.3.1.4.2 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 subject to the Owner's prior approval.

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

§ 6.3.1.4.4 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.

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

§ 6.3.1.5 Miscellaneous Costs

§ 6.2.1.5.1 Premiums for that portion of insurance and bonds required by the Design-Build Documents that can be directly attributed to the Contract. With the Owner's prior approval self-insurance for either full or partial amounts of the coverages required by the Design-Build Documents.

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

§ 6.3.1.5.3 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.

§ 6.3.1.5.4 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 16.5.3 of the Agreement or by other provisions of the Design-Build Documents.

§ 6.3.1.5.5 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 such requirement of the Design-Build Documents; 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 Stipulated Sum. 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.

§ 6.3.1.5.6 Costs for electronic equipment and software directly related to the Work.

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

§ 6.3.1.5.8 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.

§ 6.3.1.5.9 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.

§ 6.3.1.5.10 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.

§ 6.3.1.6 Other Costs and Emergencies

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

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

§ 6.2.1.6.3 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.

§ 6.3.1.7 Related Party Transactions

§ 6.3.1.7.1 For purposes of Section 6.3.1.7, 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.

§ 6.3.1.7.2 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. 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.

§ 6.4.1 Costs Not to Be Reimbursed as Part of this Contract or any Change Order

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 6.3.1.1;
- .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 6.3.1;
- .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 6.2.1.6.3 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 6.3.1; and
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Stipulated Sum to be exceeded.

§ 6.4.2. Discounts, Rebates, and Refunds

§ 6.4.2.1 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.

§ 6.4.2.2 Amounts that accrue to the Owner in accordance with Section 6.1.2.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.5 Other Agreements

§ 6.5.1 When the Design-Builder has provided a Stipulated Sum, 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 Stipulated Sum 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.

§ 6.5.2 Agreements between the Design-Builder and Subcontractors 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 Subcontractor 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 Subcontractor as the Owner receives with regard to the Design-Builder in Section 6.6, below.

§ 6.5.3 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.

§ 6.6 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, Subcontractor'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.

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 matters requiring the Owner's approval or authorization. Design-Builder shall be entitled to rely on direction of any other agent or representative of Owner who executes any document on behalf of Owner, issues any directive regarding extras or changes in the Work, or otherwise directs Design-Builder.

§ 7.1.2 The Owner shall render decisions in a timely manner and in accordance with the Design-Builder's schedule. 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. During the Project, the Owner shall provide Design-Builder with written notice if ownership of the property upon which the Project is being performed changes.

§ 7.1.3 The Owner shall furnish and coordinate the services of the Owner's consultants and Separate Contractors with those services provided by the Design-Builder. Upon the Design-Builder's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants or Separate Contractors. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 7.1.4 The Owner shall furnish the services of consultants required by a material change in the Owner's Criteria or authorize the Design-Builder to furnish them pursuant to a Change Order.

§ 7.1.5 If the Owner identifies a Sustainable Objective, the Owner shall fulfill its responsibilities as required in AIA Document A141-2024 Exhibit C, attached to this Agreement.

§ 7.1.6 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, including the Architect and Subcontractors.

§ 7.1.7 The Owner shall purchase and maintain insurance as set forth in Article 11 and AIA Document A141-2024 Exhibit A.

§ 7.1.8 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 not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences, or procedures, or for the safety precautions and programs in connection with the Work. However, 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.

§ 7.1.9 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, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 7.1.10 The Owner may reject Work that does not conform to the Design-Build Documents. The Owner may require inspection or testing of the Construction Work in accordance with Section 16.5.2, whether or not the Construction Work is fabricated, installed, or completed.

§ 7.1.11 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. The Owner shall exercise reasonable discretion in making such determinations and may not unreasonably withhold its approval.

§ 7.1.12 The Owner acknowledges that accelerated or fast-track design and construction, or phased construction, provides a benefit, but also carries with it associated risks. Such risks include the Owner incurring costs for the Design-Builder to coordinate and redesign portions of the Project affected by procuring or installing elements of the Project prior to the completion of all relevant Design-Build Documents, and costs for the Design-Builder to remove and replace previously installed Construction Work. If the Owner approves accelerated or fast-track design and construction, or phased construction, the Owner agrees to include in the budget for the Work sufficient contingencies to cover such costs.

§ 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, 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, including all easements, rights of way or other encumbrances affecting or limiting the use of the Project site, including adjacent roads or means of access thereto.

§ 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 unless Design-Build documents specify otherwise.

§ 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. The Design-Builder shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services, information, surveys, and reports furnished by the Owner.

§ 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 notice thereof to the Design-Builder.

§ 7.2.7 Evidence of the Owner's Financial Arrangements

§ 7.2.7.1 Prior to execution of the Design-Build Amendment, the Design-Builder may request that the Owner furnish reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Owner shall provide this written evidence using form AIA G729-2024. If the Owner fails to provide such evidence, as required, within fourteen days of the Design-Builder's request, the Design-Builder may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. If the Work is stopped under this Section 7.2.7, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Design-Build Documents.

§ 7.2.7.2 Following the execution of the Design-Build Amendment and upon written request by the Design-Builder, the Owner shall furnish to the Design-Builder reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Design-Builder as the Design-Build Documents require; (2) the Design-Builder identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. Owner shall provide this written evidence using form AIA G729-2024. If the Owner fails to provide such evidence, as required, within fourteen days of the Design-Builder's request, the Design-Builder may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. If the Work is stopped under this Section 7.2.7, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Design-Build Documents.

§ 7.2.7.3 After the Owner furnishes evidence of financial arrangements under this Section 7.2.7, the Owner shall not materially vary such financial arrangements without prior notice to the Design-Builder.

§ 7.2.7.4 Where the Owner has designated information furnished under this Section 7.2.7 as "confidential," the Design-Builder shall keep the information confidential as set forth in Article 16.

§ 7.2.8 Unless required by the Design-Build Documents to be provided by the Design-Builder, the Owner shall furnish the services of geotechnical engineers or other consultants when such services are reasonably necessary to properly carry out the Design Services furnished by the Design-Builder. 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.

§ 7.2.9 Unless required by the Design-Build Documents, the Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements, and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning or deed restrictions, and boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 7.2.10 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 other consultants 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 identify the services required.

§ 7.2.11 The Owner shall furnish all legal, insurance, and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 7.2.12 Upon Design-Builder's request, Owner shall participate in meetings during the Project as frequently as weekly, to review the status of completion of the Work, including identifying and resolving any pending Submittals, Owner's selections, requests for Change Orders, Requests for Information (RFI's) and to review requests for changes, if any, in the Project Schedule.

§ 7.3 Owner's Right to Stop Construction Work

If the Design-Builder fails to correct Construction Work which is not in accordance with the requirements of the Design-Build Documents as required by Section 12.2 or persistently fails to carry out Construction Work in accordance with the Design-Build Documents, the Owner may, following fourteen (14) days' written notice, issue a written order to the Design-Builder to stop the Construction Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Construction 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 5.14.1.2.

§ 7.4 Owner's Right to Carry Out the Construction Work

If the Design-Builder defaults or neglects to carry out the Construction Work in accordance with the Design-Build Documents

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and fails within a fourteen-day period after receipt of 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 default or neglect. The Owner may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies. If current and future payments are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner. If the Design-Builder disagrees with the actions of the Owner, or the amounts claimed as costs to the Owner, the Design-Builder may file a claim pursuant to Article 15.

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 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, government shutdowns, fire, pandemics, floods, unusual delay in deliveries, unavailable or discontinued materials, shipping delays, war, acts of war, 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 justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as required to account for such delay in the progress of the Project and Design-Builder shall be entitled to an increase in the Contract Sum (and Stipulated Sum, if applicable) for the additional costs of the delay, including additional supervision and general conditions costs, and any costs due to unavailable or discontinued materials.

§ 8.2.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 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.

§ 8.2.4 "Weather Events" are those days when the Design-Builder cannot proceed with Work on the critical path for more than four (4) hours in a day because of any of the following:

- i. Precipitation in excess of .10 of an inch, as measured by the precipitation gauge kept at the Project site.
- ii. Project site conditions (such as mud, pooling of water, ice, or standing snow subsequent to the actual precipitation days) that prevent the performance of activities (such as, but not limited to, mass grading, building pad grading, excavations, and backfill operations).
- iii. Project site temperature measuring: (a) less than 32 degrees Fahrenheit or below product specification constraints related to temperature (examples include, but are not limited to, placing concrete, roofing applications, fireproofing application, waterproofing application, exterior envelope installation, and masonry activities); or (ii) in excess of 100 degrees Fahrenheit.
- iv. Wind speeds, as measured by a Project site gauge, exceeding those permissible to use equipment or to perform certain tasks safely (example includes not being able to safely use crane(s) or other aerial equipment for erection of the building structure).

§ 8.2.5 The Design-Builder shall undertake reasonable measures to minimize the potential impact of and to mitigate and overcome the impact of Weather Events, including without limitation, the installation of temporary protection measures and/or dismantling of equipment necessary to prepare the Project site for such Weather Events; removal of temporary protections, clean-up, and restoration of the Project site as needed to promptly and safely resume construction activities.

§ 8.2.6 The Construction Schedule is based on the Design-Builder performing Work five (5) days per week ("Work Week"). The Work Week shall be defined as Monday through Friday. The Work Week does not include legal holidays recognized in the state of North Carolina.

§ 8.2.7 In the event that Design-Builder cannot perform Work on the critical path during the Work Week due to one or more Weather Events, Design-Builder shall be entitled to an extension of the Contract Time and Contract Sum on a day-for-day basis solely due to a delay caused by a Weather Event; provided however, Design-Builder shall supplement any lost day of Work during the Work Week by working subsequent Saturdays.

§ 8.2.8 Grounds for a potential adjustment to the Contract Time and Contract Sum shall be considered on the first day of the month for Weather Events that occurred during the prior month. The Design-Builder shall only be entitled to an adjustment in the Contract Time and Contract Sum to the extent that the Design-Builder encounters Weather Events during such month in excess of the available weather days and after fully utilizing Saturdays to make up for such Weather Events.

§ 8.2.9 A time extension and additional contract change order shall only be granted for a Weather Event if such Weather Event directly and solely has an adverse effect upon the critical path of the Work. Notwithstanding anything to the contrary in the Contract Documents, the Design-Builder shall only be entitled to an adjustment in the Contract Time because of a Weather Event as set forth in this Section 8.2. Unless external site activities fall on the critical path of the Project and are directly and solely impacted by such Weather Event, Weather Events are not applicable grounds for an adjustment in the Contract Time after the Project reaches the dry-in stage of the structure.

§ 8.2.10 Any Claims by the Design-Builder based on a Weather Events delays shall be made by the Design-Builder to Owner in writing at the end of each month. The Design-Builder shall update Owner concerning any Weather Event during the weekly Project site meetings. All Weather Events shall be promptly recorded by the Design-Builder in a Weather Event Log. A copy of Design-Builder's Weather Event Log shall be available to Owner upon the Owner's request. The Weather Event Log shall also record Work performed by the Design-Builder on a weather day and a Saturday to make up for a lost day of Work during the Work Week as a result of a Weather Event. The Weather Event Log shall maintain a then-current and comprehensive running tally of weather days and Saturdays, both used and unused, so to clearly reflect such days available to offset the occurrence of a Weather Event.

ARTICLE 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION

§ 9.1 Contract Sum

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

§ 9.1.1 If unit prices are stated in the Design-Build Amendment or subsequently agreed upon, and if quantities set forth in the Design-Build Amendment are materially changed in a proposed Change Order or Change Directive, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

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

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work. The Application for Payment shall be notarized, if required, and supported by all data substantiating the Design-Builder's right to payment that the Owner requires, such as copies of requisitions, and releases and waiver of liens (which may be conditional until payment is received) from the Architect, Consultants, Subcontractors, and suppliers, and shall reflect retainage if provided for in the Design-Build Documents.

§ 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 the Owner, or by interim determinations of the Owner, but not yet included in Change Orders. As provided in Section 2.1, compensation for Work prior to execution of the Design-Build Amendment may include payment on account of changes in the Work that have been properly authorized by Owner, 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, a Consultant, a Subcontractor, or a supplier, unless such Work has been performed by others whom the Design-Builder intends to pay.

§ 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, 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, Subcontractors, suppliers, or any other persons or entities that 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, either (1) issue to the Design-Builder a Certificate for Payment in the full amount of the Application for Payment; (2) issue to the Design-Builder a Certificate for Payment for such amount the Owner determines is properly due, and notify the Design-Builder of the Owner's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Design-Builder of the Owner's reason for withholding certification in whole as provided in Section 9.5.1.

§ 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 for Payment, 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 Failure to perform Work in accordance with the Design-Build Documents, , provided that notice of such defective Work has been delivered to Design-Builder;
- .2 Third-party claims filed, 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, Subcontractors, suppliers, or others, for services, labor, materials, or equipment, provided that Owner has paid Design-Builder all monies invoiced;
- .4 Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum and Design-Builder fails after request to provide evidence of financial capacity to pay estimated costs in excess of the Contract Sum;
- .5 Damage to the Owner or a Separate Contractor, which is not being addressed by Design-Builder's insurer; or
- .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.

§ 9.5.2 If the Design-Builder disputes the Owner's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, the Design-Builder may submit a Claim in accordance with Article 15.

§ 9.5.3 When the above reasons for withholding certification are removed, the Owner shall certify amounts previously withheld.

§ 9.5.4 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 any other persons or entities providing 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 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.

§ 9.6.1.1 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

§ 9.6.1.2 Provided that an Application for Payment is received not later than the « 25th » day of the month, the Owner shall make payment of the certified amount to the Design-Builder not later than the « 25th » day of the « following » 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.

§ 9.6.1.3 Intentionally Deleted

§ 9.6.1.4 With each Application for Payment where the Contract Sum is based upon a Stipulated Sum 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. 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.

§ 9.6.2 Progress Payments—Stipulated Sum

§ 9.6.2.1 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.

§ 9.6.2.2 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 of five percent (5 %) on the Work. Pending final determination of cost to the Owner of Changes in the Work, amounts not in dispute shall be included;
- .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 of five percent (5 %);
- .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.

§ 9.6.2.3 The progress payment amount determined in accordance with Section 9.6.2.2 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
- .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 this Agreement.

§ 9.6.2.4 Reduction or limitation of retainage, if any, shall be as follows:

«1) Retainage shall not be held on the Design-Builder's Applications for Payment for direct purchased materials, General Requirements, General Conditions, General Liability Insurance, Builder's Risk, Bonds, Permits, Contingency and Fees.

2) After the first fifty percent (50 %) of the project has been billed, as determined by the Schedule of Values, the retainage shall be withheld at two and a half percent (2.5 %) for the remainder of the project.

3) The following Schedule of Value line items shall be entitled to an early distribution of retainage if the work has been completed and inspected: Mass Grading, Site Utilities, Aggregate Piers, Soil Improvements, Structural Concrete, and Structural Steel. Other Schedule of Value line items may require reduction prior to completion of the project with owner approval.»

§ 9.6.3 Intentionally Deleted

§ 9.6.4 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 such action shall not be deemed to be a representation that (1) the Owner has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 9.3.1 or other supporting data; (2) that the Owner has made exhaustive or continuous on-site inspections; or (3) that the Owner has made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid on account of the Contract. 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.

§ 9.6.5 The Design-Builder shall pay each person or entity providing Work for the Design-Builder, no later than the time period required by Applicable Law. Payment shall be the amount to which the person or entity providing 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 person or entity. The Design-Builder shall, by appropriate agreement with each person or entity providing Work for the Design-Builder, require each person or entity providing Work for the Design-Builder to make payments to subconsultants and subcontractors in a similar manner.

§ 9.6.6 The Owner will, on request and if practicable, furnish to the person or entity providing 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 person or entity providing Work for the Design-Builder.

§ 9.6.7 The Owner has the right to request written evidence from the Design-Builder that the Design-Builder has properly paid any other persons or entities providing 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 other person or entity providing Work for the Design-Builder 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 any other person or entity providing services or Work for the Design-Builder, except as may otherwise be required by law.

§ 9.6.8 The Design-Builder's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.5, 9.6.6 and 9.6.7.

§ 9.6.8.1 Except with the Owner's prior written approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment.

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

§ 9.6.10 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 persons or entities providing Work for the Design-Builder, shall be held by the Design-Builder for the Architect and those Consultants, Subcontractors, or other persons or entities. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Design-Builder, create any fiduciary liability or tort liability on the part of the Design-Builder for breach of trust, or entitle any person or entity to an award of punitive damages against the Design-Builder for breach of the requirements of this provision.

§ 9.6.11 Provided the Owner has fulfilled its payment obligations under the Design-Build Documents, the Design-Builder shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Architect, Consultant, Subcontractor, or any other

person or entity providing Work for the Design-Builder. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Design-Builder. If approved by the applicable court, when required, the Design-Builder may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

If the Owner fails to issue a Certificate for Payment or make payment of the certified amount within the time required by the Design-Build Documents, then the Design-Builder may, upon seven additional days' notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended for not less than the number of days during which Work was suspended and the Contract Sum shall be increased by the amount of the Design-Builder's reasonable costs of shutdown, demobilization and remobilization, delay, and start-up, plus interest as provided for in the Design-Build Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Construction Work when the Construction Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Construction Work for its intended use. The date of Substantial Completion shall be no later than the earlier of the date any Temporary Certificate of Occupancy or Certificate of Occupancy is issued by the applicable municipality. The issuance of a Temporary Certificate of Occupancy or Certificate of Occupancy constitutes irrefutable proof of Substantial Completion whether Owner issues a Certificate of Substantial Completion.

§ 9.8.2 When the Design-Builder considers that the Construction 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, which the Owner shall sign and return to Design-Builder. The Owner's failure to include any item on such list constitutes acceptance of such work and Owner agrees to waive any claim against Design-Builder for work that is not included on the list.

§ 9.8.3 Upon receipt of the Design-Builder's list, the Owner shall make an inspection within fourteen (14) calendar days to determine whether the Construction 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 Construction 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 Unless otherwise agreed to in writing, responsibility for building operations, security, maintenance, heat, utilities, damage to the Work, insurance, and any other undertakings reasonably related to building operations shall transfer from Design-Builder to Owner on the date of substantial completion.

§ 9.8.5 When the Construction Work or designated portion thereof is substantially complete, the Design-Builder will prepare 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 Construction 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 Construction Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 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, which shall not be unreasonably withheld. 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.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Construction 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 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 Construction 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 Construction Work shall be determined by written agreement between the Owner and Design-Builder.

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

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Construction Work shall constitute Substantial Completion of such portions of the Work for purposes of payment and warranties but 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 notice that the Construction 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 Construction Work acceptable under the Design-Build Documents and the Contract fully performed, the Owner will, subject to Section 9.10.2 and 9.10.3, promptly issue a final Certificate for Payment.

§ 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 Construction 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 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) an as-constructed record copy of the Construction Documents marked to indicate field changes and selections made during construction, (6) documentation of any special warranties, such as 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, and releases and waivers of liens (which may be conditioned upon receipt of final payment), claims, security interests, or encumbrances, arising out of the Contract, to the extent and in such form as may be designated by the Owner.

§ 9.10.3 If, after Substantial Completion of the Construction 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 Construction Work fully completed, corrected, and accepted. If the estimated cost to complete or correct the Construction Work is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Construction 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 terms of special warranties required by the Design-Build Documents; or
- .3 audits performed by the Owner, if permitted by the Design-Build Documents, after final payment.

§ 9.10.5 Final Payment

§ 9.10.5.1 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 9.10.2 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.

~~§ 9.10.5.2 Intentionally Deleted 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 9.10.2 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.~~

§ 9.10.6 Method of Payment

For any payments made by Owner via electronic transfer, wire transfer, or other kind of EFT transaction as may be required by Design-Builder, Owner agrees that it shall only accept such instructions and account information from Design-Builder in paper form and shall verbally verify the same with Design-Builder's Controller or CFO prior to Owner's initial payment. Owner shall not make any payment to Design-Builder via electronic transfer, wire transfer, or other kind of EFT transaction pursuant to any other instructions without first verifying the instructions and account information via telephone with Design-Builder's Controller or CFO. Owner shall timely make all payments required by this Agreement. Time is of the essence as to all terms of payment.

§ 9.11 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

1.5% % month

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 Construction Work.

§ 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 and persons performing the Construction Work who may be affected thereby;
- .2 the Construction 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, a Subcontractor, or any 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 bearing on the 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 notifying the owners and users of adjacent sites and utilities of the safeguards.

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

§ 10.2.5 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 Subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections 10.2.1.2 and 10.2.1.3. The Design-Builder may make a Claim for the cost to remedy damage or loss to the extent such damage or loss is 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, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time. 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 or substances. 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 Construction Work in the affected area and notify the Owner of the condition.

§ 10.3.2 Upon receipt of the Design-Builder's 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 the material or substance or who are to perform the task of removal or safe containment of the 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, Construction 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 by the amount of the Design-Builder's reasonable additional costs of shutdown, 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 Subcontractors, 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 Construction 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 Construction Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous 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 hazardous 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 reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances 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 Construction Work as required by

the Design-Build Documents, the Owner shall reimburse 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 INSURANCE AND BONDS

§ 11.1 Design-Builder's Insurance and Bonds

§ 11.1.1 The Design-Builder shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in this Agreement or elsewhere in the Design-Build Documents. Prior to commencement of the Work, the Design-Builder shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner shall be named as an additional insured under the Design-Builder's commercial general liability policy or as otherwise described in the Design-Build Documents.

§ 11.1.2 The Design-Builder shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Design-Build Documents. The Design-Builder shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Design-Build Contract, the Design-Builder shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.1.4 Notice of Cancellation or Expiration of Design-Builder's Required Insurance. Within three (3) business days of the date the Design-Builder becomes aware of an impending or actual cancellation or expiration of any insurance required by the Design-Build Documents, the Design-Builder shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Design-Builder, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Design-Builder. The furnishing of notice by the Design-Builder shall not relieve the Design-Builder of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in this Agreement or elsewhere in the Design-Build Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in this Agreement or elsewhere in the Design-Build Documents, the Owner shall inform the Design-Builder in writing prior to commencement of the Construction Work. Upon receipt of notice from the Owner, the Design-Builder may delay commencement of the Construction Work and may obtain insurance that will protect the interests of the Design-Builder, Subcontractors, and Sub-Subcontractors in the Construction Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Design-Builder, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a 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 the required insurance, the Owner shall reimburse the Design-Builder for all reasonable costs and damages attributable thereto.

§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Design-Build Documents, the Owner shall provide notice to the Design-Builder of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Design-Builder: (1) the Design-Builder, upon receipt of notice from the Owner, shall have the right to stop the Construction Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Design-Builder; (2) the Contract Time and Contract

Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Design-Builder, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Design-Builder purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Design-Builder waive all rights against (1) each other and any of their consultants, subcontractors, sub-subcontractors, agents, and employees, each of the other; and (2) Separate Contractors, 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 those losses are covered by property insurance required by this Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Design-Builder, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Separate Contractors, consultants, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 If, during construction of the Project, 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, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Design-Builder for loss of use of the Owner's property, due to fire or other hazards however caused.

§ 11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by this Agreement 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 11.5.2. The Owner shall pay the Design-Builder its just share of insurance proceeds received by the Owner, and by appropriate agreement the Design-Builder shall make payments to its consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Design-Builder of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Design-Builder shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Design-Builder does not object, the Owner shall settle the loss, and the Design-Builder shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Design-Build Contract for convenience, the Owner and Design-Builder shall execute a Change Order for reconstruction of the damaged or destroyed Construction Work in the amount allocated for that purpose. If the Design-Builder timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Design-Builder arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Change Directive for the reconstruction of the damaged or destroyed Construction Work.

ARTICLE 12 UNCOVERING AND CORRECTION OF CONSTRUCTION WORK

§ 12.1 Uncovering of Construction Work

The Owner may request to examine a portion of the Construction Work that the Design-Builder has covered to determine if the Construction Work has been performed in accordance with the Design-Build Documents. If such Construction Work is in accordance with the Design-Build Documents, the Design-Builder shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Construction Work is not in accordance with the Design-Build

Documents, the costs of uncovering the Construction Work, and the cost of correction, shall be at the Design-Builder's expense and shall not result in 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.

§ 12.2 Correction of Construction Work

§ 12.2.1 Before Substantial Completion. The Design-Builder shall promptly correct Construction Work rejected by the Owner or failing to conform to the requirements of the Design-Build Documents, discovered before Substantial Completion, and whether or not fabricated, installed, or completed. Costs of correcting such rejected Construction Work, including additional testing and inspections and the cost of uncovering and replacement, and compensation for any consultant employed by the Owner whose expenses and compensation were made necessary thereby, shall be at the Design-Builder's expense. In addition, the Owner shall promptly remedy damage and loss arising in conjunction with the Project caused in whole or in part by any Separate Contractor or agent of Owner, or anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 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 Construction Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Design-Build Documents, any of the Construction Work is discovered not to be in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of 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 Construction Work, if the Owner fails to notify the Design-Builder of the condition 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 and breach of the standard of care for that condition. If the Design-Builder fails to correct nonconforming or defectively designed Construction Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 7.4.

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

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

§ 12.2.3 The Design-Builder shall remove from the site portions of the Construction 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.

§ 12.2.4 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 Construction Work that is not in accordance with the requirements of the Design-Build Documents, 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 .

§ 12.2.5 This Section 12.2 shall be Owner's exclusive remedy and a period of limitation with respect to obligations the Design-Builder has under the Design-Build Documents for any failure of the Work to conform to the requirements of the Design-Build Documents or any claim or omission, defect or deficiency (whether latent or patent) in the Work, including but not limited to any claim arising under Section 3.1.12 Warranty.

§ 12.3 Acceptance of Nonconforming Construction Work

If the Owner prefers to accept Construction 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 13 COPYRIGHTS AND LICENSES

§ 13.1 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, Subcontractors, and any other person or entity providing 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 Subcontractors, and any other person or entity providing Work for any of them.

§ 13.2 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.

§ 13.3 Upon execution of the Design-Build Amendment, the Design-Builder grants to the Owner a nonexclusive license to use the Design-Builder's 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 in this Section 13.3 shall terminate only if (1) the Design-Builder terminates this Agreement in accordance with Sections 14.1.1, 14.1.3, 14.1.4, or 14.2.1 or (2) the Owner terminates this Agreement for convenience as provided in Section 14.1.5 and does not compensate the Design-Builder as required under Sections 14.1.6 and 14.1.7. The license granted under this section permits the Owner to authorize the Owner's consultants to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.1.5, solely and exclusively for use in performing services for the Project.

§ 13.3.1 In the event the Owner uses the Instruments of Service (1) for purposes inconsistent with Section 13.3, (2) after completion of the Project for purposes of altering or adding to the Project without retaining the authors of the Instruments of Service for such purposes, (3) after the Owner terminates this Agreement for convenience, or (4) after the Design-Builder terminates this Agreement in accordance with Sections 14.1.1, 14.1.3, 14.1.4, or 14.2.1, the Owner releases the Design-Builder from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Design-Builder 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 use of the Instruments of Service under this Section 13.3.1. The terms of this Section 13.3.1 shall not apply if the Owner terminates this Agreement for cause under Section 14.1.4 or 14.2.2. The payment of a Termination Fee or Licensing Fee under Section 14.1.7 shall not relieve the Owner of the release or indemnity obligations of this Section 13.3.1.

§ 13.3.2 The Design-Builder shall obtain non-exclusive licenses from the Architect, Consultants, and Subcontractors, that will allow the Design-Builder to satisfy its obligations to the Owner under this Article 13. The Design-Builder's licenses from the Architect and its Consultants and Subcontractors 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 Subcontractors terminate their agreements with the Design-Builder for cause, to obtain a 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 Subcontractor all amounts due, and (2) provides the Architect, Consultant or Subcontractor with the Owner's written agreement to indemnify and hold harmless the Architect, Consultant, or Subcontractor 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.

§ 13.3.3 Except as otherwise stated in this Section 13.3, the provisions of this Article 13 shall survive the termination of this Agreement.

ARTICLE 14 TERMINATION OR SUSPENSION

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

§ 14.1.1 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 under Section 14.1.4 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' 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.

§ 14.1.2 If the Owner 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.

§ 14.1.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Design-Builder, the Design-Builder may terminate this Agreement by giving not less than seven days' notice.

§ 14.1.4 Either party may terminate this Agreement upon not less than seven days' 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.

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

§ 14.1.6 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 14.1.6 be greater than the compensation set forth in Section 2.1.

§ 14.1.7 In addition to any amounts paid under Section 14.1.6, if the Owner terminates this Agreement for its convenience pursuant to Section 14.1.5, or the Design-Builder terminates this Agreement pursuant to Sections 14.1.3 or 14.1.4, the Owner shall pay to the Design-Builder the following fees:

(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)

.1 Termination Fee:

All costs incurred to date plus 15%.

.2 Licensing Fee if the Owner intends to continue using the Design-Builder's Instruments of Service:

\$ 15,000 in addition to the termination fee.

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

§ 14.2.1 Suspension or Termination by the Design-Builder

§ 14.2.1.1 The Design-Builder may, upon seven (7) days' written notice, suspend or terminate (in Design-Builder's sole discretion) this Agreement recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, costs incurred by reason of such suspension or termination, and damages, if the Work is stopped for a period of 30 consecutive days through no act or fault of the Design-Builder, or any other persons or entities performing portions of the Work, and 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;
- .4 Owner's refusal, for a period exceeding 21 days after receipt of a written request by Design-Builder to execute Change Orders necessary for the prosecution of the Work;
- .5 Owner's failure to provide Design-Builder with information or other Design-Build Documents necessary for Design-Builder to perform its Work in an efficient and workmanlike manner unless the Owner promptly remedies that failure through written Change Orders issued within 21 days from receipt of a written request by Design-Builder; or

.6 The Owner has failed to furnish to the Design-Builder reasonable evidence as required by Section 7.2.7.

§ 14.2.1.2 The Design-Builder may terminate this Agreement if, through no act or fault of the Design-Builder, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.2.3, 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.

§ 14.2.1.3 If one of the reasons described in Section 14.2.1.2 exists, the Design-Builder may, upon seven days' notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, or the Design-Builder's Fee on Work not executed if the Contract Sum is based upon the Cost of the Work plus a Fee with or without a Stipulated Sum, and costs incurred by reason of such termination.

§ 14.2.1.4 If the Work is stopped for a period of 30 consecutive days through no act or fault of the Design-Builder, or any other persons or entities performing portions of the Work 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 (other than those set forth in Section 14.2.1.1), the Design-Builder may, upon seven additional days' notice to the Owner, terminate the Contract and recover from the Owner as provided in Section 14.2.1.3.

§ 14.2.2 Termination by the Owner for Cause

§ 14.2.2.1 The Owner may terminate this Agreement 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 enough properly skilled workers or proper materials;
- .3 repeatedly refuses or fails to supply a qualified architect, consultant, or subcontractor, where required;
- .4 fails to make payment to the Architect, Consultants, Subcontractors, or suppliers in accordance with their respective agreements with the Design-Builder;
- .5 repeatedly disregards Applicable Laws; or
- .6 is otherwise in breach of a material provision of the Design-Build Documents.

§ 14.2.2.2 When any of the reasons described in Section 14.2.2.1 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' notice and an opportunity to commence a cure of the reason stated by Owner in its 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 for which Owner has made payment;
- .2 Accept assignment of the Architect, Consultant, and Subcontractor 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.

§ 14.2.2.3 When the Owner terminates this Agreement for one of the reasons stated in Section 14.2.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished.

§ 14.2.2.4 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 this Agreement.

§ 14.2.3 Suspension by the Owner for Convenience

Intentionally deleted

§ 14.2.4 Termination by the Owner for Convenience

§ 14.2.4.1 The Owner may, at any time, terminate this Agreement for the Owner's convenience and without cause.

§ 14.2.4.2 Upon receipt of 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, Subcontractors, and purchase orders, and enter into no further Project agreements and purchase orders.

§ 14.2.4.3 In case of such termination for the Owner’s convenience, the Owner shall pay the Design-Builder for: Work executed through the date of termination; Termination and Licensing Fees set forth in Section 14.1.7; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts, and reasonable overhead and profit on the Work not executed.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 **Definition.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, 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. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 **Time Limits on Claims.** The Owner and Design-Builder shall commence all claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, 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 15.1.2.

§ 15.1.3 Notice of Claims

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

§ 15.1.3.2 **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 notice to the other party. The notice requirement in Section 15.1.3.1 and the provisions for Initial Resolution of Claims in Section 15.2 shall not be required as a condition precedent to mediation in Section 15.3.

§ 15.1.4 **Continuing Contract Performance.** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, 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.

§ 15.1.5 **Claims for Additional Cost.** If the Design-Builder wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Design-Builder wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Design-Builder’s Claim shall include an estimate of cost and of the probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 Claims for additional time based on Weather Events shall be addressed per Section 8.2.10.

§ 15.1.7 Waiver of 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.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Design-Build Documents.

§ 15.2 Initial Resolution of Claims

§ 15.2.1 Meet and Confer

§ 15.2.1.1 If the parties select Meet and Confer as the initial method of dispute resolution, the Owner and Design-Builder shall endeavor to resolve Claims subject to the meet and confer session. The meet and confer session shall be attended by representatives who have the authority to bind the Owner and Design-Builder. The Owner or Design-Builder may request senior representatives from the Architect, Subcontractors, or other interested parties to attend the meet and confer session. The meet and confer session shall take place within thirty (30) days after a request by either party to this Agreement unless the parties mutually agree otherwise.

§ 15.2.1.2 Discussions held during the meet and confer process shall be treated as settlement discussions and, as such, will be confidential.

§ 15.2.1.3 If the Owner and Design-Builder reach a mutually acceptable resolution, appropriate documentation memorializing the resolution shall be prepared. If the resolution results in a change to the Contract Sum or the Contract Time, the parties shall execute a Change Order.

§ 15.2.1.4 If the Owner and Design-Builder cannot reach a mutually acceptable resolution at the meet and confer session, or if the meet and confer session does not take place within the time specified in Section 15.2.1, either party may proceed to mediation in accordance with Section 15.3.

§ 15.2.2 Project Neutral

Intentionally deleted

§ 15.3 Mediation – Intentionally Deleted

§ 15.5 The provisions of this Article 15 shall survive the termination of this Agreement.

ARTICLE 16 MISCELLANEOUS PROVISIONS

§ 16.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 16.2 Successors and Assigns

§ 16.2.1 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 16.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 16.2.2 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 the assignment.

§ 16.2.3 Certifications. If the Owner requests the Design-Builder to execute certificates, the proposed language of such

certificates shall be submitted to the Design-Builder for review at least 21 days prior to the requested dates of execution. If the Owner requests the Design-Builder to execute consents reasonably required to facilitate assignment to a lender, the Design-Builder shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Design-Builder for review at least 21 days prior to execution. The Design-Builder shall not be required to execute any certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 16.3 The Design-Builder, Architect, Consultants, Subcontractors, or their agents, or any other persons or entities performing portions of the Work, shall have the right to include video, photographic, or artistic representations of the design of the Project among their respective promotional and professional materials. The Design-Builder, Architect, Consultants, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work, shall be given reasonable access to the completed Project to make such representations. However, such material shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Design-Builder in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Design-Builder, Architect, Consultants, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work, in the Owner's promotional materials for the Project. This Section 16.3 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 14.2.2.

§ 16.4 Rights and Remedies

§ 16.4.1 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.

§ 16.4.2 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 upon in writing.

§ 16.5 Tests and Inspections

§ 16.5.1 Tests, inspections, and approvals of portions of the Construction 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, unless otherwise provided in the Design-Build Amendment. 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 tests, inspections, or approvals that do not become requirements until after execution of the Design-Build Amendment. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or Applicable Laws or regulations so require.

§ 16.5.2 If the Owner determines that portions of the Construction Work require additional testing, inspection, or approval not included under Section 16.5.1, 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 16.5.3, shall be at the Owner's expense.

§ 16.5.3 If procedures for testing, inspection, or approval under Sections 16.5.1 and 16.5.2 reveal failure of the portions of the Construction 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.

§ 16.5.4 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.

§ 16.5.5 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.

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

§ 16.6 Confidential Information

§ 16.6.1 If the Design-Builder or Owner receives information specifically designated as “confidential” or “business proprietary,” the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 16.6.2. **The provisions of the North Carolina Public Records Statute as revised per Exhibit E shall apply.** The obligations in this Section 16.6 shall survive the termination of this Agreement.

§ 16.6.2 The receiving party may disclose “confidential” or “business proprietary” information after 7 days’ notice to the other party, when required by law, arbitrator’s order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, contractors, or subcontractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants, contractors, and subcontractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 16.6. In the event either party knows or reasonably believes that “confidential” or “business proprietary” information received from the other party has been subject to any circumstance where the security, integrity, or confidentiality of any of the “confidential” or “business proprietary” information has been compromised, damaged, lost, corrupted, destroyed, or the “confidential” or “business proprietary” information has been accessed, acquired, modified, used, disclosed, or rendered inaccessible, by any unauthorized person, by any person in an unauthorized manner, or for an unauthorized purpose, the party experiencing the breach will provide written notice to the other party as soon as reasonably possible after it becomes aware of any breach.

§ 16.6.3 “Confidential” or “business proprietary” information shall not include information:

- .1 in the public domain, or which later enters the public domain, through no action on the receiving party’s part in violation of this Agreement;
- .2 already in the receiving party’s possession and not marked as “confidential” or “business proprietary” when received;
- .3 obtained by the receiving party on a non-confidential basis from a third party not known by the receiving party to be under an obligation of confidentiality; or
- .4 that is independently developed by the receiving party without access to, or use of, any “confidential” or “business proprietary” information.

§ 16.7 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 AIA Contract Documents.

§ 16.8 Interpretation

§ 16.8.1 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.

§ 16.8.2 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.

§ 16.9 The invalidity of any provision of this Agreement shall not invalidate this Agreement or its remaining provisions. If it is determined that any provision of this Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case this Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties’ intentions and purposes in executing this Agreement.

§ 16.10 In accordance with Section 1.1.5, the Design-Builder shall coordinate with the Owner in establishing building information modeling and digital data protocols for the Project governing the development, use, transmission, and exchange of, and reliance on, digital data.

§ 16.10.1 Any use of, or reliance on, all or a portion of a building information model without agreement to written protocols governing the use of, and reliance on, the information contained in the model shall be at the using or relying party’s sole risk and without liability to the other party and its subcontractors or consultants, the authors of, or contributors to, the building

information model, and each of their agents and employees.

§ 16.11 Electronic Transactions

Design-Builder may use DocuSign for the transmission and electronic execution of certain Design-Build Documents, including this Agreement and subsequent Change Orders, or may transmit and exchange Design-Build Documents by email as set forth in Section 15.3.1 herein. By execution of this Agreement, the parties agree that any electronic record or electronic signature, including a scanned and emailed copy of an original signature, shall be attributable to the person whose signature appears on the electronic record/electronic signature, shall have full legal effect and enforceability to bind the party causing the electronic signature to be made, and shall satisfy any provision of this Agreement or of any law that requires a record be in writing, except as to Notices of Claims which may not be served by electronic transmission as set forth in Section 15.6.2 herein. The parties may transmit Instruments of Service or other information or documentation in digital form using the Design-Builder’s Project website or other electronic transmission methods. The parties will follow the Design-Builder’s protocols governing such transmissions, including security, software versioning, naming protocols, and archiving requirements when transmitting data in digital form.

§ 15.3 Written Notice

Owner and Design-Builder agree where this Agreement or the Design-Build Documents require one party to notify or give notice to the other party, such notice shall be provided in writing, and given in electronic format, to the designated representative of the party to whom the notice is addressed, and shall be deemed to have been duly served by electronic transmission to the party’s representative at the email address below. If the sending party receives notice of any type of electronic delivery failure, the sending party shall thereafter immediately serve the notice in person, by mail, or by an overnight or same-day courier service to the party’s designated representative. A party shall notify the other party in writing in advance of, or not later than five (5) days after, any change to the email address of the party’s representative.

Owner’s Representative for Notices
Jon Barlow, Town Manager
Andy Miller, Owner’s Rep, MBP

Email
tnmgr@ci.swansboro.nc.us
amiller@mbpce.com

Design-Builder’s Representative for Notices
Andy Speck
Bobbitt Construction, Inc.
2400 Weston Parkway
Cary, NC 27513

Email
(Andy.Speck@Bobbitt.com)

All notices to Design-Builder shall also be provided to:

Jeané Powers
Vice President of Construction Operations
Bobbitt Construction, Inc.
2400 Weston Parkway
Cary, NC 27513

jeane.powers@bobbitt.com



ARTICLE 17 SCOPE OF THIS AGREEMENT

§ 17.1 This Agreement is comprised of the following documents:

- .1 AIA Document A141®–2024, Standard Form of Agreement Between Owner and Design-Builder for a Traditional Design-Build Project
- .2 AIA Document A141®–2024, Exhibit A, Insurance and Bonds
- .3 AIA Document A141®–2024, Exhibit B, Design-Build Amendment, if executed
- .4 AIA Document A141®–2024, Exhibit C, Sustainable Projects Exhibit, if completed
- .5 Other documents, if any, listed below:

Exhibit D – Design-Builder’s Rate Schedule

Exhibit E – North Carolina Public Records Statute

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

OWNER *(Signature)*
Jonathan Barlow, Town Manager

(Printed name and title)

DESIGN-BUILDER *(Signature)*
Jeane Powers, Vice President of Construction
Operations

(Printed name and title)

This instrument has been pre-audited in the manner required by Local Government Budget and Fiscal Control Act, G.S. 159-28.

City Finance Director Name: _____

City Finance Director Signature: _____

AIA[®] Document A141[®] – 2024 Exhibit A

Insurance and Bonds

This Exhibit dated the Sixteenth day of February in the year Two Thousand Twenty Six (the “Exhibit”) is incorporated into AIA Document A141[®]–2024, Standard Form of Agreement Between Owner and Design-Builder for a Traditional Design-Build Project dated the Sixteenth day of February in the year Two Thousand Twenty Six (the “Agreement”).

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

for the following **PROJECT**:

(Name and location or address)

Swansboro Public Safety Building

Parcel Pin: 536405191852

Swansboro, NC 28584

THE OWNER:

(Name, legal status, and address)

Town of Swansboro

601 W. Corbett Avenue

Swansboro, NC 28584-8451

THE DESIGN-BUILDER:

(Name, legal status, and address)

Bobbitt Construction, Inc.

2400 Weston Pkwy

Cary, NC 27513

TABLE OF ARTICLES

A.1 GENERAL

A.2 OWNER’S INSURANCE

A.3 DESIGN-BUILDER’S INSURANCE AND BONDS

A.4 SPECIAL TERMS AND CONDITIONS

ARTICLE A.1 GENERAL

The Owner and Design-Builder shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term Agreement refers to AIA Document A141[®]–2024, Standard Form of Agreement between Owner and Design-Builder for a Traditional Design-Build Project.

ADDITIONS AND DELETIONS:
The author of this document may have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes

revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added to or deleted from the original AIA text.

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

This document is intended to be used in conjunction with AIA Document A141[®]–2024, Standard Form of Agreement Between Owner and Design-Builder for a Traditional Design-Build Project. Article 11 of A141-2024 contains additional insurance provisions.

ELECTRONIC COPYING of any portion of this AIA[®] Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

ARTICLE A.2 OWNER'S INSURANCE

§ A.2.1 General

The Owner shall secure the insurance, and provide evidence of the coverage, required under this Article A.2.

§ A.2.2 Liability Insurance

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under the Agreement and this Exhibit, upon the Design-Builder's request, provide a copy of any insurance policy or policies required under the Design-Build Documents. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

§ A.2.2.1 The Owner shall be responsible for purchasing and maintaining commercial general liability insurance, including premises and operations liability, and completed operations coverages, with limits of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate.

§ A.2.3 Builder's Risk Insurance

§ A.2.3.1 Prior to commencement of the Construction Work, the Design-Builder shall secure the insurance, and provide evidence of the coverage, required under this Section A.2.3 and, upon the Owner's request, provide a copy of the property insurance policy or policies. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements. The Design-Builder shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. This coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials supplied or installed by others. This insurance shall be maintained until Substantial Completion and thereafter as provided in Section A.2.3.1.3, unless otherwise provided in the Design-Build Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Design-Builder, Subcontractors, and Sub-subcontractors in the Project as insureds.

§ A.2.3.1.1 Causes of Loss. The insurance required by this Section A.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:
(Indicate below the cause of loss and any applicable sub-limit.)

Cause of Loss

Project Specific Policy To Be Included with Design-Build Amendment

Sub-Limit

§ A.2.3.1.2 Specific Required Coverages. The insurance required by this Section A.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Design-Builder's services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:
(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)

Coverage

Project Specific Policy To Be Included with Design-Build Amendment

Sub-Limit

§ A.2.3.1.3 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall replace the insurance policy required under Section A.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Construction Work set forth in Section 12.2.2 of the Agreement.

§ A.2.3.1.4 Deductibles and Premiums. Owner shall reimburse Design-Builder for the premiums charged for this builder's risk insurance. Owner shall also reimburse Design-Builder for the deductible in the event of a loss. Design-Builder's deductible for builder's risk insurance will be determined and documented with the Design Build Amendment.

§ A.2.3.2 Occupancy or Use Prior to Substantial Completion. The Owner's occupancy or use of any completed or partially

completed portion of the Construction Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section A.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Design-Builder shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

§ A.2.3.3 Insurance for Existing Structures

If the Construction Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Construction Work as set forth in Section 12.2.2 of the Agreement, “all-risks” property insurance, on a replacement cost basis, if commercially available, or otherwise on an actual cost value basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section A.2.3.1.1, notwithstanding the undertaking of the Construction Work. The Owner shall be responsible for all co-insurance penalties.

§ A.2.4 Optional Extended Property Insurance.

The Owner shall purchase and maintain the insurance selected and described below.

(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)

- [N/A] **§ A.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner’s property, or the inability to conduct normal operations due to a covered cause of loss.

N/A

- [N/A] **§ A.2.4.2 Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.

N/A

- [N/A] **§ A.2.4.3 Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.

N/A

- [N/A] **§ A.2.4.4 Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.

N/A

- [N/A] **§ A.2.4.5 Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.

N/A

- [N/A] **§ A.2.4.6 Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured’s business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.

N/A

- [N/A] **§ A.2.4.7 Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Construction Work, arising out of physical loss or damage covered by the required property insurance:

including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

N/A

§ A.2.5 Other Optional Insurance.

The Owner shall purchase and maintain the insurance selected below.

(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)

- [] **§ A.2.5.1 Cyber Security Insurance** for first party loss due to data security and privacy breach, including coverage of losses for business interruption, cyber-extortion, breach of privacy, and identity theft. The Cyber Security Insurance coverage shall include costs of notifying affected parties, credit monitoring, recovery of compromised data, and forensic investigation of the potential or actual breach. The Cyber Security Insurance shall be subject to the following limits of coverage and other conditions.
(State applicable limits of coverage, including aggregate limits and sub-limits, and other conditions.)

N/A

- [] **§ A.2.5.2 Other Insurance**
(List below any other insurance coverage to be provided by the Owner and any applicable limits.)

Coverage

Limits

N/A

ARTICLE A.3 DESIGN-BUILDER'S INSURANCE AND BONDS

§ A.3.1 General

§ A.3.1.1 Certificates of Insurance. The Design-Builder shall provide certificates of insurance evidencing compliance with the requirements in this Article A.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section A.3.2.1 and Section A.3.3.1. The certificates will show the Owner as an additional insured on the Design-Builder's Commercial General Liability and excess or umbrella liability policy or policies. Design-Builder's current certificate of insurance is attached hereto as Exhibit 1.

§ A.3.1.2 Intentionally deleted

§ A.3.1.3 Additional Insured Obligations. To the fullest extent permitted by law, the Design-Builder shall cause the commercial general liability coverage to include (1) the Owner as an additional insured for claims caused in whole or in part by the Design-Builder's negligent acts or omissions during the Design-Builder's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Design-Builder's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04.

§ A.3.2 Design-Builder's Required Insurance Coverage

§ A.3.2.1 Prior to commencement of the Work, the Design-Builder shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance 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 Construction Work as set forth in Section 12.2.2 of the Agreement.

§ A.3.2.2 Commercial General Liability

§ A.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of Two Million Dollars (\$ 2,000,000.00) each occurrence, Four Million Dollars (\$ 4,000,000.00) general aggregate, and Four Million Dollars (\$ 4,000,000.00) aggregate for products-completed operations hazard, 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 and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Design-Builder's indemnity obligations under Section 3.1.14 of the Agreement.

§ A.3.2.2.2 The Design-Builder's Commercial General Liability policy under this Section A.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Design-Builder's Construction Work arising out of the products-completed operations hazard where the damaged Construction Work or the Construction Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under Section 3.1.14 of the Agreement arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Construction Work is to be performed on such a project.
- .8 Claims related to roofing, if the Construction Work involves roofing.
- .9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco, or similar exterior coatings or surfaces, if the Construction Work involves such coatings or surfaces.
- .10 Claims related to earth subsidence or movement.
- .11 Claims related to explosion, collapse, and underground hazards, where the Construction Work involves such hazards.

§ A.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Design-Builder, with policy limits of Two Million Dollars (\$ 2,000,000.00) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance, and use of those motor vehicles along with any other statutorily required automobile coverage.

§ A.3.2.4 The Design-Builder may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ A.3.2.5 Workers' Compensation at statutory limits.

§ A.3.2.6 Employers' Liability with policy limits of 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.

§ A.3.2.7 Professional Liability insurance covering performance of professional services, with policy limits of Two Million Dollars (\$ 2,000,000.00) per claim and Three Million Dollars (\$ 3,000,000.00) in the aggregate. The Professional Liability insurance shall be effective from the earliest date that the design services of the Design-Builder, the Architect, or Consultants commenced for the Project until completion of the period for correction of the Construction Work. The coverage required by this Section is in addition to any professional liability coverage the Design-Builder requires of the Architect, Consultants, or Subcontractors.

§ A.3.2.8 Pollution Liability insurance with policy limits of Two Million Dollars (\$ 2,000,000.00) per claim and Three Million Dollars (\$ 3,000,000.00) in the aggregate covering the transportation, dissemination, use, or release of pollutants.

§ A.3.2.9 **Cyber Security Insurance** for first- and third-party loss due to data security and privacy breach, including coverage of losses for business interruption, cyber-extortion, breach of privacy and identity theft. The Cyber Security Insurance coverage shall include costs of notifying affected parties, credit monitoring, recovery of compromised data, and forensic investigation of the potential or actual breach. The Cyber Security Insurance shall be subject to the following limits of coverage and other conditions:

(State applicable limits of coverage, including aggregate limits and sub-limits, and other conditions.)

Cyber Liability Insurance with aggregate limit of Three Million Dollars (\$3,000,000.00), Data & Network Liability of Three Million Dollars (\$3,000,000.00).

§ A.3.2.10 Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Construction Work involves hazards arising from work on or near navigable waterways, including vessels and docks.

§ A.3.2.11 Intentionally deleted

§ A.3.2.12 Intentionally deleted

§ A.3.3 Design-Builder's Other Insurance Coverage

§ A.3.3.1 Insurance selected and described in this Section A.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance 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 the Construction Work as set forth in Section 12.2.2 of the Agreement, unless a different duration is stated below:

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

N/A

§ A.3.3.2 The Design-Builder shall purchase and maintain the following types and limits of insurance in accordance with Section A.3.3.1.

(Select the types of insurance the Design-Builder is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)

[N/A] § A.3.3.2.1 Property insurance of the same type and scope satisfying the requirements identified in Section A.2.3, which, if selected in this Section A.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section A.2.3.1.3 and Section A.2.3.3. The Design-Builder shall comply with all obligations of the Owner under Section A.2.3 except to the extent provided below. The Design-Builder shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Design-Builder shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the Agreement unless otherwise set forth below:

(Where the Design-Builder's obligation to provide property insurance differs from the Owner's obligations as described under Section A.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the Agreement, indicate the responsible party below.)

N/A

[N/A] § A.3.3.2.2 **Railroad Protective Liability Insurance**, with policy limits of zero (\$ 0) per claim and zero (\$ 0) in the aggregate, for Construction Work within fifty (50) feet of railroad property.

- [N/A] § A.3.3.2.3 **Asbestos Abatement Liability Insurance**, with policy limits of zero (\$ 0) per claim and zero (\$ 0) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.
- [N/A] § A.3.3.2.4 Insurance for physical damage to property while it is in storage and in transit to the construction site on an “all-risks” completed value form.
- [N/A] § A.3.3.2.5 Property insurance on an “all-risks” completed value form, covering property owned by the Design-Builder and used on the Project, including scaffolding and other equipment.
- [N/A] § A.3.3.2.6 **Other Insurance**
(List below any other insurance coverage to be provided by the Design-Builder and any applicable limits.)

Coverage	Limits
N/A	

§ A.3.4 Insurance Coverage Required of Design-Builder’s Architect, Consultants, and Subcontractors

The Design-Builder shall require the Architect, Consultants, and Subcontractors to purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Design-Builder shall obligate the Architect, Consultants, and Subcontractors to maintain the required insurance until the expiration of the period for correction of the Construction Work as set forth in Section 12.2.2 of the Agreement, unless a different duration is stated below.

(List below the types of insurance required of the Design-Builder’s Architect, Consultants, and Subcontractors and any applicable limits. In addition, if the Design-Builder is to obligate the Architect, Consultants, or Subcontractors to maintain any of the types of insurance indicated below for a duration other than the expiration of the period for correction of the Construction Work, state the duration.)

N/A

§ A.3.5 Performance Bond and Payment Bond

The Design-Builder shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:

(Specify type and penal sum of bonds.)

Type	Penal Sum (\$0.00)
Payment Bond	Full Contract Value
Performance Bond	

Payment and Performance Bonds shall be AIA Document A312®, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312, current as of the date of this Agreement.

ARTICLE A.4 SPECIAL TERMS AND CONDITIONS

§ A.4.1 The Owner and Design-Builder waive all rights against (1) each other and any of their consultants, subcontractors, sub-subcontractors, agents, and employees, each of the other; and (2) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for losses to the extent those losses are covered by cyber-insurance required by this Agreement, except such rights as they have to proceeds of such insurance. The Owner or Design-Builder, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Separate Contractors, consultants, subcontractors, and sub-subcontractors.

§ A.4.2 Other special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

Notwithstanding anything in the Design-Build Documents or bonds to the contrary, Owner is not entitled to make a claim against the bonds or declare or claim that Design-Builder is in “default” or has committed a “breach” of the bond or Design-Build Documents, unless and until: (a) Design-Builder persistently or repeatedly refuses or fails to comply with a term of the

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Design-Build Documents; (b) the subject term is a material provision of the Design-Build Documents and the failure constitutes a substantial and material breach of the Design-Build Documents; (c) Owner provides Design-Builder with a written notice of the alleged default and an opportunity to investigate, test and cure the same, including a detailed description of the alleged default or breach and the basis of Design-Builder's responsibility for the same, and reasonable access to the work area for purposes of such investigation, testing and/or cure; and (d) Design-Builder fails within fifteen days after receiving notice from Owner to commence and continue correction of the basis of the claimed default or breach with reasonable diligence and promptness. »

The Owner and Design-Builder waive all rights against (1) each other and any of their consultants, subconsultants, Subcontractors, agents and employees, each of the other, and (2) any Separate Contractors described in Section 5.14 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 A.2.3 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 5.14 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.





Bobbitt Rates

*RATES ARE
EFFECTIVE THROUGH: **9/30/2026**
V1

Position/Role	Rate per Hour
Bobbitt A&E Studio Director	235
Design Director	190
Technical Director	180
Sr. Architect	170
Architect III	160
Architect II	130
Architect I	115
BIM Manager	150
BIM Design Technician II	100
BIM Design Technician I	90
Senior Project Designer	145
Project Designer III	125
Project Designer II	120
Project Designer I	115
Sr. Interior Designer	145
Interior Design Manager	130
Interior Designer III	120
Interior Designer II	115
Interior Designer I	105
VDC Department Manager	150
VDC Engineer III	130
VDC Engineer II	120
VDC Engineer I	105
Design Intern	60
Land Development and Permitting Leader	210
Civil Designer II	145
Civil Designer I	135
Landscape Architect II	160
Landscape Architect I	150
Senior Permit Specialist	170
Permit Specialist	115
Preconstruction Executive	225
Preconstruction Executive - Chief Estimator	180
Senior Preconstruction Manager - Estimator	170
Preconstruction Manager II - Estimator	155
Preconstruction Manager I - Estimator	125
Assistant Preconstruction Manager - Estimator	115
Preconstruction Engineer - Estimator	100
Vice President - Region Leader	295
Director, Corporate Accounts & Interiors Division	265
Project Executive	250
Senior Integrated Project Leader	235
Integrated Project Leader	210
Associate Integrated Project Leader	115
Emergency Services Specialist	125
Director of Project Management	235
Senior Project Manager	200
Project Manager II	160



Bobbitt Rates

*RATES ARE
EFFECTIVE THROUGH: **9/30/2026**
V1

Position/Role	Rate per Hour
Project Manager I	140
Assistant Project Manager	130
Project Engineer I	95
Contracts Administrator	130
Construction Administrator	85
Vice President Construction Operations	295
Field Executive	210
General Superintendent II	200
General Superintendent I	190
MEP Coordinator	190
Construction Technology Leader	180
Senior Superintendent	155
Superintendent II	130
Superintendent I	125
Assistant Superintendent	115
Field Engineer II	100
Field Engineer I	90
Construction Intern	60
Director, Service Division	210
Service Manager	170
Service Superintendent	165
Roofing Master Foreman	160
Roofing Foreman	145
Commercial Construction Assistant	140
Commercial Service Foreman II	160
Commercial Service Foreman I	145
Shop Manager	115
Senior Metal Building Superintendent	180
Metal Building Superintendent	125
Steel Construction Manager	125
Director of Corporate Risk & Safety	225
Safety Director	205
Safety Manager	190
Safety Coordinator	120
Safety Administrator	100
Controller	180
Assistant Controller	160
Staff Accountant	105
Senior Project Accountant	150
Project Accountant II	115
Project Accountant I	100
Assistant Project Accountant	85

Exhibit E: North Carolina Public Records Statute

With respect to confidentiality of information and all references in this Agreement to confidentiality of information and materials the Parties acknowledge the Owner is a NC municipality subject, to the NC Public Records Statute, NCGS 132-1 et seq (the "Statute"). Accordingly, materials, plans, documents, work products, or intellectual property of any kind produced for or arising out of the Project Work and claimed to be confidential, privileged, or otherwise not subject to disclosure under the Public Records Statute must be prominently identified as "Confidential Information" or "Trade Secret" as provided in the Statute. In the event of a legal challenge to the Town's non-disclosure of materials or information claimed by the Design-Builder in writing to be confidential or otherwise protected from disclosure under the Statute, defense against such legal challenge shall be the sole responsibility of the Design-Builder. The Design-Builder hereby agrees to defend, hold harmless, and indemnify the Owner from all liabilities, costs, and expenses, including attorney's fees, arising from the Town's non-disclosure of materials identified by the Design-Builder in writing as confidential according to the Statute, and any consequent legal challenge to such action.

Upon receipt of a public records request or legal challenge concerning materials designated by the Design-Builder as confidential or trade secret, the Owner shall provide prompt written notice to the Design-Builder, and in no event less than five (5) business days prior to the Owner's intended response or such shorter period as may be required by court order or the Statute. The Design-Builder shall have until the expiration of such notice period to elect, at its sole option, either to (a) authorize the release of such materials, in which case the Owner shall disclose the materials and the Design-Builder shall have no indemnification obligation with respect thereto, or (b) confirm its confidentiality designation, in which case the Design-Builder's defense and indemnification obligations under this Exhibit shall apply. The Design-Builder shall have no obligation to defend, indemnify, or hold harmless the Owner with respect to any withholding of materials that the Design-Builder did not designate as confidential or trade secret in writing.