



neccog

## Request For Qualifications And Request For Proposals

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### **Design-Build Services For Renovation And Expansion Of Regional Animal Shelter**

The Northeastern Connecticut Council of Governments ("NECCOG") is inviting qualified design-builders to submit qualifications and proposals for design-build services for the renovation and expansion of the NECCOG Regional Animal Shelter ("Project") located at 125 Putnam Pike, Killingly, Connecticut ("Project Location"). The Project is described in more detail in Section 3 of these Instructions to Proposers (these "Instructions").

The Proposals will be received at the offices of the Northeastern Connecticut Council of Governments, 125 Putnam Pike, (PO Box 759), Dayville, Connecticut 06241 until July 30, 2018, 4:00 p.m at which time they will be publicly opened.

Specifications and other information may be obtained at the Northeastern Connecticut Council of Governments, 125 Putnam Pike, PO Box 759, Dayville, Connecticut 06241, between 8:30 a.m. and 4:30 p.m. Monday through Friday or at [neccog.org](http://neccog.org)

NECCOG Contact:

Hoween Flexer

[hoween.flexer@neccog.org](mailto:hoween.flexer@neccog.org)

860-774-1288

Date Issue: June 27 , 2018

Mandatory Pre-Proposal Conference at 10 a.m. on Monday, July 9, 2018

Date and Time Due: 4 p.m. on Monday, July, 30, 2018

S&G 6/15/18

**NORTHEASTERN CONNECTICUT COUNCIL OF GOVERNMENTS  
REQUEST FOR QUALIFICATIONS AND REQUEST FOR PROPOSALS**

**on the provision of:**

**DESIGN-BUILD SERVICES**

**FOR**

**RENOVATION AND EXPANSION OF REGIONAL ANIMAL SHELTER**

**June 22, 2018**

# NORTHEASTERN CONNECTICUT COUNCIL OF GOVERNMENTS

## INSTRUCTIONS TO PROPOSERS

### 1. INTRODUCTION

The Northeastern Connecticut Council of Governments (“NECCOG”) is inviting qualified design-builders to submit qualifications and proposals for design-build services for the renovation and expansion of the NECCOG Regional Animal Shelter (“Project”) located at 125 Putnam Pike, Killingly, Connecticut (“Project Location”). The Project is described in more detail in Section 3 of these Instructions to Proposers (these “Instructions”).

NECCOG will use a quality based two stage selection process which is more particularly described in Section 4 to select the design-builder for the Project.

### 2. PROCUREMENT SCHEDULE

2.01 There will be a mandatory pre-proposal conference at **10 a.m. on Monday, July 9, 2018** at the Project Location. Each attendee shall, upon arrival, register with NECCOG and provide firm name, address, contact person name and valid email address to be used for all communications between NECCOG and proposers during the bidding process. A brief Project overview will be provided. Immediately following the pre-proposal conference, interested parties may visit the Project site to view existing conditions.

2.02 All Requests for Information must be received in writing no later than **Monday, July 16, 2018** by Hoween Flexer via email at [hoween.flexer@neccog.org](mailto:hoween.flexer@neccog.org) using the RFI Form attached to these Instructions as Schedule A. Verbal questions will not be answered. All responses to Requests for Information will be published by email to all proposers that are properly registered pursuant to Section 2.01 above (each, a “Registered Proposer”). Information from any other sources will not be considered a part of this proposal process or the Proposal Documents.

2.03 Addenda will be issued no later than **Monday, July 23, 2018**. All Addenda will be communicated to all Registered Proposers by email pursuant to Section 2.02.

2.04 NECCOG will accept qualifications and proposal submissions until **4 p.m. on Monday, July, 30, 2018** (the “**Proposal Deadline**”).

2.05 Thereafter, one or more qualified proposers may be asked to attend an interview with NECCOG representatives. Such interviews will take place during the week of **August 6, 2018** as further described in Section 4.2 below.

2.06 Any extensions of any of the above referenced deadlines will be effective only upon publication by email to Registered Proposers.

### 3. SCOPE OF SERVICES/DESIGN-BUILD CRITERIA

3.01 The Project involves the design and construction of an addition to, and renovation of, NECCOG’s existing regional animal services shelter to meet current CT Department of Agriculture Regulations for public animal shelters, to meet Connecticut State Building Code requirements and the needs (current and anticipated) of animals (primarily dogs and cats) of the regional animal services program and site work.

It shall be the responsibility of the contract awardee to be aware of all state, federal and local laws and regulations applicable to the Project including, without limitation, those specifically related to the design, construction, maintenance and operation of animal shelters. Architectural design plans site plans shall be review and approved by NECCOG

3.02 As reflected on the Engineering Drawings identified in Section 3.03 below, the Project is anticipated to include the following:

1. Addition of a 24' x 13' room (cattery) with ADA entranceway
2. Addition of a 14' x 8' room (isolation) with ADA entranceway
3. Addition of a 14' x 12' room (intake) with ADA entranceway
4. Addition of a bathroom – including shower 10' x 9' (ADA Compliant)
5. Addition of a room 14' x 10' with ADA entranceway
6. Upgrade of the Waste Disposal System
7. Upgrade of the Air Filtration/Ventilation System
8. Renovation (adding in-floor heating) of existing 19 Kennels
9. Addition of a 22' x 23' room and installation of 5 new dog kennels
10. Addition of a 32' x 20' outdoor graveled area with fencing
11. Renovation of existing 17' x 16' room to a 11' x 8' room, an 8' x 6' entryway, a 4' x 8' room and 8' x 6' hallway – all with ADA entranceways
12. Addition of an 8' x 4' storage area
13. Provision and installation of related equipment, including but not limited to: cat cages, examination table, veterinarian grade sink, security system - including remote video to monitor site and animal behavior

The above referenced dimensions are approximate and subject to change to address design issues/solutions or limitations posed by the topography of the Project site. The design for the Project (including the final dimensions of the Project spaces) is subject to the approval of NECCOG.

3.03 The Proposal Documents (also referred to herein as the Design-Build Criteria) shall mean and include:

1. These Instructions including all exhibits, schedules and appendices hereto;
2. Grant Award #RPI-16-6;
3. Owner's Budget for the Project attached hereto as Schedule B; and
4. Engineering Drawings (Schematic Floor Plan) for the Project prepared by Syl Pauley and dated May 11, 2018 and attached hereto as Schedule C. The purpose of including the Engineering Drawings in the Proposal Documents is to provide proposers with information regarding the components of the Project that must be included in the Project design. The Contract awardee will not be required to utilize the layout of the Project components or the dimensions reflected on the Engineering Drawings in designing the Project.

#### 4. PROCUREMENT PROCESS

##### 4.01 Responses to the RFQ and RFP

Proposers must respond to both the RFQ and the RFP however such responses must be submitted in **separate sealed envelopes** clearly marked with the name of the Proposer and the words **“Response to RFQ for Design-Build Services, NECCOG Animal Shelter Project”** or **“Response to RFP for Design-Build Services, NECCOG Animal Shelter Project”**, as applicable.

**The response to the RFQ must not contain any information pertaining to the fees or costs for the Project.** Responses that are not submitted in this manner will be rejected.

Responses must be received no later than the Proposal Deadline set forth above by Hoween Flexer at 125 Putnam Pike in Dayville, CT 06241. Each sealed envelope must include paper copies of the response. Responses must be delivered by U.S. mail or hand delivered.

**Once submitted, no Proposer may withdraw its response to the RFQ/RFP until the expiration of 90 days after the Proposal Deadline, as such deadline may be extended by NECCOG in its discretion.**

#### 4.02 **SELECTION**

The evaluation and selection process will take place in two stages.

First, NECCOG will review all responses to the RFQ and, based on those responses and the Qualification Criteria described below, NECCOG will identify all proposers which are determined by NECCOG to be responsible qualified proposers (the “Qualified Proposers”).

Second, NECCOG will open and review the fee proposals submitted by the Qualified Proposers.

**Fee proposals submitted by proposers who are not deemed by NECCOG to be Qualified Proposers will be returned unopened to the submitting proposers.** NECCOG will evaluate the fee proposals submitted by the Qualified Proposers and determine the “four most responsible qualified proposers” using the Qualification Criteria and the Proposal Criteria set forth below in Sections 6 and 7, respectively, giving due consideration of the Qualified Proposer's pricing for the Project as well as Qualified Proposer’s (i) experience with design-build projects of similar size and scope as that required for the Project, (ii) organizational and team structure for the design and construction of the Project, (iii) past performance data, including, but not limited to, adherence to project schedules and project budgets and the number of change orders for projects, (iv) the approach to the work required and the proposed design for the Project, and (v) documented contract oversight capabilities. The Contract will be awarded to one of the “four most responsible qualified proposers” after consideration of all of the foregoing.

In its review of responses to this RFQ/RFP and selection of the Contract awardee, NECCOG will be guided by the selection of the contract awardee that would best serve the interest of the NECCOG. NECCOG reserves the right to negotiate with one or more of the “four most qualified proposers” and to accept modifications to the scope of services, proposed design and proposed fees when such action would be in the best interest of NECCOG.

If determined to be warranted by NECCOG, NECCOG may conduct interviews of some or all of the Qualified Proposers to assist NECCOG in the selection process. Included in NECCOG’s request that a Qualified Proposer participate in an interview, NECCOG will provide the name(s) of the NECCOG representatives who will conduct the interview and the date by which the Qualified Proposer must submit an affidavit disclosing its relationship(s) with the interviewer(s) or confirming that it has no relationship(s) with the interviewer(s). The names of interviewers will

be released solely to enable the Qualified Proposer to prepare the affidavit and neither the Qualified Proposer nor its representatives shall directly or indirectly contact the interviewer(s) prior to or following the interview process.

The submission of responses to this RFQ/ RFP constitutes a declaration by the submitting proposer that no person or persons other than members of proposer's own organization are interested in the Project or in the contract proposed to be awarded; that the submission is made without any connection with any other person or persons making a proposal for the same services and is in all respects fair and without collusion or fraud; that no persons acting for or employed by NECCOG or any of its member towns is directly or indirectly interested therein, or in the supplies or works to which it relates or will receive any part of the profit or any commission therefrom in any manner which is unethical or contrary to the best interests of NECCOG.

#### 4.03 **FORM OF CONTRACT**

NECCOG intends to use, and the contract awardee will be expected to execute, a contract substantially similar to the form of contract attached hereto as Schedule D (the "Contract"). The Contract is a modified version of the AIA Document A141-2014 Owner/Design-Builder Agreement (including Exhibits A, B and C thereto). If a proposer has objections to any of the terms and conditions of the Contract, such objections should be included in the proposer's response to the RFP Additions and Deletions Report to AIA documents available upon request.

#### 4.04 **NECCOG's RIGHT TO WITHDRAW/REJECT**

**NECCOG reserves the right to amend or withdraw its Invitation for Proposals for any reason, to accept or reject any or all proposals, to waive any informalities or non-material deficiencies in any proposal, and to make such award (or make no award) of a contract in connection with this Request for Proposals all as determined by NECCOG, in its discretion, to be in the best interest of NECCOG. NECCOG also reserves the right to negotiate with one or more proposers.**

**NECCOG shall be under no obligation to accept the lowest financial proposal if the lowest financial proposal is not deemed to be in the best interest of NECCOG. Any or all proposals may be rejected if there is any reason to believe that collusion exists among the proposers. A proposal may be rejected for irregularities of any kind, including without limitation, alteration of form, additions not called for, conditional proposals, and incomplete proposals. A proposal may also be rejected if, in the opinion of the NECCOG, such proposal does not meet the standard of quality established by the Proposal Documents. The foregoing provisions are for illustrative purposes and shall in no way limit the right of NECCOG to reject any and all proposals, in whole or in part.**

### 5. **REQUEST FOR QUALIFICATIONS**

#### 5.01 **Qualification Criteria**

NECCOG will identify those proposers that NECCOG deems to be Qualified Proposers based on the criteria below (the "Qualification Criteria"):

- 5.1.1 The proposer is a legal entity properly licensed or registered under the laws of the State of Connecticut to perform the services that are the subject of this solicitation and is otherwise authorized to do business in the State of Connecticut.

- 5.1.2 The proposer has adequate experience in providing design-build services in the past five years designing and constructing projects of similar size, character and scope as the Project.
- 5.1.3 The proposer has adequate experience dealing with the state grant reimbursement process and with the preparation of the related documentation that must be filed to secure state grant reimbursement.
- 5.1.4 The proposer is able to demonstrate an adequate level of performance on past projects, including, without limitation, adherence to project schedules and project budgets and the satisfaction of past owners with such performance.
- 5.1.5 The proposer's staff proposed to be assigned to the Project ("Project Team") has satisfactory qualifications and experience on past design-build projects of similar size and scope as the Project.
- 5.1.6 The proposer is able to demonstrate that the members of the Project Team have performed satisfactorily on past projects to the satisfaction of the owners of such projects.
- 5.1.7 The proposer has an adequate degree of contract oversight capability and the organizational, team, and management structure proposed for the Project is satisfactory.
- 5.1.8 The number, context, and, where applicable, outcomes, of claims, disputes, arbitration, and litigation proceedings involving the proposer are acceptable.
- 5.1.9 The proposer's approach to the Project and degree of the proposer's demonstrated ability to develop and control project costs, quality, and schedule as well as the proposer's methods for doing so, is satisfactory.

5.02 **CONTENT OF RESPONSE TO RFQ**

Each proposer will be evaluated using the above Qualification Criteria. To assist and expedite this evaluation, each proposer must provide the following information in the order listed below:

- 5.2.1 A Letter of Transmittal signed by a principal of the proposer, not to exceed two (2) pages, describing in narrative form the proposer and proposer's qualifications and why such proposer should be selected for the Project.
- 5.2.2 Proposer Information
  - 5.2.2.1 Proposer Overview: Please provide the following (If the Design-Builder is a joint venture, provide the information requested in this Section 5.2.2.1 and in Section 5.2.2.2 for each member of the Joint Venture):
    - The name and location of the proposer, including the office location that will be serving NECCOG.
    - A brief general description of proposer's business.
    - The number of years the proposer has been in business.
    - If the proposer is a subsidiary of another entity, provide the name of the parent entity.
    - The number of personnel employed by the proposer (please include the number of staff dedicated to provide requested services).
    - The primary line of business of proposer.
  - 5.2.2.2 Client Base/Proposer References: Provide specific descriptions and reference information for three clients for whom proposer has served in the capacity of a design-builder to include:
    - Client name and location
    - Size and type of project(s)
    - Starting date of service

- Contact name, title and telephone number

References must be relevant to service in the last forty-eight (48) months and shall include specific details on how the project represents a project of similar scope. Although not a requirement for a determination of whether a proposer constitutes a Qualified Proposer, experience with design and construction of animal shelters shall be taken into consideration in evaluating the relevant experience of a proposer.

5.2.3 Statement of Qualification to include, but not necessarily limited to, the following:

6.2.3.1 Name and address of proposer.

6.2.3.2 Identify proposer's contact person for this project and provide a phone number, fax number and e-mail address that NECCOG may use to issue further information.

5.2.4 DAS Prequalification: Prequalification Certificate issued by the Commissioner of Administrative Services pursuant to CGS §4a-100 and update bid statement submitted pursuant to CGS §4b-91 ("Update Bid Statement"). The selected Design-Builder shall remain so prequalified throughout the duration of the Project.

5.2.5 Project Team: Provide a list of proposer's Project Team Members, including any consultants, proposed to participate in the Project along with related responsibilities they will devote to the Project. Provide resumes of key personnel (and key personnel of consultants) that would be assigned to the Project and a brief description of similar projects.

5.2.6 Organizational Chart: Provide an organization chart showing the personnel of the Project Team and their proposed involvement in the Project. Please indicate how the Project Team will be managed.

5.2.7 Project Team References: List three (3) references, of similar design-build projects worked on by members of the Project Team providing for each:

- List of Project Team Members, consultants and staff involved.
- Size (project cost and square feet) and location of project.
- Provide contact name and telephone numbers for the Owner (specific individuals).

5.2.8 Non-Collusion Affidavit: Attached hereto as Schedule E.

5.2.9 Additional Information: Any additional information not included above, that the proposer feels may be useful and applicable to this Project and helpful to NECCOG's. Please limit response to three (3) pages.

## 6. REQUEST FOR PROPOSALS

### 6.01 Proposal Criteria

The Proposal Criteria includes the following:

- 6.1.1 The proposer's fee proposal.
- 6.1.2 The proposer's proposed schedule for completion of the Project.
- 6.1.3 The level of financial stability of the proposer.
- 6.1.4 The level of the proposer's insurance coverage.
- 6.1.5 The degree of resources of the proposer that will help facilitate the Project.

### 6.02 Content of Response to RFP

Please provide the following information in the order listed below:

- 6.2.1 One lump sum amount for the design and construction of the Project\*.
- 6.2.2 Bank references and/or financial statements reflecting financial stability.
- 6.2.3 Evidence of insurance coverage consistent with the requirements set forth in Section 7 below.



- 6.2.4 Descriptions of other resources of the proposer that will help facilitate the Project.
- 6.2.5 Any objections to the terms and conditions of the Contract.
- 6.2.6 Bid Bond as described in Section 8 below.

\*NECCOG is a tax-exempt entity. The sales or use tax on materials or supplies exempted by regulations of the Connecticut Department of Revenue Services shall not be included as part of the proposed lump sum amount.

## 7. **INSURANCE REQUIREMENTS**

The proposer shall maintain insurance that meets the following requirements and shall submit with its fee proposal, a certificate of insurance (Accord or other approved format) evidencing the following insurance coverage:

- General liability (including completed operations coverage) in the amounts of \$1,000,000 (combined single limit) Bodily Injury/Property Damage coverage per occurrence, and \$2,000,000 general aggregate coverage.
- Automobile Liability in the amount of \$1,000,000 (combined single limit), Property Damage and Bodily Injury coverage.
- Professional Liability, in an amount not less than \$1,000,000 per claim and \$2,000,000 aggregate with a maximum deductible of \$25,000.00.
- Umbrella/Excess liability (follow form) in an amount of \$5,000,000.00.
- Workers' Compensation as defined in the Connecticut General Statutes and Employer's Liability as follows:
  - (i) \$1,000,000 for each accident, for bodily injury by accident
  - (ii) \$1,000,000 for each employee, for bodily injury by disease
  - (iii) \$1,000,000 for each disease policy limit

The liability insurance coverages shall be primary and noncontributory.

The certificate of insurance shall reflect that NECCOG is named as an additional insured as to the General Liability and Automobile Liability insurance policies. The Contract awardee shall provide a copy of the endorsements to such policies evidencing the required additional insured status. All subcontractors and consultants to a Contract awardee shall maintain the same insurance coverage (except for professional liability coverage by subcontractors that are not providing professional services). The Contract awardee shall furnish certificates of insurance evidencing such coverage acceptable to NECCOG before commencing services on the Project.

## 8. **BONDS**

- 8.01 Each response to the RFP must be accompanied by a Bid Bond payable to NECCOG for ten percent (10%) of the total lump sum amount proposed. Each Bid Bond shall be issued by a surety company included on the most current Department of the Treasury's Listing of Approved Sureties (Department Circular 570) (an "Approved Surety").
- 8.02 NECCOG will have the right to retain the Bid Bonds that relate to Proposals under consideration until the first to occur of the following: (a) the applicable Contract has been executed and the required payment and performance bonds have been furnished, or (b) the specified time has elapsed so that Proposals may be withdrawn, or (c) all Proposals have been rejected.

- 8.03 The Contract awardee will be required to provide a labor and material payment bond which complies with the provisions of Connecticut General Statutes §49-41(a) as well as a performance bond price issued by an Approved Surety, each in the full amount of the Contract price set forth in the Contract executed by NECCOG and the Contract awardee.
- 8.04 If a selected contract awardee refuses to execute the applicable Contract and provide the payment and performance bonds within **ten days** of the presentation of the Contract to the contract awardee, NECCOG may consider the selected contract awardee in default, in which case the applicable Bid Bond shall become the property of NECCOG.

9. **SUBSTITUTIONS**

- 9.01 To the extent that materials, products and equipment are specified in the Design-Build Criteria, such specification establishes a standard of required function, dimension, appearance and quality to be met by any proposed substitution.
- 9.02 Requests for substitutions shall be made to NECCOG and shall include the name of the material or equipment for which it is to be substituted and a complete description of the proposed substitution including drawings, performance and test data, and other information necessary for an evaluation. A statement setting forth changes in other materials, equipment or other portions of the Project, including changes in the work of other contracts that incorporation of the proposed substitution would require, shall be included. The burden of proof of the merit of the proposed substitution is upon the proposer. The decision of approval or disapproval of a proposed substitution shall be final.

10. **PREVAILING WAGE**

- 10.01 To the extent required under Section 31-53 of the Connecticut General Statutes, the wages paid on an hourly basis to any mechanic, laborer or worker employed upon the work herein contracted to be done and the amount of payment or contribution paid or payable on behalf of each such employee to any employee welfare fund, as defined in subsection (h) of Section 31-53 of the General Statutes of Connecticut shall be at a rate equal to the rate customary or prevailing for the same work in the same trade or occupation in the town in which such public works project is being constructed. Any contractor who is not obligated by agreement to make such payment or contribution on behalf of such employees to any such employee welfare fund shall pay to each employee as part of their wages the amount of the payment of contribution for their classification on each pay day. Prevailing Wages applicable to the Project are set forth on Schedule F hereto.
- 10.02 To the extent required pursuant to Connecticut General Statute Section 31-53b, the contract awardee shall furnish proof, and shall cause its Subcontractors to furnish proof, with the weekly certified payroll form for the first week each employee begins work on such project that any person performing the work of a mechanic, laborer or worker pursuant to the classifications of labor under section 31-53 on such public works project, pursuant to such contract, has completed a course of at least ten hours in duration in construction safety and health approved by the federal Occupational Safety and Health Administration or, has completed a new miner training program approved by the Federal Mine Safety and Health Administration in accordance with 30 CFR 48 or, in the case of telecommunications employees, has completed at least ten hours of training in accordance with 29 CFR 1910.268.

11. **CT Department of Agriculture Requirements**

11.01 The Project must be designed and constructed in accordance with the Connecticut Standards for Construction and Improvement of Dog Pounds, Regulations of the Department of Agriculture, which are attached as Appendix 2 to this RFQ/RFP.

12. **CHRO REQUIREMENTS**

The Contract awardee shall be required to comply with the provisions of CGS Section 4a-60g and the requirements concerning nondiscrimination and affirmative action under sections 4a-60 and 4a-60a. The Contract awardee shall, on the basis of competitive bidding procedures, (A) set aside at least twenty-five per cent of the total value of the state's financial assistance for the contract resulting from this solicitation for award to subcontractors who are small contractors, and (B) of that portion to be set aside in accordance with subparagraph (A) of this subdivision, reserve a portion equivalent to twenty-five per cent of the total value of such contract or portion thereof to be set aside for awards to subcontractors who are minority business enterprises.

These requirements are more particularly described in Appendix 1 to this RFQ/RFP.

12. **FURTHER INFORMATION**

12.01 NECCOG prohibits harassment and discrimination on the basis of race, color, religious creed, age, marital status, military or veteran status, national origin, sex, ancestry, sexual orientation, or past or present physical or mental disability in accordance with Titles VI, VII of the Civil Rights Act of 1964, Title IX of the Education Amendments Act of 1973; Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1991; and applicable state laws.

**SCHEDULES/APPENDICES TO THESE INSTRUCTIONS:**

- Schedule A:** RFI Form
- Schedule B:** Project Budget
- Schedule C:** Engineering Drawings
- Schedule D:** Contract
- Schedule E:** Non-Collusion Affidavit
- Schedule F:** State Requirements
- Appendix 1** CHRO NOTICE
- Appendix 2:** Connecticut Standards for Construction and Improvement of Dog Pounds, Regulations of the Department of Agriculture Requirements

**SCHEDULE A: REQUEST FOR INFORMATION**

Owner: NORTHEASTERN CONNECTICUT COUNCIL OF GOVERNMENTS

Project: Renovation and Addition to Regional Animal Shelter

Date: \_\_\_\_\_, \_\_\_\_\_

To: Hoween Flexer  
Director of Regional Services, NECCOG  
hoween.flexer@neccog.org

From: \_\_\_\_\_ (Name of Design-Builder)  
\_\_\_\_\_ (Submitter's Name and Title)  
\_\_\_\_\_ (Submitter's Signature)

Request from Design-Builder:

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Reply to Design-Builder:

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Copy to:  
\_\_\_ Project Manager \_\_\_ Civil Engineer \_\_\_ Architectural Consultant \_\_\_ Other

**Schedule B: Project Budget**

<b>Animal Shelter Construction</b>	<b>Amount</b>
<b>Total Project Funding</b>	\$608,000





SCALE: 1" = 4'



# AIA<sup>®</sup> Document A141<sup>™</sup> – 2014

## Standard Form of Agreement Between Owner and Design-Builder

AGREEMENT made as of the  day of  in the year  2018  
(In words, indicate day, month and year.)

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

Northeastern Connecticut Council of Governments 125 Putnam Pike  
Killingly, CT 06241

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

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

Renovation and Expansion of Regional Animal Shelter  
125 Putnam Pike  
Killingly, CT 06241

The Owner and Design-Builder agree as follows.

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and 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.

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

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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.

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

The Design-Builder will design and perform the renovations of, and addition to, the regional animal shelter at the Project location in accordance with the Owner's criteria set forth on Schedule A attached to this Agreement ("Owner's Criteria") and the Design-Build Documents (as hereafter defined). The renovation portion of the Project will be designed to bring the facility into compliance with current Department of Agriculture Regulations for public animal shelters, to meet Connecticut State Building Code requirements and to meet the needs (current and anticipated) of animals (primarily dogs and cats) of the regional animal services program.





**§ 1.1.1** The Owner's program for the Project:

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

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

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

- a. Renovation (adding in-floor heating) and expansion of the number of existing dog kennels to 35, including five isolation kennels for medically compromised dogs
- b. Addition of a cat room capable of housing 75 cats, including an isolation room for medically compromised cats, TNR Procedures and birthing room
- c. Addition of an indoor adoption room
- d. Upgrade of the waste disposal system
- e. Addition of an indoor exercise/play/display area for cats to exercise and to be viewed by potential adopters
- f. Incorporation of a solar energy system
- g. Addition of an employees' locker room - including shower
- h. Addition of a room for the cleaning and grooming of animals - including a staff entrance
- i. Addition of an outdoor exercise area with seasonal mister
- j. Addition of a Kitchen, Food Preparation and Dish Washing area
- j. Provision and installation of related equipment, including: cat cages, examination table, veterinarian grade sink, security system - including remote video to monitor site and animal behavior.

**§ 1.1.3** The Project's physical characteristics:

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

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

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

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

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

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

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

Six Hundred Eight Thousand and 00/100 (\$608,000.00).

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

- .1 Design phase milestone dates:

.2 Submission of Design-Builder Proposal:

.3 Phased completion dates:

.4 Substantial Completion date:

To be Determined

.5 Other milestone dates:

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

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

.1 Architect

.2 Consultants

.3 Contractors

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

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

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

§ 1.1.10.1 If the Owner's Criteria conflicts with Applicable Laws, the Design-Builder shall promptly notify the Owner in writing of the details of such conflict and assist the Owner in resolving such conflict.

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

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

## § 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.)*

John Filchak  
Executive Director  
Northeastern Connecticut Council of Governments  
125 Putnam Pike  
Dayville, CT 06241

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

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

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

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

### § 1.3 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Section 14.3, the method of binding dispute resolution shall be the following:  
(Check the appropriate box. If the Owner and Design-Builder do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

- Arbitration pursuant to Section 14.4
- Litigation in a court of competent jurisdiction
- Other: (Specify)

### § 1.4 Definitions

§ 1.4.1 **Design-Build Documents.** The Design-Build Documents consist of this Agreement between Owner and Design-Builder and its attached Exhibits and Schedules (hereinafter, the "Agreement"); other documents identified in this Agreement as Design-Build Documents; and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, including the Design-Build Amendment, (2) a Change Order, or (3) a Change Directive. Upon the execution of the AIA A141 Exhibit A - 2014 Design Build Amendment (the "Design-Build Amendment") by the parties, the Design-Build Amendment shall also be included in the Design-Build Documents.

§ 1.4.2 **The Contract.** The Design-Build Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either

written or oral. The Contract may be amended or modified only by a Modification. The Design-Build Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Design-Builder. If any of the terms and conditions in the other Design-Build Documents, other than a Modification, is inconsistent with the terms and conditions of this Agreement, this Agreement shall govern.

**§ 1.4.3 The Work.** The term “Work” means the design, construction and related services required to fulfill the Design-Builder’s obligations under the Design-Build Documents, and the design, construction and related services as are reasonably inferable from and as necessary to produce the results intended by the Design-Build Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Design-Builder. The Work may constitute the whole or a part of the Project.

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

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

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

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

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

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

**§ 1.4.10 Architect.** The Architect is a person or entity providing design services for the Design-Builder for all or a portion of the Work, and is lawfully licensed to practice architecture in the applicable jurisdiction. The Architect is referred to throughout the Design-Build Documents as if singular in number. If any professional services to be performed hereunder are to be performed by a design professional other than an architect (e.g., an engineer), the term Architect shall mean and refer to such design professional and such design professional shall be properly registered and lawfully licensed to perform such design services in the State of Connecticut.

**§ 1.4.11 Contractor.** A Contractor is a person or entity performing all or a portion of the construction, required in connection with the Work, for the Design-Builder. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor.

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

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



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

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

§ 1.4.16 Subcontractor. A Subcontractor is a person or entity performing all or a portion of the construction, required in connection with the Work, for a Contractor.

§ 1.4.17 Responsible Parties. The Responsible Parties include the Design-Builder, Architect, Consultants, Contractors, Subcontractors, and anyone directly or indirectly employed by them or anyone for whose acts they may be liable (each individually, a "Responsible Party" and collectively, the "Responsible Parties").

## ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS

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

#### § 2.1.1 Intentionally Omitted.

*(Paragraph Deleted)*

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

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

Individual or Position	Rate
------------------------	------

In all cases where the compensation to be paid to the Design-Builder under this Contract is to be based on hourly rates, the hourly rates shall be those rates set forth on Exhibit E (the "Hourly Rates"). The Hourly Rates represent all-inclusive prices per hour and include, but are not limited to, base salary, fringe and other benefits, insurance, taxes, miscellaneous personnel expenses, meals, travel, travel time, training, holidays, sickness, medical, lost-time, general and corporate supervision and management expenses, overhead charges or expenses, legal costs, consumables, accounting costs and profit, all costs of living, per diem expenses, transportation, communication, including cellular communication, laptop computer for document management and written communication, and all mailings. The Hourly Rates shall remain in effect for the duration of the Contract.

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

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

.1

*(Paragraph Deleted)*

Fees paid for securing approval of authorities having jurisdiction over the Project;

.2 Printing, reproductions, plots, standard form documents;

.3 Postage, handling and delivery;

*(Paragraph Deleted)*

.4 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner;

and

.5 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 Contractors incurred.

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

§ 2.1.4.1 Payments are due and payable within thirty (30) days after the presentation of the Design-Builder's invoice to the Owner. Amounts unpaid thirty (30) days after the date such payment is due shall bear interest to the extent and as required by Connecticut law, and if required, at the lowest required rate..

*(Paragraph Deleted)*

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

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

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

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

**§ 3.1 General**

§ 3.1.1 The Design-Builder shall comply, and shall be responsible for ensuring that all other Responsible Parties comply, with all local, state and federal laws, statutes, ordinances, codes, building codes, rules, regulations, permits, and orders enacted, promulgated, issued or ordered by any governmental body or public or quasi-public authority having jurisdiction over the Work, the Design-Builder and/ or the site of the Project (collectively, the "Applicable Laws"). Applicable Laws shall include, without limitation, those relating to equal opportunity, labor, wages and employment.

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

§ 3.1.3 The Design-Builder shall perform all services, including design services, and furnish and install all materials, labor and equipment required to fully execute the Work and complete the Project as set forth in, and in accordance with the Design-Build Documents. The Design-Builder shall not be relieved of the obligation to perform the Work in accordance with the Design-Build Documents by the activities, tests, inspections or approvals of the Owner.

§ 3.1.3.1 The Design-Builder shall perform the Work in compliance with all Applicable Laws. If the Work is performed by or on behalf of the Design-Builder contrary to Applicable Laws, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.

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

§ 3.1.3.3 The Design-Builder shall perform the Work as an independent contractor and shall be responsible for the performance of all aspects of the Work, whether performed by the Design-Builder or by some other Responsible Party (i) in a good and workmanlike manner, (ii) in compliance with the requirements of the Design-Build Documents, (iii) consistent with prevailing applicable professional or industry standards, skill and care; and (iv) as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project (the standards of this subsection 3.1.3.3 shall be referred to herein as the "Design-Builder's Standard of Care").

§ 3.1.3.4 The Design-Builder accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Owner and the Owner's separate contractors and consultants and exercise the Design-Builder's skill and judgment in furthering the interest of the Owner; to furnish efficient construction administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests.

**§ 3.1.3.5** The Design-Builder represents and warrants the following to the Owner (in addition to the other representations and warranties contained in the Design-Build Documents) as an inducement to the Owner to execute the Design-Build Documents, which representations and warranties shall survive the execution and delivery of the Design-Build Documents and the final completion of the Work;

- (a) That it is financially solvent, able to pay its debts as they mature and possesses sufficient working capital to complete the Work and perform its obligations under the Design-Build Documents;
- (b) That it, and through the Architect, Contractors, Subcontractors, consultants and other Responsible Parties, is able to furnish the services, plant, tools, materials, supplies, equipment and labor required to complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;
- (c) That it, and all other Responsible Parties are authorized to do business in the State of Connecticut and properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over it and over the Work and the site of the Project;
- (d) That its execution of the Agreement and its performance under the Design-Build Documents have been duly authorized by all necessary corporate action; and
- (e) That its duly authorized representative has visited the site of the Work, familiarized himself or herself with the local conditions under which the Work is to be performed and correlated his or her observations with the requirements of the Design-Build Documents.

**§3.1.3.6** By appropriate written agreement, the Design-Builder shall require the Architect, each Consultant and each Contractor, to the extent of the Work to be performed by the Architect, Consultant or Contractor, to be bound to the Design-Builder by terms of the Design-Build Documents, and to assume toward the Design-Builder all the obligations and responsibilities, including, without limitation, the responsibility for safety of the Contractor's Work, which the Design-Builder, by the Design-Build Documents, assumes toward the Owner. Each agreement shall preserve and protect the rights of the Owner under the Design-Build Documents with respect to the Work to be performed by the Architect, Consultant or Contractor so that contracting thereof will not prejudice such rights, and shall allow to the Architect, Consultant or Contractor, unless specifically provided otherwise in the agreement, the benefit of all rights, remedies and redress against the Design-Builder that the Design-Builder, by the Design-Build Documents, has against the Owner. Where appropriate, the Design-Builder shall require the Architect and each Consultant and Contractor to enter into similar agreements with subconsultants and Subcontractors. The Design-Builder shall make available to the Architect and each proposed Consultant and Contractor, prior to the execution of its agreement, copies of the Design-Build Documents to which the Architect, Consultant or Contractor will be bound, and, upon written request of the Architect or Contractor, identify the terms and conditions of the proposed agreement that may be at variance with the Design-Build Documents. The Architect, Consultants and Contractors will similarly make copies of applicable portions of such documents available to their respective proposed subconsultants and Subcontractors.

**§ 3.1.4** The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Architect, Consultants, Contractors, Subcontractors, other Responsible Parties, and all of their respective agents and employees.

**§ 3.1.5 General Consultation.** The Design-Builder shall schedule and conduct periodic meetings with the Owner to review matters such as procedures, progress, coordination, and scheduling of the Work.

**§ 3.1.6** When Applicable Law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, properly licensed professionals. Owner shall be a third party beneficiary of all contracts between the Design-Builder and the Architect and the Design-Builder and its other design professionals. As such third party beneficiary, the Owner shall have a direct cause of action against the Architect and such other design professionals and shall have all rights and remedies as Design-Builder has against the Architect and such other design professionals. The Owner does not waive any rights or remedies that the Owner may have, including without limitation, the Owner's right to pursue any claims or causes of action the Owner may have against the Design-Builder nor does it release the Design-Builder from any obligations, duties or responsibilities to the Owner pursuant to this Agreement.



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

### § 3.1.8 Progress Reports

§ 3.1.8.1 The Design-Builder shall keep the Owner informed of the progress and quality of the Work. The Design-Builder's qualified representative shall attend weekly progress meetings at such times and places as the Owner shall designate. On a monthly basis, or otherwise as agreed to by the Owner and Design-Builder, the Design-Builder shall submit written progress reports to the Owner, showing estimated percentages of completion and other information identified below:

- .1 Work completed for the period;
- .2 Project schedule status;
- .3 Submittal schedule and status report, including a summary of outstanding Submittals;
- .4 Responses to requests for information to be provided by the Owner;
- .5 Approved Change Orders and Change Directives;
- .6 Pending Change Order and Change Directive status reports;
- .7 Tests and inspection reports;
- .8 Status report of Work rejected by the Owner;
- .9 Status of Claims previously submitted in accordance with Article 14;
- .10 Cumulative total of the Cost of the Work to date including the Design-Builder's compensation and Reimbursable Expenses, if any;
- .11 Current Project cash-flow and forecast reports; and
- .12 Additional information as agreed to by the Owner and Design-Builder.

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

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

### § 3.1.9 Design-Builder's Schedules

§ 3.1.9.1 The Design-Builder, shall, prior to the execution of the Design-Build Amendment, prepare and submit for the Owner's information and approval a schedule for the completion of the Work incorporating the requirements of, and consistent with, the Owner's Requirements. The schedule shall be in such format and contain such information as outlined in the Project Criteria and include such other information as the Owner may reasonably request. The schedule, including the time required for design and construction, shall not exceed time limits current under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project and, as approved by the Owner, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

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

§ 3.1.10 **Certifications.** Upon the Owner's written request, the Design-Builder shall obtain from the Architect, Consultants, and Contractors, and furnish to the Owner, certifications with respect to the documents and services provided by the Architect, Consultants, and Contractors (a) that the documents or services to which the certifications relate (i) are consistent with the Design-Build Documents, except to the extent specifically identified in the certificate, (ii) comply with Applicable Laws governing the design, and as applicable the construction, of the Project; and (iii) comply with the Design-Builder's Standard of Care"); and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications. The Design-Builder's Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

### § 3.1.11 Design-Builder's Submittals

§ 3.1.11.1 Prior to submission of any Submittals, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the Owner's approval. The Owner's approval shall not unreasonably be delayed or withheld.



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

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

**§ 3.1.11.3** The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require Submittals until the Owner has approved the respective Submittal. The Owner's review of Submittals is not conducted for the purpose of determining the accuracy and completeness of 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. Owner's review shall in no way create any liability on the part of Owner for errors, inconsistencies or omissions in any approved documents, nor shall any such review and approval alter Design-Builder's responsibilities hereunder and with respect to such documents.

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

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

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

**§ 3.1.12.1** Substitutions not properly approved and authorized shall be considered to have failed to conform to the Design-Build Documents.

**§ 3.1.12.2** The warranties under this Section 3.1.12 shall be in addition to and not a substitute for, any other rights of the Owner under the Design-Build Documents or as may exist at law or in equity.

**§ 3.1.12.4** Design-Builder shall cause to be warranted by its Contractor that (i) materials and equipment furnished under the Contractor's contract with the Design-Builder ("Construction Contract") will be of good quality and new unless the Design-Build Documents require or permit otherwise; (ii) the Work will conform to the requirements of the Design-Build Documents and will be free from defects, except for those inherent in the quality of the Work or otherwise expressly permitted by the Design-Build Documents. Design-Builder shall assign or cause to be assigned to the Owner, all warranties related to the Project and shall cooperate and assist in the enforcement thereof, as set forth herein.

**§ 3.1.12.5** The Design-Builder shall cause its Contractor to repair or replace any defective part of the Project discovered during the one year period referred to in Section 11.2, all without cost or expense to the Owner. Design-Builder shall assist the Owner in conducting a one year warranty inspection of the Project prior to the expiration of the one year period for correction of Work set forth in Section 11.2. Design-Builder shall assist the Owner in enforcement of warranties and coordinate all warranty Work until the warranty Work is satisfactorily completed.

**§ 3.1.13 Royalties, Patents and Copyrights**

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

**§ 3.1.13.2** The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall defend and hold the Owner and its separate contractors and consultants harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Owner, or where the copyright violations are required in the Owner's Criteria. However, if the Design-Builder has reason to believe that the design, process or product required in the Owner's Criteria is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner. If the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the Design-Builder, the Owner shall give prompt written notice to the Design-Builder. In the event of legal action arising out of such infringement for which the Design-Builder is responsible and which action has the effect of stopping the Work, the Owner may require the Design-Builder to substitute other products of like kind as will make it possible to pursue and complete the Work. Costs and expenses resulting therefrom shall be borne by the Design-Builder

**§ 3.1.14 Indemnification**

**§ 3.1.14.1** To the fullest extent permitted by law, the Design-Builder shall indemnify, defend and hold harmless the Owner, the Owner's consultants and the agents and employees of each of them, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from:

.1 performance of the Work, but only to the extent caused by the negligent, reckless, willful or wanton acts or omissions of the Design-Builder, Architect, a Consultant, a Contractor, a Subcontractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.1.14;

.2 any type of pollution and/or environmental impairment into or upon the land, the atmosphere, or any course or body of water that is above or below ground, which is caused by any negligent, reckless, willful or wanton acts or omissions of the Design-Builder, Architect, Consultant, Contractor, Subcontractor, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable;

.3 acts that are outside of the Design-Build Contract specifications and without the supervision or direction of the Owner, Owner's consultants, agents or employees, conducted or performed by of the Design-Builder, Architect, Consultant, Contractor, Subcontractor, and/or anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable; or

.4 the misuse or malfunction of any equipment rented, owned, or leased by the Design-Builder, Architect, Consultant, Contractor, Subcontractor, or anyone directly or indirectly employed by any of them or anyone for whose acts they may be liable.

The indemnification obligations set forth in this Section 3.1.14 shall apply regardless of whether or not such claim, damage, loss or expense is caused in part by an Indemnified Party; however, nothing in this Section shall be construed as obligating the Design-Builder to indemnify or hold harmless any Indemnified Party against liability for damage arising out of bodily injury to persons or damage to property caused by or resulting from the negligence of such Indemnified Party, or such party's agents or employees.

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

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

**§3.14.3** The Design-Builder further agrees to obtain and maintain at its expense such general liability insurance coverage as will insure the provisions of this Section and other contractual indemnity obligations assumed by the Design-Builder in this Design-Build Contract.

**§3.14.4** The Owner assumes no responsibility or liability for loss or damage to the Design-Builder's equipment, materials or supplies.

**§ 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 Section 13.2.2, and only for those agreements that the Owner accepts by written notification to the Design-Builder and the Architect, Consultants, and Contractors whose agreements are accepted for assignment; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

*(Paragraph Deleted)*

**§ 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 such assignment to the Owner under this Section 3.1.15, the Owner may further assign the agreement to a successor design-builder, contractor or other entity.

**§ 3.1.15.4** Upon such assignment, the Design-Builder shall promptly advise the Owner in writing of any claim or demand by a Contractor claiming that any amount is due to such Contractor or claiming any default by the Design-Builder in any of its obligations to such Contractor.

**§ 3.1.16 Design-Builder's Insurance and Bonds.** The Design-Builder shall purchase and maintain insurance and provide bonds as set forth in Exhibit B.

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

**§ 4.1 General**

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

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

**§ 4.2 Evaluation of the Owner's Criteria**

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



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

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

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

#### **§ 4.3 Preliminary Design**

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

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

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

**§ 4.3.2** The Owner shall review the Preliminary Design and, if acceptable, provide the Design-Builder with written consent to proceed to development of the Design-Builder's Proposal. The Preliminary Design shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification. If the Owner has objections to the Preliminary Design, the Design-Builder shall revise the Preliminary Design to address the Owner's objections until the Preliminary Design is approved in writing by the Owner.

#### **§ 4.4 Design-Builder's Proposal**

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

- .1 A list of the Preliminary Design documents and other information, including the Design-Builder's clarifications, assumptions and deviations from the Owner's Criteria, upon which the Design-Builder's Proposal is based;
- .2 The proposed Contract Sum, including the compensation method and, if based upon the Cost of the Work plus a fee, a written statement of estimated cost organized by trade categories, allowances, contingencies, Design-Builder's Fee, and other items that comprise the Contract Sum;
- .3 The proposed date the Design-Builder shall achieve Substantial Completion;
- .4 An enumeration of any qualifications and exclusions, if applicable;
- .5 A list of the Design-Builder's key personnel, Contractors and suppliers; and
- .6 The date on which the Design-Builder's Proposal expires.

**§ 4.4.2** Submission of the Design-Builder's Proposal shall constitute a representation by the Design-Builder that it has visited the site and become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Design-Build Documents.

§ 4.4.3 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 terms of their agreement. If the Owner does not approve the Design-Builder's Proposal, the Design-Builder shall revise the Design-Builder's Proposal to address the Owner's concerns and objections until the Design-Builder's Proposal is approved in writing by the Owner

## 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 for review and written approval by the Owner. The term "Construction Documents" shall mean and include documents setting forth in detail all of the requirements for the construction of the Project and in a form sufficient to obtain required building permits as well as required planning and zoning approvals. The Construction Documents shall include drawings and specifications that establish the quality levels of materials and systems required. Deviations, if any, from the Design Build Amendment, the Owner's Criteria or any Design-Build Document shall be disclosed to the Owner in writing no later than the time of submission of the Construction Documents to the Owner for approval. Construction Documents shall include drawings, specifications, and other documents and electronic data setting forth in detail the requirements for construction of the Work, and shall:

- .1 be consistent with the Design-Builder's Proposal, the Design-Build Amendment and all other Design-Build Documents approved by the Owner in writing;
- .2 provide information for the use of those in the building trades; and
- .3 include documents customarily required for regulatory agency approvals.

§ 5.1.2 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. Neither the Design-Builder nor the Architect shall rely upon the Owner's or the Owner's consultants to perform a detailed review, check or coordination of the Construction Documents, it being the sole responsibility of the Design-Builder to prepare the Preliminary Design documents and the Construction Documents properly, completely and in accordance with the Design-Build Documents

### § 5.2 Construction

§ 5.2.1 **Commencement.** Except as permitted in Section 5.2.2, construction shall not commence prior to execution of the Design-Build Amendment and the Owner's approval of the Construction Documents.

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

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

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

### § 5.3 Labor and Materials

§ 5.3.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services, necessary for proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.

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

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

#### § 5.4 Taxes

The Design-Builder shall pay sales, consumer, use and similar taxes, for the Work provided by the Design-Builder, that are legally enacted when the Design-Build Amendment is executed, whether or not yet effective or merely scheduled to go into effect.

#### § 5.5 Permits, Fees, Notices and Compliance with Laws

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

§ 5.5.2 The Design-Builder shall comply with and give notices required by Applicable Laws.

§ 5.5.3 **Concealed or Unknown Conditions.** If the Design-Builder encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions previously unknown to the Design-Builder that differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, the Design-Builder shall promptly provide notice to the Owner before conditions are disturbed and in no event later than 5 days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Design-Builder in writing, stating the reasons. If the Design-Builder disputes the Owner's determination or recommendation, the Design-Builder may proceed as provided in Article 14.

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

#### § 5.6 Allowances

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

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

- .1 allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 the Design-Builder's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts, shall be included in the Contract Sum but not in the allowances except when installation is specified as part of the allowance in the Owner's Criteria; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual



costs and the allowances under Section 5.6.2.1 and (2) changes in Design-Builder's costs under Section 5.6.2.2.

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

**§ 5.7 Key Personnel, Contractors and Suppliers**

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

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

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

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

**§ 5.8 Documents and Submittals at the Site**

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

**§ 5.9 Use of Site**

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

**§ 5.10 Cutting and Patching**

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

**§ 5.11 Cleaning Up**

**§ 5.11.1** The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Design-Builder shall remove waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials from and about the Project.

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

#### § 5.12 Access to Work

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

#### § 5.13 Construction by Owner or by Separate Contractors

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

§ 5.13.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces; and to award separate contracts in connection with other portions of the Project, or other construction or operations on the site. The Design-Builder shall cooperate with the Owner and separate contractors whose work might interfere with the Design-Builder's Work. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make a Claim as provided in Article 14.

§ 5.13.1.2 Intentionally Omitted.

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

§ 5.13.1.4 Intentionally Omitted.

##### § 5.13.1.5 MINOR CHANGES IN THE WORK

The Owner shall have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Design-Build Documents. Such changes shall be effected by written order and shall be binding on the Design-Builder. The Design-Builder shall carry out such written orders promptly.

#### § 5.14 Mutual Responsibility

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

§ 5.14.2 If part of the Design-Builder's Work depends upon construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, prepare a written report to the Owner, identifying apparent discrepancies or defects in the construction or operations by the Owner or separate contractor that would render it unsuitable for proper execution and results of the Design-Builder's Work. Failure of the Design-Builder to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable. If any part of a Design-Builder's Work depends on proper and timely execution or relies upon the interphasing or coordinating of the work of any other separate contractor, or the Owner, the Design-Builder shall allow for this interrelationship in the planning and performance of the Work, without interference to any other separate contractor or the Owner.

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

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



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

**§ 5.15 Owner's Right to Clean Up**

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

**ARTICLE 6 CHANGES IN THE WORK**

**§ 6.1 General**

**§ 6.1.1** Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order or Change Directive or order for a minor change in the Work, 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. The Owner may issue a Change Directive without agreement by the Design-Builder. No change in the Contract Sum or the Contract Time may be accomplished except by written amendment to the Design-Build Contract or by Change Order signed by both parties, in each case.

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

**§ 6.2 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.

**§ 6.3 Change Directives**

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

**§ 6.3.2** A Change Directive shall be used in the absence of total agreement on the terms of a Change Order. In order to incorporate a Change Directive into the Design-Build Contract, a Change Order must be executed.

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

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

**§ 6.3.4** Intentionally Omitted.

§ 6.3.5 Upon receipt of a Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design-Builder's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time. The Design-Builder must proceed promptly with the change in the Work regardless of whether or not the Change Directive is signed by the Design-Builder.

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

§ 6.3.7 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the method for adjustment in the Design-Builder's compensation, the Owner shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 6.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section 6.3.7 shall be limited to the following:

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

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

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

§ 6.3.10 When the Owner and Design-Builder agree with a determination concerning the adjustments in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Owner and Design-Builder shall execute a Change Order. Change Orders may be issued for all or any part of a Change Directive. Agreement upon and execution of any Change Order shall constitute a final settlement of all matters relating to the change in the Work which is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and the construction schedule. In the event a Change Order increases the Contract Sum, Design-Builder shall include the Work covered by such Change Order in Applications for Payment as if such Work were originally part of the Design-Build Documents.

## ARTICLE 7 OWNER'S RESPONSIBILITIES

### § 7.1 General

§ 7.1.1 The Owner has designated in writing an Owner representative for the Project. All contact and communication with the Owner shall be through the Owner Representative, or his or her designee.

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

### § 7.2 Information and Services Required of the Owner

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

§ 7.2.2 The Owner shall provide, to the extent available and 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 to the extent available and under the Owner's control.

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

§ 7.2.4 The Owner shall cooperate with the Design-Builder in securing building and other permits, licenses and inspections. The Owner shall not be required to pay the fees for such permits, licenses and inspections unless the cost of such fees is excluded from the responsibility of the Design-Builder under the Design-Build Documents.

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

§ 7.2.6 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder provided however that the failure of the Owner to so provide notice shall not create any liability on the part of the Owner for such fault, defect or nonconformity, all of which shall remain the sole responsibility of the Design-Builder.

§ 7.2.7 Prior to the execution of the Design-Build Amendment, the Design-Builder may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Design-Build Documents and the Design-Builder's Proposal.

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

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



anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

**§ 7.2.10** The Owner shall purchase and maintain insurance to the extent required in Exhibit B.

**§ 7.2.11 Extent of Owner's Rights**

**§ 7.2.11.1** The rights of the Owner stated in Article 7.2 and elsewhere in the Design-Build Documents are cumulative and not in limitation of any rights of the Owner set forth in the Design-Build Documents or other rights the Owner may have at law or in equity.

**§ 7.3 Submittals**

**§ 7.3.1** The Owner shall review and approve or take other appropriate action on Submittals. Review of Submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities; or for substantiating instructions for installation or performance of equipment or systems; or for determining that the Submittals are in conformance with the Design-Build Documents, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents. The Owner's action will be taken in accordance with the submittal schedule approved by the Owner or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Owner's judgment to permit adequate review. The Owner's review of Submittals shall not relieve the Design-Builder of the obligations under Sections 3.1.11, 3.1.12, and 5.2.3. The Owner's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Owner, of any construction means, methods, techniques, sequences or procedures. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

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

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

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

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

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

**§ 7.8 Owner's Right to Stop Work**

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

### § 7.9 Owner's Right to Carry Out the Work

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

## ARTICLE 8 TIME

### § 8.1 Progress and Completion

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

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

§ 8.1.3 The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion in accordance with the construction schedule approved by the Owner pursuant to Section 3.1.9.

§ 8.1.3.1 The Design-Builder shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner of any delays or potential delays. The approved construction schedule shall be updated to reflect actual conditions (sometimes referred to as progress reports) as set forth in Section 3.1.8 or as otherwise may be requested by the Owner. In the event any progress report indicates any delays or potential delays, the Design-Builder shall advise the Owner of its plan to recover the schedule, providing the Owner with a recovery schedule, and shall further take all steps necessary to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report or recovery schedule constitute an adjustment in the Contract Time or the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to Change Order.

§ 8.1.3.2 In the event the Owner determines that the performance of the Work has not progressed or reached the level of completion required by the approved construction schedule for reasons within the responsibility of the Design-Builder, the Owner shall have the right to order the Design-Builder to take any and all corrective measures necessary to expedite the progress of construction, including, without limitation, (1) working additional shifts or overtime, (2) supplying additional manpower, equipment, and facilities and (3) other similar measure (hereinafter referred to collectively as "Extraordinary Measures"). Such Extraordinary Measure shall continue until the progress of the Work complies with the stage of completion required by the approved construction schedule. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Design-Builder's compliance with the construction schedule.

§ 8.1.3.3 The Design-Builder shall not be entitled to any adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner, if the Owner determines that the conditions creating the need for such Extraordinary Measures were within the responsibility of the Design-Builder.

§ 8.1.3.4 The Owner may exercise the rights furnished the Owner under or pursuant to this Section as frequently as the Owner deems necessary to ensure that the Design-Builder's performance of the Work will comply with any approved construction schedule or completion date established in accordance with the Design-Build Contract.

### § 8.2 Delays and Extensions of Time

§ 8.2.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a consultant or separate contractor employed by the Owner; or by changes ordered in the Work by the Owner; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's control; or by delay authorized by the Owner pending mediation and binding dispute resolution or by other causes that the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

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

**§ 8.2.2.1** Claims of delay and requests for extension of time shall set forth in detail the circumstances of such claim, the dates upon which claimed delay began and ended, and the number of days' extension of time requested. The Design-Builder shall provide supporting documentation as the Owner may require, including a revised construction schedule indicating the effect of the circumstances which form the basis for the Claim.

**§ 8.2.2.2** The Design-Builder shall not be entitled to an extension of time for each and every one of a number of causes which have a concurrent and interrelated effect on the progress of the Work.

**§ 8.2.2.3** Claims for extension of time arising out of authorized changes in the Work shall be made in writing prior to or concurrent with the submission of the Design-Builder's proposal for such change. No extension of time arising out of changes in the Work will be granted after the date upon which the Design-Builder is authorized to proceed with such change unless specific provision for an extension of time has been incorporated in the authorization.

**§ 8.2.2.4** No claim by the Design-Builder for damages for delay, arising from such change in the Work, shall be recognized or be deemed valid.

**§ 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.

## **ARTICLE 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION**

### **§ 9.1 Contract Sum**

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

### **§ 9.2 Schedule of Values**

Where the Contract Sum is based on a stipulated sum or Guaranteed Maximum Price, the Design-Builder, prior to the first Application for Payment after execution of the Design-Build Amendment shall submit to the Owner a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment. The schedule of values shall be submitted on an AIA Document G702 form and shall be broken down into a minimum of sixteen (16) divisions based on the Construction Specifications Institute (CSI) Guidelines and subdivided further by Materials and Labor and shall include a separate category for professional services.

### **§ 9.3 Applications for Payment**

**§ 9.3.1** The Design-Builder shall submit to the Owner on a monthly basis an Application for Payment for Work performed up to the last day of the previous month which Application for Payment shall be in the form of an AIA Document G702, Application and Certification for Payment, supported by AIA Document G703, Continuation Sheet, such other supporting documents and information required by the Design-Build Documents and as may otherwise be reasonably required by the Owner (the "Supporting Documentation"). The latest edition of each document must be used. The application shall be notarized, if required, and supported by data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from the Architect, Consultants, Contractors, and material suppliers, and shall reflect retainage if provided for in the Design-Build Documents. By submission of the Application for Payment and Supporting Documentation, the Design-Builder certifies that to the best of the Design-Builder's knowledge, information and belief, the Work covered by this Application for Payment has been completed in accordance with the Design-Build Documents, that all amounts have been paid by the Design-Builder for Work for which payments have been received from the Owner, and that current payment shown therein is now due.

**§ 9.3.1.1** As provided in Section 6.3.9, Applications for Payment may include requests for payment on account of changes in the Work that have been properly authorized by Change Directives, or by interim determinations of the Owner, but not yet included in Change Orders. Further, each Application for Payment submitted by the Design-Builder shall include a statement showing the status of all pending construction change orders, other pending change directives and approved changes to the original Design-Build Contract. Such statement shall identify the pending



construction change orders and other pending change directives, and shall include the date such change orders and directives were initiated, the costs associated with their performance and a description of any work completed. As used in this subsection, "pending construction change order" or "other pending change directive", means an authorized directive for extra work that has been issued to a Design-Builder or a Contractor.

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

§ 9.3.2 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 covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Design-Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Design-Builder, Architect, Consultants, Contractors, material suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the Work. The Design-Builder further expressly undertakes to indemnify, defend and hold harmless the Owner, at the Design-Builder's sole cost and expense, against any actions, lawsuits, or proceedings brought against Owner as a result of liens filed against the Work, the Project site and any improvements thereon (referred to collectively as "Liens" in this Section 9.3.3), by the Design-Builder, Architect, any Subcontractor, sub-subcontractor, consultants or anyone claiming by, through or under them. In the event that any consultant, Subcontractor, supplier or other party for whom the Design-Builder is responsible establishes a lien against the Project and/or the Project site, the Design-Builder shall, upon request of the Owner and at no cost to the Owner, and provided that such lien does not arise from the Owner's failure to comply with its payment obligations under this Agreement, cause the lien to be discharged (by recording a lien discharge bond from a surety and in form acceptable to the Owner) within thirty (30) days of the Design-Builder's receipt of such request of the Owner. If the Design-Builder fails to cause such lien to be discharged within such thirty (30) day period, the Owner shall have the right to withhold the next progress payment until such lien is discharged to the satisfaction of the Owner. The Design-Builder's obligations under this Section 9.3.3 are conditioned upon Owner having fulfilled its payment obligations to the Design-Builder with respect to the Work that is the subject of the Lien or claim and for which indemnification is sought.

§ 9.3.4 Commencing with the second Application for Payment, and continuing with each Application for Payment submitted thereafter, the Design-Builder shall furnish to the Owner a properly executed unconditional release and waiver of mechanics liens from the Design-Builder, the Architect, each Consultant, each Contractor and all other persons or entities providing performing any part of the Work and whose Work was included on the previous Application for Payment for which payment by Owner was made to the Design-Builder.

§ 9.3.5 Applications for Payment, and invoices in support of the same, shall clearly distinguish between amounts charged for labor and amounts charged for materials.

§ 9.3.6 If payment for stored materials and/or equipment is approved by Owner, Design-Builder shall furnish, along with the Application for Payment including such stored materials and/or equipment a vendor invoice establishing the value of material and/or equipment stored along with a statement of amount to be paid by the Design-Builder to the vendor.

§ 9.3.6.1 Such stored items are subject to prior approval for storage and to inspection by Owner before payment is requested.

§ 9.3.6.2 Design-Builder shall give Owner Certificates of Insurance in accordance with the Design-Build Documents for the full value of the items stored reflecting the Owner as an additional insured. Such insurance shall be maintained until items are incorporated in the Work.

#### § 9.4 Certificates for Payment

The Owner shall, within ten days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a Certificate for Payment indicating the amount the Owner determines is properly due, and notify the Design-Builder in writing of the Owner's reasons for withholding certification in whole or in part as provided in Section 9.5.1. The Owner's acknowledgment that payment for any portion of the Work is properly due shall not constitute any kind of acceptance of the Work by the Owner or an acknowledgment by the Owner that such Work is in accordance and conformance with the Design-Build Documents. The Work shall be subject to (i) an evaluation of the Work by the Owner and/or its consultants for conformance with the Design-Build Documents upon Substantial Completion; (ii) results of subsequent tests and inspections; (iii) correction of minor deviations from the Design-Build Documents prior to completion; and (iv) specific qualifications expressed by the Owner

#### § 9.5 Decisions to Withhold Certification

§ 9.5.1 The Owner may withhold a Certificate for Payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Design-Builder's Application for Payment, or the quality of the Work is not in accordance with the Design-Build Documents. If the Owner is unable to certify payment in the amount of the Application, the Owner will notify the Design-Builder as provided in Section 9.4. If the Design-Builder and Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount that the Owner deems to be due and owing. The Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible including, without limitation, loss resulting from:

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

§ 9.5.2 The Owner shall not be deemed in default by reason of withholding payment while any of the above grounds for withholding payment remain uncured. When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

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

#### § 9.6 Progress Payments

§ 9.6.1 After the Owner has issued a Certificate for Payment, the Owner shall make payment of the certified amount due in the manner and within the time provided in the Design-Build Documents.

§ 9.6.2 The Design-Builder shall, within ten (10) days after receipt of payment from the Owner, pay the Architect, each Consultant, each Contractor and all other persons or entities providing services or work for the Design-Builder when their respective services or work has been included in a requisition submitted by the Design-Builder and paid by the Owner. The Design-Builder shall include in each of its Contracts and consulting agreements a provision requiring each Contractor and Consultant to pay any amounts due any of its Subcontractors or subconsultants, whether for labor performed or materials furnished, within ten (10) days after such Contractor or Consultant receives a payment from the Design-Builder which encompasses labor or materials furnished by the Subcontractor or



subconsultant. Payments shall be net of percentages actually retained from payments to the Design-Builder on account of the portion of the Work performed by the Architect, Consultant, Contractor, or other person or entity.. The Design-Builder shall not withhold retainage in excess of that withheld by the Owner pursuant to the Design-Build Documents.

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

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

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

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

**§ 9.6.7** Intentionally Omitted.

**§ 9.7** Intentionally Omitted.

*(Paragraph Deleted)*

**§ 9.8 Substantial Completion**

**§ 9.8.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize, without impact or interruptions, the Work for its intended use . The date of Substantial Completion is the date certified by the Owner in accordance with this Section 9.8. Substantial Completion shall not be deemed to be achieved until: (i) the Owner has determined after inspection of the Work that the Work is complete with the exception of minor punch list items; (ii) the Owner has issued a Certificate of Substantial Completion pursuant to this Section 9.8; and (iii) the Owner has received a final and unconditional Certificate of Occupancy from the governmental authorities having jurisdiction that the Work has been completed in accordance with Applicable Law.

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

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

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

**§ 9.8.5** When the Work or designated portion thereof is substantially complete, the Design-Builder will prepare for the Owner's signature a Certificate of Substantial Completion that shall, upon the Owner's signature, establish the date of Substantial Completion; establish responsibilities of the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Design-Builder shall finish all items on the list accompanying the Certificate. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

**§ 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..

### **§ 9.9 Partial Occupancy or Use**

**§ 9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to, by endorsement or otherwise, by the insurer providing property insurance and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section 9.8.2. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Design-Builder.

**§ 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 Work to be used in order to determine and record the condition of the Work.

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

### **§ 9.10 Final Completion and Final Payment**

**§ 9.10.1** Upon receipt of the Design-Builder's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection. When the Owner finds the Work acceptable under the Design-Build Documents and the Contract fully performed, the Owner will, subject to Section 9.10.2, promptly issue a final Certificate for Payment.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which the Owner or the Owner's property might be responsible or encumbered, (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, (5) as-constructed record copy of the Construction Documents marked to indicate field changes and selections made during construction, (6) manufacturer's warranties, product data, and maintenance and operations manuals, and (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, or releases and waivers of liens, claims, security interests, or encumbrances, arising out of the Contract, to the extent and in such form as may be designated by the Owner. If an Architect, a Consultant, or a Contractor, or other person or entity providing services or work for the Design-Builder, refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such liens, claims, security interests, or encumbrances. If such liens, claims, security interests, or encumbrances remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be compelled to pay in discharging such liens, claims, security interests, or encumbrances, including all costs and reasonable attorneys' fees.

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

§ 9.10.4 Intentionally Omitted.

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

§ 9.10.6 If Design-Builder fails to complete the items on the final punch list, Owner may use the remaining retainage provided for in the Design-Build Documents to complete such items, and the Design-Builder shall forfeit all rights to the retainage amounts. The Owner's exercise of its right under this Section 9.10.6 shall be in addition to, and not in any way limit, the Owner's rights to exercise of its other remedies hereunder, at law or in equity.

§ 9.10.7 Upon final completion, the Design-Builder shall deliver to the Owner copies of all permits and certificates and will furnish to the Owner one complete set of final "as built" records recording all changes made during construction. All changes will be identified and circled.

§ 9.10.8 All warranties and guarantees required under or pursuant to the Design-Build Documents and a complete set of operations and maintenance manuals for all systems, equipment and fixtures of the Project shall be assembled and delivered by the Design-Builder to the Owner as part of the final Application for Payment. In addition the Design-Builder shall provide training to the Owner's employees as required by the Design-Build Documents. The final payment shall not be due until all warranties and guarantees and all other close-out deliverables have been received and accepted by the Owner and the Design-Builder has completed the employee training required by the Design-Build Documents.

## § 9.11 LIQUIDATED DAMAGES

§ 9.11.1 **Liquidated Damages:** Time is of the essence to the Design-Build Documents and all obligations there under. The Design-Builder acknowledges and agrees that if the Design-Builder fails to achieve Substantial Completion of the Work, or causes any delay to the Substantial Completion of any portion of the Work within the Contract Time (except as may be extended by the Owner in accordance with the Design-Build Documents) the Owner will sustain extensive damages and serious loss as a result of such failure. The exact amount of such damages will be difficult to ascertain. Therefore, the Owner and the Design-Builder agree as follows:

- 1 If the Design-Builder fails to achieve Substantial Completion of the Work within the Contract Time and as otherwise required by the Design-Build Documents, the Owner shall be entitled to retain or recover from the Design-Builder, as liquidated damages and not as a penalty, the per diem sum of **Five Hundred and 00/100 Dollars (\$500.00)** for every calendar day that the Design-Builder is in default, commencing upon the first day following the expiration of the Contract Time and continuing until the actual date Substantial Completion of the Work is achieved. Such liquidated damages are hereby agreed to be a reasonable pre-estimate of damages the Owner will incur as a result of delayed completion of the Work.
- 2 The Owner shall be entitled to recover as actual damages the Owner's costs, expenses and damages it incurs in connection with the completion of the Work in the event that the Design-Builder fails to complete the Work, and/or the Design-Builder's surety fails to perform the Work pursuant to any Performance Bond. The Owner shall be entitled to recover as actual damages any payments it makes to any Contractor, Subcontractor or materials supplier that the Design-Builder's surety fails to pay pursuant to any Payment Bond.



- .3 The Owner may deduct liquidated damages described in paragraph 9.11.1.1 from any unpaid amounts then or thereafter due the Design-Builder under this Design-Build Contract. Any liquidated damages not so deducted from any unpaid amounts due the Design-Builder shall be payable to the Owner, together with interest from the date of the demand at the legal rate.

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 Safety Precautions and Programs

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

### § 10.2 Safety of Persons and Property

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

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Design-Builder or the Architect, Consultants, or Contractors, or other person or entity providing services or work for the Design-Builder; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, or structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Design-Builder shall comply with, and give notices required by, Applicable Laws and lawful orders of public authorities, bearing on safety of persons or property, or their protection from damage, injury or loss.

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

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

§ 10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3, caused in whole or in part by the Design-Builder, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections 10.2.1.2 and 10.2.1.3; except damage or loss solely 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, or any other Responsible Parties. 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 The Design-Builder shall at all times provide reasonable protection against weather (rain, wind, storms or heat) so as to maintain all Work, materials, apparatus and fixtures free from damage.

§ 10.2.9 The Design-Builder shall provide adequate fire protection for all operations associated with the Work, and such protection must meet all applicable federal (including OSHA), State and municipal regulations.

§ 10.2.10 The Design-Builder shall remove and replace with new work, at the Design-Builder's own expense, any



Work damaged by failure to provide protection pursuant to Sections 10.2.8 and 10.2.9.

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

### **§ 10.3 Hazardous Materials**

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

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

**§ 10.3.3** Intentionally Omitted.

**§ 10.3.4** The Owner shall not be responsible under this Section 10.3 for materials or substances the Design-Builder, any Contractor, any Subcontractor, any materialman or supplier or any entity for whom any of the foregoing is responsible brings to the site unless such materials or substances are required by the Owner's Criteria. The Owner shall be responsible for materials or substances required by the Owner's Criteria, except to the extent of the Design-Builder's fault or negligence in the use and handling of such materials or substances. The Design-Builder agrees not to use any fills or other materials to be incorporated into the Work, which are hazardous, toxic or comprised of any items that are hazardous or toxic. In the event it is determined materials that are hazardous, toxic or comprised of items that are hazardous or toxic have been used as fills or incorporated into the Work, the Design-Builder, at its sole expense, shall be responsible for immediate removal, proper disposal, and replacement of materials of the Work and surrounding areas so affected.

**§ 10.3.5** The Design-Builder shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Design-Builder brings to the site and negligently handles, or (2) where the Design-Builder fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

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

#### § 10.4 Emergencies

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

### ARTICLE 11 UNCOVERING AND CORRECTION OF WORK

#### § 11.1 Uncovering of Work

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

#### § 11.2 Correction of Work

**§ 11.2.1 Before or After Substantial Completion.** The Design-Builder shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for any design consultant employed by the Owner whose expenses and compensation were made necessary thereby, shall be at the Design-Builder's expense. If prior to the date of Substantial Completion, the Design-Builder or any other Responsible Party uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing, and other building systems, machinery, equipment, or other mechanical device, the Design-Builder shall cause such item to be restored to "like new" condition at no expense to the Owner.

#### § 11.2.2 After Substantial Completion

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

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

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

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

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

§ 11.2.5 Nothing contained in this Section 11.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder has, or may have, under the Design-Build Documents. Establishment of the one-year period for correction of Work as described in Section 11.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

**§ 11.3 Acceptance of Nonconforming Work**

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

**ARTICLE 12 COPYRIGHTS AND LICENSES**

§ 12.1 Drawings, specifications, and other documents and materials including those in electronic form and all associated electronic data, prepared by the Architect, the Architect's consultants, or other providers of professional services in connection with the Project and furnished by the Design-Builder are Instruments of Service through which the Work to be executed by the Design-Builder is described. The Design-Builder may retain one record set. Neither the Design-Builder, the Architect nor any Consultant, Contractor, Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents or materials furnished by the Design-Builder, or on the Design-Builder's behalf, for the Project, and, unless otherwise indicated, the Architect and the Architect's consultants shall be deemed the authors. The Owner will hold and shall retain all common law, statutory and other reserved rights, including copyrights in the Instruments of Service unless the Design-Build Contract provides otherwise, and the Owner may utilize the Instruments of Service, including electronic data, for the purposes of future renovation, maintenance, repair and modification of the Project. All copies of Instruments of Service, except the Design-Builder's record set, shall be returned or suitably accounted for to the Owner, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Architect or the Architect's consultants and furnished by the Design-Builder, and copies thereof furnished to the Design-Builder are for use solely with respect to this Project. They are not to be used by the Design-Builder or any Contractor, Subcontractor, lower tier subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner.

§ 12.1.1 The Design-Builder, Contractors, Subcontractors, lower tier subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect or the Architect's consultants and furnished by the Design-Builder appropriate to and for use in the execution of their Work under the Design-Build Documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents.

§ 12.1.2 Submission or distribution of Instruments of Service to meet official regulatory requirements, or for similar purposes in connection with the Project, is not to be construed as publication in derogation of the reserved rights of the Design-Builder and the Architect, Consultants, and Contractors, and any other person or entity providing services or work for any of them.

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

§ 12.3 Intentionally Omitted.

§ 12.3.1 The Design-Builder shall incorporate the requirements of, and the rights of the Owner described in, this Article 12 in its agreement with the Architect and in its agreements with all other design professionals performing services for the Project for or on behalf of the Design-Builder.

§ 12.3.2 Intentionally Omitted.



## ARTICLE 13 TERMINATION OR SUSPENSION

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

§ 13.1.1 If the Owner fails to make payments to the Design-Builder for Work prior to execution of the Design-Build Amendment in accordance with this Agreement, and provided such failure continues for sixty days beyond the due date for payment under the Design-Build Documents and such suspension is not necessitated due to the fault of the Design-Builder, the Architect, a Consultant, a Contractor or any other person or entity for which any of them is responsible, such failure shall be considered substantial nonperformance and cause for termination or, at the Design-Builder's option, cause for suspension of performance of services under this Agreement. If the Design-Builder elects to suspend the Work, the Design-Builder shall give seven days' written notice to the Owner before suspending the Work. In the event of a suspension of the Work pursuant to this Section 13.1.1, 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 actual direct expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.2 If the Owner suspends the Project, and provided that such suspension is not necessitated due to the fault of the Design-Builder or any other Responsible Party, the Design-Builder shall be compensated for the Work performed prior to notice of such suspension pursuant to the terms and conditions of the Design-Build Documents. When the Project is resumed, the Design-Builder shall be compensated for actual direct expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

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

§ 13.1.4 Intentionally Omitted.

§ 13.1.5 The Owner may, without prejudice and without waiving any other right or remedy the Owner may have, terminate this Agreement upon not less than seven days' written notice to the Design-Builder for the Owner's convenience and without cause.

§ 13.1.6 In the event of termination pursuant to Section 13.1.5, the Design-Builder shall be compensated for Work performed in accordance with the Design-Build Documents prior to termination, together with Reimbursable Expenses then due and any other actual expenses directly attributable to termination for which the Design-Builder is not otherwise compensated. In no event shall the Design-Builder's compensation under this Section 13.1.6 be greater than the compensation set forth in Section 2.1.

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

#### § 13.2.1 Termination by the Design-Builder

§ 13.2.1.1 The Design-Builder may terminate the Contract if the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder, the Architect, a Consultant, or a Contractor, or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for either 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; or
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped.

*(Paragraphs Deleted)*

§ 13.2.1.2 The Design-Builder may terminate the Contract if, through no act or fault of the Design-Builder, the Architect, a Consultant, a Contractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 13.2.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.



§ 13.2.1.3 If one of the reasons described in Section 13.2.1.1 or 13.2.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed in accordance with the Design-Build Documents, including reasonable overhead and profit as provided in the Design-Build Documents, and actual direct costs incurred by reason of such termination.

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

§ 13.2.1.5 Any notice of termination delivered by the Design-Builder under this Article 13, must state with specificity the means by which the Owner may cure its nonperformance, and the Design-Builder shall not terminate this Agreement if, within the applicable seven day period, the Owner substantially takes such curative measures.

### § 13.2.2 Termination by the Owner For Cause

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

- .1 fails to submit the Proposal by the date required by this Agreement, or if no date is indicated, within a reasonable time consistent with the date of Substantial Completion;
- .2 repeatedly refuses or fails to supply an Architect, or enough properly skilled Consultants, Contractors, or workers or proper materials;
- .3 fails to make payment to the Architect, Consultants, or Contractors for services, materials or labor in accordance with their respective agreements with the Design-Builder;
- .4 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .5 is otherwise guilty of substantial breach of a provision of the Design-Build Documents;
- .6 fails to furnish the Owner with assurances satisfactory to the Owner evidencing the Design-Builder's ability to complete the Work in compliance with all requirements of the Design-Build Documents;
- .7 refuses or fails to prosecute the Work or any separable part, with the diligence that will insure its completion within the time specified in this Design-Build Contract including any duly authorized extension, or fails to complete the Work within said period;
- .8 institutes proceedings or consents to proceedings requesting relief or arrangement under the Federal Bankruptcy Act or any similar or applicable Federal or state law, or if a petition under any Federal or state bankruptcy or insolvency law is filed against the Design-Builder and such petition is not dismissed within sixty (60) days from the date of said filing, or if the Design-Builder admits in writing its inability to pay its debts generally as they become due, or if it makes a general assignment for the benefit of its creditors, or if a receiver, liquidator, trustee or assignee is appointed on account of its bankruptcy or insolvency; or if a receiver of all or any substantial portion of the Design-Builder's properties is appointed; or
- .9 submits, or is found to have submitted, an Application for Payment, sworn statement, waiver of lien, affidavit or document of any nature whatsoever which is intentionally falsified.

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

- .1 Exclude the Design-Builder from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;
- .2 Accept assignment of the Architect, Consultant and Contractor agreements pursuant to Section 3.1.15;
- .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; and
- .4 Terminate the Design-Builder's right to proceed with a separate part of the Work if the Owner so elects.

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

§ 13.2.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including without limitation, compensation for the Owner's consultant's services and expenses made necessary thereby and other damages incurred by the Owner and not expressly waived, such excess shall be retained by the Owner. If such costs and damages exceed the unpaid balance of the Contract Sum, the Design-Builder shall pay the difference to the Owner. The obligation for such payments shall survive termination of the Contract.

**§ 13.2.3 Suspension by the Owner for Convenience**

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

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

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

**§ 13.2.4 Termination by the Owner for Convenience**

§ 13.2.4.1 The Owner may, at any time, without prejudice and without waiving any other right or remedy the Owner may have under the Design-Build Documents, at law or in equity, terminate the Contract for the Owner's convenience and without cause. Termination by the Owner under this Section shall be by a Notice of Termination delivered to the Design-Builder specifying the extent of termination and the effective date.

§ 13.2.4.2 Upon receipt of written notice of termination for convenience from the Owner, the Design-Builder shall immediately, in accordance with instructions from the Owner, proceed with performance of the following duties regardless of delay in determining or adjusting amounts due under this Section:

- .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 place no further orders and enter into no further Subcontracts for materials, labor, services or facilities except as necessary to complete continued portions of the Design-Build Contract;
- .4 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Contracts and other Project agreements, including agreements with the Architect, Consultants, Contractors, and purchase orders, and enter into no further Project agreements and purchase orders; and
- .5 proceed to complete the performance of Work not terminated; and
- .6 take actions that may be necessary or that the Owner may direct for the protection and preservation of the terminated Work.

§ 13.2.4.3 Upon such termination for convenience, the Design-Builder shall recover as its sole remedy, payment for Work performed in accordance with the Design-Build Documents in connection with the terminated portion of the Work prior to the effective date of termination and for items properly and timely purchased or fabricated off the Project site, delivered and stored in accordance with the Owner's instructions plus Design-Builder's reasonable and actual direct demobilization costs. The Design-Builder hereby waives and forfeits all other claims for payment and damages, including without limitation, anticipated profits.

Notwithstanding the foregoing, if the Owner delivers its written notice of termination for convenience prior to the Design-Builder's commencement of the construction of the Project under Section 5.2 herein, upon delivery to the Owner by the Design-Builder of 100% complete, signed and sealed Construction Documents for all elements of the Work, the Design-Builder shall also be entitled to be paid the balance of the Design Fee, to the extent not previously paid.

§13.2.4.3 The Owner shall be credited for (1) payments previously made to the Design-Builder for the terminated portion of the Work; (2) claims which the Owner has against the Design-Builder under the Design-Build Contract and (3) the value of the materials, supplies, equipment or other items that are to be disposed of by the Design-Builder that are part of the Contract Sum.

## ARTICLE 14 CLAIMS AND DISPUTE RESOLUTION

### § 14.1 Claims

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

§ 14.1.2 **Time Limits on Claims.** The Owner and Design-Builder shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other, arising out of or related to the Contract in accordance with the requirements of the binding dispute resolution method selected in Section 1.3 and within the time period specified by applicable law.

### § 14.1.3 Notice of Claims

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

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

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

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

### § 14.1.6 Claims for Additional Time

§ 14.1.6.1 If the Design-Builder intends to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Design-Builder's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. No such Claim shall be valid unless made in accordance with the provisions of this Section 14.1.6.1. In the case of a continuing delay, only one Claim is necessary.

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

### § 14.1.7 Intentionally Omitted.

*(Paragraphs Deleted)*

### § 14.2 Initial Decision

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



## § 14.2.2 Procedure

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

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

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

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

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

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

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

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

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

## § 14.3 Mediation

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

**§ 14.3.2** The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this Section 14.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.



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

#### § 14.4 Arbitration

§ 14.4.1 If the parties have selected arbitration as the method for binding dispute resolution in Section 1.3, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

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

§ 14.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

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

#### § 14.4.4 Consolidation or Joinder

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

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

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

### ARTICLE 15 MISCELLANEOUS PROVISIONS

#### § 15.1 Governing Law

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

§ 15.1.1 The invalidity of any part or provision of the Design-Build Documents shall not impair or affect in any manner the validity, enforceability or effect of the remaining parts and provisions of the Design-Build Documents and the parties agree to substitute for the invalid provision the provision within the bounds of the law which most clearly effectuates the legal and economic intent of the invalid provision.

#### § 15.2 Successors and Assigns

§ 15.2.1 The Owner and Design-Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section 15.2.2, neither party to the Contract shall assign the Contract as a whole without written consent

of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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

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

### **§ 15.3 Written Notice**

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

### **§ 15.4 Rights and Remedies**

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

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

### **§ 15.5 Tests and Inspections**

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

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

**§ 15.5.3** If such procedures for testing, inspection or approval under Sections 15.5.1 and 15.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure, including, without limitation, those of repeated procedures and compensation for the Owner's and the Owner's consultants services, shall be at the Design-Builder's expense.

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

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

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

### § 15.6 Confidential Information

If the Owner or Design-Builder transmits Confidential Information, the transmission of such Confidential Information constitutes a warranty to the party receiving such Confidential Information that the transmitting party is authorized to transmit the Confidential Information. If a party receives Confidential Information, the receiving party shall keep the Confidential Information strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 15.6.1.

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

### § 15.7 Capitalization

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

### § 15.8 Interpretation

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

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

## ARTICLE 16 SCOPE OF THE AGREEMENT

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

- .1 AIA Document A141™-2014, Standard Form of Agreement Between Owner and Design-Builder
- .2 AIA Document A141™-2014, Exhibit A, Design-Build Amendment, if executed
- .3 Exhibit B, Insurance and Bonds
- .4 AIA Document A141™-2014, Exhibit C, Sustainable Projects, if completed
- .5 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if completed, or the following:
- .6 Other:  
Request for Proposals for the Project issued by the Owner on \_\_\_\_\_, 2018 (including all exhibits, schedules and attachments thereto) incorporated herein by reference.

Exhibit D - Project Requirements

Exhibit E - Hourly Rates

*(Paragraph Deleted)*

Exhibit F - State Requirements

Schedule A - Owner's Criteria

Schematic Floor Plan for the Project prepared by Syl Pauley for Owner and dated May 11, 2018

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

NORTHEASTERN CONNECTICUT COUNCIL

OF GOVERNMENTS

OWNER (Signature)

(Printed name and title)

DESIGN-BUILDER (Signature)

(Printed name and title)

TEST AREA



# AIA<sup>®</sup> Document A141<sup>™</sup> – 2014 Exhibit A

## Design-Build Amendment

This Amendment to be effective as of \_\_\_\_\_ is incorporated into the accompanying AIA Document A141<sup>™</sup>-2014, Standard Form of Agreement Between Owner and Design-Builder dated the \_\_\_\_ day of \_\_\_\_ in the year \_\_\_\_ (the "Agreement")  
*(In words, indicate day, month and year.)*

### for the following PROJECT:

*(Name and location or address)*

Renovation and Expansion of Regional Animal Shelter  
125 Putnam Pike  
Killingly, CT 06241

### THE OWNER:

*(Name, legal status and address)*

Northeastern Connecticut Council of Governments  
125 Putnam Pike  
Killingly, CT 06241

### THE DESIGN-BUILDER:

*(Name, legal status and address)*

\_\_\_\_\_

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

### TABLE OF ARTICLES

#### A.1 CONTRACT SUM

#### A.2 CONTRACT TIME

#### A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

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

#### A.5 COST OF THE WORK

#### ARTICLE A.1 CONTRACT SUM

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

*(Check the appropriate box.)*

Stipulated Sum, in accordance with Section A.1.2 below

#### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and 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.

- Cost of the Work plus the Design-Builder's Fee, in accordance with Section A.1.3 below
- Cost of the Work plus the Design-Builder's Fee with a Guaranteed Maximum Price, in accordance with Section A.1.4 below

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

**§ A.1.2 Stipulated Sum**

**§ A.1.2.1** The Stipulated Sum shall be  (\$  ), subject to authorized adjustments as provided in the Design-Build Documents.

Included in the Stipulated Sum above is the amount of  and /100 Dollars (\$  ) which constitutes the compensation to be paid to the Design-Builder for design services under the Design-Build Documents (the "Design Fee"). The Design Fee less retainage shall be paid monthly based on percentage of completion of the design services. The design services shall continue until the Owner's approval of the 100% Construction Documents.

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

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

Any alternate prices shall remain valid for the life of the Project, unless otherwise noted in the Design Build Documents and such prices shall include all costs for design, construction and complete installation. All pricing is inclusive of all labor, materials, equipment, costs of wages, applicable taxes, benefits, applicable insurance, overhead and profit.

**§ A.1.2.3 Unit prices, if any:**

Unit Prices shall remain valid for the life of the Project and include all costs for design, construction and complete installation. All pricing is inclusive of all costs of labor, materials, equipment, costs of wages, applicable taxes, benefits, applicable insurance, overhead and profit.

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

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

§  
*(Paragraph Deleted)*

**A.1.3 Intentionally Omitted**

**§ A.1.4**  
*(Paragraph Deleted)*

**Intentionally Omitted.**

*(Paragraphs Deleted)*

(Table Deleted)

(Paragraph Deleted)

**§ A.1.5 Payments**

**§ A.1.5.1 Progress Payments**

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

**§ A.1.5.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

**§ A.1.5.1.3** The Owner shall make payment of the certified amount to the Design-Builder not later than thirty (30) days after Owner's receipt of the subject Application for Payment along with such supporting documentation as is required in the Design-Build Documents and as may otherwise be reasonably requested by the Owner (the "Supporting Documentation").

(Paragraph Deleted)

**§ A.1.5.1.4** Intentionally Omitted.

**§ A.1.5.1.5** With each Application for Payment where the Contract Sum is based upon a Stipulated Sum or Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The Design Fee, 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.

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

**§ A.1.5.1.7** Except with the Owner's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

**§ A.1.5.2 Progress Payments—Stipulated Sum**

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

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

- 1 Take that portion of the Contract Sum (net of the Design Fee) properly allocable to completed Work (other than design services) 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 as provided in Section 6.3.9 of the Agreement;
- 2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved

in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage 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.

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

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less 200% of such amounts as the Owner shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and  
(Section 9.8.6 of the Agreement discusses release of applicable retainage upon Substantial Completion of Work.)
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Design-Builder, any additional amounts payable in accordance with Section 9.10.3 of the Agreement;

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

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

None.

#### § A.1.5.3

*(Paragraph Deleted)*

**Intentionally  
Omitted.**

*(Paragraphs Deleted)*

#### § A.1.5.4

*(Paragraphs Deleted)*

#### § A.1.5.5 Final Payment

§ A.1.5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner thirty (30) days after the Owner's receipt of the final Application for Payment and all Supporting Documentation, provided the Design-Builder has fully performed the Contract and the requirements of Section 9.10 of the Agreement have been satisfied, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment.

**Intentionally Omitted.**

*(Paragraph Deleted)*

### ARTICLE A.2 CONTRACT TIME

§ A.2.1 Contract Time, as defined in the Agreement at Section 1.4.13, is the period of time, including authorized adjustments, within which the Design-Builder is required to achieve Substantial Completion of the Work.

§ A.2.2 The Design-Builder shall achieve Substantial Completion of the entirety of the Work, in accordance with the schedule for completion of the Work attached hereto as Schedule B, and not later than    (    ) days from the date of this Amendment, subject to adjustments of the Contract Time as provided in the Design-Build Documents, or as follows:

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



Portion of Work

Substantial Completion Date

, subject to adjustments of the Contract Time as provided in the Design-Build Documents.  
(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)

**ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED**

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

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

Document	Title	Date	Pages

**§ A.3.1.2** The Specifications:  
(Either list the specifications here or refer to an exhibit attached to this Amendment.)

Specifications prepared by or on behalf of the Design-Builder dated \_\_\_\_\_ and attached hereto as Schedule C.

Section	Title	Date	Pages

**§ A.3.1.3** The Drawings:  
(Either list the drawings here or refer to an exhibit attached to this Amendment.)

Drawings prepared by or on behalf of the Design-Builder dated \_\_\_\_\_ and attached hereto as Schedule D.

Number	Title	Date

**§ A.3.1.4** The Sustainability Plan, if any:  
(If the Owner identified a Sustainable Objective in the Owner's Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner's and Design-Builder's roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Exhibit C to the Agreement.)

Title	Date	Pages

Other identifying information:

\_\_\_\_\_

**§ A.3.1.5** Allowances and Contingencies:  
(Identify any agreed upon allowances and contingencies, including a statement of their basis.)

.1 Allowances

.2 Contingencies

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

[Redacted]

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

[Redacted]

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

[Redacted]

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

§ A.4.1 The Design-Builder's key personnel are identified below:  
(Identify name, title and contact information.)

.1 Superintendent

.2 Project Manager

.3 Others

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

[Redacted]

**ARTICLE A.5 COST OF THE WORK**

§ A.5.1 Cost To Be Reimbursed as Part of the Contract where the Compensation is based on the Cost of the Work

**§ A.5.1.1 Labor Costs**

§ A.5.1.1.1 Wages of construction workers directly employed by the Design-Builder to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ A.5.1.1.2 With the Owner's prior approval, wages or salaries of the Design-Builder's supervisory and administrative personnel when stationed at the site.

(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)
[Redacted]	[Redacted]	[Redacted]	[Redacted]

§ A.5.1.1.3 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.

§ A.5.1.1.4 Costs paid or incurred by the Design-Builder for taxes, 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 Section A.5.1.1.

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

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

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

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

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

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

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

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

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

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

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

**§ A.5.1.5 Miscellaneous Costs**

§ A.5.1.5.1 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.

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

§ A.5.1.5.3 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.

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

§ A.5.1.5.5 Royalties and license fees paid for the use of a particular design, process or product required by the Design-Build Documents; the cost of defending suits or claims for infringement of patent rights arising from 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 Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the third to last sentence of Section 3.1.13.2 of the Agreement or other provisions of the Design-Build Documents, then they shall not be included in the Cost of the Work.

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

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

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

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

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

#### § A.5.1.6 Other Costs and Emergencies

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

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

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

#### § A.5.1.7 Related Party Transactions

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

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



from the related party, as a Contractor, according to the terms of Section A.5.4. If the Owner fails to authorize the transaction, the Design-Builder shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Section A.5.4.

**§ A.5.2 Costs Not to Be Reimbursed as Part of this Contract where the Contract Sum is based on the Cost of the Work**

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

- .1 Salaries and other compensation of the Design-Builder's personnel stationed at the Design-Builder's principal office or offices other than the site office, except as specifically provided in Section A.5.1.1;
- .2 Expenses of the Design-Builder's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Section A.5.1;
- .4 The Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work;
- .5 Except as provided in Section A.5.1.6.3 of this Agreement, costs due to the negligence or failure of the Design-Builder, Contractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Section A.5.1; and
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

**§ A.5.3 Discounts, Rebates, and Refunds**

**§ A.5.3.1** Cash discounts shall accrue to the Owner. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Design-Builder shall make provisions so that they can be obtained.

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

**§ A.5.4 Other Agreements**

**§ A.5.4.1** Intentionally Omitted.

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

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

**§ A.5.5 Accounting Records**

The Design-Builder shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under the Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Design-Builder's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Contractor's proposals, purchase orders, vouchers, memoranda and other data relating to the Contract. The Design-Builder shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

**§ A.5.6 Relationship of the Parties**

The Design-Builder accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to perform all of its obligations under the Design-Build Documents consistent with the Design-Builder's Standard of Care (as defined in the Agreement) and to exercise the Design-Builder's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and

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

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

**Northeastern Connecticut Council of Governments**

\_\_\_\_\_  
**OWNER** *(Signature)*  
\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
**DESIGN-BUILDER** *(Signature)*  
\_\_\_\_\_  
*(Printed name and title)*

[Attachments -  
Schedule B Construction Schedule  
Schedule C Specifications  
Schedule D Drawings]

LE  
A  
R  
D

Schedule E: NON-COLLUSION AFFIDAVIT

AFFIDAVIT  
(Prime Bidder)

State of \_\_\_\_\_)

ss

County of \_\_\_\_\_)

\_\_\_\_\_, being first duly sworn, deposes and says:

1. That he/she is a ( ) Partner; ( ) Officer; ( ) Member; ( ) Owner of the firm of:  
  
\_\_\_\_\_  
the party making the foregoing proposal or bid;
2. He/she is fully informed respecting the preparation and contents of the attached proposal or bid and all circumstances regarding the same;
3. Said proposal or bid is genuine and is not a collusive or sham proposal or bid;
4. Neither the said bidder nor any of its officers, partners, members, owners, agents, representatives, employees, or parties-in-interest, including this affiant has in any way colluded, conspired, connived or agreed, directly or indirectly, with any bidder, or person, to put in a sham bid or to refrain from bidding, and has not in any manner, directly or indirectly, sought by agreement or collusion, or communication or conference, with any person, to fix the bid price or affiance or of any other bidder, or to fix any overhead, profit or cost element of said bid price, or of that of any other bidder, or to secure any advantage against The Maritime Aquarium at Norwalk, Inc. or any person interested in the proposed contract;
5. The price or prices quoted in the attached proposal or bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of this Bidder or any of its agents, representatives, owners, employees, or parties-in-interest, including this affiant; and
6. All statements in said proposal or bid are true.

(Signed): \_\_\_\_\_

(Title): \_\_\_\_\_

Subscribed and sworn to me

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

## Schedule F:

### **EXHIBIT F to AIA A141 Agreement** **STATE REQUIREMENTS**

**“Contractor” as referred to in this Exhibit A shall mean the Design-Builder.**

#### **I. Prevailing Wage Requirements**

To the extent required under Section 31-53 of the Connecticut General Statutes, the wages paid on a hourly basis to any mechanic, laborer or workman employed upon the work herein contracted to be done and the amount of payment or contribution paid or payable on behalf of each such employee to any employee welfare fund, as defined in subsection (i) of Section 31-53 of the General Statutes of Connecticut shall be at a rate equal to the rate customary or prevailing for the same work in the same trade or occupation in the town in which such public works project is being constructed. Any contractor who is not obligated by agreement to make such payment or contribution on behalf of such employees to any such employee welfare fund shall pay to each employee as part of their wages the amount of the payment of contribution for their classification on each pay day.

To the extent required pursuant to Connecticut General Statute Section 31-53b, the Contractor shall furnish proof, and shall cause its Subcontractors to furnish proof, with the weekly certified payroll form for the first week each employee begins work on such project that any person performing the work of a mechanic, laborer or worker pursuant to the classifications of labor under section 31-53 on such public works project, pursuant to such contract, has completed a course of at least ten hours in duration in construction safety and health approved by the federal Occupational Safety and Health Administration or, has completed a new miner training program approved by the Federal Mine Safety and Health Administration in accordance with 30 CFR 48 or, in the case of telecommunications employees, has completed at least ten hours of training in accordance with 29 CFR 1910.268.

#### **II. Nondiscrimination**

##### **A. (a) Compliance with CGS §4a-60:**

(1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such Contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the state of Connecticut; and the Contractor further agrees to take affirmative action to insure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such Contractor that such disability prevents performance of the work involved;

(2) The Contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, to state that it is an "affirmative action-equal opportunity employer" in accordance with regulations adopted by the Commission on Human Rights and Opportunities;

(3) The Contractor agrees to provide each labor union or representative of workers with which such Contractor has a collective bargaining agreement or other contract or understanding and each vendor with which such Contractor has a contract or understanding, a notice to be provided by the



Commission on Human Rights and Opportunities advising the labor union or workers' representative of the Contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment;

(4) The Contractor agrees to comply with each provision of Connection General Statutes §4a-60 and Connecticut General Statutes sections 46a-68e and §46a-68f and with each regulation or relevant order issued by said commission pursuant to Connecticut General Statutes sections 46a-56, 46a-68e, 46a-68f and 46a-86; and

(5) The Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor as relate to the provisions of Connection General Statutes §4a-60 and Connection General Statutes § 46a-56.

(b) If this Contract is a public works contract, municipal public works contract or contract for a quasi-public agency project, the Contractor agrees and warrants that he or she will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works or quasi-public agency project.

(c) The Contractor shall include the provisions of subsections (a) and (b) above in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the state, and in every subcontract entered into in order to fulfill any obligation of a municipal public works contract or contract for a quasi-public agency project, and such provisions shall be binding on a subcontractor, vendor or manufacturer, unless exempted by regulations or orders of the Commission on Human Rights and Opportunities. The Contractor shall take such action with respect to any such subcontract or purchase order as the commission may direct as a means of enforcing such provisions, including sanctions for noncompliance in accordance with Connecticut General Statutes § 46a-56; provided, if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the commission regarding a state contract, the Contractor may request the state of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the state and the state may so enter.

**B. (a) Compliance with Connecticut General Statutes §4a-60a:**

(1) The Contractor agrees and warrants that in the performance of the Contract the Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or of the state of Connecticut, and that employees are treated when employed without regard to their sexual orientation;

(2) The Contractor agrees to provide each labor union or representative of workers with which such Contractor has a collective bargaining agreement or other contract or understanding and each vendor with which the Contractor has a contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers' representative of the Contractor's commitments under Connecticut General Statutes §4a-60a, and to post copies of the notice in conspicuous places available to employees and applicants for employment;

(3) The Contractor agrees to comply with each provision of Connecticut General Statutes §4a-60a and with each regulation or relevant order issued by said Commission on Human Rights and Opportunities pursuant to Connecticut General Statutes §46a-56; and

(4) The Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor which relate to the provisions of Connecticut General Statutes §4a-60a and Connecticut General Statutes §46a-56.

(b) The Contractor shall include the provisions of subsection (a) of this Section B in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the state, and in every subcontract entered into in order to fulfill any obligation of a municipal public works contractor contract for a quasi-public agency project, and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission on Human Rights and Opportunities. The Contractor shall take such action with respect to any such subcontract or purchase order as the commission may direct as a means of enforcing such provisions, including sanctions for noncompliance in accordance with Connecticut General Statutes §46a-56; provided, if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the commission regarding a state contract, the Contractor may request the state of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the state and the state may so enter.

### **III. Bonding**

The Contractor is required to provide payment and performance bonds as described in Connecticut General Statutes §49-41.

In the event that the surety issuing such bonds assumes the contract or obtains a bid or bids for completion of the contract, the surety shall ensure that the contractor chosen to complete the contract is prequalified pursuant to Section 4a-100 of the Connecticut General Statutes in the requisite classification and has the aggregate work capacity rating and single project limit necessary to complete the contract.

# Appendix 1 CHRO NOTICE

## COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES CONTRACT COMPLIANCE REGULATIONS NOTIFICATION TO BIDDERS

(Revised 09/17/07)

The contract to be awarded is subject to contract compliance requirements mandated by Sections 4a-60 and 4a-60a of the Connecticut General Statutes; and, when the awarding agency is the State, Sections 46a-71(d) and 46a-81i(d) of the Connecticut General Statutes. There are Contract Compliance Regulations codified at Section 46a-68j-21 through 43 of the Regulations of Connecticut State Agencies, which establish a procedure for awarding all contracts covered by Sections 4a-60 and 46a-71(d) of the Connecticut General Statutes.

According to Section 46a-68j-30(9) of the Contract Compliance Regulations, every agency awarding a contract subject to the contract compliance requirements has an obligation to “aggressively solicit the participation of legitimate minority business enterprises as bidders, contractors, subcontractors and suppliers of materials.” “Minority business enterprise” is defined in Section 4a-60 of the Connecticut General Statutes as a business wherein fifty-one percent or more of the capital stock, or assets belong to a person or persons: “(1) Who are active in daily affairs of the enterprise; (2) who have the power to direct the management and policies of the enterprise; and (3) who are members of a minority, as such term is defined in subsection (a) of Section 32-9n.” “Minority” groups are defined in Section 32-9n of the Connecticut General Statutes as “(1) Black Americans . . . (2) Hispanic Americans . . . (3) persons who have origins in the Iberian Peninsula . . . (4) Women . . . (5) Asian Pacific Americans and Pacific Islanders; (6) American Indians . . .” An individual with a disability is also a minority business enterprise as provided by Section 4a-60g of the Connecticut General Statutes. The above definitions apply to the contract compliance requirements by virtue of Section 46a-68j-21(11) of the Contract Compliance Regulations.

The awarding agency will consider the following factors when reviewing the bidder’s qualifications under the contract compliance requirements:

- (a) the bidder’s success in implementing an affirmative action plan;
- (b) the bidder’s success in developing an apprenticeship program complying with Sections 46a-68-1 to 46a-68-17 of the Administrative Regulations of Connecticut State Agencies, inclusive;
- (c) the bidder’s promise to develop and implement a successful affirmative action plan;
- (d) the bidder’s submission of employment statistics contained in the “Employment Information Form”, indicating that the composition of its workforce is at or near parity when compared to the racial and sexual composition of the workforce in the relevant labor market area; and
- (e) the bidder’s promise to set aside a portion of the contract for legitimate minority business enterprises. See Section 46a-68j-30(10)(E) of the Contract Compliance Regulations.

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### INSTRUCTIONS AND OTHER INFORMATION

The following BIDDER CONTRACT COMPLIANCE MONITORING REPORT must be completed in full, signed, and submitted with the bid for this contract. The contract awarding agency and the Commission on Human Rights and Opportunities will use the information contained thereon to determine the bidders compliance to Sections 4a-60 and 4a-60a CONN. GEN. STAT., and Sections 46a-68j-23 of the Regulations of Connecticut State Agencies regarding equal employment opportunity, and the bidder’s □□good faith efforts to include minority business enterprises as subcontractors and suppliers for the work of the contract.

#### 1) Definition of Small Contractor

Section 4a-60g CONN. GEN. STAT. defines a small contractor as a company that has been doing business under the same management and control and has maintained its principal place of business in Connecticut for a one year period immediately prior to its application for certification under this section, had gross revenues not exceeding ten million dollars in the most recently completed fiscal year, and at least fifty-one percent of the ownership of which is held by a person or persons who are active in the daily affairs of the company, and have the power to direct the management and policies of the company, except that a nonprofit corporation shall be construed to be a small contractor if such nonprofit corporation meets the requirements of subparagraphs (A) and (B) of subdivision 4a-60g CONN. GEN. STAT.

**MANAGEMENT:** Managers plan, organize, direct, and control the major functions of an organization through subordinates who are at the managerial or supervisory level. They make policy decisions and set objectives for the company or departments. They are not usually directly involved in production or providing services. Examples include top executives, public relations managers, managers of operations specialties (such as financial, human resources, or purchasing managers), and construction and engineering managers.

**BUSINESS AND FINANCIAL OPERATIONS:** These occupations include managers and professionals who work with the financial aspects of the business. These occupations include accountants and auditors, purchasing agents, management analysts, labor relations specialists, and budget, credit, and financial analysts.

**MARKETING AND SALES:** Occupations related to the act or process of buying and selling products and/or services such as sales engineer, retail sales workers and sales representatives including wholesale.

**LEGAL OCCUPATIONS:** In-House Counsel who is charged with providing legal advice and services in regards to legal issues that may arise during the course of standard business practices. This category also includes assistive legal occupations such as paralegals, legal assistants.

**COMPUTER SPECIALISTS:** Professionals responsible for the computer operations within a company are grouped in this category. Examples of job titles in this category include computer programmers, software engineers, database administrators, computer scientists, systems analysts, and computer support specialists

**ARCHITECTURE AND ENGINEERING:** Occupations related to architecture, surveying, engineering, and drafting are included in this category. Some of the job titles in this category include electrical and electronic engineers, surveyors, architects, drafters, mechanical engineers, materials engineers, mapping technicians, and civil engineers.

**OFFICE AND ADMINISTRATIVE SUPPORT:** All clerical-type work is included in this category. These jobs involve the preparing, transcribing, and preserving of written communications and records; collecting accounts; gathering and distributing information; operating office machines and electronic data processing equipment; and distributing mail. Job titles listed in this category include telephone operators, bill and account collectors, customer service representatives, dispatchers, secretaries and administrative assistants, computer operators and clerks (such as payroll, shipping, stock, mail and file).

**BUILDING AND GROUNDS CLEANING AND MAINTENANCE:** This category includes occupations involving landscaping, housekeeping, and janitorial services. Job titles found in this category include supervisors of landscaping or housekeeping, janitors, maids, grounds maintenance workers, and pest control workers.

**CONSTRUCTION AND EXTRACTION:** This category includes construction trades and related occupations. Job titles found in this category include boilermakers, masons (all types), carpenters, construction laborers, electricians, plumbers (and related trades), roofers, sheet metal workers, elevator installers, hazardous materials removal workers, paperhangers, and painters. Paving, surfacing, and tamping equipment operators; drywall and ceiling tile installers; and carpet, floor and tile installers and finishers are also included in this category. First line supervisors, foremen, and helpers in these trades are also grouped in this category..

**INSTALLATION, MAINTENANCE AND REPAIR:** Occupations involving the installation, maintenance, and repair of equipment are included in this group. Examples of job titles found here are heating, ac, and refrigeration mechanics and installers; telecommunication line installers and repairers; heavy vehicle and mobile equipment service technicians and mechanics; small engine mechanics; security and fire alarm systems installers; electric/electronic repair, industrial, utility and transportation equipment; millwrights; riggers; and manufactured building and mobile home installers. First line supervisors, foremen, and helpers for these jobs are also included in the category.

**MATERIAL MOVING WORKERS:** The job titles included in this group are Crane and tower operators; dredge, excavating, and lading machine operators; hoist and winch operators; industrial truck and tractor operators; cleaners of vehicles and equipment; laborers and freight, stock, and material movers, hand; machine feeders and offbearers; packers and packagers, hand; pumping station operators; refuse and recyclable material collectors; and miscellaneous material moving workers.

**PRODUCTION WORKERS:** The job titles included in this category are chemical production machine setters, operators and tenders; crushing/grinding workers; cutting workers; inspectors, testers sorters, samplers, weighers; precious stone/metal workers; painting workers; cementing/gluing machine operators and tenders; etchers/engravers; molders, shapers and casters except for metal and plastic; and production workers.



<p><u>White</u> (not of Hispanic Origin)- All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.</p> <p><u>Black</u>(not of Hispanic Origin)- All persons having origins in any of the Black racial groups of Africa.</p> <p><u>Hispanic</u>- All persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.</p>	<p><u>Asian or Pacific Islander</u>- All persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. This area includes China, India, Japan, Korea, the Philippine Islands, and Samoa.</p> <p><u>American Indian or Alaskan Native</u>- All persons having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition.</p>
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**BIDDER CONTRACT COMPLIANCE MONITORING REPORT**

**PART I - Bidder Information**

Company Name Street Address City & State Chief Executive	Bidder Federal Employer Identification Number _____ Or Social Security Number _____
Major Business Activity (brief description)	Bidder Identification (response optional/definitions on page 1)  -Bidder is a small contractor. Yes__ No__ -Bidder is a minority business enterprise Yes__ No__ (If yes, check ownership category) Black__ Hispanic__ Asian American__ American Indian/Alaskan Native__ Iberian Peninsula__ Individual(s) with a Physical Disability__ Female__
Bidder Parent Company (If any)	- Bidder is certified as above by State of CT Yes__ No__
Other Locations in Ct. (If any)	

**PART II - Bidder Nondiscrimination Policies and Procedures**

1. Does your company have a written Affirmative Action/Equal Employment Opportunity statement posted on company bulletin boards? Yes__ No__	7. Do all of your company contracts and purchase orders contain non-discrimination statements as required by Sections 4a-60 & 4a-60a Conn. Gen. Stat.? Yes__ No__
2. Does your company have the state-mandated sexual harassment prevention in the workplace policy posted on company bulletin boards? Yes__ No__	8. Do you, upon request, provide reasonable accommodation to employees, or applicants for employment, who have physical or mental disability? Yes__ No__
3. Do you notify all recruitment sources in writing of your company's Affirmative Action/Equal Employment Opportunity employment policy? Yes__ No__	9. Does your company have a mandatory retirement age for all employees? Yes__ No__
4. Do your company advertisements contain a written statement that you are an Affirmative Action/Equal Opportunity Employer? Yes__ No__	10. If your company has 50 or more employees, have you provided at least two (2) hours of sexual harassment training to all of your supervisors? Yes__ No__ NA__
5. Do you notify the Ct. State Employment Service of all employment openings with your company? Yes__ No__	11. If your company has apprenticeship programs, do they meet the Affirmative Action/Equal Employment Opportunity requirements of the apprenticeship standards of the Ct. Dept. of Labor? Yes__ No__ NA__
6. Does your company have a collective bargaining agreement with workers? Yes__ No__ 6a. If yes, do the collective bargaining agreements contain non-discrimination clauses covering all workers? Yes__ No__ 6b. Have you notified each union in writing of your commitments under the nondiscrimination requirements of contracts with the state of Ct? Yes__ No__	12. Does your company have a written affirmative action Plan? Yes__ No__ If no, please explain.  13. Is there a person in your company who is responsible for equal employment opportunity? Yes__ No__ If yes, give name and phone number. _____ _____

1. Will the work of this contract include subcontractors or suppliers? Yes\_\_ No\_\_

1a. If yes, please list all subcontractors and suppliers and report if they are a small contractor and/or a minority business enterprise. (defined on page 1 / use additional sheet if necessary)

1b. Will the work of this contract require additional subcontractors or suppliers other than those identified in 1a. above?

Yes\_\_ No\_\_

**PART IV - Bidder Employment Information**

Date:

JOB CATEGORY *	OVERALL TOTALS	WHITE (not of Hispanic origin)		BLACK (not of Hispanic origin)		HISPANIC		ASIAN or PACIFIC ISLANDER		AMERICAN INDIAN or ALASKAN NATIVE	
		Male	Female	Male	Female	Male	Female	Male	Female	male	female
Management											
Business & Financial Ops											
Marketing & Sales											
Legal Occupations											
Computer Specialists											
Architecture/Engineering											
Office & Admin Support											
Bldg/ Grounds Cleaning/Maintenance											
Construction & Extraction											
Installation , Maintenance & Repair											
Material Moving Workers											
Production Occupations											
TOTALS ABOVE											
Total One Year Ago											
FORMAL ON THE JOB TRAINEES (ENTER FIGURES FOR THE SAME CATEGORIES AS ARE SHOWN ABOVE)											
Apprentices											
Trainees											

\*NOTE: JOB CATEGORIES CAN BE CHANGED OR ADDED TO (EX. SALES CAN BE ADDED OR REPLACE A CATEGORY NOT USED IN YOUR COMPANY)

1. Which of the following recruitment sources are used by you? (Check yes or no, and report percent used)				2. Check (X) any of the below listed requirements that you use as a hiring qualification  (X)		3. Describe below any other practices or actions that you take which show that you hire, train, and promote employees without discrimination
SOURCE	YES	NO	% of applicants provided by source			
State Employment Service					Work Experience	
Private Employment Agencies					Ability to Speak or Write English	
Schools and Colleges					Written Tests	
Newspaper Advertisement					High School Diploma	
Walk Ins					College Degree	
Present Employees					Union Membership	
Labor Organizations					Personal Recommendation	
Minority/Community Organizations					Height or Weight	
Others (please identify)					Car Ownership	
					Arrest Record	
					Wage Garnishments	

Certification (Read this form and check your statements on it CAREFULLY before signing). I certify that the statements made by me on this BIDDER CONTRACT COMPLIANCE MONITORING REPORT are complete and true to the best of my knowledge and belief, and are made in good faith. I understand that if I knowingly make any misstatements of facts, I am subject to be declared in non-compliance with Section 4a-60, 4a-60a, and related sections of the CONN. GEN. STAT.

(Signature)	(Title)	(Date Signed)	(Telephone)
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## APPENDIX 2

### Connecticut Standards for Construction and Improvement of Dog Pounds Regulations of the Department of Agriculture Requirements

#### Section 22-336-13 Definitions

As used in sections 22-336-13 to 22-336-30, inclusive:

- (a) “Dog Pound” means a building provided and maintained by a city or town which is used for the detention and care of impounded dogs or other facilities including a licensed veterinary hospital or licensed commercial kennel which, through written agreement with a town, is used for the detention and care of impounded dogs.
- (b) “Impounded Dog” means a dog seized by the chief canine control officer, assistant chief canine control officer, canine control officer, regional canine control officer, assistant regional canine control officer or municipal animal control officer for the purpose of detaining the dog, quarantining the dog, or holding a dog under a restraint or disposal order.
- (c) “Indoor Pen” means a completely enclosed area inside a dog pound building to be used for shelter by an impounded dog.
- (d) “Indoor Run” means an area inside a completely enclosed dog pound to be used for shelter and exercise by an impounded dog.
- (e) “Outdoor Run” means an incompletely enclosed area adjacent to a dog pound building to be used for exercise by an impounded dog.
- (f) “Renovate” means to change the size, construction or composition of pens, runs, fences, floors, heating system, water supply system, waste disposal system, or any other physical component of dog pound buildings which are governed by these regulations.
- (g) “Sanitary” means that which pertains to health, with especial reference to cleanliness and freedom from infective and deleterious influences.

#### Section 22-336-14 Impoundment Requirements

No dog may be impounded at a dog pound which does not meet the requirements of sections 22-336-13 to 22-336-29, inclusive, of these regulations, subject to the provisions of Section 22-336-30 of these regulations.

#### Section 22-336-15 Compliance

All dog pounds in which impounded dogs are kept must comply with sections 22-336-13 to 22-336-29, inclusive, of these regulations, subject to the provisions of Section 22-336-30 of these regulations.

#### Sec. 22-336-16. Physical requirements

- (a) Any building to be used as a dog pound shall be constructed in compliance with [sections 22-336-13](#) to [22-336-30](#), inclusive, of these regulations and maintained in good repair.



(b) The lower portion of interior and exterior walls of a building to be used as a dog pound shall be constructed of concrete or cement block material up to a minimum height of four (4) feet.

(c) All fencing shall be a maximum 1 ½ inch wire mesh by 11 minimum wire gauge to contain impounded dogs and of a design to prevent injury.

(d) A copy of blueprints detailing the construction of the dog pound facility or renovation of an existing facility shall be submitted to the commissioner at least ninety (90) days prior to the start of construction.

#### Sec. 22-336-17. Pens and runs

(a) Dog pounds shall provide either an indoor run, or an outdoor run and an adjacent indoor pen for each adult dog.

(b) Indoor runs shall measure not less than forty (40) square feet with a minimum width of four (4) feet and a minimum height of six (6) feet. Solid partition dividers shall be provided between each run extending from the floor to a height of at least four (4) feet and shall extend the full length of the run.

(c) Outdoor runs shall measure not less than four (4) feet wide, eight (8) feet long and six (6) feet high with a gate at the end of each run. Solid partition dividers shall be provided between each run extending from the floor to a height of at least four (4) feet and shall extend the full length of the run.

(d) Outdoor runs shall be covered by a permanent roof of suitable material to protect the runs from snow, rain and excessive sunlight and a barrier shall be provided between the top of the runs and the roof structure to prevent the escape of impounded dogs.

(e) Indoor pens shall be adjacent to each outdoor run and shall measure not less than four (4) feet square and at least four (4) feet high. Any indoor run of less than six (6) feet in height must be covered with a maximum of 1 ½ inch wire mesh by 11 minimum wire gauge chain link fence and shall be kept clear of obstruction to provide for air circulation.

(f) Indoor pens shall be supplied with a solid partition divider extending from the floor to a height of at least four (4) feet.

(g) Doorways between indoor pens and the outdoor runs shall be offset from center to provide adequate space for resting beds to be placed in the indoor pens.

#### Section 22-336-18 Floors and base of runs

(a) All dog pounds shall have smooth concrete floors, runs and troughs with a minimum of one-quarter ( ¼ ) inch pitch per foot.

(b) Floors of outdoor runs shall be pitched away from the building in the direction of a trough installed at the end of the run, exterior to the run fencing.

(c) Floors of indoor pens shall be pitched toward a trough installed at the end of the pen, exterior to the pen fencing.

(d) Floors of indoor runs shall be pitched toward a trough which has been made inaccessible to dogs by either covering or placement exterior to the run fencing.

(e) All troughs shall be pitched toward covered drains at least six (6) inches in diameter connected by pipe not less than six (6) inches in diameter to a disposal system approved by the official responsible for local sewage disposal.

#### Section 22-336-19 Heat and Ventilation

(a) Thermostatically controlled clean and sanitary heat shall be provided to maintain a minimum temperature of fifty-five (55) degrees Fahrenheit at floor level. At no time shall the indoor temperature of the dog pound where dogs are housed exceed ninety (90) degrees Fahrenheit.

(b) The indoor portion of the dog pound where dogs are housed shall be mechanically ventilated in such a manner as will provide fresh air to maintain health and comfort of impounded dogs.

#### Section 22-336-21 Lighting

Electrical lighting shall be provided in all dog pounds, capable of providing a minimum of 30 foot candles. Lighting shall be provided for a minimum of eight (8) hours during each twenty-four (24) hour period.

#### Section 22-336-22 Sanitation

(a) The dog pound shall be kept sanitary and cleaned a minimum of once daily.

(b) A disinfectant capable of eliminating canine viruses and bacteria shall be used in washing down runs, pens and interior areas of the dog pound.

(c) Such disinfectants shall be used in such a manner not harmful to dogs.

(d) Runs and pens shall be cleaned and disinfected before use by another dog.

(e) Feces and other excreta shall be removed from pens, runs and troughs daily.

(f) Equipment shall be available for the proper storage or disposal of waste material to control vermin, insects and obnoxious odors.

#### Section 22-336-23 Food and water containers

Galvanized or stainless steel food and water containers shall be provided and kept clean and sanitary at all times. Food and water containers shall be washed and disinfected daily and before use by another dog.

#### Section 22-336-24 Storage of dog food

Dog food in original packaging shall be stored at least twelve (12) inches above the floor on clean racks, dollies or other clean surfaces, in such a manner as to protect from splash and other contamination. Unsealed bags of dog food shall be stored in covered metal or covered heavy duty plastic containers at least twelve (12) inches above the floor on clean racks, dollies or other clean surfaces, in such a manner as to protect from splash and other contamination.

Section 22-336-25 Removal of dead dogs

Any dead dog shall be immediately removed from the dog pound area. A dead dog shall be preserved in a properly operating refrigerator at a temperature of not more than forty (40) degrees Fahrenheit or freezer at a temperature of not more than thirty-two (32) degrees Fahrenheit until such time as the dog is transferred for purposes of diagnostic testing or disposed of by cremation or burial.

Section 22-336-26 Isolation area

At least one (1) isolation area shall be provided for each ten indoor runs or outdoor runs with adjacent indoor pens. An isolation area must consist of an indoor run or an outdoor run with an indoor pen. Such isolation areas shall only be used by dogs quarantined pursuant to [Sections 22-358](#) or [22-359 C.G.S.](#)

Section 22-336-27 Quarantined Dogs

Impounded dogs quarantined pursuant to [Sections 22-358](#) or [22-359 C.G.S.](#) must be kept in an isolation area. Only one (1) dog shall be kept in each isolation area.

Section 22-336-28 Animal Care

- (a) Water shall be provided for dogs at all times. Adult dogs shall be fed at least once per day. Dogs under the age of six (6) months shall be fed at least two (2) times per day.
- (b) Dogs shall be fed the type and quantity of food as directed by the manufacturers' label.
- (c) Any dog which appears sick or injured shall be examined by a licensed veterinarian.
- (d) A water impervious removable resting bed shall be provided for each impounded dog. Not more than one adult dog shall be kept in each indoor run or outdoor run with adjacent indoor pen.

Section 22-336-29 Transportation

All dogs transported by municipal animal control officers shall be transported in an enclosed vehicle. Vehicles used to transport dogs shall be structurally sound and maintained in good repair to prevent injury to dogs carried therein.

Section 22-336-30 Grandfather Clause

- (a) The requirements of [Sections 22-336-17\(b\)](#), [22-336-17\(c\)](#), [22-336-17\(d\)](#) and [22-336-17\(e\)](#) of these regulations concerning minimum measurements for the size of runs and pens, and the requirements of [Section 22-336-18](#) of these regulations do not apply to dog pounds which are completely constructed prior to the effective date of these regulations. All other requirements of [sections 22-336-13](#) to [22-336-29](#), inclusive, of these regulations including the provisions of [Sections 22-336-17\(a\)](#), [22-336-17\(d\)](#) and [22-336-17\(g\)](#) shall apply to such dog pounds.
- (b) Notwithstanding the provisions of [Section 22-336-30\(a\)](#) of these regulations, any renovations to the size, construction or composition of pens, runs, fences, floors, heating system, water supply system, waste disposal system, or any other physical component of dog pound buildings completely constructed prior to the effective date of these regulations must conform with the appropriate requirements of [sections 22-336-13](#) to [22-336-29](#), inclusive, of these regulations.