



**BOARD OF CONTRACT AND SUPPLY  
CITY OF PROVIDENCE, RHODE ISLAND**

# REQUEST FOR PROPOSALS

**Item Description: DESIGN BUILD (D-B) SERVICES FOR PUBLIC SAFETY COMPLEX ROOF INFRASTRUCTURE RENOVATIONS**

**Procurement/MinuteTraq #: 46220**

**Date to be opened: 9/23/2024**

**Issuing Department:** Department of Public Property

## QUESTIONS

- Please direct questions related to the bidding process, how to fill out forms, and how to submit a bid (Pages 1-6) to the Purchasing Department.
  - Email: [purchasing@providenceri.gov](mailto:purchasing@providenceri.gov)
    - Please use the subject line “**Solicitation Question**”
- Please direct questions relative to the Minority and Women’s Business Enterprise Program and the corresponding forms (Pages 14-15) to the MBE/WBE Outreach Director for the City of Providence, Grace Diaz
  - Email: [gdiaz@providenceri.gov](mailto:gdiaz@providenceri.gov)
    - Please use subject line “**MBE WBE Forms**”
- Please direct questions relative to the specifications outlined (beginning on page 14) to the issuing department’s subject matter expert:
  - Name:
  - Title:
  - Email Address:

## Pre-bid Conference

There will be a Mandatory Pre-Bid Conference

Date: Friday, September 6, 2024                      Time: 10:00am

Location: 325 Washington St, Providence, RI 02903

**Deadline for questions submissions:** Monday, September 16, 2024 at 12:00pm



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**INSTRUCTIONS FOR SUBMISSION**

Please Note – this RFP for Construction Manager Services contains special instructions for two separate proposal packages:

1) Technical Proposal for Qualification and 2) Professional Cost Proposal

1) **Technical Proposals for Qualification** may be submitted up to **2:15 P.M.** on the above meeting date (September 23, 2024) at the **Department of the City Clerk, Room 311, City Hall, 25 Dorrance Street, Providence.** At 2:15 P.M. all **Technical Proposals for Qualification** will be publicly opened and read at the Board of Contract Meeting in Conference Room 305, on the 3<sup>rd</sup> floor of City Hall.

- Bidders must submit **2 hard copies and a digital copy on a USB flash drive** of their bid in sealed envelopes or packages labeled “RESPONSE TO RFP Technical Proposals for Design Build Services for Public Safety Complex Roof Infrastructure Renovations” and the **City Department to which the solicitation and bid are related and must include the company name and address on the envelope as well.** (On page 1).
- Communications to the Board of Contract and Supply that are not competitive sealed bids (i.e. product information/samples) should have “**NOT A BID**” written on the envelope or wrapper.
- Only use form versions and templates included in this solicitation. If you have an old version of a form do not recycle it for use in this bid.
- **This Technical Proposal for Qualification must contain no cost information.**
- The Technical Proposal for Qualification envelope and information relative to the bid must be addressed to:

**Board of Contract and Supply  
Department of the City Clerk – City Hall, Room 311  
25 Dorrance Street  
Providence, RI 02903**

2) **Professional Cost Proposals** may be submitted up to **2:15 P.M.** on the above meeting date at the **Department of Purchasing, Room 408, City Hall, 25 Dorrance Street, Providence.** All **Professional Cost Proposals** from firms meeting the minimum Technical evaluation score threshold will be publicly opened and read on October 7, 2024 at the Board of Contract Meeting in Conference Room 305, on the 3<sup>rd</sup> floor of City Hall.

- Bidders must submit **2 hard copies and a digital copy on a USB flash drive** of their **Professional Cost Proposals** in sealed envelopes or packages labeled “Cost Proposal – Design Build Services for Public Safety Complex Roof Infrastructure Renovations” and the **City Department to which the solicitation and bid are related and must include the company name and address on the envelope as well.** (On page 1).
- The Professional Cost Proposal envelope and information relative to the bid must be addressed to:

**Department of Purchasing**



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**Providence City Hall, Room 408  
25 Dorrance Street  
Providence, RI 02903**

**\*\*PLEASE NOTE: This bid may include details regarding information that you will need to provide (such as proof of licenses) to the issuing department before the formalization of an award.**

*This information is NOT requested to be provided in your initial bid by design.*

**All bids submitted to the City Clerk become public record. Failure to follow instructions could result in information considered private being posted to the city's Open Meetings Portal and made available as a public record. The City has made a conscious effort to avoid the posting of sensitive information on the City's Open Meetings Portal, by requesting that such sensitive information be submitted to the issuing department only at their request.**

**FAILURE TO FOLLOW THESE SUBMISSION INSTRUCTIONS WILL RESULT IN DISQUALIFICATION OF THE PROPOSING FIRM.**



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**BID PACKAGE CHECKLIST**

Digital forms are available in the City of Providence Purchasing Department Office or online at <http://www.providenceri.gov/purchasing/how-to-submit-a-bid/>

The **Technical Proposal for Qualification** bid package **MUST** include the following, in this order:

- Bid Form 1: Bidder's Blank as the cover page/ 1<sup>st</sup> page (*see page 7 of this document*)
- Bid Form 2: Certification of Bidder as 2<sup>nd</sup> page (*see page 8 of this document*)
- Bid Form 3: Certificate Regarding Public Records (*see page 9 of this document*)
- Bid Form 4: Affidavit of City Vendor (*see pages 10 and 11 of this document*)

The **Professional Cost Proposal** bid package **MUST** include the following, in this order:

- Bid Form 5: Professional Fee (*see pages 12-13 of this document*)
- Forms from the Minority and Women Business Enterprise Program: Based on Bidder Category. See *forms and instructions enclosed (pages 14-15) or on:*  
<https://www.providenceri.gov/purchasing/minority-women-owned-business-mbewbe-procurement-program/>

**\*Please note: MBE/WBE forms must be completed for EVERY bid submitted and must be inclusive of ALL required signatures. Forms without all required signatures will be considered incomplete.**

- Bidder's Proposal/Packet: Formal response to the specifications outlined in this RFP, including pricing information and details related to the good(s) or service(s) being provided. Please be mindful of formatting responses as requested to ensure clarity.
- Financial Assurance, *if requested* (as indicated on page 5 of this document under "Bid Terms")

**All of the above listed documents are REQUIRED.** (With the exception of financial assurances, which are only required if specified on page 5.)

**\*\*\*Failure to meet specified deadlines, follow specific submission instructions, or enclose all required documents with all applicable signatures will result in disqualification, or in an inability to appropriately evaluate bids.**



**BOARD OF CONTRACT AND SUPPLY  
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**NOTICE TO VENDORS**

1. The Board of Contract and Supply will make the award to the lowest qualified and responsible bidder.
2. In determining the lowest responsible bidder, cash discounts based on preferable payment terms will not be considered.
3. Where prices are the same, the Board of Contract and Supply reserves the right to award to one bidder, or to split the award.
4. No proposal will be accepted if the bid is made in collusion with any other bidder.
5. Bids may be submitted on an “equal in quality” basis. The City reserves the right to decide equality. Bidders must indicate brand or the make being offered and submit detailed specifications if other than brand requested.
6. A bidder who is an out-of-state corporation shall qualify or register to transact business in this State, in accordance with the Rhode Island Business Corporation Act, RIGL Sec. 7-1.2-1401, et seq.
7. The Board of Contract and Supply reserves the right to reject any and all bids.
8. Competing bids may be viewed in person at the Department of the City Clerk, City Hall, Providence, immediately upon the conclusion of the formal Board of Contract and Supply meeting during which the bids were unsealed/opened. Bids may also be accessed electronically on the internet via the City’s [Open Meetings Portal](#).
9. As the City of Providence is exempt from the payment of Federal Excise Taxes and Rhode Island Sales Tax, prices quoted are not to include these taxes.
10. In case of error in the extension of prices quoted, the unit price will govern.
11. The contractor will **NOT** be permitted to: a) assign or underlet the contract, or b) assign either legally or equitably any monies or any claim thereto without the previous written consent of the City Purchasing Director.
12. Delivery dates must be shown in the bid. If no delivery date is specified, it will be assumed that an immediate delivery from stock will be made.
13. A certificate of insurance will normally be required of a successful vendor.
14. For many contracts involving construction, alteration and/or repair work, State law provisions concerning payment of prevailing wage rates apply ([RIGL Sec. 37-13-1 et seq.](#))
15. No goods should be delivered, or work started without a Purchase Order.
16. **Submit 2 copies of the bid to the City Clerk, unless the specification section of this document indicates otherwise.**
17. Bidder must certify that it does not unlawfully discriminate on the basis of race, color, national origin, gender, gender identity or expression, sexual orientation and/or religion in its business and hiring practices and that all of its employees are lawfully employed under all applicable federal, state and local laws, rules and regulations. (See Bid Form 2.)



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**BID TERMS**

1. Financial assurances may be required in order to be a successful bidder for Commodity or Construction and Service contracts. If either of the first two checkboxes below is checked, the specified assurance must accompany a bid, or the bid will not be considered by the Board of Contract and Supply. The third checkbox indicates the lowest responsible bidder will be contacted and required to post a bond to be awarded the contract.
  - a)  A certified check for \$\_\_\_\_\_ must be deposited with the City Clerk as a guarantee that the Contract will be signed and delivered by the bidder.
  - b)  A bid bond in the amount of 5 per centum (%) of the proposed total price, must be deposited with the City Clerk as a guarantee that the contract will be signed and delivered by the bidder; and the amount of such bid bond shall be retained for the use of the City as liquidated damages in case of default. Any person signing a bid bond as an attorney-in-fact shall include with the bid bond an original, or a photocopy or facsimile of an original, power of attorney.
  - c)  A performance and payment bond with a satisfactory surety company will be posted by the bidder in a sum equal to one hundred per centum (100%) of the awarded contract.
  - d)  No financial assurance is necessary for this item.
2. Awards will be made within **nighty (90) days of bid opening**. All bid prices will be considered firm, unless qualified otherwise. Requests for price increases will not be honored.
3. Failure to deliver within the time quoted or failure to meet specifications may result in default in accordance with the general specifications. It is agreed that deliveries and/or completion are subject to strikes, lockouts, accidents, and Acts of God.

**The following entry applies only for COMMODITY BID TERMS:**

4. Payment for partial delivery will not be allowed except when provided for in blanket or term contracts.

**The following entries apply only for CONSTRUCTION AND SERVICE BID TERMS:**

5. Only one shipping charge will be applied in the event of partial deliveries for blanket or term contracts.
6. Prior to commencing performance under the contract, the successful bidder shall attest to compliance with the provisions of the Rhode Island Worker's Compensation Act, [RIGL 28-29-1, et seq.](#) If exempt from compliance, the successful bidder shall submit a sworn Affidavit by a corporate officer to that effect, which shall accompany the signed contract.
7. Prior to commencing performance under the contract, the successful bidder shall, submit a certificate of insurance, in a form and in an amount satisfactory to the City.



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**BID FORM 1: Bidders Blank**

1. Bids must meet the attached specifications. Any exceptions or modifications must be noted and fully explained.
2. Bidder's responses must be in ink or typewritten, and all blanks on the bid form should be completed.
3. The price or prices proposed should be stated both in **WRITING** and in **FIGURES**, and any proposal not so stated may be rejected. **Contracts exceeding twelve months must specify annual costs for each year.**
4. Bids **SHOULD BE TOTALED** so that the final cost is clearly stated (unless submitting a unit price bid), however **each item should be priced individually**. Do not group items. Awards may be made on the basis of *total* bid or by *individual items*.
5. All bids **MUST BE SIGNED IN INK.**

**Name of Bidder (Firm or Individual):** \_\_\_\_\_

Contact Name: \_\_\_\_\_

Business Address: \_\_\_\_\_

Business Phone #: \_\_\_\_\_

Contact Email Address: \_\_\_\_\_

Agrees to bid on (Write the "Item Description" here): \_\_\_\_\_

If the bidder's company is based in a state other than Rhode Island, list name and contact information for a local agent for service of process that *is located within Rhode Island* \_\_\_\_\_

Delivery Date (if applicable): \_\_\_\_\_

Name of Surety Company (if applicable): \_\_\_\_\_

Total Amount in Writing\*:

**N/A – TECHNICAL PROPOSAL FOR QUALIFICATION ONLY**

Total Amount in Figures\*:

**N/A – TECHNICAL PROPOSAL FOR QUALIFICATION ONLY**

***\*If you are submitting a unit price bid, please insert "Unit Price Bid"***

***Use additional pages if necessary for additional bidding details.***

\_\_\_\_\_  
Signature of Representation

\_\_\_\_\_  
Title



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**BID FORM 2: Certification of Bidder**  
(Non-Discrimination/Hiring)

Upon behalf of \_\_\_\_\_ (Firm or Individual Bidding),

I, \_\_\_\_\_ (Name of Person Making Certification),

being its \_\_\_\_\_ (Title or "Self"), hereby certify that:

1. Bidder does not unlawfully discriminate on the basis of race, color, national origin, gender, sexual orientation and/or religion in its business and hiring practices.
2. All of Bidder's employees have been hired in compliance with all applicable federal, state and local laws, rules and regulations.

I affirm by signing below that I am duly authorized on behalf of Bidder, on  
this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

\_\_\_\_\_  
Signature of Representation

\_\_\_\_\_  
Printed Name





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**BID FORM 3: Certificate Regarding Public Records**

Upon behalf of \_\_\_\_\_ (Firm or Individual Bidding),

I, \_\_\_\_\_ (Name of Person Making Certification),

being its \_\_\_\_\_ (Title or "Self"), hereby certify an

understanding that:

1. All bids submitted in response to Requests for Proposals (RFP's) and Requests for Qualification (RFQ's), documents contained within, and the details outlined on those documents become public record upon receipt by the City Clerk's office and opening at the corresponding Board of Contract and Supply (BOCS) meeting.
2. The Purchasing Department and the issuing department for this RFP/RFQ have made a conscious effort to request that sensitive/personal information be submitted directly to the issuing department and only at request if verification of specific details is critical the evaluation of a vendor's bid.
3. The requested supplemental information may be crucial to evaluating bids. Failure to provide such details may result in disqualification, or an inability to appropriately evaluate bids.
4. If sensitive information that has not been requested is enclosed or if a bidder opts to enclose the defined supplemental information prior to the issuing department's request in the bidding packet submitted to the City Clerk, the City of Providence has no obligation to redact those details and bears no liability associated with the information becoming public record.
5. The City of Providence observes a public and transparent bidding process. Information required in the bidding packet may not be submitted directly to the issuing department at the discretion of the bidder in order to protect other information, such as pricing terms, from becoming public. Bidders who make such an attempt will be disqualified.

I affirm by signing below that I am duly authorized on behalf of Bidder, on

this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_.

\_\_\_\_\_  
Signature of Representation

\_\_\_\_\_  
Printed Name



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**BID FORM 4: Affidavit of City Vendor**

Per our Code of Ordinances [Sec. 21.-28.1 \(e\)](#), this form applies to a) the business, b) any political action committee whose name includes the name of the business, c) all persons holding ten (10) percent or greater equity interest or five thousand dollars (\$5,000.00) or greater cash value interest in the business at any time during the reporting period, d) all executive officers of the business entity, e) any spouse or dependent child of any individual identified in a) though d) above.

Executive officers who are not residents of the state of Rhode Island are exempted from this requirement.

Per [R.I.G.L. § 36-14-2](#), “Business” means a sole proprietorship, partnership, firm, corporation, holding company, joint stock company, receivership, trust, or any other entity recognized in law through which business for profit or not for profit is conducted.

Name of the person making this affidavit: \_\_\_\_\_

Position in the “Business” \_\_\_\_\_

Name of Entity \_\_\_\_\_

Address: \_\_\_\_\_

Phone number: \_\_\_\_\_

The number of persons or entities in your entity that are required to report under [Sec. 21.-28.1 \(e\)](#): \_\_\_\_\_

**Read the following paragraph and answer one of the options:**

Within the 12 month period preceding the date of this bid submission with the City of Providence, or with respect to the contracts that are not in writing within the 12 month period preceding the date of notification that the contract has reached the \$100,000 threshold, have you made campaign contributions within a calendar year to (please list all persons or entities required under [Sec. 21.-28.1 \(e\)](#)).

a. Members of the Providence City Council?  Yes  No

- If Yes, please complete the following:

Recipient(s) of the Contribution:

Contribution Date(s):

Contribution Amount(s):

b. Candidates for election or reelection to the Providence City Council?  Yes  No

- If Yes, please complete the following:

Recipient(s) of the Contribution:

Contribution Date(s):

Contribution Amount(s):



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c. The Mayor of Providence?  Yes  No

- If Yes, please complete the following:

Recipient(s) of the Contribution:

Contribution Date(s):

Contribution Amount(s):

d. Candidates for election or reelection to the office of Mayor of Providence?  Yes  No

- If Yes, please complete the following:

Recipient(s) of the Contribution:

Contribution Date(s):

Contribution Amount(s):

\_\_\_\_\_  
Signed under the pains and penalties of perjury.

\_\_\_\_\_  
Position



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**BID FORM 5: Professional Fee**

**NOTE: This form must be included in the separate "Professional Cost Proposal" and not included in the "Technical Proposal for Qualification"**

1. Bids must meet the attached specifications. Any exceptions or modifications must be noted and fully explained.
2. Bidder's responses must be in ink or typewritten, and all blanks on the bid form should be completed.
3. The price or prices proposed should be stated both in **WRITING** and in **FIGURES**, and any proposal not so stated may be rejected. **Contracts exceeding twelve months must specify annual costs for each year.**
4. Bids **SHOULD BE TOTALED** so that the final cost is clearly stated (unless submitting a unit price bid), however **each item should be priced individually**. Do not group items. Awards may be made on the basis of *total* bid or by *individual items*.
5. All bids **MUST BE SIGNED IN INK.**

**Name of Bidder (Firm or Individual):** \_\_\_\_\_

Contact Name: \_\_\_\_\_

Business Address: \_\_\_\_\_

Business Phone #: \_\_\_\_\_

Contact Email Address: \_\_\_\_\_

Agrees to bid on (Write the "Item Description" here): \_\_\_\_\_

Total Amount in Writing: \_\_\_\_\_

Total Amount in Figures: \_\_\_\_\_

**BASE BID PRICE**

The Bidder submits this bid proposal to perform all the work as defined in the attached specifications and exhibits (including but not limited to the costs of all defined services prescribed or otherwise required to complete the work, the total allowance defined herein as "Allowances", all required insurance, licensing, labor, travel, administration, office expenses, required equipment, and all Addenda).

Total Amount listed above shall match the bottom line lump sum Total on the following page. Any discrepancy between the calculation of the lump sum Total and the individual line items shall defer to the percent fees and fixed dollar amounts of individual line items A through G.



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**Bid Cost Proposal Breakdown**

A. Fixed Fee for Pre-Construction Services (Designer & Sub-Consultants)	Lump Sum	\$	
B. Fixed Fee for Pre-Construction Services (Builder)	Lump Sum	\$	
C. Fixed Percentage Fee for Construction	Lump Sum & Percentage	\$	(% )
D. Fixed Percentage Fee for General Conditions	Lump Sum & Percentage	\$	(% )
<b>TOTAL FEES</b>		\$	

The City's budget for the Work to be provided by the Design-Builder is \$2,770,000 for the sake of the bid proposal and contract award. D-B Fee for Construction will be updated upon execution of the Design-Build Amendment and establishment of the Guaranteed Maximum Price.

Proposer must also provide an itemized staffing matrix showing hourly rates for all D-B personnel who will contribute to the Project. Rates must include salary, payroll deductions, taxes, insurances, escalation, allowances to cover vacation and sick leave, employee fringe benefits, associated company overhead (including all off-site home general management, office support and accounting, office operations, telephone costs, data processing/IT costs, and any other off-site expenses), and company profit. Provide the estimated monthly time commitment in hours for each person/position providing services on the Projects. Proposer shall make distinctions in anticipated time commitments between Pre-Construction and Construction Phases.

\_\_\_\_\_  
Signature of Representation

\_\_\_\_\_  
Title



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MBE/WBE Participation Plan

**Please complete separate forms for each MBE/WBE subcontractor/supplier to be utilized on the solicitation.**

Bidder's Name:					
Bidder's Address:					
Point of Contact:					
Telephone:					
Email:					
Procurement #:					
Project Name:					
Which one of the following describes your business' status in terms of Minority and/or Woman Owned Business Enterprise certification with the State of Rhode Island? (Check all that apply).	<input type="checkbox"/> MBE	<input type="checkbox"/> WBE	<input type="checkbox"/> Neither MBE nor WBE		
<p>This form is intended to capture commitments between the prime contractor/vendor and MBE/WBE subcontractors and suppliers, including a description of the work to be performed and the percentage of the work as submitted to the prime contractor/vendor. Please note that all MBE/WBE subcontractors/suppliers must be certified by the Office of Diversity, Equity and Opportunity at the time of bid. The MBE/WBE Directory can be found <a href="#">here</a>. Please visit, the <a href="#">City's MBE/WBE page</a> for details of the program (e.g. instructions and requirements).</p> <ul style="list-style-type: none"> <li>• <b>Nonprofit organizations are not required to complete the rest of this form.</b></li> <li>• <b>Construction projects unable to identify subcontractors prior to bid submission (e.g. Design Build) are required to provide updates to the MBE/WBE Outreach Office</b></li> </ul>					
Name of Subcontractor/Supplier:					
Type of RI Certification:	<input type="checkbox"/> MBE	<input type="checkbox"/> WBE	<input type="checkbox"/> Neither		
Address:					
Point of Contact:					
Telephone:					
Email:					
Detailed Description of Work to Be Performed by Subcontractor or Materials to be Supplied by Supplier Per the Scope of Work provided in the RFP					
Total Contract Value (\$):		Subcontract Value (\$):		Participation Rate (%):	
Anticipated Date of Performance:					
I certify under penalty of perjury that the forgoing statements are true and correct.					
<b>Prime Contractor/Vendor Signature</b>				<b>Title</b>	<b>Date</b>
<b>Subcontractor/Supplier Signature</b>				<b>Title</b>	<b>Date</b>

**\*If you did not meet the 20% MBE/WBE combined participation goal, submit a Waiver Request Form.**



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**MBE/WBE Waiver Request Form**

**Fill out this form only if you did not meet the 20% MBE/WBE participation goal.  
State-certified MBE or WBE Prime Bidders are NOT REQUIRED to fill out this form.**

Submit this form to the City of Providence MBE/WBE Outreach Director, Grace Diaz, at [gdiaz@providenceri.gov](mailto:gdiaz@providenceri.gov), for review **prior to bid submission**. This waiver applies only to the current bid which you are submitting to the City of Providence and does not apply to other bids your company may submit in the future. **In case a waiver is needed, City Department Directors should not recommend a bidder for an award if this form is not included, absent or is not signed by the city of Providence MBE/WBE director.**

Prime Bidder: \_\_\_\_\_ Contact Email and Phone \_\_\_\_\_  
Company Name, Address: \_\_\_\_\_ Trade \_\_\_\_\_  
Project /Item Description (as seen on RFP): \_\_\_\_\_  
\_\_\_\_\_

To receive a waiver, you must list the certified MBE and/or WBE companies you contacted, the name of the primary individual with whom you interacted, and the reason the MBE/WBE company could not participate on this project.

MBE/WBE Company Name	Individual's Name	Company Name	Why did you choose not to work with this company?

I acknowledge the City of Providence's goal of a combined MBE/WBE participation is 20% of the total bid value. I am requesting a waiver of \_\_\_\_\_ % MBE/WBE (20% minus the value of **Box F** on the Subcontractor Disclosure Form). If an opportunity is identified to subcontract any task associated with the fulfillment of this contract, a good faith effort will be made to select MBE/WBE certified businesses as partners.

\_\_\_\_\_  
Signature of Prime Contractor /  
or Duly Authorized Representative

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Signature of City of Providence  
MBE/WBE Outreach Director /  
or Duly Authorized Representative

\_\_\_\_\_  
Printed Name of City of Providence  
MBE/WBE Outreach Director

\_\_\_\_\_  
Date Signed



**BOARD OF CONTRACT AND SUPPLY  
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## **BID PACKAGE SPECIFICATIONS**

The City of Providence Public Safety Complex building was constructed in 2001, and the roof and HVAC equipment are nearing end of life and in need of replacement. The City is seeking qualified firms to perform Design-Build (D-B) services for a full roof replacement, and to install new fully-electric rooftop HVAC units. The D-B Team will provide engineered stamped drawings for the complete demolition of existing roofing and rooftop HVAC systems and installation of new systems.

The roof shall be replaced per the specifications included in this RFP in Attachment A (pages 23 to 48).

The D-B Team shall be responsible for verifying capacity and quality of existing electrical infrastructure in order to accommodate loads from the new rooftop HVAC units, and make any improvements necessary to facilitate the new system. Every effort shall be made to re-use existing HVAC infrastructure on the interior of the building, including mechanical lines, ductwork, Fan Coil units, and VAV boxes. D-B Team shall evaluate the quality and integrity of these systems, and shall make every effort to design the new rooftop units to be compatible with these existing systems. All new mechanical and electrical equipment shall be compatible and integrated with the existing Building Automation System (BAS) on installation.

The D-B Team will work with the City's chosen vendor to coordinate the installation of a new PV Solar system on the roof. Costs for equipment and installation of the solar panels themselves are outside of this scope of work.

### **PROPOSAL EVALUATION**

Responses will be evaluated in two (2) parts by a Selection Committee for a maximum score of one hundred (100) points. Part One is defined as the Technical Proposal for Qualification and is worth eighty (80) points maximum. Part Two is defined as the Professional Cost Proposal and is worth twenty (20) points maximum. See pages 2-3 of this RFP for bid package submission instructions. The City will make an award to the firm with the proposal with the highest total score. The City reserves the right to cancel this solicitation in its entirety and reject all proposals at its sole discretion.

#### **Part One – Technical Proposal for Qualification (80 points maximum)**

Technical proposals will be evaluated based on the following criteria. Proposers are encouraged to assemble their proposals in a format that addresses the items as presented in the following outlines.

1. Experience of the Firm and Project Principals (40 points maximum)
  - 1.1. Describe in detail the firm and the firm's proposed consultant(s) general and relevant experience as well as its specific experience and qualifications for projects of this size, scope, and use classifications. Illustrate what makes this the Best Team for the project.
  - 1.2. List the percentage of work to be completed by the firm in-house and the percentage to be completed by using specialized outside consultants and subcontractors in this section. Consultants and subcontractors that specialize and have expertise in specific areas of construction disciplines related to the Scope and Project used for this project type will be given higher consideration than those with limited experience/exposure.
  - 1.3. As part of this section indicate the firm's plan for compliance with the MBE-WBE requirements inclusion.
  - 1.4. Address if your firm has the "A" Team Staff and Subcontractors and others already on standby to achieve the fast-track timeline for this project.
  - 1.5. Does the Proposal illustrate that the Project Manager and each consultant project manager(s) assigned to the project have the background and experience necessary for a successful project?
  - 1.6. Does the proposal include an organization matrix of the overall team?
2. Project Plan and Team Performance Review (30 points maximum)





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- 2.1. This section shall describe the firm's understanding of the City's requirement, including the result(s) intended and desired, the approach and/or method to be employed, and a Work Plan for accomplishing the results proposed, it must include a proposed project schedule with personnel assignments to project tasks.
- 2.2. Proposals must provide answers to the following questions:
  - 2.2.1. Does the presentation illustrate that the Offeror has analyzed, interpreted, and understands issues presented by the project?
  - 2.2.2. Does the plan provide solutions for the issues presented by the project in a manner likely to meet the needs of the client and other customers and end users?
  - 2.2.3. Does the proposed plan appear sensitive to budget and time constraints?
  - 2.2.4. Does the plan address relevant design and program issues, by providing possible solutions?
  - 2.2.5. Does the plan include a discussion of the Value of Engineering that may be required once all program requirements are identified?
  - 2.2.6. Does the plan include a discussion regarding LEED® standards and proposed goals?
  - 2.2.7. Does the Offeror identify both constraints and opportunities posed by this project?
  - 2.2.8. Does the firm describe its current workload and the availability personnel to perform the project?
  - 2.2.9. Provide a narrative related to past performance on projects of this size and complexity by identifying your and sub-consultant's statistical information on the following:
    - 2.2.9.1. Average amount of Error and Omission claims due to Construction Documents Quality.
    - 2.2.9.2. Typical Constructability Issues Encountered.
    - 2.2.9.3. Typical Change Orders due to issues systemic in the Construction Documents.
    - 2.2.9.4. Typical Number of Valid Requests for Information during Construction.
3. References (10 points maximum)
  - 3.1. Select a minimum of three (3) and a maximum of five (5) projects and provide principal contacts, including all contact information (confirmed), for projects of a similar size and scope and use to the Public Safety Complex Project. These individuals may be contacted by members of the selection committee for further information. Kindly assure that all contact information is current.
  - 3.2. Proposals must provide answers to the following questions:
    - 3.2.1. Were the references provided related to projects of a similar size, scope, and use to the proposed project?
    - 3.2.2. Did the D-B Team's final project provide a good design and program fit that serves the client well?
    - 3.2.3. Did the D-B Team identify problems and issues in a timely and complete manner and have solutions in hand at the time of the presentation?
    - 3.2.4. Were technical, budget, and aesthetic issues fairly balanced with a good outcome resulting?
    - 3.2.5. Did the D-B Team adequately research relevant design and program issues?
    - 3.2.6. Was the D-B Teams design process characterized by effective communication, clear graphic and verbal presentations, and appropriate inclusion of all designated stakeholders?

Firms may be required to submit additional written information or may be asked to attend an interview with the Selection Committee including a presentation on the firm's proposal and Q&A. The Selection Committee, at its sole discretion, may conduct interviews with as many or as few of the proposing firms as it deems appropriate.



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Technical evaluations will be scored prior to opening of the Cost Proposals, and firms must score a minimum threshold of sixty-five (65) points in order for their Cost Proposals to be opened. Firms scoring less than threshold sixty-five (65) points will be disqualified from the solicitation.

**Part Two – Professional Cost Proposal (20 points maximum)**

The project fees presented shall include all costs to provide complete and full services anticipated and defined in this RFP including additional Team Members that may not be defined herein that the proposing firm feels is required to be part of the team to successfully accomplish the project.

The Professional Cost Proposal shall be submitted as a Lump Sum price. The price must be provided on the attached Professional Cost Proposal form (page 12-13). This shall include as separate line items: Preconstruction Designer's Fee as a fixed lump sum; Preconstruction Builder's Fee as a fixed lump sum; Construction D-B Fee as a fixed percentage of total GMP; costs for General Conditions as a fixed percentage of total GMP.

The D-B Team Fee Proposal shall be based on efforts to meet the requirements of all design and associated efforts defined and/or otherwise prescribed herein based on a project with a total completed construction value of an estimated Two Million Seven Hundred and Seventy Thousand Dollars (\$2,770,000.00).

The D-B's GMP (Guaranteed Maximum Price) bid shall be based upon a project cost of Two Million Seven Hundred and Seventy Thousand Dollars (\$2,770,000.00). The D-B Team shall prepare a GMP for submission per the contract. The GMP figure will be revised with the consent of the Owner.

The D-B Team shall be responsible for developing a GMP as follows:

1. An estimated Guaranteed Maximum Price (GMP) based upon the documents within this Request for Proposal. Said Guaranteed Maximum Price shall be an estimate with value engineering performed by the Contractor and Rowse Architects to achieve the Owner's budget.
2. D-B Fee based as a percentage of total GMP.
3. D-B's General Conditions based on cost of the work expressed in a percentage of cost of the total GMP.
4. Cost of Performance and Payment Bond for each \$100,000 of Contract.
5. A minimum of three (3) bids per trade, if the D-B is self-performing a specific trade detailed list shall be provided, including three (3) subcontractor bids.

The proposal with the lowest opened Total Fee from the Cost Proposal Bid Form, page 13 of this RFP shall receive the full 20 points. The other opened Professional Cost Proposals shall be allocated points according to the following formula:

$$\text{Awarded Points for Cost Proposal} = ((\text{Lowest Estimated Total Fee}) \times 20) / (\text{Firm's Estimated Total Fee})$$

For example, if the lowest Estimated Total Fee is \$1,000,000.00, the awarded points for a proposal with a Total Fee of \$1,500,000.00 would be:  $(1,000,000 \times 20) / (1,500,000) = \underline{13.3}$ .

**PROVISIONS OF THIS PROJECT**



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- Upon the issuance of the award from the Board of Contract and Supply – the City/PPBA shall issue a contract to be executed by the City/PPBA and the vendor incorporating the bid specifications. All provisions of the specifications are binding.
- Any permits required by the City of Providence and/or State of Rhode Island shall be obtained by the vendor – permit fees by the City of Providence shall be waived – the State ADA fee must be paid
- The Davis Bacon Act applies– prevailing wages must be paid for on site hours – employees shall be advised of the prevailing wage rates prior to mobilization on site.
- All on-site personnel shall be licensed and/or registered with the State of Rhode Island (as required) and shall have proof of all licenses/registrations required by the State of Rhode Island to perform the work required



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## **SUPPLEMENTAL INFORMATION**

If the issuing department for this RFP determines that your firm's bid is best suited to accommodate their need, you will be asked to provide proof of the following prior to formalizing an award.

An inability to provide the outlined items at the request of the department may lead to the disqualification of your bid.

*This information is **NOT** requested to be provided in your initial bid that you will submit to the City Clerk's office by the "date to be opened" noted on page 1. This list only serves as a list of items that your firm should be ready to provide on request.*

**All bids submitted to the City Clerk become public record. Failure to follow instructions could result in information considered private being posted to the city's Open Meetings Portal and made available as a public record.**

### **You must be able to provide:**

- Business Tax ID will be requested after an award is approved by the Board of Contract and Supply.
- Proof of Insurance.
- Certificate of Good Standing with the Rhode Island Secretary of State.

The following additional Attachments are included as part of this RFP:

- Attachment A – Specifications (pages 23 – 48)
- Attachment B – Draft AIA A141 Agreement (pages 49 – 106)
- Attachment C – Apprentice and First Source Requirements (pages 107 – 109)



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**CITY OF PROVIDENCE STANDARD TERMS & CONDITIONS**

1. The terms “you” and “your” contained herein refer to the person or entity that is a party to the agreement with the City of Providence (“the City”) and to such person’s or entity’s employees, officers, and agents.
2. The Request For Proposals (“RFP”) and these Standard Terms and Conditions together constitute the entire agreement of the parties (“the Agreement”) with regard to any and all matters. By your submission of a bid proposal or response to the City’s RFP, you accept these Standard Terms & Conditions and agree that they supersede any conflicting provisions provided by bid or in any terms and conditions contained or linked within a bid and/or response. Changes in the terms and conditions of the Agreement, or the scope of work thereunder, may only be made by a writing signed by the parties.
3. You are an independent contractor and in no way does this Agreement render you an employee or agent of the City or entitle you to fringe benefits, workers’ compensation, pension obligations, retirement or any other employment benefits. The City shall not deduct federal or state income taxes, social security or Medicare withholdings, or any other taxes required to be deducted by an employer, and this is your responsibility to yourself and your employees and agents.
4. You shall not assign your rights and obligations under this Agreement without the prior written consent of the City. Any assignment without prior written consent of the City shall be voidable at the election of the City. The City retains the right to refuse any and all assignments in the City’s sole and absolute discretion.
5. Invoices submitted to the City shall be payable sixty (60) days from the time of receipt by the City. Invoices shall include support documentation necessary to evidence completion of the work being invoiced. The City may request any other reasonable documentation in support of an invoice. The time for payment shall not commence, and invoices shall not be processed for payment, until you provide reasonably sufficient support documentation. In no circumstances shall the City be obligated to pay or shall you be entitled to receive interest on any overdue invoice or payment. In no circumstances shall the City be obligated to pay any costs associated with your collection of an outstanding invoice.
6. For contracts involving construction, alteration, and/or repair work, the provisions of applicable state labor law concerning payment of prevailing wage rates (R.I. Gen. Laws §§ 37-13-1 et seq., as amended) and the City’s First Source Ordinance (Providence Code of Ordinances §§ 21-91 et seq., as amended) apply.
7. With regard to any issues, claims, or controversies that may arise under this Agreement, the City shall not be required to submit to dispute resolution or mandatory/binding arbitration. Nothing prevents the parties from mutually agreeing to settle any disputes using mediation or non-binding arbitration.
8. To the fullest extent permitted by law, you shall indemnify, defend, and hold harmless the City, its employees, officers, agents, and assigns from and against any and all claims, damages, losses, allegations, demands, actions, causes of action, suits, obligations, fines, penalties, judgments, liabilities, costs and expenses, including but not limited to attorneys’ fees, of any nature whatsoever arising out of, in connection with, or resulting from the performance of the work provided in the Agreement.
9. You shall maintain throughout the term of this Agreement the insurance coverage that is required by the RFP or, if none is required in the RFP, insurance coverage that is considered in your industry to be commercially reasonable, and you agree to name the City as an additional insured on your general liability policy and on any umbrella policy you carry.
10. The City shall not subject itself to any contractual limitations on liability. The City shall have the time permitted within the applicable statute of limitations, and no less, to bring or assert any and all causes of action, suits, claims or demands the City may have arising out of, in connection with, or resulting from the performance of the work provided in the Agreement, and in no event does the City agree to limit your liability to the price of the Agreement or any other monetary limit.
11. The City may terminate this Agreement upon five (5) days’ written notice to you if you fail to observe any of the terms and conditions of this Agreement, or if the City believes your ability to perform the



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terms and conditions of this Agreement has been materially impaired in any way, including but in no way limited to loss of insurance coverage, lapsing of a surety bond, if required, declaration of bankruptcy, or appointment of a receiver. In the event of termination by the City, you shall be entitled to just and equitable compensation for any satisfactory work completed and expenses incurred up to the date of termination.

12. Written notice hereunder shall be deemed to have been duly served if delivered in person to the individual or member of the firm or entity or to an officer of the entity for whom it was intended, or if delivered at or sent by registered or certified mail to the last business address known by the party providing notice.
13. In no event shall the Agreement automatically renew or be extended without a writing signed by the parties.
14. You agree that products produced or resulting from the performance of the Agreement are the sole property of the City and may not be used by you without the express written permission of the City.
15. For any Agreement involving the sharing or exchange of data involving potentially confidential and/or personal information, you shall comply with any and all state and/or federal laws or regulations applicable to confidential and/or personal information you receive from the City, including but not limited to the Rhode Island Identity Theft Protection Act, R.I. Gen. Laws § 11-49.3-1, during the term of the Agreement. You shall implement and maintain appropriate physical, technical, and administrative security measures for the protection of, and to prevent access to, use, or disclosure of, confidential and/or personal information. In the event of a breach of such information, you shall notify the City of such breach immediately, but in no event later than twenty-four (24) hours after discovery of such breach.
16. The Agreement is governed by the laws of the State of Rhode Island. You expressly submit yourself to and agree that any and all actions arising out of, in connection with, or resulting from the performance of the Agreement or relationship between the parties shall occur solely in the venue and jurisdiction of the State of Rhode Island or the federal court located in Rhode Island.
17. The failure of the City to require performance of

any provision shall not affect the City's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

18. If any term or provision of this Agreement, or the application thereof to any person or circumstance shall, in any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each term and provision shall be valid and enforceable to the fullest extent permitted by law.

SECTION 07220  
ROOF DECK AND INSULATION

PART 1 – GENERAL

1.1 RELATED DOCUMENTS

1.2 SUMMARY

- A. Section includes roof insulation over the properly prepared deck substrate.
- B. Related Sections:
  - 1. Section 07 05 00 – Common Work Procedures for Thermal and Moisture Protection.
  - 2. Section 07 62 00 – Sheet Metal Flashing and Trim.

1.3 REFERENCES

- A. American Society for Testing and materials (ASTM):
  - 1. ASTM A167 Standard Specification for Stainless and Heat-Resisting Chromium Nickel Steel Plate, Sheet and Strip.
  - 2. ASTM A653 Standard Specification for Steel Sheet, Zinc-Coated (Galvanized) or Zinc-Iron Alloy-Coated (Galvanized) by the Hot-Dip Process.
  - 3. ASTM B29 Standard Specification for Refined Lead.
  - 4. ASTM B32 Standard Specification for Solder Metal.
  - 5. ASTM C165 Standard Test Method for Measuring Compressive Properties of Thermal Insulation.
  - 6. ASTM C208 Standard Specification for Cellulosic Fiber Insulation Board.
  - 7. ASTM C209 Standard Test Method for Cellulosic Fiber Insulating Board.
  - 8. ASTM C272 Standard Test Method for Water Absorption of Core Materials for Structural Sandwich Constructions.
  - 9. ASTM C1396 Standard Specification for Gypsum Wallboard.
  - 10. ASTM C518 Standard Test Method for Steady-State Heat Flux Measurements and Thermal Transmission Properties by Means of the Heat Flow Meter Apparatus.
  - 11. ASTM C578 Standard Specification for Perlite Thermal Insulation Board.
  - 12. ASTM C728 Standard Test Methods for Fire Test of Roof Coverings.
  - 13. ASTM C1289 Standard Specification for Faced Rigid Polyisocyanurate Thermal Insulation.
  - 14. ASTM D5 Standard Test Method for Penetration of Bituminous Materials.
  - 15. ASTM D36 Standard Test Method for Softening Point of Bitumen (Ring and Ball Apparatus).
  - 16. ASTM D312 Standard Specification for Asphalt Used in Roofing.
  - 17. ASTM D412 Standard Test Methods for Vulcanized Rubber and Thermoplastic Rubbers and Thermoplastic Elastomers-Tension.
  - 18. ASTM D1621 Standard Test Method for Compressive Properties of Rigid Cellular Plastics.
  - 19. ASTM D1622 Standard Test Method for Apparent Density of Rigid Cellular Plastics.
  - 20. ASTM D1863 Standard Specification for Mineral Aggregate Used on Built-Up Roofs.
  - 21. ASTM D2126 Standard Test Method for Response off Rigid Cellular Plastics to Thermal Humid Aging.
  - 22. ASTM D2178 Standard Specification for Asphalt Glass Felts used in Roofing and Waterproofing.
  - 23. ASTM D4601 Standard Specification for Asphalt-Coated Glass Fiber Base Sheet Used in Roofing.
  - 24. ASTM D5147 Standard Sampling and Testing Modified Bituminous Sheet Material.

- B. Cast Iron Soil Pipe Institute, Washington, D.C. (CISPI)
- C. Factory Mutual Research (FM):
  - 1. Roof Assembly Classifications.
- D. National Roofing Contractors Association (NRCA):
  - 1. Roofing and Waterproofing Manual.
- E. Underwriters Laboratories, Inc. (UL):
  - 1. Fire Hazard Classifications.
- F. Warnock Hersey (WH):
  - 1. Fire Hazard Classifications.
- G. Sheet Metal and Air Conditioning Contractors National Association (SMACNA)
- H. Steel Deck Institute, St. Louis, Missouri (SDI)
- I. Southern Pine Inspection Bureau, Pensacola, Florida (SPIB)
- J. Insulation Board, Polyisocyanurate (FS HH-I-1972)

#### 1.4 SUBMITTALS

- A. Product Data: Provide manufacturer's specification data sheets for each product in accordance with Division 01 Section Submittal Procedures. 01300.
- B. Provide approval letters from insulation manufacturer for use of their insulation within this particular roofing system type.
- C. Provide a sample of each insulation type.
- D. Shop Drawings
  - 1. Submit manufacturer's shop drawings indicating complete installation details of tapered insulation system, including identification of each insulation block, sequence of installation, layout, drain/scupper locations, roof slopes, thicknesses, crickets and saddles.
  - 2. Shop drawing shall include: Outline of roof, location of drains/scuppers, complete board layout of tapered insulation components, thickness and the average "R" value for the completed insulation system.
- E. Certification
  - 1. Submit roof manufacturer's certification that insulation fasteners furnished are acceptable to roof manufacturer.
  - 2. Submit roof manufacturer's certification that insulation furnished is acceptable to roofing manufacturer as a component of roofing system and is eligible for roof manufacturer's system warranty.

#### 1.5 QUALITY ASSURANCE

- A. Fire Classification, ASTM E-108.



- B. Manufacturer's Certificate: Certify that roof system furnished is approved by Factory Mutual, in accordance with ASTM E108, Class A for external fire and meets local or nationally recognized building codes.
- C. Manufacturer's Certificate: Certify that the roof system is adhered properly to meet or exceed the requirements of FM.
- D. Pre-installation meeting: Refer to Division 07 roofing specifications for pre-installation meeting requirements.

## 1.6 DELIVERY, STORAGE AND HANDLING

- A. Deliver products to site with seals and labels intact, in manufacturer's original containers, dry and undamaged.
- B. Store all insulation materials in a manner to protect them from the wind, sun and moisture damage prior to and during installation. Any insulation that has been exposed to any moisture shall be removed from the project site.
- C. Keep materials enclosed in a watertight, ventilated enclosure (i.e. tarpaulins).
- D. Store materials off the ground. Any warped, broken or wet insulation boards shall be removed from the site.

## PART 2 – PRODUCTS

### 2.1 PRODUCTS, GENERAL

- A. Basis of Design: Hunter H-Shield, supplied by Commercial Innovations, Inc., Cleveland, OH. Materials, manufacturer's product designations, and/or manufacturer's names specified herein shall be regarded as the minimum standard of quality required for work of this Section. Meet or exceed all manufacturer and contractor/fabricator quality and performance criteria specified.
- B. Substitutions: Products proposed as equal to the products specified in this Section shall be submitted in accordance with Bidding Requirements.
  - 1. Proposals shall be accompanied by a copy of the manufacturer's standard specification section. Substitution requests containing specifications without licensed engineer certification shall be rejected for non-conformance.
  - 2. Include a list of three (3) projects of similar type and extent, located within a one hundred mile radius from the location of the project. In addition, the three projects must be at least five (5) years old and be available for inspection by the Architect, Owner or Owner's Representative.
  - 3. Equivalency of performance criteria, warranty terms, submittal procedures, and contractual terms will constitute the basis of acceptance.
  - 4. The Owner's decision regarding substitutions will be considered final. Unauthorized substitutions will be rejected.
  - 5. Substitutions must be submitted ten (10) days prior to bid opening.

### 2.2 INSULATION MATERIALS

- A. Thermal Insulation Properties and Approved Insulation Boards.
  - 1. Rigid Polyisocyanurate Roof Insulation; ASTM C1289:
    - a. Qualities: Rigid, closed cell polyisocyanurate foam core bonded to heavy duty glass fiber mat facers.

- b. Board Size: Four by four feet (4' x 4')
  - c. Thickness: Two (2) layers of 2.6", Total 5.2"
  - d. Compliances: RI Building Code
  - e. Acceptable Product: Johns Manville ENRGY 3 / Hunter H-Shield
2. Tapered Polyisocyanurate Roof Insulation; ASTM C1289:
- a. Qualities: Factory Tapered, closed cell polyisocyanurate foam core bonded to heavy-duty glass fiber mat facers.
  - b. Field: 1/4" tapered insulation. See tapered drawing for specific layout. Contractor to verify all structural/tapered slopes and quantities.
  - c. Crickets/Saddles: 1/2":12" slope
  - d. Install tapered crickets and saddles between all drains and scuppers, and on the upslope side of all curbs to ensure positive drainage. Use a 2:1 length to width ratio per NRCA recommendations.
  - e. Compliances: RI Building Code
  - f. Acceptable Product: Johns Manville ENRGY 3 / Hunter H-Shield
3. Gypsum Roof Board:
- a. Qualities: Nonstructural, noncombustible, homogenous composition panel.
  - b. Board Size: Four by four feet (4' x 4').
  - c. Thickness: 1/2"
  - d. Compliances: RI Building Code
  - e. Acceptable Product: Dens-Deck Primed

## 2.3 RELATED MATERIALS

- A. Fiber Cant and Tapered Edge Strips: Performed rigid insulation units of sizes/shapes indicated, matching insulation board or of perlite or organic fiberboard, as per the approved manufacturer. Use tapered edge along perimeter wood blocking to create an acceptable transition, as necessary.
- B. Roof Deck Insulation Adhesive: Dual-component, high-rise foam adhesive as recommended by insulation manufacturer.
- 1. Tensile Strength (ASTM D412).....250 psi
  - 2. Density (ASTM D1875).....8.5 lbs./gal.
  - 3. Viscosity (ASTM D2556).....22,000 to 60,000 cP.
  - 4. 2` Peel Strength (ASTM D903).....17 lb/in.
  - 5. 3` Flexibility (ASTM D816).....Pass @ -70°F
  - 6. **Refer to the specific wind uplift calcs associated with each deck type/elevation for specific adhesives, ribbon sizes and installation requirements.**
- C. Fasteners: Corrosion resistant screw fastener as recommended by Factory Mutual and the roofing membrane manufacturer.
- 1. Factory Mutual Tested and Approved with three (3) inches coated disc for length required to penetrate wood deck one inch.
  - 2. **Refer to the specific wind uplift calcs associated with each deck type/elevation for specific fastener sizes and installation requirements.**

## PART 3 – EXECUTION

### 3.1 EXECUTION, GENERAL

- A. Comply with requirements of Division 01 Section "Common Execution Requirements."

### 3.2 INSPECTOR OF SURFACES

- A. Roofing contractor shall be responsible for preparing an adequate substrate to receive insulation.
  - 1. Verify that work which penetrates roof deck has been completed.
  - 2. Verify that wood nailers are properly and securely installed.
  - 3. Examine surfaces for defects, rough spots, ridges, depressions, foreign material, moisture, and unevenness.
  - 4. Do not proceed until defects are corrected.
  - 5. Do not apply insulation until substrate is sufficiently dry.
  - 6. Broom clean substrate immediately prior to application.
  - 7. Use additional insulation to fill depressions and low spots that would otherwise cause ponding water.

### 3.3 INSTALLATION

- A. Attachment with Mechanical Fasteners
  - 1. Approved insulation board shall be fully attached to the deck with an approved mechanical fastening system. As a minimum, the amount of fasteners shall be in accordance with wind uplift requirements.
  - 2. Filler pieces of insulation require at least two fasteners per piece if size of insulation is less than four square feet.
  - 3. Spacing pattern of fasteners shall be as per manufacturer's recommendations to meet the uplift requirements. Placement of any fastener from edge of insulation board shall be a minimum of three inches, and a maximum of six (6) inches.
  - 4. Minimum penetration into deck shall be as recommended by the fastener manufacturer. There is a one (1) inch minimum for metal, wood and structural concrete decks where not specified by the manufacturer.
  - 5. The specified flat/tapered insulation, and recovery board must be **simultaneously** fastened to the wood deck per manufacturer's Wind Uplift calculations.
  - 6. **All fasteners and fastening patterns must meet the specific wind uplift requirements, as described in manufacturer's Wind Uplift Calculations referenced. Zone 1 – 11 fasteners per 4 x 8' board, Zone 2 - 17 fasteners per 4 x 8' board, 24 fasteners per 4 x 8' board**

### 3.4 CLEANING

- A. Remove debris and cartons from roof deck. Leave insulation clean and dry, ready to receive roofing membrane.

### 3.5 CONSTRUCTION WASTE MANAGEMENT

- A. Remove and properly dispose of waste products generated during installation. Comply with requirements of authorities having jurisdiction.

END OF SECTION

SECTION 07550  
MODIFIED BITUMINOUS MEMBRANE ROOFING

PART 1 GENERAL

1.1 SECTION INCLUDES

- A. Cold Applied 2-Ply Asphalt Roofing

1.2 RELATED SECTIONS

- A. Section 07220 - Insulation Board: Insulation and fastening.
- B. Section 07620 - Sheet Metal Flashing and Trim: Weather protection for base flashings.

1.3 REFERENCES

- A. ASTM D 41 - Standard Specification for Asphalt Primer Used in Roofing, Dampproofing, and Waterproofing.
- B. ASTM D 312 - Standard Specification for Asphalt used in Roofing.
- C. ASTM D 451 - Standard Test Method for Sieve Analysis of Granular Mineral Surfacing for Asphalt Roofing Products.
- D. ASTM D 1079 Standard Terminology Relating to Roofing, Waterproofing and Bituminous Materials.
- E. ASTM D 1863 Standard Specification for Mineral Aggregate Used as a Protective Coating for Roofing.
- F. ASTM D 2822 Standard Specification for Asphalt Roof Cement.
- G. ASTM D 5147 Standard Test Method for Sampling and Testing Modified Bituminous Sheet Materials.
- H. ASTM D 6162 Standard Specification for Styrene Butadiene Styrene (SBS) Modified Bituminous Sheet Materials Using a Combination of Polyester and Glass Fiber Reinforcements.
- I. ASTM E 108 - Standard Test Methods for Fire Test of Roof Coverings
- J. Factory Mutual Research (FM): Roof Assembly Classifications.
- K. National Roofing Contractors Association (NRCA): Roofing and Waterproofing Manual.
- L. Sheet Metal and Air Conditioning Contractors National Association, Inc. (SMACNA) - Architectural Sheet Metal Manual.
- M. Underwriters Laboratories, Inc. (UL): Fire Hazard Classifications.
- N. Warnock Hersey (WH): Fire Hazard Classifications.
- O. ANSI-SPRI ES-1 Wind Design Standard for Edge Systems used with Low Slope Roofing Systems.
- P. ASCE 7, Minimum Design Loads for Buildings and Other Structures

Q. UL - Fire Resistance Directory.

#### 1.4 DESIGN / PERFORMANCE REQUIREMENTS

- A. Perform work in accordance with all federal, state and local codes.
- B. Exterior Fire Test Exposure: Roof system shall achieve a UL, FM or WH Class rating for roof slopes indicated on the Drawings as follows:
  - 1. Factory Mutual Class A Rating.
  - 2. Underwriters Laboratory Class A Rating.
  - 3. Warnock Hersey Class A Rating.
- C. Design Requirements:
  - 1. Uniform Wind Uplift Load Capacity
    - a. Installed roof system shall withstand negative (uplift) design wind loading pressures complying with the following criteria.
      - 1) Design Code: ASCE 7-16 ASD
      - 2) Importance Category: III
      - 3) Importance Factor of: 1
      - 4) Wind Speed: 134 mph
      - 5) Ultimate Pullout Value: N/A
      - 6) Exposure Category: B
      - 7) Design Roof Height: 192 feet.
      - 8) Minimum Building Width: 59 feet.
      - 9) Roof Pitch: 1/4:12
      - 10) Roof Area Design Uplift Pressure:
        - a) Zone 1 - Field of roof 66.4 psf
        - b) Zone 2 - Eaves, ridges, hips and rakes 97.0 psf
        - c) Zone 3 - Corners 97.0 psf
        - d) Zone 4 - Wall Perimeter 44.4 psf
        - e) Zone 5 - Wall Corner 72.0 psf
        - f) Zone 2 & 3 Width - 5'11"
        - g) Zone 3 Length - 11'10"

#### 1.5 SUBMITTALS

- A. Submit under provisions of Section 01300.
- B. Product Data: Manufacturer's data sheets on each product to be used, including:
  - 1. Preparation instructions and recommendations.
  - 2. Storage and handling requirements and recommendations.
  - 3. Installation instructions.
- C. Shop Drawings: Submit shop drawings including installation details of roofing, flashing, fastening, insulation, including notation of roof slopes and adhesion patterns of insulation and base modified bitumen membrane, prior to job start.
- D. Design Pressure Calculations: Submit design pressure calculations for the roof area in accordance with ASCE 7 and local Building Code requirements. Include a roof system attachment analysis report, certifying the system's compliance with applicable wind load requirements before Work begins.
- E. Verification Samples: For each modified bituminous membrane ply product specified, two samples, minimum size 6 inches (150 mm) square, representing actual product, color, and patterns.
- F. Manufacturer's Certificates: Provide to certify products meet or exceed specified

requirements.

- G. Test Reports: Submit test reports, prepared by an independent testing agency, for all modified bituminous sheet roofing, indicating compliance with ASTM D5147. Testing must be performed at 77 deg. F. Tests at 0 deg. F will not be considered.
- H. Manufacturer's Fire Compliance Certificate: Certify that the roof system furnished is approved by Factory Mutual (FM), Underwriters Laboratories (UL), Warnock Hersey (WH) or approved third party testing facility in accordance with ASTM E108, Class A for external fire and meets local or nationally recognized building codes.
- I. Closeout Submittals: Provide manufacturer's maintenance instructions that include recommendations for periodic inspection and maintenance of all completed roofing work. Provide product warranty executed by the manufacturer. Assist Owner in preparation and submittal of roof installation acceptance certification as may be necessary in connection with fire and extended coverage insurance on roofing and associated work.

#### 1.6 QUALITY ASSURANCE

- A. Perform Work in accordance with NRCA Roofing and Waterproofing Manual.
- B. Manufacturer Qualifications: Company specializing in manufacturing products specified with documented ISO 9001 certification and minimum of twelve years of documented experience and must not have been in Chapter 11 bankruptcy during the last five years.
- C. Installer Qualifications: Company specializing in performing Work of this section with minimum five years documented experience and a certified Pre-Approved Contractor with manufacturer specified. Installer shall produce evidence of completing 5 projects of similar scope within a 50 mile radius of this project.
- D. Installer's Field Supervision: Maintain a full-time Supervisor/Foreman on job site during all phases of roofing work while roofing work is in progress.
- E. Product Certification: Provide manufacturer's certification that materials are manufactured in the United States and conform to requirements specified herein, are chemically and physically compatible with each other, and are suitable for inclusion within the total roof system specified herein.
- F. Source Limitations: Obtain all components of roof system from a single manufacturer. Secondary products that are required shall be recommended and approved in writing by the roofing system Manufacturer. Upon request of the Architect or Owner, submit Manufacturer's written approval of secondary components in list form, signed by an authorized agent of the Manufacturer.

#### 1.7 PRE-INSTALLATION MEETINGS

- A. Convene minimum two weeks prior to commencing Work of this section.
- B. Review installation procedures and coordination required with related Work.
- C. Inspect and make notes of job conditions prior to installation:
  - 1. Record minutes of the conference and provide copies to all parties present.
  - 2. Identify all outstanding issues in writing designating the responsible party for follow-up action and the timetable for completion.
  - 3. Installation of roofing system shall not begin until all outstanding issues are resolved to the satisfaction of the Architect.

#### 1.8 DELIVERY, STORAGE, AND HANDLING

- A. Deliver and store products in manufacturer's unopened packaging with labels intact until ready for installation.
- B. Store all roofing materials in a dry place, on pallets or raised platforms, out of direct exposure to the elements until time of application. Store materials at least 4 inches above ground level and covered with "breathable" tarpaulins.
- C. Stored in accordance with the instructions of the manufacturer prior to their application or installation. Store roll goods on end on a clean flat surface except store KEE-Stone FB 60 rolls flat on a clean flat surface. No wet or damaged materials will be used in the application.
- D. Store at room temperature wherever possible, until immediately prior to installing the roll. During winter, store materials in a heated location with a 50 degree F (10 degree C) minimum temperature, removed only as needed for immediate use. Keep materials away from open flame or welding sparks.
- E. Avoid stockpiling of materials on roofs without first obtaining acceptance from the Architect/Engineer.
- F. Adhesive storage shall be between the range of above 40 degree F (4 degree C) and below 80 degree F (27 degree C). Area of storage shall be constructed for flammable storage.

#### 1.9 COORDINATION

- A. Coordinate Work with installing associated metal flashings as work of this section proceeds.

#### 1.10 PROJECT CONDITIONS

- A. Maintain environmental conditions (temperature, humidity, and ventilation) within limits recommended by manufacturer for optimum results. Do not install products under environmental conditions outside manufacturer's absolute limits.

#### 1.11 WARRANTY

- A. Upon completion of the work, provide the Manufacturer's written and signed NDL Warranty, warranting that, if a leak develops in the roof during the term of this warranty, due either to defective material or defective workmanship by the installing contractor, the manufacturer shall provide the Owner, at the Manufacturer's expense, with the labor and material necessary to return the defective area to a watertight condition.
  - 1. Warranty Period: **(Base Bid)**
    - a. 30 years from date of acceptance.
  - 2. Warranty Period: **(Add Alternate Only)**
    - a. 40 years from date of acceptance.
- B. Installer is to guarantee all work against defects in materials and workmanship for a period indicated following final acceptance of the Work.
  - 1. Warranty Period:
    - a. 2 years from date of acceptance.

### PART 2 PRODUCTS

#### 2.1 MANUFACTURERS

- A. Basis of Design: The Garland Company, Inc.: 3800 E. 91st St.; Cleveland, OH 44105; Tel: 401-500-2901; Email: [dwall@garlandind.com](mailto:dwall@garlandind.com)
- B. Substitutions/approved equals: Products proposed, as equal to the products specified in this Section shall be submitted in accordance with the specifications. Substitutions and proposed

equals must be submitted to the Owner ten (10) days prior to bid date.

- C. A copy of the manufacturer's standard specification section shall accompany proposals. That specification section shall be signed and sealed by a professional engineer licensed in the state in which the installation is to take place. Substitution requests containing specifications without licensed engineer certification shall be rejected for non-conformance.
- D. Include a list of three (3) projects of similar type and extent, located within a fifty-mile radius from the location of the project. In addition, the three projects must be at least five (5) years old and be available for inspection by the Architect, Owner or Owner's Representative.
- E. Equivalency of performance criteria, warranty terms, submittal procedures, and contractual terms will constitute the basis of acceptance.
- F. The Owner's decision regarding substitutions will be considered final. Unauthorized substitutions will be rejected.

## 2.2 COLD APPLIED 2-PLY MODIFIED BITUMINOUS ASPHALT ROOFING

- A. Base (Ply) Sheets: One ply bonded to the prepared substrate with cold adhesive.
- B. Cap (Ply) Sheet: One ply bonded to the prepared substrate with cold adhesive.
- C. Flashing Base Ply: One ply bonded to the prepared substrate with cold adhesive.
- D. Flashing Cap (Ply) Sheet: One ply bonded to the prepared substrate with cold adhesive.

## 2.3 EDGE TREATMENT AND ROOF PENETRATION FLASHINGS

- A. Pitch pans, Rain Collars and Plumbing Sleeves shall be fabricated from 20oz (567gram) copper. All joints should be welded/soldered watertight. See details for design.
- B. Drain Flashings should be 4lb (1.8kg) sheet lead formed and rolled.
- C. Fabricated Flashings: Fabricated flashings and trim are specified in Section 07620.
  - 1. Fabricated flashings and trim shall conform to the detail requirements of SMACNA "Architectural Sheet Metal Manual" and/or the CDA Copper Development Association "Copper in Architecture - Handbook" as applicable.

## PART 3 EXECUTION

### 3.1 EXAMINATION

- A. Do not begin installation until substrates have been properly prepared.
- B. Inspect and approve the deck condition, slopes and fastener backing if applicable, parapet walls, expansion joints, roof drains, stack vents, vent outlets, nailers and surfaces and elements.
- C. Verify that work penetrating the roof deck, or which may otherwise affect the roofing, has been properly completed.
- D. If substrate preparation and other conditions are the responsibility of another installer, notify Architect of unsatisfactory preparation before proceeding.

### 3.2 PREPARATION

- A. General: Clean surfaces thoroughly prior to installation.
  - 1. Prepare surfaces using the methods recommended by the manufacturer for achieving



the best result for the substrate under the project conditions.

2. Fill substrate surface voids that are greater than 1/4 inch wide with an acceptable fill material.
  3. Roof surface to receive roofing system shall be smooth, clean, free from loose gravel, dirt and debris, dry and structurally sound.
  4. Wherever necessary, all surfaces to receive roofing materials shall be power broom and vacuumed to remove debris and loose matter prior to starting work.
  5. Do not apply roofing during inclement weather. Do not apply roofing membrane to damp, frozen, dirty, or dusty surfaces.
  6. Prime decks where required, in accordance with requirements and recommendations of the primer and deck manufacturer.
- B. Poured reinforced concrete
1. Shall be smooth, dry, clean and free of ice/frost, projections and depressions. Concrete shall be fully cured and the surface shall be broom cleaned and free of release/curing agents prior to commencement of work.
  2. Prepared concrete surfaces for roofing or insulation by priming with asphalt/concrete primer conforming to ASTM D 41. Apply at a rate of approx. 1 gallon/100 sq. ft. (.4 L/m<sup>2</sup>). All primed areas shall be fully dried before proceeding with the application of the roof system.

### 3.3 INSTALLATION - GENERAL

- A. Install modified bitumen membranes and flashings in accordance with manufacturer's instructions and with the recommendations provided by the National Roofing Contractors Association's Roofing & Waterproofing Manual, the Asphalt Roofing Manufacturers Association, and applicable codes.
- B. General: Avoid installation of modified bitumen membranes at temperatures lower than 40-45 degrees F. When work at such temperatures unavoidable use the following precautions:
1. Take extra care during cold weather installation and when ambient temperatures are affected by wind or humidity, to ensure adequate bonding is achieved between the surfaces to be joined. Use extra care at material seam welds and where adhesion of the applied product to the appropriately prepared substrate as the substrate can be affected by such temperature constraints as well.
  2. Unrolling of cold materials, under low ambient conditions must be avoided to prevent the likelihood of unnecessary stress cracking. Rolls must be at least 40 degrees F at the time of application. If the membrane roll becomes stiff or difficult to install, it must be replaced with roll from a heated storage area.
  3. Use weighted lawn roller to fully embed all modified membrane field sheets to the substrate.
- C. Commence installation of the roofing system at the lowest point of the roof (or roof area), working up the slope toward the highest point. Lap sheets shingle fashion so as to constantly shed water

### 3.4 INSTALLATION COLD APPLIED ROOF SYSTEM

- A. Base Ply: Cut cap ply sheets into 18 foot lengths and allow plies to relax before installing. Install in cold adhesive applied at the rate required by the manufacturer. Shingle sheets uniformly over the prepared substrate to achieve the number of plies specified. Shingle in proper direction to shed water on each large area of roofing.
1. Lap ply sheet ends 8 inches. Stagger end laps 12 inches minimum.
  2. Solidly bond to the base layers with specified cold adhesive at the rate of 2 to 2-1/2 gallons per 100 square feet.
  3. Roll must push a puddle of adhesive in front of it with adhesive slightly visible at all side laps. Care should be taken to eliminate air entrapment under the membrane.

4. Install subsequent rolls of modified across the roof as above with a minimum of 4 inch side laps and 8 inch staggered end laps. Lay modified membrane in the same direction as the underlayers but the laps shall not coincide with the laps of the base layers.
  5. Allow cold adhesive to set for 5 to 10 minutes before installing the top layer of modified membrane.
  6. Extend membrane 2 inches beyond top edge of all cants in full moppings of the cold adhesive as shown on the Drawings.
- B. Cap Ply: Cut cap ply sheets into 18 foot lengths and allow plies to relax before installing. Install in cold adhesive applied at the rate required by the manufacturer. Shingle sheets uniformly over the prepared substrate to achieve the number of plies specified. Shingle in proper direction to shed water on each large area of roofing.
1. Lap ply sheet ends 8 inches. Stagger end laps 12 inches minimum.
  2. Solidly bond to the base layers with specified cold adhesive at the rate of 2 to 2-1/2 gallons per 100 square feet.
  3. Roll must push a puddle of adhesive in front of it with adhesive slightly visible at all side laps. Care should be taken to eliminate air entrapment under the membrane.
  4. Install subsequent rolls of modified across the roof as above with a minimum of 4 inch side laps and 8 inch staggered end laps. Lay modified membrane in the same direction as the underlayers but the laps shall not coincide with the laps of the base layers.
  5. Allow cold adhesive to set for 5 to 10 minutes before installing the top layer of modified membrane.
  6. Extend membrane 2 inches beyond top edge of all cants in full moppings of the cold adhesive as shown on the Drawings.
  7. All side and end lap seams are to be hot air welded.
- C. Fibrous Cant Strips: Provide non-combustible perlite or glass fiber cant strips at all wall/curb detail treatments where angle changes are greater than 45 degrees. Cant may be set in approved cold adhesives, hot asphalt or mechanically attached with approved plates and fasteners.
- D. Wood Blocking, Nailers and Cant Strips: Provide wood blocking, nailers and cant strips as specified in Section 06114.
1. Provide nailers at all roof perimeters and penetrations for fastening membrane flashings and sheet metal components.
  2. Wood nailers should match the height of any insulation, providing a smooth and even transition between flashing and insulation areas.
  3. Nailer lengths should be spaced with a minimum 1/8 inch gap for expansion and contraction between each length or change of direction.
  4. Nailers and flashings should be fastened in accordance with Factory Mutual "Loss Prevention Data Sheet 1- 49, Perimeter Flashing" and be designed to be capable of resisting a minimum force of 200 lbs/lineal foot in any direction.
- E. Metal Work: Provide metal flashings, counter flashings, parapet coping caps and thru-wall flashings as specified in Section 07620. Install in accordance with the SMACNA "Architectural Sheet Metal Manual" or the NRCA Roofing Waterproofing manual.
- F. Termination Bar: Provide a metal termination bar or approved top edge securement at the terminus of all flashing sheets at walls and curbs. Fasten the bar a minimum of 8 inches (203 mm) o/c to achieve constant compression. Provide suitable, sealant at the top edge if required.
- G. Flashing Base Ply: Install flashing sheets by the same application method used for the base ply.
1. Seal curb, wall and parapet flashings with an application of mastic and mesh on a

- daily basis. Do not permit conditions to exist that will allow moisture to enter behind, around or under the roof or flashing membrane.
2. Prepare all walls, penetrations, expansion joints and where shown on the Drawings to be flashed with required primer at the rate of 100 square feet per gallon. Allow primer to dry tack free.
  3. Adhere to the underlying base ply with specified flashing ply adhesive unless otherwise specified. Nail off at a minimum of 8 inches (203 mm) o.c. from the finished roof at all vertical surfaces.
  4. Solidly adhere the entire flashing ply to the substrate. Secure the tops of all flashings that are not run up and over curb through termination bar fastened at 6 inches (152 mm) O.C. and sealed at top.
  5. Seal all vertical laps of flashing ply with a three-course application of trowel-grade mastic and fiberglass mesh.
  6. Coordinate counter flashing, cap flashings, expansion joints and similar work with modified bitumen roofing work as specified.
  7. Coordinate roof accessories, miscellaneous sheet metal accessory items, including piping vents and other devices with the roofing system work.
  8. Secure the top edge of the flashing sheet using a termination bar only when the wall surface above is waterproofed, or nailed 4 inches on center and covered with an acceptable counter flashing.
- H. Flashing Cap Ply: Install flashing cap sheets by the same application method used for the base ply.
1. Seal curb, wall and parapet flashings with an application of mastic and mesh on a daily basis. Do not permit conditions to exist that will allow moisture to enter behind, around or under the roof or flashing membrane.
  2. Prepare all walls, penetrations, expansion joints and where shown on the Drawings to be flashed with required primer at the rate of 100 square feet per gallon. Allow primer to dry tack free.
  3. Adhere to the underlying base flashing ply with specified flashing ply adhesive unless otherwise specified. Nail off at a minimum of 8 inches (203 mm) o.c. from the finished roof at all vertical surfaces.
  4. Coordinate counter flashing, cap flashings, expansion joints and similar work with modified bitumen roofing work as specified.
  5. Coordinate roof accessories, miscellaneous sheet metal accessory items with the roofing system work.
  6. All stripping shall be installed prior to flashing cap sheet installation.
  7. Heat and scrape granules when welding or adhering at cut areas and seams to granular surfaces at all flashings.
  8. Secure the top edge of the flashing sheet using a termination bar only when the wall surface above is waterproofed, or nailed 4 inches on center and covered with an acceptable counter flashing.
  9. All side and end lap seams are to be hot air welded.

### 3.5 INSTALLATION EDGE TREATMENT AND ROOF PENETRATION FLASHING

- A. Surface Mounted Counterflashing:
1. Minimum flashing height is 8 inches (203 mm) above finished roof height. Maximum flashing height is 24 inches (609 mm). Prime vertical wall at a rate of 100 square feet per gallon and allow to dry.
  2. Set cant in bitumen. Run all field plies over cant a minimum of 2 inches (50 mm).
  3. Install base flashing ply covering wall set in bitumen with 6 inches (152 mm) on to field of the roof.
  4. Install a second ply of modified flashing ply in bitumen over the base flashing ply, 9 inches (228 mm) on to the field of the roof. Apply a three-course application of mastic and mesh at all vertical seams and allow to cure and aluminize.

5. Apply butyl tape to wall behind flashing. Secure termination bar through flashing, butyl tape and into wall. Alternatively use caulk to replace the butyl tape.
  6. Secure counterflashing set on butyl tape above flashing at 8 inches (203 mm) o.c. and caulk top of counterflashing.
- B. Reglet Mounted Counterflashing:
1. Minimum flashing height is 8 inches (203 mm) above finished roof height. Maximum flashing height is 24 inches. Prime vertical wall at a rate of 100 square feet per gallon and allow to dry.
  2. Set cant in bitumen. Run all field plies over cant a minimum of 2 inches (50 mm).
  3. Install base flashing ply covering wall set in bitumen with 6 inches (152 mm) on to field of the roof.
  4. Install a second ply of modified flashing ply in bitumen over the base flashing ply, 9 inches (228 mm) on to the field of the roof. Apply a three-course application of mastic and mesh at all vertical seams and allow to cure and aluminize.
  5. Apply butyl tape to wall behind flashing. Secure termination bar through flashing, butyl tape and into wall. Alternatively use caulk to replace the butyl tape.
  6. Cut reglet in masonry one joint above flashing.
  7. Secure reglet counterflashing with expansion fasteners and caulk reglet opening.
- C. Base Flashing For Non-Supported Deck:
1. Inspect the nailer to assure proper attachment and configuration. The wood cant strip should be mechanically attached to the vertical and horizontal wood nailers.
  2. Install compressible insulation in neoprene cradle between wall and vertical wood nailer.
  3. Prime vertical wall at a rate of 100 square feet per gallon and allow to dry.
  4. Install base flashing ply covering entire wall and wrapped to top of wood nailer with 6 inches (152 mm) on to field of the roof. Nail membrane at 8 inches (203 mm) o.c.
  5. Install a second ply of modified flashing ply in bitumen over the base flashing ply, 9 inches (228 mm) on to the field of the roof. Apply a three-course application of mastic and mesh at all vertical seams and allow to cure and aluminize.
  6. Attach counterflashing through wall flashing at a spacing of 24 inches (609 mm) o.c.
- D. Exhaust Fan:
1. Minimum curb height is 8 inches (203 mm) above finished roof height. Prime vertical at a rate of 100 square feet per gallon and allow to dry.
  2. Set cant in bitumen. Run all plies over cant a minimum of 2 inches (50 mm).
  3. Install base flashing ply covering curb with 6 inches (152 mm) on to field of the roof.
  4. Install a second ply of modified flashing ply installed over the base flashing ply, 9 inches (228 mm) on to field of the roof. Attach top of membrane to top of wood curb and nail at 8 inches (203 mm) o.c. Apply a three-course application of mastic and mesh at all vertical seams and allow to cure and aluminize.
  5. Install metal exhaust fan over the wood nailers and flashing to act as counterflashing. Fasten per manufacturer's recommendation.
- E. Passive Vent/Air Intake:
1. Minimum curb height is 8 inches (203 mm) above finished roof height. Prime vertical at a rate of 100 square feet per gallon and allow to dry.
  2. Set cant in bitumen. Run all plies over cant a minimum of 2 inches (50 mm).
  3. Install base flashing ply covering curb with 6 inches (152mm) on to the field of the roof.
  4. Install a second ply of modified flashing ply installed over the base flashing ply, 9 inches (228 mm) on to field of the roof. Attach top of membrane to top of wood curb and nail at 8 inches (203 mm) o.c. Apply a three-course application of mastic and mesh at all vertical seams and allow to cure and aluminize.
  5. Install passive vent/air intake over the wood nailers and flashing to act as

counterflashing. Fasten per manufacturer's recommendations.

- F. Roof Drain:
1. Plug drain to prevent debris from entering plumbing.
  2. Taper insulation to drain minimum of 24 inches (609 mm) from center of drain.
  3. Run roof system plies over drain. Cut out plies inside drain bowl.
  4. Set lead/copper flashing (30 inch square minimum) in 1/4 inch bed of mastic. Run lead/copper into drain a minimum of 2 inches (50 mm). Prime lead/copper at a rate of 100 square feet per gallon and allow to dry.
  5. Install base flashing ply (40 inch square minimum) in bitumen.
  6. Install modified membrane (48 inch square minimum) in bitumen.
  7. Install clamping ring and assure that all plies are under the clamping ring.
  8. Remove drain plug and install strainer.
- G. Plumbing Stack:
1. Minimum stack height is 12 inches (609 mm).
  2. Run roof system over the entire surface of the roof. Seal the base of the stack with elastomeric sealant.
  3. Prime flange of new sleeve. Install properly sized sleeves set in 1/4 inch (6 mm) bed of roof cement.
  4. Install base flashing ply in bitumen.
  5. Install membrane in bitumen.
  6. Caulk the intersection of the membrane with elastomeric sealant.
  7. Turn sleeve a minimum of 1 inch (25 mm) down inside of stack.
- H. Heat Stack:
1. Minimum stack height is 12 inches (609 mm).
  2. Run roof system over the entire surface of the roof. Seal the base of the stack with elastomeric sealant.
  3. Prime flange of new sleeve. Install properly sized sleeves set in 1/4 inch (6 mm) bed of roof cement.
  4. Install base flashing ply in bitumen.
  5. Install modified membrane in bitumen.
  6. Caulk the intersection of the membrane with elastomeric sealant.
  7. Install new collar over cape. Weld collar or install stainless steel draw band.
- I. Pitch Pocket Umbrella:
1. Run all plies up to the penetration.
  2. Place the pitch pocket over the penetration and prime all flanges.
  3. Strip in flange of pitch pocket with one ply of base flashing ply. Extend 6 inches (152 mm) onto field of roof.
  4. Install second layer of modified membrane extending 9 inches (228 mm) onto field of the roof.
  5. Fill pitch pocket half full with non-shrink grout. Let this cure and top off with pourable sealant.
  6. Caulk joint between roof system and pitch pocket with roof cement.
  7. Place a watershedding type bonnet over the top of the pitch pocket and clamp the top with a drawband collar. Caulk the upper edge of the band with an elastomeric sealant.
- J. Liquid Flashing:
1. Mask target area on roof membrane with tape.
  2. Clean all non-porous areas with isopropyl alcohol.
  3. Apply 32 wet mil base coat of liquid flashing over masked area.
  4. Embed polyester reinforcement fabric into the base coat of the liquid flashing.
  5. Apply 48-64 wet mil top coat of the liquid flashing material over the fabric extending 2 inches (51 mm) past the scrim in all directions.
  6. Apply minerals immediately or allow the liquid flashing material to cure 15-30 days

and then install reflective coating.

### 3.6 PROTECTION

- A. Provide traffic ways, erect barriers, fences, guards, rails, enclosures, chutes and the like to protect personnel, roofs and structures, vehicles and utilities.
- B. Protect exposed surfaces of finished walls with tarps to prevent damage.
- C. Plywood for traffic ways required for material movement over existing roofs shall be not less than 5/8 inch (16 mm) thick.
- D. In addition to the plywood listed above, an underlayment of minimum 1/2 inch (13 mm) recover board is required on new roofing.
- E. Special permission shall be obtained from the Manufacturer before any traffic shall be permitted over new roofing.

### 3.7 FIELD QUALITY CONTROL

- A. Inspection: Provide manufacturer's daily field observations and a final inspection upon completion of the Work.
  - 1. Daily field observations shall be performed by a Technical Representative employed full-time by the manufacturer and whose primary job description is to assist, inspect and approve roofing installations for the manufacturer.
  - 2. Daily roofing progress reports must include; photographic documentation of work in-progress and written statements of compliance with details/shop drawings, weather conditions, and any discrepancies found during inspection.
  - 3. Progress reports must be published to an online database accessible to the Owner/Architect at no additional cost.
  - 4. Provide a final report from the Technical Representative, certifying that the roofing system has been satisfactorily installed according to the project specifications, approved details and good general roofing practice.
  - 5. Warranty shall be issued upon manufacturer's acceptance of the installation.

### 3.8 SCHEDULES

- A. Base (Ply) Sheet:
  - 1. 80 mil SBS (Styrene-Butadiene-Styrene) rubber modified roofing base sheet reinforced with a fiberglass scrim, performance requirements according to ASTM D 5147.
    - a. Tensile Strength, ASTM D 5147
      - 1) 2 in/min. @ 73.4 +/- 3.6 deg. F MD 100 lbf/in XD 100 lbf/in
      - 2) 50mm/min. @ 23 +/- 2 deg. C MD 17.5 kN/m XD 17.5 kN/m
    - b. Tear Strength, ASTM D 5147
      - 1) 2 in/min. @ 73.4 +/- 3.6 deg. F MD 110 lbf XD 100 lbf
      - 2) 50mm/min. @ 23 +/- 2 deg. C MD 489 N XD 444 N
    - c. Elongation at Maximum Tensile, ASTM D 5147
      - 1) 2 in/min. @ 73.4 +/- 3.6 deg. F MD 4 % XD 4 %
      - 2) 50mm/min @ 23 +/- 2 deg. C MD 4 % XD 4 %
    - d. Low Temperature Flexibility, ASTM D 5147, Passes -40 deg. F ( -40 deg. C)
- B. Cap (Ply) Sheet: **(Base Bid Only)**
  - 1. 160 mil SBS and SIS (Styrene-Butadiene-Styrene and Styrene-Isoprene-Styrene) rubber modified membrane incorporating post-consumer recycled rubber, fire retardant additives and reinforced with a fiberglass and polyester composite scrim. Surfaced with the highly reflective Sunburst white mineral. ASTM D 6162, Type III

Grade G

- a. Tensile Strength, ASTM D 5147
    - 1) 2 in/min. @ 73.4 +/- 3.6 deg. F MD 700 lbf/in XD 750 lbf/in
    - 2) 50 mm/min. @ 23 +/- 2 deg. C MD 122.5 kN/m XD 131.25 kN/m
  - b. Tear Strength, ASTM D 5147
    - 1) 2 in/min. @ 73.4 +/- 3.6 deg. F MD 1300 lbf XD 1400 lbf
    - 2) 50 mm/min. @ 23 +/- 2 deg. C MD 5783 N XD 6227 N
  - c. Elongation at Maximum Tensile, ASTM D 5147
    - 1) 2 in/min. @ 73.4 +/- 3.6 deg. F MD 6.0% XD 6.0%
    - 2) 50 mm/min. @ 23 +/- 2 deg. C MD 6.0% XD 6.0%
  - d. Low Temperature Flexibility, ASTM D 5147, Passes -30 deg. F (-34 deg. C)
- C. Modified Cap (Ply) Sheet: **(Add Alternate #1 Only)**
1. 145 mil mineral surfaced, polyurethane modified roofing membrane with fire retardant characteristics, and dual fiberglass reinforced scrim. ASTM D 6163, Type III Grade G
    - a. Tensile Strength, ASTM D 5147
      - 1) 2 in/min. @ 73.4 +/- 3.6 deg. F MD 205 lbf/in XD 215 lbf/in
      - 2) 50 mm/min. @ 23 +/- 2 deg. C MD 36.0 kN/m XD 38 kN/m
    - b. Tear Strength, ASTM D 5147
      - 1) 2 in/min. @ 73.4 +/- 3.6 deg. F MD 300 lbf XD 300 lbf
      - 2) 50 mm/min. @ 23 +/- 2 deg. C MD 1334 N XD 1334 N
    - c. Elongation at Maximum Tensile, ASTM D 5147
      - 1) 2 in/min. @ 73.4 +/- 3.6 deg. F MD 4.7% XD 5.0%
      - 2) 50 mm/min. @ 23 +/- 2 deg. C MD 4.7% XD 5.0%
    - d. Low Temperature Flexibility, ASTM D 5147, Passes 0 deg. F (-18 deg. C)
- D. Interply Adhesive:
1. Rubberized, polymer modified cold process asphalt roofing bitumen V.O.C. compliant ASTM D 3019. Performance Requirements:
    - a. Non-Volatile Content ASTM D 4479 70%
    - b. Density ASTM D1475 8.9 lbs./gal.
    - c. Viscosity Stormer ASTM D562 400-500 grams
    - d. Flash Point ASTM D 93 100 deg. F min. (37 deg. C)
    - e. Slope: up to 3:12
- E. Flashing Base (Ply) Sheet:
1. 80 mil SBS (Styrene-Butadiene-Styrene) rubber modified roofing base sheet reinforced with a fiberglass scrim, performance requirements according to ASTM D 5147.
    - a. Tensile Strength, ASTM D 5147
      - 1) 2 in/min. @ 73.4 +/- 3.6 deg. F MD 100 lbf/in XD 100 lbf/in
      - 2) 50mm/min. @ 23 +/- 2 deg. C MD 17.5 kN/m XD 17.5 kN/m
    - b. Tear Strength, ASTM D 5147
      - 1) 2 in/min. @ 73.4 +/- 3.6 deg. F MD 110 lbf XD 100 lbf
      - 2) 50mm/min. @ 23 +/- 2 deg. C MD 489 N XD 444 N
    - c. Elongation at Maximum Tensile, ASTM D 5147
      - 1) 2 in/min. @ 73.4 +/- 3.6 deg. F MD 4 % XD 4 %
      - 2) 50mm/min@ 23 +/- 2 deg. C MD 4 % XD 4 %
    - d. Low Temperature Flexibility, ASTM D 5147, Passes -40 deg. F ( -40 deg. C)
- F. Flashing Ply Adhesive:
1. Brush grade flashing adhesive.
    - a. Non-Volatile Content ASTM D 4479 70 min.
    - b. Density ASTM D 1475 8.6 lbs./gal. (1kg/l)
    - c. Flash Point ASTM D 93 100 deg. F (37 deg. C)
- G. Flashing Cap (Ply) Sheet: **(Base Bid Only)**

- a. 160 mil SBS and SIS (Styrene-Butadiene-Styrene and Styrene-Isoprene-Styrene) rubber modified membrane incorporating post-consumer recycled rubber, fire retardant additives and reinforced with a fiberglass and polyester composite scrim. Surfaced with the highly reflective Sunburst white mineral. ASTM D 6162, Type III Grade G
  - 1) Tensile Strength, ASTM D 5147
    - a) 2 in/min. @ 73.4 +/- 3.6 deg. F MD 700 lbf/in XD 750 lbf/in
    - b) 50 mm/min. @ 23 +/- 2 deg. C MD 122.5 kN/m XD 131.25 kN/m
  - 2) Tear Strength, ASTM D 5147
    - a) 2 in/min. @ 73.4 +/- 3.6 deg. F MD 1300 lbf XD 1400 lbf
    - b) 50 mm/min. @ 23 +/- 2 deg. C MD 5783 N XD 6227 N
  - 3) Elongation at Maximum Tensile, ASTM D 5147
    - a) 2 in/min. @ 73.4 +/- 3.6 deg. F MD 6.0% XD 6.0%
    - b) 50 mm/min. @ 23 +/- 2 deg. C MD 6.0% XD 6.0%
  - 4) Low Temperature Flexibility, ASTM D 5147, Passes -30 deg. F (-34 deg. C)
- H. Modified Cap (Ply) Sheet: **(Add Alternate #1 Only)**
  - 1. 145 mil mineral surfaced, polyurethane modified roofing membrane with fire retardant characteristics, and dual fiberglass reinforced scrim. ASTM D 6163, Type III Grade G
    - a. Tensile Strength, ASTM D 5147
      - 1) 2 in/min. @ 73.4 +/- 3.6 deg. F MD 205 lbf/in XD 215 lbf/in
      - 2) 50 mm/min. @ 23 +/- 2 deg. C MD 36.0 kN/m XD 38 kN/m
    - b. Tear Strength, ASTM D 5147
      - 1) 2 in/min. @ 73.4 +/- 3.6 deg. F MD 300 lbf XD 300 lbf
      - 2) 50 mm/min. @ 23 +/- 2 deg. C MD 1334 N XD 1334 N
    - c. Elongation at Maximum Tensile, ASTM D 5147
      - 1) 2 in/min. @ 73.4 +/- 3.6 deg. F MD 4.7% XD 5.0%
      - 2) 50 mm/min. @ 23 +/- 2 deg. C MD 4.7% XD 5.0%
      - 3) Low Temperature Flexibility, ASTM D 5147, Passes 0 deg. F (-18 deg. C)

END OF SECTION



SECTION 07600

SHEET METAL FLASHING AND TRIM

PART 1 - GENERAL

1.1 RELATED SECTIONS

- A. Division 7 Section "Roof Insulation"
- B. Division 7 Section "Modified Bituminous Membrane Roofing".

1.2 REFERENCES

A. American Society for Testing and Materials (ASTM)

- 1. ASTM A653 Standard Specification for Steel Sheet, Zinc-Coated (galvanized) or Zinc-Iron Alloy-Coated (galvannealed) by the Hot-Dip Process.
- 2. ASTM A792 Standard Specification for Steel Sheet, 55% Aluminum-Zinc Alloy Coated by the Hot-Dip Process.
- 3. ASTM B209 Standard Specification for Aluminum and Aluminum-Alloy Sheet and Plate.
- 4. ASTM B221 Standard Specification for Aluminum and Aluminum-Alloy Extruded Bars, Rods, Wire, Profiles, and Tubes.
- 5. ASTM D692 Standard Specification for Coarse Aggregate for Bituminous Paving Mixtures.
- 6. ASTM B32 Solder Metal
- 7. ASTM B486 Paste Solder
- 8. ASTM D226 Asphalt-Saturated Organic Felt Used in Roofing and Waterproofing
- 9. ASTM D486 Asphalt Roof Cement, Asbestos-free

B. American National Standards Institute and Single Ply Roofing Institute (ANSI/SPRI)

- 1. ANSI/SPRI ES-1 Testing and Certification Listing of Pre-Manufactured Fabricated Edge Metal and Pre-Manufactured Metal Coping Cap.

C. Warnock Hersey International, Inc., Middleton, WI (WH)

D. Factory Mutual Global (FM)

E. Underwriters Laboratories (UL)

F. Sheet Metal and Air Conditioning Contractors National Association (SMACNA)

- 1. 1993 Edition Architectural Sheet Metal Manual

G. National Roofing Contractors Association (NRCA)

- 1. Roofing and Waterproofing Manual

H. American Society of Civil Engineers (ASCE)

1. ASCE 7-05 Minimum Design Loads for Buildings and Other Structures.

I. FS QQ-L-201 - Specification for Lead Sheet

J. FS O-F-506 - Flux, Soldering, Paste and Liquid

1.4 SUBMITTALS

A. Submit under provisions of this specification.

B. Product Data: Provide manufacturer's specification data sheets for each product.

C. Submit two samples, 12 x 12 inch in size illustrating typical external corner, internal corner, valley, junction to vertical dissimilar surface, material and finish.

D. Shop Drawings

1. For manufactured and ANSI/SPRI approved pre-manufactured metal edge fascia and pre-manufactured metal coping cap system, and all other sheet metal fabrications.
2. Shop drawings: Indicate material profile, jointing pattern, jointing details, fastening methods, flashing, termination's, and installation details.
3. Indicate type, gauge and finish of metal.

E. Sample Warranty

1. Provide an unexecuted copy of the warranty specified for this Project, identifying the terms and conditions required of the Manufacturer and the Owner. Warranty shall be provided from one manufacturer and part of a total Edge-to-Edge roof warranty that includes the polyurethane modified membrane roof system and pre-fabricated metal edge system.

F. Certification

1. Submit roof manufacturer's certification that metal fasteners furnished are acceptable to roof manufacturer.

G. Manufacturer's Product Data

1. Metal material characteristics and installation recommendations.
2. Submit color chart prior to material ordering and/or fabrication so that equivalent colors to those specified can be approved.

1.5 QUALITY ASSURANCE

A. Reference Standards

1. Comply with details and recommendations of SMACNA Manual for workmanship, methods of joining, anchorage, provisions for expansion, etc.

- B. If required, fabricator/installer shall submit work experience and evidence of adequate financial Responsibility. The owner's representative reserves the right to inspect fabrication facilities in determining qualifications.
- C. Successful contractor must obtain all components of roof system from a single manufacturer including any roll good materials if required. Any secondary products that are required, which cannot be supplied by the specified manufacturer, must be recommended and approved in writing by primary manufacturer prior to bid submittal.
- D. Manufacturer shall have in place a documented, standardized method for maintaining quality control such as ISO-9001 approval.
- E. The roof material manufacturer shall conduct all required daily inspections of work in progress as described herein and shall furnish written documentation of all such inspections.

#### 1.6 DELIVERY, STORAGE, AND HANDLING

- A. Deliver materials in manufacturer's original, unopened containers or packages with labels intact and legible.
- B. Stack pre-formed and pre-finished material to prevent twisting, bending, or abrasion, and to provide ventilation. Slope metal sheets to ensure drainage.
- C. Prevent contact with materials which may cause discoloration or staining.

#### 1.7 JOB CONDITIONS

- A. Determine that work of other trades will not hamper or conflict with necessary fabrication and storage requirements for pre-formed metal roofing system.
- B. Protection:
  - 1. Provide protection or avoid traffic on completed roof surfaces.
  - 2. Do not overload roof with stored materials.
  - 3. Support no roof-mounted equipment directly on the roofing system.
- C. Ascertain that work of other trades which penetrates the roof or is to be made watertight by the roof, is in place and approved prior to installation of roofing.

#### 1.8 DESIGN AND PERFORMANCE CRITERIA

- A. ANSI/SPRI ES-1 / Factory Mutual (Pre-manufactured Metal Edge Fascia System)
  - 1. ANSI/SPRI ES-1 test reports must be submitted for specific project wind uplift requirements per Section 1.16 Design and Performance Criteria within Modified Bituminous Membrane Roofing specification. Edge metal system must be ANSI/SPRI ES-1 compliant.
- B. Thermal expansion and contraction:
  - 1. Completed metal edge fascia and cant dam system shall be capable of withstanding unlimited thermal expansion and contraction of components caused

by changes in temperature without buckling, producing excess stress on structure, anchors or fasteners, or reducing performance ability.

## 1.9 WARRANTIES

### A. Material Manufacturer's Warranty

1. Pre-finished metal material shall require a written 20-year non-prorated warranty covering fade, chalking and film integrity. The material shall not show a color change greater than 5 NBS color units per ASTM D-2244 or chalking excess of 8 units per ASTM D-659. If either occurs material shall be replaced per warranty, at no cost to the Owner.
2. Warranty shall include the modified roof system, pre-manufactured metal edge fascia system, flashings and the transition between all systems, and shall be an Edge-to-Edge roof warranty; provided by one manufacturer.
3. Provide a manufacturer's Edge-to-Edge roof warranty: Warranted materials shall be free of defects in material and workmanship for five (5) years after shipment. The manufacturer will also furnish their standard decorative finish warranty.
4. At the request of the Owner, the Manufacturer will provide an annual inspection. The request for annual inspections shall be applicable for the life of the warranty.

### B. Contractor's Warranty

1. The Contractor shall provide the Owner with a notarized written warranty assuring that all sheet metal work including caulking and fasteners to be watertight and secure for a period of two (2) years from the date of final acceptance of the building. Warranty shall include all materials and workmanship required to repair any leaks that develop.

## PART 2 - PRODUCTS

### 2.1 MATERIALS

#### A. Pre-Manufactured Metal Edge System: R-Mer Force Fascia; The Garland Co., Cleveland, OH.

1. RMF Fascia with 7.25" face shall be .040 Kynar finished aluminum with extruded aluminum base frame, as specified in the details and calculations provided.
2. Include one (1) tube of Green-Lock Sealant XL (2 beads) per 10' section to seal the base frame on the horizontal substrate.
3. All submittals for approved equals shall conform to Sections 1.5 Quality Assurance and 1.8 Design & Performance Criteria.
4. Provide a manufacturer's Edge-to-Edge roof warranty. Warranted materials shall be free of defects in material and workmanship for five years after shipment. The manufacturer will also furnish their standard finish warranty.
5. Fascia extenders, scuppers and all other trim components and accessories shall be fabricated from 0.040" aluminum with Kynar finish.
6. Color to be selected by Owner from manufacturer's standard color range.

- B. Basis of Design: Pre-Manufactured Snap-On Coping: manufactured by The Garland Co., Cleveland, OH.
1. Copings shall be .050" Kynar coated aluminum. Cant dam, coping anchor chairs (40" spacing) and hat channels shall be 22 ga. galvanized and continuous for the entire roof edge. In addition to the fasteners installed on the top of the coping anchors chairs, two additional fasteners must be screwed through the face of the back leg of each chair.
  2. All submittals for approved equals shall conform to Sections 1.5 Quality Assurance and 1.8 Design & Performance Criteria.
  3. Provide a manufacturer's Edge-to-Edge roof warranty. Warranted materials shall be free of defects in material and workmanship for five years after shipment. The manufacturer will also furnish their standard decorative finish warranty.
  4. Fascia extenders, conductor heads, downspouts and all other accessories shall be fabricated from 0.040" aluminum with Kynar finish or approved equal.
  5. Color to be selected by Owner from manufacturer's standard color range.
- C. Pre-manufactured Scupper Boxes & Downspouts; The Garland Co., Cleveland, OH.
4. 040 aluminum scupper boxes and conductor heads.
  5. Accessories; 5 x 4" downspouts, fasteners, straps.
- D. Pitch pockets shall be 20 oz. copper, and have all corners soldered, and a continuous 4" wide minimum deck flange at corners.
- E. Miscellaneous Metals and Flashings:
1. Surface Mounted Counterflashings: Kynar finished Aluminum, 0.040 inch thick.
  2. Equipment Slip Flashing: Mill finished Aluminum, 0.040 inch thick.
  3. Flat Stock - Custom Fabricated Trim: Kynar finished Aluminum, 0.040 inch thick.
  4. Solder for Stainless Steel: ASTM B 32, Grade Sn60, used with an acid flux of type recommended by stainless-steel sheet manufacturer; use a noncorrosive rosin flux over tinned surfaces.
  5. Solder for Copper: ASTM B 32, Grade Sn50, 50 percent tin and 50 percent lead.
  6. Fasteners: Same metal as sheet metal flashing or other noncorrosive metal as recommended by sheet metal manufacturer. Match finish of exposed heads with material being fastened. Exposed fasteners shall have a neoprene or other suitable weatherproofing washer. Additional fasteners
  7. Asphalt Mastic: SSPC-Paint 12, solvent-type asphalt mastic, nominally free of sulfur and containing no asbestos fibers, compounded for 15-mil dry film thickness per coat.
  8. Mastic Sealant: Polyisobutylene; nonhardening, nonskinning, nondrying, nonmigrating sealant.
  9. Sealing Tape: Pressure sensitive, 100 percent solids, polyisobutylene compound sealing tape with release-paper backing. Provide permanently elastic, nonsag, nontoxic, nonstaining tape.

10. Adhesives: Type recommended by flashing sheet metal manufacturer for waterproof and weather-resistant seaming and adhesive application of flashing sheet metal.
11. Metal Accessories: Provide sheet metal clips, straps, anchoring devices, and similar accessory units as required for installation of Work, matching or compatible with material being installed; noncorrosive; size and thickness required for performance.
12. Roofing Cement: ASTM D 4586, Type I, asbestos free, asphalt based.
13. Zinc-Coated Steel Sheet: ASTM A526, 0.20% copper, 26 gage (0.0179"); designation G90 hot-dip galvanized, mill phosphatized.
14. Stainless Steel Sheet: Type 302/304, ASTM A167, 26 gage, (0.0217"), annealed except dead soft where fully concealed by other work, 2D (dull) finish.
15. Copper Sheet: ASTM B370, 20 oz., temper H00 (cold-rolled).
16. Lead-Coated Copper Sheet: ASTM B101. Type I, Class A (12-15 1 lb. of lead coating per 100 sq. ft.), 17.1 oz. (0.022").
17. Zinc Alloy Sheet: Zinc with 0.6% copper and 0.14% titanium; 0.27" thick (21 gauge); standard (soft) temper, mil finish.

## 2.2 RELATED MATERIALS

- A. Metal Primer: Zinc chromate type.
- B. Plastic Cement: ASTM D 4586
- C. Sealant: As required by material manufacturer.
- D. Lead: Meets Federal Specification QQ-L-201, Grade B, four (4) pounds per square foot.
- E. Solder: ANSI/ASTM B32; 95/05 type.
- F. Flux: FS O-F-506.
- G. Underlayment: Ply of specified base flashing modified membrane or approved equal.
- H. Fasteners:
  1. Nails and Fasteners: Non-ferrous metal or hot dipped galvanized fasteners complying with ASTM A153 and connectors complying with ASTM A653, Class G185; Type 304 or Type 316 stainless steel fasteners and connectors shall be used with new generation of pressure-treated wood; except that hard copper nails shall be used with copper; aluminum or stainless steel nails shall be used with aluminum; and stainless steel nails shall be used with stainless steel. Fasteners shall be self-clinching type of penetrating type as recommended by the manufacturer of the wood blocking/nailer material. Nails and fasteners shall be flush-driven through flat metal discs of not less than one (1) inch diameter. Omit metal discs when one-piece composite nails or fasteners with heads not less than one (1) inch diameter are used.

2. Fastening shall conform to ANSI/SPRI ES-1 and/or Factory Mutual 1-90 requirements or as stated on section details, whichever is more stringent and per the manufacturer's requirements.

I. Metal Termination Bars:

1. Shall be heavy flat bar aluminum unless otherwise recommended by membrane manufacturers.
2. Material shall be .125" x 1" (minimum) aluminum conforming to ASTM B-221, mill finish. Bars shall have holes for fasteners at 6" o.c. maximum.

### **PART 3 - EXECUTION**

#### **3.1 PROTECTION**

- A. Isolate contact areas of dissimilar metals with heavy asphalt or other approved coating, specifically made to stop electrolytic action.

#### **3.2 GENERAL**

- A. Install work watertight, without waves, warps, buckles, fastening stress, or distortion, allowing for expansion and contraction.
- B. Fastening of metal to walls and wood blocking shall comply with ANSI-SPRI ES-1, SMACNA Architectural Sheet Metal Manual, Factory Mutual 1-90 wind uplift specifications and/or manufacturer's recommendations whichever is of the highest standard.
- C. All accessories or other items essential to the completeness of sheet metal installation, whether specifically indicated or not, shall be provided and of the same material as item to which applied.
- D. Pre-manufactured metal edge fascia system's continuous base frame shall be secured to the side of the wood blocking.
- E. Metal fascia extenders shall be secured to wall or wood blocking at the bottom edge with a continuous cleat. Cleats shall be at least one gauge heavier than the metal it secures. Both pieces shall be secured at 6" on center.

#### **3.3 INSPECTION**

- A. Verify roof openings, curbs, pipes, sleeves, ducts, or vents through roof are solidly set, cant strips and reglets are in place, and nailing strips located.
- B. Verify membrane termination and base flashings are in place, sealed, and secure.
- C. Beginning of installation means acceptance of existing conditions.
- D. Field measure site conditions prior to fabricating work.

#### **3.4 SHOP FABRICATED SHEET METAL**

- A. Installing Contractor shall be responsible for determining if the sheet metal systems are in general conformance with roof manufacturer's recommendations.

- B. Metal work shall be shop fabricated to configurations and forms in accordance with recognized sheet metal practices.
- C. Hem exposed edges.
- D. Angle bottom edges of exposed vertical surfaces to form drip.
- E. All corners for sheet metal shall be lapped with adjoining pieces fastened and set in sealant.
- F. Joints for pre-manufactured metal edge fascia system, and metal edge fascia extenders shall be formed with a 3/8" opening between sections. The joints of the metal edge fascia system and the metal edge fascia extenders shall be offset a minimum of twelve (12) inches. The joint openings shall be backed by an internal drainage plate formed to the profile of fascia piece. The pre-manufactured metal edge fascia system and metal fascia extenders shall be embedded in two rows of butyl sealant over the internal drainage plate. The internal drainage plate shall be embedded in two rows of butyl sealant over the continuous cant dam and fastened through the opening between the sections and loose locked to the drip edges.
- G. Joints for counterflashings shall be overlapped a minimum of 3", and counterflashings shall extend 4" below the roof flashing termination bar.
- H. Install sheet metal to comply with ANSI/SPRI, FM, SMACNA and NRCA standards, and per the manufacturer's instructions.

END OF SECTION 07600



# DRAFT AIA® Document A141™ - 2014

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

AGREEMENT made as of the «9th» day of «September» in the year «2024»  
(In words, indicate day, month and year.)

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

« PROVIDENCE PUBLIC BUILDINGS AUTHORITY  
225 Dyer Street  
Providence, RI 02903 »  
« »

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

« »  
« »

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

Design Build (D-B) Services for Public Safety Complex Infrastructure Renovations

The Owner and Design-Builder agree as follows:

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

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

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

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**ARTICLE 1 GENERAL PROVISIONS**

**§ 1.1 Owner's Criteria**

This Agreement is based on the Owner's Criteria 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.)*

**§ 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.)*

« » (RFP Dated)

**§ 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.)*

«See EXHIBIT D »

§ 1.1.3 The Project's physical characteristics:

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

« See EXHIBIT D »

§ 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.)*

« See EXHIBIT D as to RIDE Requirements »

§ 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.)*

«See EXHIBIT D »

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

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

«See EXHIBIT D

»

§ 1.1.7 The Owner's design and construction milestone dates: **See Project Schedule, EXHIBIT F**

.1 Design phase milestone dates:

« »

.2 Submission of Design-Builder Proposal:

« »

.3 Phased completion dates:

« »

.4 Substantial Completion date:

«.»

.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.)*

**The Owner reserves the right to retain those consultants and separate contractors as it deems appropriate. Design-Builder agrees to be responsible to cooperate with, to be responsible to and to coordinate with Owner’s consultants and separate contractors.**

**Design-Builder’s Architect is: (namely, “Project Architect”)**

.1 Architect

«

.2 Consultants

« »

.3 Contractors

«N/A »

**§ 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.)*

« N/A »

**§ 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.

In performing its services under the Contract, the Design-Builder shall comply with all applicable federal, state and local standards, codes, statutes, laws, regulations, ordinances and all other legal requirements, including without limitation all construction, supervision and safety requirements (“Applicable Laws”). The Standard of Care for Design Services provided by Design-Builder shall be the degree of care and skill used by members of the architectural/engineering profession performing design services for projects of comparable scale and complexity in the United States. The Standard of Care for Construction Services provided by the Design-Builder shall be the degree of care and skill used by members of the construction profession performing construction services for projects of comparable scale and complexity in the United States. Design-Builder’s obligations under this section shall survive the completion of the Design-Builder Design and Construction Services and the termination of this Contract. Notwithstanding the above, the Design-Builder shall comply with all statutes, codes, regulations included in the Request for Proposal noted as EXHIBIT D, which includes, but is not limited to, RIDE Regulations.

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

**§ 1.1.11** If there is a change in the Owner’s Criteria, the Owner 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.)*

« »

« »

« »

**§ 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' 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.)*

[ **« X »** ] Arbitration pursuant to Section 14.4 **(R.I. Public Works Arbitration Act, R.I.G.L. §37-16-1 et. seq.)**

[ **« »** ] Litigation in a court of competent jurisdiction

[ **« »** ] Other: *(Specify)*

« »

### § 1.4 Definitions

§ 1.4.1 **Design-Build Documents.** The Design-Build Documents consist of this Agreement between Owner and Design-Builder and its attached Exhibits (hereinafter, the "Agreement"); other documents listed in this Agreement (and incorporated herein by reference); 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. All modifications must be in writing and signed by the Owner's authorized representative. The Contract cannot be modified verbally or by conduct of the parties.

§ 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 written Modification signed by the Owner or its authorized representative. The Design-Build Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Design-Builder.

§ 1.4.3 **The Work.** The term "Work" means the design, construction and related services required to fulfill the Design-Builder's obligations under the Design-Build Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Design-Builder. The Work may constitute the whole or a part of the Project and the Design-Builder shall fully execute the Work described in the Design-Build Documents and all work incidental or reasonably inferable that is necessary to produce the results indicated by the Design-Build Documents.

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

§ 1.4.5 **Instruments of Service.** Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Design-Builder, Contractor(s), Architect, and Consultant(s) under their

respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models and other similar materials.

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

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

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

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

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

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

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

§ 1.4.13 **Contract Time.** Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, as set forth in the Design-Build Amendment for Substantial Completion of the Work. Contract Time shall be in accordance with the schedule agreed to between the Owner and the Design-Builder attached hereto as **EXHIBIT F**.

TIME IS OF THE ESSENCE under this Agreement.

§ 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.

**ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS - ANY AND ALL COMPENSATION OR OTHER EXPENSES FOR WORK OR SERVICES PROVIDED BY THE DESIGN-BUILDER PRIOR TO EXECUTION OF THE DESIGN-BUILD AGREEMENT ARE AND SHALL BE INCLUDED IN THE DESIGN-BUILD AMENDMENT NOTED AS EXHIBIT A AND THE REQUEST FOR PROPOSAL AND DESIGN-BUILDER’S PROPOSAL NOTED IN EXHIBIT D-1.**

§ 2.1 **Compensation for Work Performed Prior To Execution of Design-Build Amendment N/A**

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

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

«N/A »

§ 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.)*

«N/A »

Individual or Position

Rate

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

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

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

§ 2.1.3.2 For Reimbursable Expenses, the compensation shall be the expenses the Design-Builder and the Design-Builder's Architect, Consultants and Contractors incurred, plus an administrative fee of «Five » percent ( « 5 » %) of the expenses incurred.

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

§ 2.1.4.1 Payments are due and payable upon presentation of the Design-Builder's invoice. Amounts unpaid «Thirty » ( «30 » ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Design-Builder.

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

« 0 » % «Zero »

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

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

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

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

§ 3.1 General

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

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

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

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

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

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

§ 3.1.5 **General Consultation.** The Design-Builder shall schedule and conduct at least bi-weekly 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, licensed professionals. The Owner understands and agrees that the services of the Design-Builder's Architect and the Design-Builder's other Consultants are performed in the interest and for the benefit of, the Owner. The Design-Builder's architects, consultants, contractors, subcontractors and material suppliers shall not be deemed beneficiaries of this Agreement or of the Contract in any way.

§ 3.1.7 The Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project, provided that the Design-Builder shall be responsible for obtaining the necessary approvals of those governmental authorities as required by the conditions, etc. Design-Builder is responsible for the State ADA fees that are attached to the building permits. The Owner shall reimburse the Design Builder for all permit fees. It is noted that the fees for the ADA Fees are included in the Design-Builder's Schedule of Values.

#### § 3.1.8 **Progress Reports**

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

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

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

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

#### § 3.1.9 **Design-Builder's Schedules**

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



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

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

§ 3.1.11 **Design-Builder's Submittals**

§ 3.1.11.1 Prior to submission of any Submittals, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the Owner's approval. The Owner's approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (1) be coordinated with the Design-Builder's schedule provided in Section 3.1.9.1, (2) allow the Owner reasonable time to review Submittals, and (3) be periodically updated to reflect the progress of the Work. If the Design-Builder fails to submit a Submittal schedule, the Design-Builder shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of Submittals. Notwithstanding the above, submittals will be reviewed and approved by the Architect of Record as retained by the Design-Builder and additionally shall be reviewed and approved by the Design-Builder. The Owner shall review submittals for color and finish selections only. The Owner's representative and the Town's Commissioning Agent will also review and approve submittals with the consent of the Building Committee.

§ 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 is not responsible for any errors or omissions in those Documents and is reviewing those Documents solely for its own benefit.

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

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

§ 3.1.12 **Warranty.**

The Design-Builder warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Design-Build Documents require or permit otherwise. The Design-Builder further warrants that the Work will conform to the requirements of the Design-Build Documents and will be free from defects, except for those inherent in the quality of the Work or otherwise expressly permitted by the Design-Build Documents. Work, materials, or equipment not conforming to these requirements may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Design-Builder, improper or insufficient maintenance (by the Owner), 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. The Design-Builder will provide a minimum warranty for one year under this section and in addition, any extended warranties provided by the applicable manufacturers.

§ 3.1.13 **Royalties, Patents and Copyrights**

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

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

#### § 3.1.14 Indemnification

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

§ 3.1.14.2 The indemnification obligation under this Section 3.1.14 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them, under workers' compensation acts, disability benefit acts or other employee benefit acts.

#### § 3.1.15 Contingent Assignment of Agreements

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

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

When the Owner accepts the assignment of an agreement, the Owner assumes the Design-Builder's rights and obligations under the agreement, But only those obligations under the Agreement arising after the date of assignment for which the Owner has agreed to be responsible. Design-Builder shall remain responsible for all other obligations.

§ 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 or other entity. If the Owner assigns the agreement to a successor design-builder or other entity, the Owner shall nevertheless remain legally responsible for all of the successor design-builder's or other entity's obligations under the agreement.

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

### 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. The Design-Builder shall thoroughly review and familiarize itself with the Owner's criteria.

§ 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. The Preliminary Design shall not modify the relative responsibilities of the Owner and the Design-Builder as otherwise stated in the Contract.

### § 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 completed.

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

## ARTICLE 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT

### § 5.1 Construction Documents

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

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

### § 5.2 Construction

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

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

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

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

### § 5.3 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. **All permit fees waived with the exception of State ADA fees.**

§ 5.5.2 The Design-Builder shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, applicable to performance of the Work.

§ 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 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;
- .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; and
- .4 Overhead and Profit factor of six percent (6%) is included in the allowances and shall be added or subtracted to the allowance amount depending on any increases or decreases in the allowance.

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

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

Contract Sum or Contract Time shall be allowed for such change unless the Design-Builder has acted promptly and responsively in submitting names as required.

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

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

**§ 5.9 Use of Site**

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

**§ 5.10 Cutting and Patching**

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

**§ 5.11 Cleaning Up**

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

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

**§ 5.12 Access to Work**

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

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

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

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

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

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

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

**§ 5.14 Mutual Responsibility**

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

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

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

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

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

**§ 5.15 Owner's Right to Clean Up**

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

**ARTICLE 6 CHANGES IN THE WORK**

**§ 6.1 General**

**§ 6.1.1** Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order or Change Directive, subject to the limitations stated in this Article 6 and elsewhere in the Design-Build Documents. The decision as to whether the Change Order work is executed via a Change Order, Construction Change Directive, or a minor change in the Work is the decision of the Owner.

**§ 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. A change in the Contract Sum or the Contract Time shall be accomplished only by Change Order or by Construction Change Directive. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that the Owner has been unjustly enriched by any alteration or addition to the Work, whether or not there is, in fact, any unjust enrichment, shall be the basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents.

**§ 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. Except as permitted in Section 6.3, a change in the Contract Sum or the Contract Time shall be accomplished only by written Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that the Owner has been unjustly enriched by any alteration or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim for an increase in any amounts due under the Design-Build Documents or for a change in any time period provided for in the Design-Build Documents.

**§ 6.1.4** The Design-Builder's itemized accounts for all expenditures or savings for additions to, or deductions from, the Work in the Contract Documents shall at all times be open to inspection by the Owner.

**§ 6.1.5** Proposed changes in the Work requested during the construction period shall be priced by the Design- Builder and

submitted to the Owner for review, in such form as the Owner may require, within ten (10) calendar days following the Design-Builder's receipt of the request. The Design-Builder shall promptly revise and resubmit such proposal if the Owner determines that it is not in compliance with the requirements of this Article, or that it contains errors of fact or mathematical errors. If required by the Owner, in order to establish the exact cost of new Work added or previously required Work omitted, the Design-Builder shall obtain and furnish to the Owner bona fide proposals from recognized suppliers for furnishing and material included in such Work. Such proposals shall be furnished at the Design-Builder's expense.

§ 6.1.6 The Design-Builder's proposal for a change in the Work, (Change Order Request), shall be itemized completely and shall include: Specific number of calendar days for additional time (if applicable); all material costs and quantities accompanied by the original manufacturer invoices; labor wages; unit prices; subcontractor costs; mark ups; equipment costs, profit, overhead, general conditions, fees, bond costs and approved daily time sheet tickets for work performed under the utilization of labor rates. The Owner's refusal to approve a Change Order or Change Order Request due to the Design-Builder's lack of itemized backup information shall not be used to substantiate a claim for additional time.

§ 6.1.7 The methods used in determining the adjustment to the Contract Sum due to the change in the Work may include those listed in Section 6.3.3 and are at the discretion of the Owner.

§ 6.1.8 If the method utilized to execute the Change in the Work is based on the labor rates, unit prices and material costs, then actual daily time sheets/tickets, approved by the Superintendent and the Owner, must accompany the Change Order, Construction Change Directive, or minor change in the Work. Not including these actual daily time sheets/tickets, approved by the Superintendent and the Owner, with the Change Order, Construction Change Directive, or minor change in the Work may be cause for their rejection.

## **§ 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.

**§ 6.2.2** Agreement on any Change Order shall constitute a final settlement by Design-Builder of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change, any impact such change may have on the unchanged Work, and any and all adjustments to the Contract Sum and the construction schedule. In the event a Change Order increases the Contract Sum, the Design-Builder shall include the Work covered by such Change Orders in Applications for Payment as if such Work were originally part of the Design-Build Documents.

**§ 6.2.3** Change Order reimbursement shall be the cost of the Work, plus overhead and profit to the Design-Builder at six (6%) percent. Subcontractor's markup shall not exceed ten (10%) percent for overhead and profit. If the Design-Builder does not self-perform the Work, the Design-Builder shall be entitled to a fee of overhead and profit of six (6%) percent of the Subcontractor's total cost, which includes overhead and profit. Design-Builder's fee on change orders is in addition to any appropriate A/E Design costs, General Conditions, insurance, bonds, materials, equipment, labor and subcontractor costs.

**§ 6.2.4** The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both addition 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 Change Directives**

**§ 6.3.1** A Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time. The Owner may by Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time being adjusted accordingly. The Owner may also by Construction Change Directive order work to be performed that has been interpreted by the Owner to be part of the Work but is disputed by the Design-Builder through submission of a Claim.



§ 6.3.2 A Change Directive shall be used in the absence of total agreement on the terms of a Change Order [or work interpreted by the Owner to be part of the Contract.](#)

§ 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 and rates stated in the Design-Build Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 6.3.7.

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

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

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

§ 6.3.7 If the Design-Builder does not respond within five days of its receipt of the Change Directive 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.

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

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

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

## **ARTICLE 7 OWNER'S RESPONSIBILITIES**

### **§ 7.1 General**

**§ 7.1.1** The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization.

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

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

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

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

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

**§ 7.2.4** The Owner shall cooperate with the Design-Builder in securing building and other permits, licenses and inspections. Unless otherwise specified in the Design-Build Documents, the Design-Builder shall be responsible for securing and payment for all building and other permits, licenses and inspections. The Owner shall reimburse the Design-Builder for permits unless otherwise noted in the Design-Builder's proposal, i.e. Schedule of Values.

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

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

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

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

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

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

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

### § 7.3 Submittals

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

§ 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 within the Contract Time. **Substantial Completion shall be not later than (Project Schedule, Exhibit F). TIME IS OF THE ESSENCE PURSUANT TO THIS CONTRACT.**

§ 8.1.4 If in any Application for Payment the total value of the completed Work in place, as observed by the Owner, is less than 95% of the total value of the Work in place estimated in the Progress Schedule, the Owner may, at the Owner's option, require the Design-Builder to accelerate the progress of the Work without cost to the Owner by increasing the work force or hours of work, or by other reasonable means approved by the Owner.

§ 8.1.5 If each of three successive Applications for Payments, as observed by the Owner, indicates that the actual Work completed is less than 95% of the values estimated in the Progress Schedule to be completed by the respective dates, the Owner may, at the Owner's option, treat the Design-Builder's delinquency as a default justifying the action permitted.

## § 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. The Design-Builder further acknowledges and agrees that adjustments in the Contract Time will be permitted for a delay only to the extent such delay adversely affects the critical path of the Project, and is not caused, or could not have been anticipated, by the Design-Builder, could not be limited or avoided by the Design-Builder's timely notice to the Owner of the delay, and is of a duration not less than one (1) day.

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

§ 8.2.3 Notwithstanding anything to the contrary in the Contract Documents, the Design-Builder's remedy for any delay in the commencement, prosecution or completion of the Work, (2) hindrance or obstruction in the performance of the Work, (3) loss of productivity, or (4) other similar claims (collectively referred to as "Delays") whether or not such Delays are foreseeable, shall be an extension of time in which to complete the Work if permitted under Section 8.2.1. In the event of a concurrent delay by the Owner, the parties agree to share in proportion to their fault, the direct cost and time associated with said delay. In no event shall the Design-Builder be entitled to any other remedy or compensation or recovery or any damages, in connection with any Delay, including, without limitation, consequential damages, lost opportunity costs, impact damages or other similar remuneration.

§ 8.2.4 The Design-Builder hereby agrees that the Design-Builder shall have no claim for damages of any kind against the Owner on account of any delay in the commencement of the Work and/or delay or suspension of any portion of the Work, whether such delay is caused by the Owner, or otherwise, other than as set forth in this Section. In the event of a delay, the Design-Builder may submit a claim to recover from the Owner the Design-Builder's general conditions costs, equipment storage costs, increased direct costs of performance, demobilization and remobilization costs and other direct and unavoidable costs incurred during the period of such delay, but only to the extent delay is not caused by the Design-Builder. Design-Builder shall not be entitled to recover any consequential damages including, by way of example, interest on working capital, unabsorbed home office overhead or lost opportunity costs.

## 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 description of the Work shall be sufficiently broken down to indicate labor and material costs associated with each area of Work. Any breakdown that fails to include sufficient detail, is unbalanced, or exhibits "front-loading" of the value of the Work, will be rejected. The Schedule of Values shall be revised if later determined by the Owner to be inaccurate.

**§ 9.3 Applications for Payment See EXHIBIT A, Design-Build Amendment**

**§ 9.3.1** At least ten days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work. The application 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. **The Application for Payment shall include all documentation required by this Agreement. Design-Builder shall submit to the Owner Application for Payment not later than the first of the following month for Work provided in the previous month.**

In order to expedite monthly payments during the course of the Project, the Design-Builder shall prepare for the Owner's review a preliminary draft of the Application for Payment (pencil copy), at least approximately ten (10) days before the end of each month. The payment period shall conclude on the last of that month. Then, five (5) days before the end of each month the Design-Builder shall have made mutually agreed modifications of the pencil copy

and At least ten days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work. The application shall be notarized, if required., The Design-Builder shall utilize and submit AIA G702 and G703 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.

**§ 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 Payments for changes in the Work which have not been formally approved in a Change Order, shall not be included.

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

**§ 9.3.1.3** The Application for Payment will reflect the amount due to the Design-Builder for the cost of the Work less retainage as determined in the Agreement.

**§ 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.

**§ 9.3.2.1** In addition, for consideration of payment for stored products:

- (a) Storage shall be agreed upon in advance prior to shipment;
- (b) Location of storage shall be agreed upon in advance;
- (c) Design-Builder shall be responsible for, and pay costs of, the verification and inspection of storage;
- (d) Insurance certificate required for stored items; and
- (e) Bill of sale from supplier to verify transfer of goods to the Owner

§ 9.3.2.2 Schedule of Values and Construction Schedule will be considered in decision on any specific request for payment for storage.

§ 9.3.2.3 Payment for material and equipment delivered and stored shall not relieve Design-Builder of responsibility for furnishing equipment and material required for the Work in the same manner as if such payment were not made.

**§ 9.3.3** The Design-Builder warrants that title to all Work, other than Instruments of Service, covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the

best of the Design-Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Design-Builder, Architect, Consultants, Contractors, material suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.3.4 To the extent payment has been made by the Owner for amount due, Design-Builder hereby expressly waives, releases and relinquishes any and all right to maintain, or have filed or maintained, any mechanic's lien or claim against the aforesaid premises, or any part thereof, or any building or buildings thereon, for or on account of any work, labor and materials performed or furnished under this Agreement, and agrees that no such lien or claim shall be so filed or maintained by or on behalf of Design-Builder; and Design-Builder further agrees to save the Owner harmless from the lien or claim of liens against the aforesaid premises or any part thereof, or any buildings thereon, of any subcontractor, or any persons acting through or under the Design-Builder and agrees, that if at any time there shall be any evidence of the filing or maintenance of any such lien or claim for liens, the Owner shall have the right to deduct from the amount otherwise due to the Design-Builder hereunder, an amount sufficient to indemnify it for any or all loss or damages which may result from such lien or claim; and the Design-Builder further agrees that this waiver shall be an independent covenant, and shall operate and be effective, not only with respect to materials furnished or labor performed under and any Agreement supplemental to this principal Agreement and under any Agreement for extra labor or materials for the above described premises and buildings.

§ 9.3.4.1 Each Application for Payment or periodic estimate requesting payment shall be accompanied by a Partial Release on account of prior payments from each Subcontractor. This Release shall include the dollar amount that the Subcontractor has been paid to date.

§ 9.3.4.2 Each Application for Payment or periodic estimate requesting payment shall be accompanied by a statement from each Design-Builder and Subcontractor certifying that there are no delay claims for the period being paid.

§ 9.3.5 To the extent payment has been made by the Owner for amounts due, Owner shall be entitled to withhold payment to Design-Builder upon receipt of notice of any intent to file a lien in an amount sufficient to protect the interests of the Owner. Owner shall allow Design-Builder a reasonable opportunity to bond off a lien. Owner shall have the right, on its own and without the Design-Builder's consent, to resolve any lien claims and deduct the costs thereof from any amounts due Design-Builder. In the event sufficient funds are not due Design-Builder, Design- Builder shall immediately pay to Owner any sums paid by Owner to resolve lien claim(s) upon demand.

#### **§ 9.4 Certificates for Payment**

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

**§ 9.4.1** Applications for Payment where the Contract Sum is based upon the cost of the Work plus a fee, with a guaranteed maximum price shall show the percentage of completion of each portion of the Work as at the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of 1) the percentage of that portion of the Work which has actually been completed, or 2) the percentage obtained by dividing a) the expense that has actually been incurred by the Design-Builder on account of that portion of the Work for which the Design-Builder has made or intends to make actual payment prior to the next Application for Payment, or b) a share of the guaranteed maximum price allocated to that portion of the Work in the Schedule of Values.

Subject to the other provisions of the Design-Build Documents, the amount of each party's payment shall be computed as follows:

- .1 Take that portion of the guaranteed maximum price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the guaranteed maximum price allocated to that portion of the Work in the Schedule of Values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included in the Application for Payment.
- .2 Add that portion of the guaranteed maximum price properly allocable to materials and equipment delivered and suitably stored on site for subsequent incorporation in the Work, or if approved in advance by the Owner suitably stored off the site at a location agreed upon in writing.
- .3 Add the Design-Builder's fee, less retainage of five percent. The Design-Builder's fee shall be computed upon the cost of the Work described in the aforesaid sections.

- .4 Subtract aggregate of previous payments by the Owner.
- .5 Subtract a short-fall, if any indicated by the Design-Builder and the documentation required with each Application for Payment.
- .6 Subtract amounts, if any, for which the Owner has withheld or nullified a Certificate for Payment.

With each Application for Payment, the Design-Builder shall provide a Partial Release as noted in **EXHIBIT R**. The Design-Builder shall prepare all necessary backup to justify payment by the Owner to the Design-Builder with each Application for Payment.

NOTWITHSTANDING, ANYTHING TO THE CONTRARY, IN THE REQUEST FOR PROPOSAL OR DESIGN-BUILDER'S PROPOSAL NOTED AS EXHIBIT D-1, THERE SHALL BE NO CONSTRUCTION CONTINGENCY FOR THE DESIGN-BUILDER.

#### § 9.5 Decisions to Withhold Certification

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

- .1 defective Work, including design and construction, not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design-Builder;
- .3 failure of the Design-Builder to make payments properly to the Architect, Consultants, Contractors or others, for services, labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Design-Build Documents.
- .8 [failure to maintain specified record documents relating to the Work;](#)
- .9 [failure to provide lien releases as required herein; or](#)
- .10 [failure to provide response to on-going construction commissioning reports.](#)

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

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

#### § 9.6 Progress Payments

§ 9.6.1 After the Owner has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Design-Build Documents. **Refer to EXHIBIT A. The Owner shall make payment no later than forty (40) days from the issuance of a Certificate of Payment and subject to RIDE Regulations. Notwithstanding, the Owner shall make a good faith effort to pay the Design-Builder within twenty (20) days if funds are received by the Owner.**

§ 9.6.2 The Design-Builder shall pay each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder no later than the time period required by applicable law, but in no event more than seven days after receipt of payment from the Owner the amount to which the Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the

portion of the Work performed by the Architect, Consultant, Contractor, or other person or entity. The Design-Builder shall, by appropriate agreement with each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder, require each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder to make payments to subconsultants and subcontractors in a similar manner.

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

### § 9.7 Failure of Payment

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

Any unpaid invoices by the Owner shall incur interest at the rate of Three Percent (3%) Per Annum.

§ 9.7.2 Notwithstanding anything to the contrary, in no event shall the Design-Builder stop the Work in connection with any withholding or payment for an item or failure to make payment relating to an item made in connection with a good faith dispute.

### § 9.7.3.Liens

(1) If any subcontractor, vendor, or any other party for whom the Design-Builder is responsible files any lien against the Project and/or the Project site, the Design-Builder shall discharge such lien within fifteen (15) calendar days of the Design-Builder's learning of such lien, unless the Owner requests that the Design-Builder obtain a lien discharge bond in which case the Design-Builder shall obtain within the same fifteen (15) calendar day period, at no cost to the Owner, a lien discharge bond for which both the surety and the form of bond are acceptable to the Owner, (2) If the Design-Builder fails to discharge such lien (or, if requested by the Owner, fails to obtain a lien discharge bond acceptable to the Owner) within such fifteen (15) calendar day period, the Owner shall have the right to withhold from the next progress payment or any other sum payable to the Design-Builder an amount equal to one hundred and fifty percent (150%) of the total of (i) the amount of such lien plus (ii) reasonable costs and expenses the Owner may incur related to such lien. The Owner may either: (i) apply amounts so withheld to discharging such lien and paying the costs and expenses for such discharge; or (ii) retain such amounts (including amounts for costs and expenses) until such liens are discharged by the Design-Builder, thereafter crediting to the Design-Builder any amounts remaining after payment of the costs and expenses the Owner incurs related to such lien. (3) The Design-Builder shall defend, indemnify, and hold harmless the Owner from all costs and expenses incurred by the Owner in connection with such liens, unless and to the extent that such liens are the result of the Owner's failure to make timely payment of amounts due to the Design-Builder in accordance with the requirements of the



Contract Documents.

**§ 9.8 Substantial Completion**

**§ 9.8.1** Substantial Completion is the stage in the progress of the Work when (1) the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents; (2) the Owner can occupy or utilize the Work for its intended use; (3) the issuance of a formal Certificate of Occupancy by the authority having jurisdiction; (4) the premises have been cleaned as per Section 3.15; and (5) only minor items remain to be corrected or completed that have no significant interference with the Owner's use of the Work. The date of Substantial Completion is the date certified by the Owner in accordance with this Section 9.8.

**§ 9.8.2** When the Design-Builder considers that the Work, or a portion thereof designated in the Contract Documents for separate completion which the Owner agrees to accept separately, is substantially complete, as defined in Section 9.8.1 above, the Design-Builder shall prepare and submit to the Owner (1) a comprehensive list of items to be completed or corrected prior to final payment and (2) all Certificates of Occupancy and applicable permits required by the Contract Documents, endorsed by the Design-Builder and in a form reasonably acceptable to the Owner. Promptly after receiving such notice, the Owner will conduct a preliminary review to determine whether or not the Documents are generally complete and correct. If the Owner finds on the basis of this review that the Design-Builder's notice and supporting documents are not generally complete or correct, the Owner will return them to the Design-Builder for revision and resubmittal, describing in general the additions or corrections required. If the Owner finds on one preliminary review of the Design-Builder's resubmittal that the resubmitted notice and supporting documents are still not generally complete and correct, the Design-Builder shall again correct and resubmit them, and shall, in addition, reimburse the Owner for the cost resulting from such a second and any subsequent preliminary reviews. When the Owner finds on the basis of a preliminary review that the Design-Builder's notice and supporting documents are substantially complete, the Owner will proceed as stated in Section 9.8.3 below. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Design-Build Documents.

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

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

**§ 9.8.5** When the Work or designated portion thereof is substantially complete, the Design-Builder will prepare 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. Upon the Owner's acceptance, and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents.

**§ 9.8.7** The retainage, as determined by the Agreement, will continue to be withheld in full, and the Owner will release such retainage within thirty (30) days after the date of the issuance of a Certificate of Substantial Completion by the Design-Builder. The Owner will continue to hold retainage in an amount of one hundred fifty percent (150%) of the estimated cost of incomplete or unsatisfactory work. Further, the Owner will consider a reduction of retainage on a trade-by-trade (subcontractor-by-subcontractor) basis based upon their satisfactory progress and/or substantial completion of their Work prior to project Substantial Completion.

**§ 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. All warranties and guarantees required under or pursuant to the Contract Documents shall be assembled and delivered by the Design-Builder to the Owner prior to submission of the final Application for Payment. The final payment will not be made by the Owner until all close-out documents including as-built documents, operation and maintenance manuals,

training and any other requirements identified in the Contract Documents have been received and accepted by the Owner and provided in the media and format requested by the Owner.

§ 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 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.

§ 9.10.3.1 If after ninety (90) calendar days after Substantial Completion of the Work, or as otherwise stated in the Agreement, Final Completion thereof is not achieved due to actions or inaction of the Design-Builder, the Design-Builder shall reimburse the Owner for any and all costs incurred by the Owner for professional fees, including those of the Owner's Representative.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Design-Build Documents;
- .3 terms of special warranties required by the Design-Build Documents; and

- .4 any unknown claims, breaches of contract, defective workmanship, etc. caused by the Design-Builder.

§ 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.

## 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. [The Owner assumes no responsibility or liability for the safety of the Project site. Design-Builder shall be solely responsible for providing a safe place for the performance of the Work.](#)

### § 10.2 Safety of Persons and Property

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

- .1 employees 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, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property, or their protection from damage, injury or loss.

§ 10.2.3 The Design-Builder shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notify owners and users of adjacent sites and utilities of the safeguards and protections. The Design-Builder shall also be responsible, at the Design-Builder's sole cost and expense, for all measures necessary to protect any property and improvements adjacent to the Project. Any damage to such property or improvements shall be promptly repaired by the Design-Builder at its expense. Without limiting the indemnity provision elsewhere in the Design-Build Documents, the Design-Builder shall indemnify and hold harmless the Owner from and against any and all actions or damages resulting from damage to such property or improvements.

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

§ 10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3, caused in whole or in part by the Design-Builder, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections 10.2.1.2 and 10.2.1.3; except damage or loss attributable to acts or omissions of the Owner, or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section 3.1.14.

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

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

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

**§ 10.2.9** The Design-Builder is aware that the Project pursuant to this Agreement is adjacent to other buildings and therefore the Design-Builder shall take any and all safety measures in relation to the adjacent property, including the protection of all persons utilizing the school including, but not limited to, areas of access, parking facilities, etc.  
The Design-Builder shall take all necessary precautions for the safety of the adjacent school.

**§ 10.2.9** The Design-Builder shall, within five (5) business days, report in writing to the Owner all accidents out of or in connection with the Work that caused death, personal injury or property damage, giving names of those involved and any witnesses.

**§ 10.2.10** The Design-Builder shall be responsible for the adequate strength and safety of all scaffolding, staging and hoisting equipment and for temporary shoring, bracing and tying.

**§ 10.2.11** The Design-Builder shall, at all times, be responsible for maintaining fire safety on the site, including prompt removal of all combustible rubbish, provision of fire extinguishing apparatus, and other measures, and/or services specified herein or required by the State Fire Marshal or other authority having jurisdiction. If such authority determines that the Design-Builder has failed to provide or maintain adequate fire safety, the Design-Builder shall, at its own expense, provide any compensatory services, equipment or devices required by the authority having jurisdiction, including but not limited to maintaining a continuous fire watch.

**§ 10.2.12** Cutting and welding to be performed in or immediately adjacent to existing spaces and shall not be performed without written approval of the Owner for each instance.

**§ 10.2.13** The Design-Builder shall comply with the requirements of the Occupational Safety and Health Act and the Construction Safety Act of 1969, including all standards and regulations which have been promulgated by the governmental authorities which administer such Acts and said requirements, standards and regulations are incorporated herein by reference. The Design-Builder shall be directly responsible for compliance therewith on the part of its agents, employees, subcontractors, and material suppliers and shall directly receive and be responsible for all citations, assessments, fines or penalties which may be incurred by reason of its agents, employees, material suppliers or subcontractors, to so comply.

**§ 10.2.14** The Design-Builder shall, at all times, protect excavations, trenches, buildings, and materials from rain water, ground water, ice, snow, back-up or leakage of sewers, drains, or other piping, and from water of any other origin and shall remove promptly any accumulation of water. The Design-Builder shall provide and operate all pumps, piping and other equipment necessary to this end.

**§ 10.2.15** The Design-Builder shall remove snow or ice within the limits of the Work indicated in the Contract Documents which might result in damage or delay.

**§ 10.2.16** During the progress of the Work and at all times prior to the Date of Substantial Completion or occupancy of the Work by the Owner, whichever is earlier, the Design-Builder shall provide temporary heat, ventilation, and enclosure adequate to permit the Work to proceed in a timely fashion, and to prevent damage to completed Work or work in progress, or to materials stored on the premises. The permanent heating and ventilation systems may be used for these purposes when available unless otherwise provided in the Contract Documents. The use of the permanent heating system for temporary heat shall be subject to the prior written approval of the Owner.

**§ 10.2.17** The Design-Builder shall be responsible for protecting the Work, materials and equipment at all times from commencement of Work until completion of its Work. It may, if it wishes, employ watchmen to assure such protection.

**§ 10.2.18** In case of an emergency involving danger to life or property, the Design-Builder may act at its discretion to prevent injury or damage to the threatened life or property.

**§ 10.2.19** The Design-Builder shall maintain its hand tools, machinery, personnel protective equipment, etc. in safe operating condition and shall require its subcontractors and individual mechanics to maintain their equipment in the same condition.

### § 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 and promptly report such conditions to the appropriate authorities as required by applicable laws, statutes, rules, codes, lawful orders, regulations, and ordinances within the time required by the applicable authorities, laws, statutes, rules, codes, lawful orders, regulations, and ordinances.

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

§ 10.3.2.1 If Hazardous Material is determined to be present on the site, the Design-Builder will cooperate with the Owner and the Owner's consultants and contractors to coordinate the Work in conjunction with the abatement, handling, disposal, or other procedures related to the presence of the Hazardous Material to maintain a safe working environment and to progress with the execution of the Work to avoid delay.

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

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

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

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

### § 10.4 Emergencies

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

## ARTICLE 11 UNCOVERING AND CORRECTION OF WORK

### § 11.1 Uncovering of Work

The Owner may request to examine a portion of the Work that the Design-Builder has covered to determine if the Work has been performed in accordance with the Design-Build Documents. If such Work is in accordance with the Design-Build Documents, the Owner and Design-Builder shall execute a Change Order to adjust the Contract Time and Contract Sum, as appropriate. If such Work is

not in accordance with the Design-Build Documents, the costs of uncovering and correcting the Work shall be at the Design-Builder's expense and the Design-Builder shall not be entitled to a change in the Contract Time unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs and the Contract Time will be adjusted as appropriate.

**§ 11.2 Correction of Work**

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

**§ 11.2.2 After Substantial Completion**

**§ 11.2.2.1** In addition to the Design-Builder's obligations under Section 3.1.12, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found not to be in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. If the Design-Builder fails to correct nonconforming Work within a thirty (30) day period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 7.9.

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

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

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

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

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

**§ 11.3 Acceptance of Nonconforming Work**

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

**ARTICLE 12 COPYRIGHTS AND LICENSES**

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

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

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

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

§ 12.3.2 In the event the Owner alters the Instruments of Service without the author's written authorization or uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all claims and causes of action arising from or related to such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service under this Section 12.3.2. The terms of this Section 12.3.2 shall not apply if the Owner rightfully terminates this Agreement for cause under Sections 13.1.4 or 13.2.2.

## **ARTICLE 13 TERMINATION OR SUSPENSION**

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

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

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

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

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

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

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

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

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

§ 13.2.1.1 The Design-Builder may terminate the Contract if the Work is stopped for a period of 30 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 any of the following reasons:

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

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

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

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

**§ 13.2.2 Termination by the Owner For Cause**

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

- .1 fails to submit the Proposal by the date required by this Agreement, or if no date is indicated, within a reasonable time consistent with the date of Substantial Completion;
- .2 repeatedly refuses or fails to supply an Architect, or enough properly skilled Consultants, 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; or
- .5 is otherwise guilty of substantial breach of a provision of the Design-Build Documents.

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

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



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

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

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

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

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

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

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

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

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

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

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

**ARTICLE 14 CLAIMS AND DISPUTE RESOLUTION**

**§ 14.1 Claims**

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

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

**§ 14.1.3 Notice of Claims**

§ 14.1.3.1 **Prior To Final Payment.** Claims by either the Owner or Design-Builder must be initiated by written notice to the other party. Claims by the Design-Builder must be initiated within 21 days after occurrence of the event giving rise to such Claim. Claims by the Owner must be initiated within 21 days after the Owner first recognizes the condition giving rise to the Claim. After a Change Order Request or a formal Change Order has been executed, no additional Claim based on the same scope of work will be considered.

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

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

to make payments, other than any monies in dispute to the Design-Builder, in accordance with the Design-Build Documents. The Owner shall have no obligation to make payments to the Design-Builder on or against such claims, disputes, or other matters in question during the pendency of any mediation, arbitration, or other proceedings to resolve such matters. Owner shall continue to make payments of undisputed amounts.

**§ 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. In the case of a continuing delay, only one Claim is necessary. Design-Builder shall provide to Owner any interruption to the schedule showing the effect on the Project's critical path of the Claim for an increase in the Contract Time. Design-Builder shall only be entitled to an extension of time where the Design-Builder can demonstrate the cause of the Claim has actually extended the critical path of the Project.

**§ 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.

**§ 14.2.2 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. At the Owner's option, the surety shall be a party with the Design-Builder to all mediations and dispute resolution procedures. The Design-Builder agrees to notify its surety that it is a party to the claims procedures set out in Sections 14.2.6, 14.3 and 14.4 of this Agreement and to obtain surety's agreement to those procedures. Design-Builder also agrees to incorporate the Contract into the performance bond provided by the Design-Builders.

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

### § 14.3 Mediation

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

§ 14.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, 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 pursuant to the Rhode Island Public Works Arbitration Act, RIGL 37-16-1. 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, Section 14.4.

### **§ 15.2 Successors and Assigns**

§ 15.2.1 The Owner and Design-Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section 15.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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

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

### **§ 15.3 Written Notice**

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

### **§ 15.4 Rights and Remedies**

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

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

### **§ 15.5 Tests and Inspections**

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

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

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

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

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

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

#### § 15.6 Confidential Information

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

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

#### § 15.7 Capitalization

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

#### § 15.8 Interpretation

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

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

#### § 15.9 Other Provisions:

##### § 15.9.1 Other Conditions and Services

§ 15.9.1.1 Within seven (7) days of execution of any Amendment to this Agreement, Design-Builder shall provide Owner with a notarized list of the names and addresses of any entity or individual who or which have been engaged or will be engaged as a subcontractor or supplier to Design-Builder on the Project, as well as identifying the type of materials, service, equipment or labor to be supplied by them. Design-Builder shall provide the Owner with the names and addresses of any additional subcontractors or suppliers involved in the Work, along with the requested information, within five (5) days of engaging same. Failure to submit such information to the Owner shall serve as a basis for withholding payment to the Design-Builder. Design-Builder shall likewise require each of its subcontractors to provide it with similar information from its lower tier subcontractors and suppliers as a pre- condition to payment.

§ 15.9.1.2 In addition to other required items, each Application for Payment shall be accompanied by the following, all in a form and substance satisfactory to the Owner and in compliance with applicable laws in the state in which the Project is located.

- .1 A current sworn statement from the Design-Builder setting forth all Subcontractors and any material suppliers with whom the Design-Builder has contracted, the amount of each such contract, the amount requested for the Application for Payment, and the amount to be paid to the Design-Builder from such progress payment, together with a current, duly executed waiver of

mechanics’ and material suppliers’ liens from Design-Builder establishing receipt of payment or satisfaction of the payment requested in the current Application for Payment.

- .2 Commencing with the second Application for Payment submitted by Design-Builder, duly executed so- called "after-the-fact" waivers of mechanics’ and material suppliers’ liens from all Subcontractors, material suppliers, and, where appropriate, lower tier subcontractors, establishing receipt of payment or satisfaction of payment of all amounts requested on behalf of such entities or disbursed prior to submittal by Design-Builder of the current Application for Payment.
- .3 Such other information or documentation as the Owner or Architect may reasonably require to verify payment or performance.

**§ 15.9.1.3** In connection with Design-Builder’s Final Application for Payment, Design-Builder shall provide a notarized Final Releases as provided by the Owner. Design-Builder shall also submit the following, or similar documentation, with respect to amounts paid and/or owed by the Design-Builder to its Subcontractors, suppliers or any other entity with whom the Design-Builder has contracted for the Project: (1) AIA Form G706-Affidavit of Payment of Debts; (2) AIA Form G706A – Affidavit of Release; (3) unconditional Final Waivers from all Subcontractors, suppliers, sub-subcontractors and others who have already been paid by the Design-Builder and its Subcontractors for their work, materials and/or equipment provided to the Project; and (4) conditional Final Releases from all Subcontractors, suppliers, sub-subcontractors and others who have not yet been fully paid by the Design-Builders or Subcontractor for their work, materials and/or equipment provided to the Project. The Contractor further agrees that final payment from the Owner to the Design-Builder or portions thereof, may be distributed by the owner in the form of joint checks to satisfy the final payment amounts owed by Design-Builder to some or all of its Subcontractors, suppliers or others with whom the Design-Builder has contracted on the Project, or the Contractor shall provide other assurance, in a form satisfactory to the Owner, that upon release of final payment o the Design-Builder, all of these debts will be promptly and fully paid. The Design-Builder shall acknowledge, in writing, full and final payment upon the release of all remaining funds (whether paid directly to Design-Builder or, in whole or in part, by joint checks) and shall obtain unconditional Final Releases from all Subcontractors, suppliers and others as those funds are promptly distributed.

**ARTICLE 16 SCOPE OF THE AGREEMENT**

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

- .1 AIA Document A141™–2014, Standard Form of Agreement Between Owner and Design-Builder
- .2 AIA Document A141™–2014, Exhibit A, Design-Build Amendment, if executed
- .3 AIA Document A141™–2014, Exhibit B, Insurance and Bonds

« »

.6 Other:

«See LIST OF EXHIBITS attached hereto and dated \_\_\_\_\_ . »

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

**PROVIDENCE PUBLIC BUILDINGS AUTHORITY**

\_\_\_\_\_  
**OWNER** (Signature)

« »« »

\_\_\_\_\_  
(Printed name and title)

\_\_\_\_\_  
**DESIGN-BUILDER** (Signature)

« »« »

\_\_\_\_\_  
(Printed name and title)

**AIA Document A141-2014 (Dated June 9, 2024)  
Standard Form of Agreement between Owner and Design-Builder**

**OWNER  
And  
, Design-Builder**

**Projects:**

**LIST OF EXHIBITS**

- Exhibit A** AIA A141 Exhibit A – Design-Build Amendment  
(To Agreement dated)
- Exhibit B** AIA A141 Exhibit B - Insurance and Bonds
- Exhibit C** Sustainable Projects/Not Applicable
- Exhibit D** Request for Proposal dated
- Exhibit D-1** Design-Builder’s Proposal dated
- Exhibit E** Design-Builder’s Schedule of Values
- Exhibit F** Project Schedule
- Exhibit G** Design-Builder’s Safety Program
- Exhibit H** Design-Builder’s Insurance Requirements (See Exhibit B)
- Exhibit I** Design-Builder’s Performance and Payment Bond
- Exhibit J** Design-Builder’s Equal Opportunity and Affirmative Action Plan
- Exhibit K** Schedule of Wages (See Exhibit P)
- Exhibit L** Audit Provisions
- Exhibit M** List of Drawings (To be noted in the GMP Amendment, Exhibit A)
- Exhibit N** List of Specifications (To be noted in the GMP Amendment,  
Exhibit A)
- Exhibit O** Owner’s Tax Exempt Certificate
- Exhibit P** Design-Builder’s General Conditions Matrix
- Exhibit Q** Amendments and Qualifications

**1. Builder’s Risk Coverage**

The Design-Builder shall provide Builder’s Risk Coverage to be reimbursed by the Town of East Greenwich in the sum of \$ \_\_\_\_\_ per Design-Builder’s correspondence of \_\_\_\_\_.

- Exhibit R      Partial and Final Lien Releases**
- Exhibit S      AIA Application for Payment Form G702, G703**
- Exhibit T      Rhode Island Prevailing Wage Statute 37-13-9, 37-13-5 and  
37-13-6 & 7**
- Exhibit U      Current List of Allowances**



# DRAFT AIA® Document A141™ - 2014 Exhibit A

## Design-Build Amendment

This Amendment dated is incorporated into the accompanying AIA Document A141™  
2014, Standard Form of Agreement Between Owner and Design-Builder dated the «»  
day of «» in the year «2024 » (the “Agreement”)  
*(In words, indicate day, month and year.)*

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

«  
\_\_\_\_\_

**THE OWNER:**  
*(Name, legal status and address)*

«  
»« »  
« »

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

«  
»« »  
« »

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

### TABLE OF ARTICLES

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

### ARTICLE A.1 CONTRACT SUM

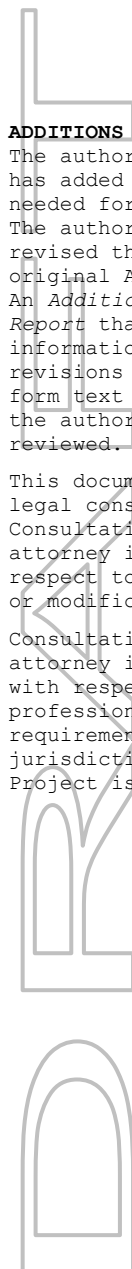
§ A.1.1 The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Contract after the execution of this Amendment. The Contract Sum shall be one of the following and shall not include compensation the Owner paid the Design-Builder for Work performed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

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

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



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[  ] 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.

**§ 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.)*

**§ A.1.2.3** Unit prices, if any:

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

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

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

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

**§ A.1.3.2** The Design-Builder's Fee:

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

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

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

**§ A.1.4.2** The Design-Builder's Fee:

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

**§ A.1.4.3 Guaranteed Maximum Price**

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

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

**§ A.1.4.3.2 Itemized Statement of the Guaranteed Maximum Price**

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

(Provide information below or reference an attachment.)

« »

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

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

« »

§ A.1.4.3.4 Unit Prices, if any:

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

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

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

« »

## § A.1.5 Payments

### § A.1.5.1 Progress Payments

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

§ A.1.5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

« »

§ A.1.5.1.3 Provided that an Application for Payment is received not later than the « » day of the month, the Owner shall make payment of the certified amount to the Design-Builder not later than the « » days of the « » month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than « » ( « » ) days after the Owner receives the Application for Payment. Notwithstanding, the Owner shall make a good faith effort for payments to the Design-Builder on or before the 20<sup>th</sup> day of payments received by the Owner.

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

§ A.1.5.1.4 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Design-Builder on account of the Cost of the Work equal or exceed (1) progress payments already received by the Design-Builder, less (2) that portion of those payments attributable to the Design-Builder's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ A.1.5.1.5 With each Application for Payment where the Contract Sum is based upon a Stipulated Sum or Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services, if any, shall be shown separately. Where the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder's Fee shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its

accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

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

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

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

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

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

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of « » percent ( « » %) 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 « » percent ( « » %);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, the Owner has withheld or nullified, as provided in Section 9.5 of the Agreement.

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

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

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

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

« »

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

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

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

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

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

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

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

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

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement.
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Design-Builder's Fee, less retainage of «Five » percent ( « 5 » %). The Design-Builder's Fee shall be computed upon the Cost of the Work at the rate stated in Section A.1.4.2 or, if the Design-Builder's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of «Five » percent ( «5 » %) from that portion of the Work that the Design-Builder self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section A.1.5.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Owner has withheld or nullified a payment as provided in Section 9.5 of the Agreement.

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

agreements with the Architect, Consultants, and Contractors; and the Design-Builder shall execute agreements in accordance with those terms.

If the Owner and Design-Builder cannot agree on the procedures and percentage under this section, then the Owner shall determine those procedures and percentage of retainage.

**§ A.1.5.5 Final Payment**

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

**§ A.1.5.5.2** Final Payment is further subject to the Owner’s prior receipt from the Design-Builder of all As-Built Drawings, certifications, maintenance manuals, operating instructions, written guaranties, warranties and bonds related to the Work, consent of surety, and assignments of all guaranties and warranties from contractors, subcontractors, vendors, suppliers or manufacturers as required by the Design-Build Documents and the Request for Proposal noted as EXHIBIT D and by the Design-Build Documents. Receipt of those documents is a condition precedent to payment to the Design-Builder by the Owner.

**§ A.1.5.5.3** If the Contract Sum is based on the Cost of the Work, the Owner’s auditors will review and report in writing on the Design-Builder’s final accounting within 60 days after the Design-Builder delivers the final accounting to the Owner. Based upon the Cost of the Work the Owner’s auditors report to be substantiated by the Design-Builder’s final accounting, and provided the other conditions of Section 9.10 of the Agreement have been met, the Owner will, within seven days after receipt of the written report of the Owner’s auditors, either issue a final Certificate for Payment, or notify the Design-Builder in writing of the reasons for withholding a certificate as provided in Section 9.5.1 of the Agreement.

**§ A.1.5.5.4** In the event that there is an Owner’s punch list, the Owner shall retain two hundred percent (200%) of the value of said punch list until the Design-Builder completes the punch list one hundred percent (100%) to the satisfaction of the Owner. Upon completion, the Owner shall pay the remaining balance to the Design-Builder within forty-five (45) days.

**ARTICLE A.2 CONTRACT TIME**

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

**§ A.2.2** The Design-Builder shall achieve Substantial Completion of the Work no later than « days from the date of this Amendment, or as follows:

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

Portion of Work	Substantial Completion Date

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

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

« »

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

Guaranteed Maximum Price is based upon EXHIBITS A through Q of the Contract between the Parties.

§ 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.)

<< >>

Section	Title	Date	Pages

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

<< >>

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:

<< s

§ 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:

<< >>

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

<< >>

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

<< >>

**ARTICLE A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS – See EXHIBIT D**

§ 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.)

<< >>

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

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

§ A.5.1.1 Labor Costs

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

§ 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)
-----------------	------------------------------	---------------	---------------------

§ 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 second to last sentence of Section 3.1.13.2 of the Agreement or other provisions of the Design-Build Documents, then they shall not be included in the Cost of the Work.

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

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

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

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

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

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

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

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

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

#### § A.5.1.7 Related Party Transactions

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

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

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

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

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

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

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

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

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

### **§ A.5.4 Other Agreements**

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

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

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

### **§ A.5.5 Accounting Records**

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

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

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

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

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« »« »  
*(Printed name and title)*

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« »« »  
*(Printed name and title)*



# DRAFT AIA® Document A141™ - 2014

## Exhibit B

### Insurance and Bonds

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

«

THE OWNER:  
(Name, legal status and address)

«

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

«  
»« »  
« »

#### THE AGREEMENT

This Insurance Exhibit is part of the accompanying agreement for the Project, between the Owner and the Design-Builder (hereinafter, the Agreement), dated the « » day of « » in the year « 2024 ».

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

#### TABLE OF ARTICLES

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

#### ARTICLE B.1 GENERAL

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

#### ARTICLE B.2 DESIGN BUILDER'S INSURANCE AND BONDS

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

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

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

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

«The Design-Builder shall maintain all insurance coverage for the life of the contract from an insurance company or companies with an A.M. Best rating of A- or better. Such insurance shall protect and indemnify the Owner from all claims which may arise out of or result from the Design-Builder's obligations under this Agreement, whether caused by the Design-Builder or by a subcontractor or any person or entity directly or indirectly employed by said Design-Builder or by anyone for whose acts said Design-Builder may be liable. »

§ B.2.1.1 Commercial General Liability with policy limits of not less than «Two Million Dollars » (\$ «2,000,000 » ) for each occurrence and «Two Million Dollars » (\$ «2,000,000 » ) in the aggregate providing coverage for claims including

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

§ B.2.1.2 Automobile Liability covering vehicles owned by the Design-Builder and non-owned vehicles used by the Design-Builder with policy limits of not less than «One Million Dollars » (\$ «1,000,000 » ) per claim and «One Million Dollars » (\$ «1,000,000 » ) in the aggregate for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles specified in this Section B.2.1.2, along with any other statutorily required automobile coverage.

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

§ B.2.1.4 Workers' Compensation at statutory limits.

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

«Umbrella Liability Insurance

Design-Builder shall provide an umbrella liability in excess (without restriction or limitation). Such policy shall contain limits of liability in the amount of Ten Million Dollars (\$10,000,000) each occurrence and Ten Million Dollars (\$10,000,000) in the aggregate. »

§ B.2.1.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than «One Million Dollars » (\$ «1,000,000 » ) per claim and «One Million Dollars » (\$ «1,000,000 » ) in the aggregate, with three (3) year extension.

§ B.2.1.7 Pollution Liability covering performance of the Work, with policy limits of not less than «One Million Dollars » (\$ «1,000,000 » ) per claim and « » (\$ « » ) in the aggregate.

§ B.2.1.7.1 The Design-Builder may obtain a combined Professional Liability and Pollution Liability policy to satisfy the requirements set forth in Sections B.2.1.6 and B.2.1.7, with combined policy limits that are not less than «One Million Dollars » (\$ «1,000,000 » ) per claim and «One Million Dollars » (\$ «1,000,000 » ) in the aggregate.

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

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

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

### **§ B.2.2 Performance Bond and Payment Bond**

The Design-Builder shall provide surety bonds as follows:  
(Specify type and penal sum of bonds.)

The Design-Builder shall furnish a Performance Bond and Labor and Material Payment Bond meeting all statutory requirements of the State of Rhode Island, in form and substance satisfactory to the Owner and without limitation, complying with the following specific requirements:

1. Except as otherwise required by statute, the form and substance of such bonds shall be satisfactory to the Owner in the Owner's sole judgment.
2. Bonds shall be executed by a responsible surety licensed in Rhode Island, with a Best's rating of no less than A/XII, and shall remain in effect for a period not less than three (3) years following the date of Substantial Completion or the time required to resolve any items of incomplete Work and the payment of any disputed amounts, whichever time period is longer.
3. The Performance Bond and the Labor and Material Payment Bond shall each be in an amount equal to the Contract Sum and subsequent increases.
4. The Design-Builder shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of his power of attorney indicating the monetary limit of such power.
5. Every Bond under this Section B.2.2 must display the Surety's Bond Number. A rider including the following provisions shall be attached to each Bond:
  - a. The Surety hereby agrees that it consents to and waives notice of any addition alteration, omission, change, or other modification of the Contract Documents, or a forbearance on the part of either the Owner or the Design-Builder to the other, shall not release the Surety of its obligations hereunder, and notice to the Surety of such matters is hereby waived.
  - b. The Surety agrees that it is obligated under the bonds to any successor, grantee, or assignee of the Owner.

The surety, form and substance of the bond shall be satisfactory to the owner. Surety companies executing bonds must appear on the Treasury Department's most current list (Circular 570, as amended) and be authorized to transact business in the State of Rhode Island.

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

## **ARTICLE B.3 OWNER'S INSURANCE**

### **§ B.3.1 Owner's Liability Insurance**

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

**§ B.3.2 Property Insurance**

**§ B.3.2.1** The Design-Builder has agreed to provide Property Insurance pursuant to Section 3.2.1 at an alternate cost of \$37,000. Said insurance should comply with the provisions of Section B.3.2.1. Unless otherwise provided, at the time of execution of the Design-Build Amendment, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus the value of subsequent Modifications and cost of materials supplied or installed by others, comprising the total value for the entire Project at the site on a replacement cost basis without optional deductibles. If any construction that is part of the Work shall commence prior to execution of the Design-Build Amendment, the Owner shall, prior to commencement of construction, purchase and maintain property insurance as described above in an amount sufficient to cover the total value of the Work at the site on a replacement cost basis without optional deductibles. The insurance required under this section shall include interests of the Owner, Design-Builder, Architect, Consultants, Contractors, and Subcontractors in the Project. The property insurance shall be maintained, unless otherwise provided in the Design-Build Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of the insurance, until the Owner has issued a Certificate of Substantial Completion in accordance with Section 9.8 of the Agreement. Unless the parties agree otherwise, upon issuance of a Certificate of Substantial Completion, the Owner shall replace the insurance policy required under this Section B.3.2 with another property insurance policy written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 11.2.2 of the Agreement.

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

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

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

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

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

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

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



consequential losses due to fire or other hazards covered under the property insurance required under this Exhibit B to the Agreement.

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

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

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

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

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

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

#### **ARTICLE B.4 SPECIAL TERMS AND CONDITIONS**

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

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## CITY OF PROVIDENCE

Brett P. Smiley, Mayor

### MEMORANDUM

To: Department of Public Property; Parks Department  
From: Law Department  
Re: Compliance with apprenticeship and "First Source" ordinances  
Date: April 21, 2023

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The City of Providence has hired "Building Futures," an outside consulting group, to assist with monitoring the City's compliance with ordinances relating to construction projects. Specifically, Building Futures is monitoring the City's compliance with two (2) ordinances that require the City to maximize utilization of apprentices and Providence residents in City construction projects.

1) Providence Code of Ordinances Sec. 21-28.1, governing construction contracts of \$100,000 or more, requires that no less than 15% of the total labor hours performed by contractors and subcontractors on any given project are to be completed by apprentices registered in state-registered apprenticeship programs. This requirement pertains to all labor hours for a given project, not just those for new hires.

The Law Department recommends the inclusion of the following notice (or one substantially similar) in all RFP's for construction projects valued at \$100,000 or more:

#### **APPRENTICE REQUIREMENTS.**

Attention of prospective bidders is called to the fact that this project is to be bid upon and executed under the City of Providence Code of Ordinances Chapter 21 Art. II Section 21-28.1 c(1) and (2) related to utilizing apprentices in the contract. This ordinance outlines requirements for utilizing not less than 15% of total hours worked by apprentices. The City may lower this percentage only if it determines in writing that compliance is not feasible or that it would be unduly cost prohibitive to the project. The attention of prospective bidders is also called to the fact that reporting the efforts undertaken and progress towards achieving the requirements in this ordinance is a condition for payment. Compliance reporting shall be submitted with any contract payment requisition, in a format to be specified by the City. This demonstration of compliance through such reports shall be a condition of the requisition for payment to be processed. Upon the contract being awarded to the successful bidder, a mandatory meeting will be scheduled to review the project

requirements relative to apprenticeship requirements and the process and protocols by which these goals will be achieved. At this meeting, specific forms and procedures for the documentation and achievement of these requirements by the successful bidder will be provided, discussed and agreed upon for the execution of the contract.

2) Providence "First Source" Ordinance Sec. 21-91 – Sec. 21-96 requires that when hiring new workers for a construction project, employers seek to hire Providence residents when available. If the awarded contractor, regardless of tier, is a signatory to a Collective Bargaining Agreement that governs the contractor's hiring and referral process, the contractor must contact both Building Futures and the local hiring halls to request apprentices or journey workers who are residents of Providence. In the case of apprentices, this is a way to meet the requirements of both ordinances with one hire.

The Law Department recommends the inclusion of the following notice (or one substantially similar) in all RFP's for City construction projects:

**"FIRST SOURCE" REQUIREMENTS.**

Attention of prospective bidders is called to the fact that this project is to be bid upon and executed under the City of Providence Code of Ordinances Chapter 21 Art. III 1/2 First Source Agreements Sec. 21-91 through 21-96. This ordinance outlines requirements for hiring Providence residents to work on this project. The City may waive this requirement only upon a determination in writing that qualified residents of Providence are not available for the project, pursuant to Sec. 21-94(e). The attention of prospective bidders is called to the fact that reporting the efforts undertaken and progress towards achieving the requirements in this ordinance is a condition for payment. Compliance reporting shall be submitted with any contract payment requisition, in a format to be specified by the City. This demonstration of compliance through such reports shall be a condition of the requisition for payment to be processed. Upon the contract being awarded to the successful bidder, a mandatory meeting will be scheduled to review the project requirements relative to the First Source Agreements and the process and protocols by which these goals will be achieved. At this meeting, specific forms and procedures for the documentation and achievement of these requirements by the successful bidder will be provided, discussed and agreed upon for the execution of the contract.

If your department or any of your contractors has difficulty securing registered apprentices or Providence residents to participate in construction projects, you are encouraged to contact Building Futures, who may be able to assist:

William Bryan, AUP Manager, Renowned Advising <renownedadvising@gmail.com>

or

Rita Holahan, Building Futures <rholahan@bfri.org>