



CITY OF PROVIDENCE, RHODE ISLAND

**Department: Providence Water**

**RFP Title: Inspection & Rehabilitation of the Supplemental Tunnel & Aqueduct (Exp. 12/31/26) with One Option Year**

**Opening Date: 02/10/2025**

**Addendum #: 4**

**Issue Date: 01/27/2025**

The purpose of this addendum is:

Additional information and answers to vendor's questions.



## ADDENDUM NO. 4

**TO:** ALL CONTRACT DOCUMENT HOLDERS OF RECORD  
ALL PROSPECTIVE PROPOSERS

**FROM:** PROVIDENCE WATER  
125 DUPONT DRIVE  
PROVIDENCE, RHODE ISLAND 02907  
PHONE: (401) 521-6300

**DATE ISSUED:** JANUARY 27, 2025

**RE:** INSPECTION & REHABILITATION OF THE SUPPLEMENTAL TUNNEL  
& AQUEDUCT – 2025-2026  
78-INCH AQUEDUCT & 102-INCH AQUEDUCT – UPSTREAM  
SECTION  
PROJECT NO. 848-20242

**BID OPENING  
DATE:** FEBRUARY 10, 2025 AT 2:15 PM

**BID OPENING  
LOCATION:** BOARD OF CONTRACT AND SUPPLY MEETING  
PROVIDENCE CITY HALL  
25 DORRANCE STREET  
PROVIDENCE, RHODE ISLAND 02903

**LAST WRITTEN  
QUESTIONS DUE:** FRIDAY, JANUARY 31, 2025

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This Addendum, including all referenced attachments, modifies, amends, and supplements designated parts of the Request For Proposals (RFP) and/or Contract Documents to the above-referenced project and shall be part of the Request For Proposals and/or Contract Documents for the above-referenced project.

Acknowledge receipt of this Addendum by inserting its number and date on the respective Bid Forms. Failure to do so may subject the Proposer to disqualification.

The Request For Proposals and/or Contract Documents are hereby modified, amended and supplemented as follows:

## **ATTACHMENTS**

The following attachments are included with this Addendum:

1. Request For Proposals – Updated January 27, 2025, including updated Bid Forms, updated General Conditions of the Contract, and revised Draft Agreement.

## **GENERAL**

1. The attached Request For Proposals (RFP) is provided in both “tracked changes” format to show all additions, deletions, modifications, and updates as well as a “clean” updated copy. The “tracked changes” version shows all modifications in “tracked changes” and also shows modifications made as part of this Addendum highlighted in yellow.
2. The General Conditions of the Contract provided with the updated RFP in this Addendum is a modified version of EJCDC D-700 – Standard General Conditions of the Contract between Owner and Design-Builder. In lieu of providing any Supplementary Conditions, all modifications and additions to the standard EJCDC D-700 terms and conditions are shown in “tracked changes”. The “tracked changes” version shows all modifications in “tracked changes” and also shows modifications made as part of this Addendum highlighted in yellow.
3. The revised Draft Agreement provided with the updated RFP in this Addendum is a modified version of EJCDC D-520 – Agreement Between Owner and Design-Builder.

## **PRE-BID CONFERENCE**

1. The meeting report from the pre-bid conference was previously provided in Addendum No. 1.

## **REQUEST FOR PROPOSALS**

1. **REPLACE** the Request For Proposals document issued with Addendum No. 2 and dated December 20, 2024 in its entirety with the attached updated Request For Proposals document dated January 27, 2025.

## **WRITTEN QUESTIONS AND COMMENTS RECEIVED**

All questions asked during the pre-bid conference meeting are documented with responses provided in the pre-bid conference meeting report. Additional questions received along with their respective responses are as follows:

1. **QUESTION/COMMENT:** Regarding the bid form and contract, we respectfully request that Providence Water reconsider the cost-plus fixed fee model and move to lump sum pricing for the bid items, with hourly charges (i.e., rate sheet) for allowance work. Reasoning as follows:
  - a. This would be consistent with payment structure for prior aqueduct inspection and lining programs.
  - b. Multiple bids will be easier for Providence Water to compare on a lump sum basis.
  - c. Simpler pricing model blends all direct, indirect, overhead, engineering, and union contractor costs into an upper limit, avoiding challenges with fixed fee calculations and contingency impacts – consider utilizing EJCDC D-520 lump sum DB contract.
  - d. Avoids additional fee on the allowance item unless work is performed.
  - e. This will avoid a significant administrative burden for both Providence Water and the DB team, which will reduce associated management costs on the base bid items. Preparing, reviewing and processing invoice packages will be simpler and more efficient.
  - f. Providence Water would eliminate potential exposure to overruns through the cost-plus fixed fee model, as risk is shifted to the DB team for lump sum upper limit.

**RESPONSE:** See the attached updated RFP documents provided with this Addendum.

2. **QUESTION/COMMENT:** The Addendum 2 provided Draft Agreement contract terms of Cost-plus Fee compensation (Article 3, pg. 2 of 11) and Cost of Work definitions and exclusions (Article 4, pgs. 2-5 of 11) seem not to match the Price Proposal Form table (Article 5, pg. 5 of 7) which states bid Items 1 - 5 and 7 are each a Guaranteed Maximum Price (GMP) per item with an indirect overhead rate included in the Labor Costs. To avoid confusion of different bidder pricing assumptions, would the Owner consider making Bid Items 1 - 5 and 7 each lump sum compensation method, with schedule of values as was practiced on the prior Aqueduct inspection and Rehabilitation project? As such all necessary costs to execute the work will be included and a singular total GMP would be stated as per the Agreement Article 6 (pg. 4 of 11). Payment Applications would remain as stated in Agreement Article 8 and General Conditions Article 14.

**RESPONSE:** See the attached updated RFP documents provided with this Addendum.

3. **QUESTION/COMMENT:** Addendum 2 states payment terms between Owner and Contractor shall be within 60 days of an approved invoice as included in City of Providence Terms and Conditions (Article 5) and the redline modifications to the EJCDC Standard General Conditions (Article 14.01F). Would the Owner consider instead redline to the City Terms and Conditions to match the standard 30 days in the original EJCDC General Conditions, which would also align with RI prompt payment laws?

**RESPONSE:** Payment terms are as dictated by the City of Providence and as stated in the RFP. The Owner understands that firms and organizations should be paid in a prompt and timely manner without undue delay. In all cases, Owner/City of Providence strives to pay all invoices and bills expeditiously, and within thirty calendar days following approval of a properly prepared and submitted invoice or Application For Payment from the vendor.

4. **CLARIFICATION:** Regarding the previous question regarding the emergency interconnection line near Structure 'D' and if this line must stay intact and active during the work:

Providence Water understands that this interconnection pipeline will need to be isolated and shut down for a period of time to transfer it to the new sliplined section of the 78-inch aqueduct. The Project Team shall minimize the down time of this interconnection pipeline and shall not needlessly shut down this interconnection pipeline. The Owner's goal is that this interconnection pipeline should remain intact and an option for Providence Water to provide emergency supply to the Kent County Water Authority (KCWA) via Structure 'D' and shall only be taken offline when and as needed for the necessary and required work.

**-END OF ADDENDUM NO. 4-**



PROVIDENCE WATER

125 DUPONT DRIVE  
PROVIDENCE, RHODE ISLAND 02907  
TELEPHONE: (401) 521-6300

## REQUEST FOR PROPOSALS

### INSPECTION & REHABILITATION OF THE SUPPLEMENTAL TUNNEL & AQUEDUCT

2025 – 2026  
78-INCH AQUEDUCT &  
102-INCH AQUEDUCT – UPSTREAM SECTION

PROJECT NUMBER: 848-20242

OCTOBER 21, 2024

UPDATED JANUARY 27, 2025

REQUEST FOR PROPOSALS  
INSPECTION & REHABILITATION OF THE SUPPLEMENTAL TUNNEL & AQUEDUCT – 2025-2026  
78-INCH AQUEDUCT & 102-INCH AQUEDUCT – UPSTREAM SECTION  
PROJECT NO. 848-20242

**BOARD OF CONTRACT & SUPPLY  
TERMS & REQUIREMENTS FOR BIDDING  
(INSTRUCTIONS FOR SUBMISSION)**



BOARD OF CONTRACT AND SUPPLY  
CITY OF PROVIDENCE, RHODE ISLAND

# REQUEST FOR PROPOSALS

**Item Description: INSPECTION & REHABILITATION OF THE SUPPLEMENTAL TUNNEL & AQUEDUCT – 2025-2026  
78-INCH AQUEDUCT & 102-INCH AQUEDUCT – UPSTREAM SECTION  
(CONTRACT THROUGH 12/31/~~2026~~2027 WITH 1-YEAR EXTENSION OPTION)**

**Procurement/MinuteTraq #:** Click or tap here to enter text.

**Date to be opened: 2:15 P.M. ON ~~DECEMBER 16, 2024~~JANUARY 27~~FEBRUARY 10, 2025~~**

**Issuing Department:** Providence Water Supply Board

## QUESTIONS

- Please direct questions related to the bidding process, how to fill out forms, and how to submit a bid (Pages 1-11) 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 12-13) 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 to the issuing department’s subject matter expert:
  - Name: **Leo Fontaine**
  - Title: **Project Manager**
  - Email Address: [leof@provwater.com](mailto:leof@provwater.com)

## Pre-Bid Conference

A pre-bid conference will be held for this project on Thursday, November 7, 2024 at 10:00 AM in person at the Providence Water Central Operations Facility (COF), 125 Dupont Drive, Providence, RI and by Microsoft Teams: [https://teams.microsoft.com/join/19%3ameeting\\_N2M2MTBjMWUtZjU1Mi00YTJmLTg2YWUtODFjYTE0ZGZhY2Mw%40thread.v2/0?context=%7b%22Tid%22%3a%22479ad3fc-a924-446b-91ec-092c231593ed%22%2c%22Oid%22%3a%22900d92ab-f428-4afc-80d2-01980905acd9%22%7d](https://teams.microsoft.com/join/19%3ameeting_N2M2MTBjMWUtZjU1Mi00YTJmLTg2YWUtODFjYTE0ZGZhY2Mw%40thread.v2/0?context=%7b%22Tid%22%3a%22479ad3fc-a924-446b-91ec-092c231593ed%22%2c%22Oid%22%3a%22900d92ab-f428-4afc-80d2-01980905acd9%22%7d)

Meeting ID: 251 320 687 772      Passcode: dRFxad

Attendance at the pre-bid conference is not mandatory, but is strongly recommended.

All questions must be submitted in writing as indicated in this Request For Proposals.





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

**INSTRUCTIONS FOR SUBMISSION**

**MEETING DATE ~~12/16/2024~~ **12/16/2024** ~~272/10/2025~~**

Bids may be submitted up to **2:15 P.M.** on the above meeting date at the **Department of the City Clerk, Room 311, City Hall, 25 Dorrance Street, Providence.** At 2:15 P.M. all bids 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 **one original and five copies along with an electronic PDF file** of their bid in sealed envelopes or packages labeled with the captioned **Item Description** 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).
- If required by the Department, please keep the original bid bond and check in only one of the envelopes.
- 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.
- The bid 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**

**\*\*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.



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

**BID PACKAGE CHECKLIST**

Bid Documents (drawings, specifications, etc.) can be obtained from the City of Providence Bid Opportunities web portal at <https://www.bidnetdirect.com/rhode-island/providenceri>

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 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 6 of this document*)
- Bid Form 2: Certification of Bidder as 2<sup>nd</sup> page (*see page 7 of this document*)
- Bid Form 3: Certificate Regarding Public Records (*see page 8 of this document*)
- Bid Form 4: Affidavit of City Vendor (*see pages 9 and 10 of this document*)
- Bid Form 5: Bidder Certification – Experience & Qualifications (*see page 11 of this document*)
- Forms from the Minority and Women Business Enterprise Program: Based on Bidder Category. See *forms and instructions enclosed (pages 12-13) 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 the above-listed documents are REQUIRED.** (With the exception of financial assurances, which are only required if specified under Bid Terms below).

**\*\*\*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  
CITY OF PROVIDENCE, RHODE ISLAND**

**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 qualified and 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 the event of an error in the extension of prices quoted, the unit price shall prevail.
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 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 copies of the bid to the City Clerk as indicated above, 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.)



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

**BID TERMS**

1. Financial assurances may be required 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 percent (100%) of the awarded contract.
  - d)  No financial assurance is necessary for this item.
2. Awards will be made within **ninety (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 amount satisfactory to the City.



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

**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:

**INSPECTION & REHABILITATION OF THE SUPPLEMENTAL TUNNEL & AQUEDUCT  
2025-2026  
78-INCH AQUEDUCT & 102-INCH AQUEDUCT – UPSTREAM SECTION  
(CONTRACT THROUGH 12/31/~~2026~~2027 WITH 1-YEAR EXTENSION OPTION)**

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\*: \_\_\_\_\_

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

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

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

Bidder acknowledges receipt of addenda numbered: \_\_\_\_\_

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

\_\_\_\_\_  
Title



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

**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 based on race, color, national origin, gender, sexual orientation and/or religion in its business and hiring practices.
2. All Bidder's employees were hired to comply 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



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

**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



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

**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) through 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):





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

**Affidavit of City Vendor (continued)**

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



**BID FORM 5: Bidder Certification – Experience and Qualifications**

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

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

being its \_\_\_\_\_ (Title or “Self”), hereby certify an understanding that:

Proposer conforms to the requirements as set forth in the Experience and Qualifications section of this Request For Proposals.

I affirm by signing below that I am duly authorized on behalf of Bidder, on this \_\_\_\_\_ day of \_\_\_\_\_ 2024.

\_\_\_\_\_

Signature of Representation

\_\_\_\_\_

Printed Name



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

**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.**



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

**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 [gdi@providenceri.gov](mailto:gdi@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  
CITY OF PROVIDENCE, RHODE ISLAND**

## **BID PACKAGE SPECIFICATIONS**

### **Overview**

See attached Request For Proposals.

### **Scope of Work**

See attached Request For Proposals.

### **Proposed Schedule**

See attached Request For Proposals.

### **Evaluation Criteria**

See attached Request For Proposals.



## 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 department's request may lead to your bid's disqualification.

*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 records. 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.
- Bidders shall provide all required supplemental documents and information as specified in the Bidding/Contract Documents.



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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 City’s election. 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.



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## **PART I – PROJECT DESCRIPTION & REQUIREMENTS**

### **1.1 INVITATION TO PROPOSE**

Providence Water (PW) (Owner) is seeking Proposals from qualified Project Teams for engineering and construction services for the next campaign of its Inspection and Rehabilitation of the Supplemental Tunnel and Aqueduct Program. The Project Work shall be as described herein in this Request For Proposals (RFP). Proposals will be received as indicated in the City of Providence Board of Contract and Supply (BOCS) Cover Documents of this RFP. Proposers shall be comprised of engineering firms, construction contractors, and specialty firms/subcontractors, as needed and required, that meet the required qualifications to form a Project Team to submit a Proposal to respond to this RFP. The intent of this RFP is that Owner will make an award to one Proposer and Project Team to perform the Work of this Project in accordance with terms and conditions herein.

All questions about the meaning or intent of this RFP and Work of this Project shall be directed to and received in writing by the Owner's subject matter expert as indicated in the Cover Documents of this RFP. All written questions shall be received by the Owner at least ten **calendar** days before the date specified for the opening of Proposals; questions received after this date may not be answered. It is the sole responsibility of all Proposers to ensure that the Owner is in receipt of any submitted written questions.

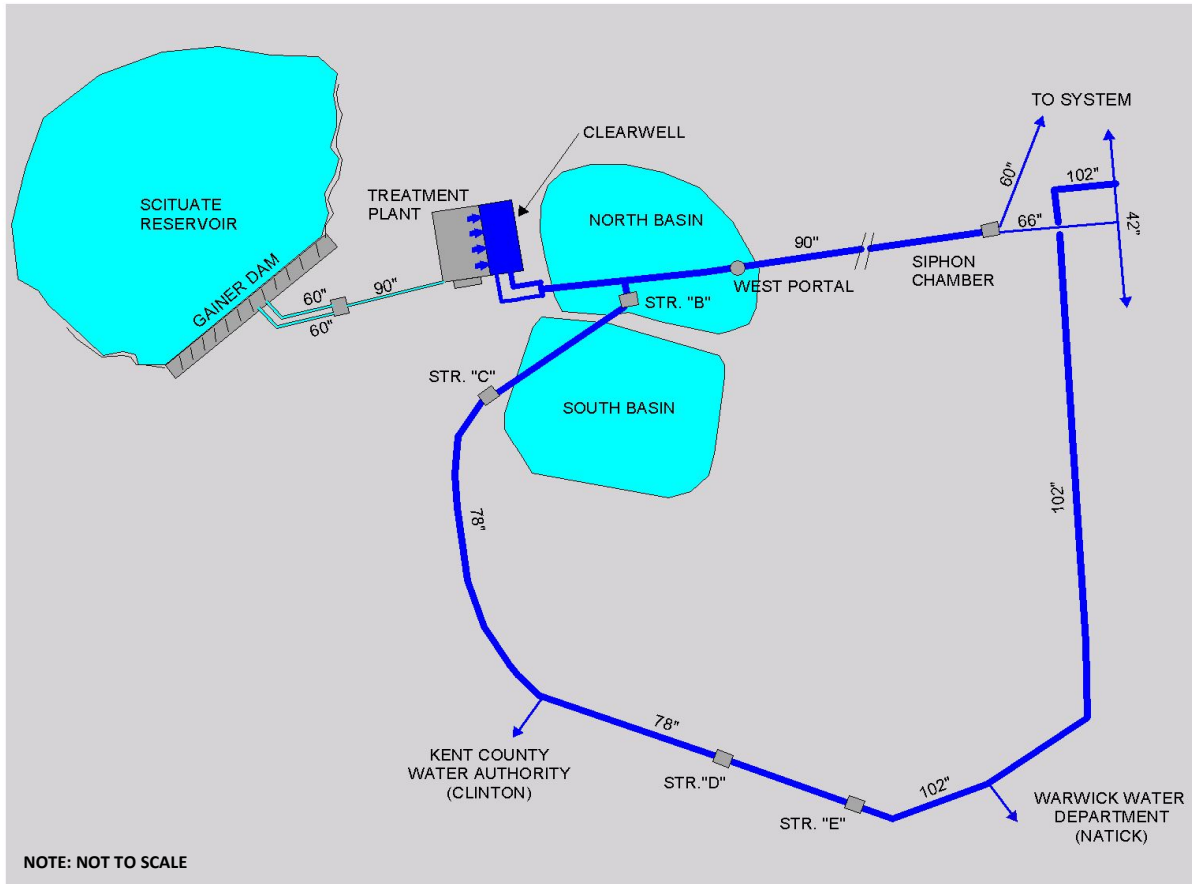
Written clarifications or interpretations will be issued by Owner by Addenda not later than five **calendar** days before the date specified for the opening of Proposals. Only questions answered by formal written Addenda will be binding. Oral and other clarifications or interpretations will be without legal effect. Addenda will be issued by delivery service with delivery confirmation and/or transmitted electronically to all parties recorded as having received this RFP. All Proposers are solely responsible for confirming that they received all issued Addenda.

### **1.2 INTRODUCTION**

PW is the main supplier of potable water for approximately 600,000 people in the State of Rhode Island, supplying water for domestic, commercial and industrial use, as well as for fire protection. PW directly serves customers in its retail area in five communities in Rhode Island – the City of Providence, City of Cranston, Town of North Providence, Town of Smithfield, and Town of Johnston. PW also provides wholesale supply to seven utilities in the greater Providence area of Rhode Island – the City of East Providence, City of Warwick, Bristol County Water Authority, Kent County Water Authority, Lincoln Water Commission, Town of Smithfield, and the Greenville Water District. PW has many assets in its water system, including a 144-million-gallon-per-day (MGD) water treatment plant (WTP), five distribution system finished water storage reservoirs and two finished water storage tanks with a total capacity of 120 million gallons (MG), 12 pumping stations, over 1,000 miles of water mains ranging in size from 6- to 102-inches, over 6,000 fire hydrants, and about 77,000 service connections. In total, PW supplies potable water to about 60 percent of the State of Rhode Island.

PW treats water from its 37-billion-gallon Scituate Reservoir (Scituate, Rhode Island), with a watershed of approximately 93 square miles, at its Philip J. Holton Water Purification Plant in Scituate, Rhode Island. The plant is a conventional plant with a maximum treatment capacity of 144 MGD. Currently, PW's system-wide Average Day Demand (ADD) and Maximum Day Demand (MDD) are about 60 MGD and 100 MGD, respectively. Treated water is supplied from the plant to PW's

distribution system through two major transmission mains – the 4-mile long 90-inch diameter concrete Scituate Tunnel and Aqueduct and the over 9-mile long 78- and 102-inch Supplemental Tunnel and Aqueduct (STA). A schematic of PW's Scituate Reservoir, WTP, and major transmission mains is shown in **Figure 1**.



**Figure 1: Schematic of Providence Water Aqueduct System**

### 1.3 BACKGROUND

The 78- and 102-inch aqueducts were designed and constructed in the mid- to late 1960s to provide additional transmission capacity and a redundant transmission main to PW's entire distribution system, separate from the original 90-inch aqueduct. The 78- and 102-inch aqueducts, installed in 1967 and 1968 as part of eight separate construction contracts, are both prestressed concrete cylinder pipe (PCCP). The 78-inch aqueduct, comprised of about 1,200 individual PCCP segments, starts at PW's WTP and traverses about 4 miles through mostly rural cross-country and rural residential areas in Scituate, Cranston, and West Warwick, crossing residential roads as well as a busy state-maintained road. At its terminus is a drop shaft structure (Structure 'D'), where the 78-inch aqueduct transitions to a 78-inch concrete tunnel that traverses under a golf course. The pipeline then rises up another drop shaft structure (Structure 'E') where the 102-inch aqueduct begins. The 102-inch aqueduct is comprised of about 1,700 individual PCCP segments. It traverses over 5 miles in West

Warwick and Cranston, through some rural cross-country and residential areas, and urban residential and commercial areas. The 102-inch aqueduct also crosses beneath many residential roads, a 4-lane state highway, and a major 4-lane Interstate highway. The 102-inch aqueduct terminates in PW's distribution system, where it connects to and supplies other major water transmission mains. Both the 78- and 102-inch aqueducts are critical components of PW's water supply and transmission system.

In November 1996, a catastrophic failure occurred on the 102-inch PCCP aqueduct just east of Oaklawn Avenue in Cranston, Rhode Island. The rupture, in a section of the 102-inch aqueduct with operating pressure of about 70 pounds per square inch (psi), caused considerable flooding and damage to the community and surrounding areas, as well as periods of water shortage and concerns of insufficient fire protection. The failed section of 102-inch PCCP was ultimately removed and replaced, and PW immediately commissioned an investigation to determine the cause of the failure and a comprehensive risk assessment to evaluate the likelihood of another failure occurring in the future. The cause of this 1996 failure of the 102-inch PCCP aqueduct was found to be separation of the outer coating of the failed PCCP pipe section and corrosion of its reinforcing steel pre-stressing wires along the full length of the failed pipe section. It was also determined that there was additional concern with issues discovered related to the original manufacturing and installation of the entire PCCP aqueduct system from the 1960s. Given this failure and these concerns, it was imperative for PW to inspect and rehabilitate these PCCP aqueducts.

Following the 1996 failure and repair of the 102-inch aqueduct, planning work immediately began to fully inspect the entire 5-mile long 102-inch PCCP aqueduct. A new 102-inch butterfly valve was designed and installed so that the 102-inch aqueduct could be isolated and shut down in two distinct sections while maintaining supply to a wholesale customer (City of Warwick) that is directly supplied from the 102-inch aqueduct. Detailed plans were developed to drain and dewater the pipeline and for confined space entry (CSE) and health and safety. This detailed planning work facilitated manned entry inside to perform a thorough internal inspection along the entire length.

In 1998 and 1999, a detailed internal inspection of the entire 5-mile long 102-inch PCCP aqueduct was performed, along with sonic/ultrasonic impact-echo testing to evaluate the condition of the concrete core of each PCCP segment. During this inspection, several additional PCCP sections of concern were identified, and these additional pipes of concern were repaired either externally by wrapping with reinforcing wire tendons that were encased in concrete or internally by utilizing a fully structural carbon fiber reinforced polymer (CFRP) liner. At that time, the use of the CFRP liner was an innovative, trenchless repair method that was the first ever use of a CFRP liner in a drinking water pipeline.

Following the 1996 failure and repair of the 102-inch aqueduct and the findings of the subsequent failure investigation, risk assessment, and full inspection of the 102-inch aqueduct in 1998, PW embarked on a systematic and comprehensive inspection, repair, and risk assessment program to continue to inspect and repair the 78- and 102-inch PCCP aqueducts and address areas of concern. The objectives of this comprehensive program, which continues today, are to conduct internal inspections at recurring intervals and perform rehabilitation as needed to provide safeguards against and minimize the risk of another failure of the PCCP aqueducts.

Each inspection of the 78- and 102-inch aqueducts involves fully isolating, shutting down, and draining and dewatering the pipelines in distinct sections and phases, as well as detailed CSE and safety planning to permit manned entry through various access/egress manholes along the pipelines.

Once fully drained and dewatered, internal manned inspections are performed to visually assess the interior of the pipelines, perform structural hammer sounding along the entire length and circumference to evaluate the structural condition and integrity of the PCCP, and to perform specialty electromagnetic (EM) inspections to assess the condition of the PCCP pre-stressing wires and identify wire breaks. The inspection results are used with finite-element analysis failure risk curves developed as part of this program to evaluate the condition of each pipe segment based on wire breaks and maximum pressures, to determine PCCP sections that need to be rehabilitated, and to evaluate risk to prioritize other sections for future monitoring and/or rehabilitation. After completion of all internal inspection work and needed rehabilitation during each campaign, the entire pipeline is thoroughly disinfected and flushed, slowly refilled, sampled, and returned to full service upon acceptable water quality sampling results.

Over the years, this comprehensive program led to the identification and rehabilitation of numerous distressed PCCP sections before they reached a state of failure. It also included the design and construction of new access manholes to better accommodate dewatering, access/egress, and CSE support teams; new control valves (78- and 102-inch) to maintain service to wholesale customers; piping and valve improvements to existing blowoff structures to help facilitate draining and dewatering the pipelines; and other ancillary improvements. In 2007-2008, a new 78-inch butterfly valve was designed and installed on the 78-inch aqueduct so that it could be shut down and isolated for its first (as well as future) inspection along its entire length while maintaining supply to a wholesale customer (Kent County Water Authority) that is directly supplied by the 78-inch aqueduct. All the rehabilitation and improvements made to the 78- and 102-inch aqueducts over the years have allowed PW to continue to operate and maintain this critical transmission main.

In 2005 and 2006, an acoustic fiber optic (AFO) cable and system was installed inside and along the entire length of the 102-inch aqueduct by Pure Technologies (A Xylem brand) to continuously monitor the 102-inch pipeline for acoustic activity associated with the failure of PCCP pre-stressing wires. An AFO cable was not installed in the 78-inch aqueduct, because typical operating pressures are lower than the pressure that would cause the steel cylinder to yield, and therefore pipe failure on the 78-inch aqueduct under typical operating conditions would be expected to manifest itself as a slow cylinder leak and not a sudden, catastrophic rupture. The AFO system in the 102-inch aqueduct helps continuously track the condition of each PCCP section in real time through a web-based management and reporting system and helps identify additional wire breaks and actively deteriorating pipe sections between inspection phases. PW uses the information reported by the AFO system to shut down the 102-inch aqueduct in between planned inspection phases, if needed, to perform further investigations and/or to rehabilitate pipe sections of concern.

Inspections of the 102-inch aqueduct have been performed in 1998, 2005-2006, 2011-2012 and most recently in 2018-2019. The 78-inch aqueduct was inspected for the first time in 2007-2008, again in 2013, and most recently in 2015-2016. All inspection campaigns included rehabilitation to various PCCP sections of concern, along with other ancillary rehabilitation and improvements. Historically, rehabilitation for the 78- and 102-inch aqueducts was made reactively, based on the findings and results of the internal inspections. That approach served PW very well over the years, rehabilitating distressed pipe sections that were found to be in a state of distress before they reached a state of failure.

As previously stated, over the years, the PCCP aqueducts have been rehabilitated reactively through various approaches, including external reinforcing wire tendons encased in concrete and internal

CFRP liner, both of which have been used to rehabilitate numerous PCCP segments. Given that both the 78- and 102-inch aqueducts are now over 50 years old, PW recently shifted its methodology to a more proactive approach of rehabilitating longer, higher risk and critical segments of the aqueducts during controlled shutdowns for inspections. Based on acoustic activity identified by the AFO system in the 102-inch aqueduct, the depressurization and re-pressurization cycles from each controlled shut down to perform the necessary inspection work causes additional wire breaks, further straining and aging the pipelines. Inspections are still performed on a recurring basis, but in 2015-2017, PW for the first time rehabilitated distressed pipe sections along the 78-inch aqueduct by sliplining with 69-inch fiberglass-reinforced pipe (FRP) for potable water pressure applications. Specifically, centrifugally cast fiberglass-reinforced polymer mortar pipe (CCFRPMP) for potable water pressure applications was provided by HOBAS Pipe USA of Houston, Texas. This same sliplining approach was used again in 2017 along the 78-inch aqueduct and again in 2018-2019 along the 102-inch aqueduct, using 90-inch FRP. Performing rehabilitation work during planned, controlled shutdowns for inspections allows PW to perform this work during planned times and aims to minimize additional, unanticipated shutdowns.

In arriving at the 69- and 90-inch FRP diameters for sliplining the 78- and 102-inch PCCP aqueducts, respectively, modeling was performed using PW's water distribution system hydraulic computer model to evaluate various conditions and scenarios. These modeling scenarios established these slipliner diameters to maintain the same or otherwise acceptable hydraulic capacity (flow, pressure, velocity, etc.) based on the smoother interior surface that the FRP provides compared to the PCCP, therefore resulting in less roughness and head losses due to pipe wall friction. The added hydraulic efficiency of the FRP provided for acceptable diameter reductions to 69- and 90-inch while maintaining similar hydraulics.

To-date, about 1,300 feet of the 78-inch aqueduct was replaced with 69-inch FRP and about 1,900 feet of the 102-inch aqueduct was replaced with 90-inch FRP. Areas that have been sliplined have included some of the most critical and high-risk areas of the PCCP aqueducts, including across a main state road and a major 4-lane interstate highway, both in areas where traffic could not be shut down and detoured. Other areas sliplined included cross-country rural areas and urban residential areas. The FRP sliplining approach not only immediately rehabilitated distressed pipe sections of concern by sliplining but it also proactively replaced critical and/or high-risk sections of the aqueducts with a corrosion resistant, fully structural "pipe within a pipe" that is completely independent of the PCCP. To-date, the FRP sliplining approach has been the most cost effective and expedient rehabilitation method for this program for PW.

This Project represents the next inspection and rehabilitation campaign as part of this comprehensive program. This comprehensive inspection and rehabilitation program has been and continues to be necessary for PW to maintain the integrity and operation of these major water transmission mains to its entire water distribution system.

## **1.4 PURPOSE, GOALS & OBJECTIVES**

The purpose of this Project is to perform the next recurring inspection and rehabilitation campaign along the entire 78-inch aqueduct as well as the upstream section of the 102-inch aqueduct, with the goal of providing reasonable safeguards against and minimizing the risk of another failure of the PCCP aqueducts to continue to maintain the integrity and operation of these critical water transmission mains.

The specific, major objectives of this Project and Work are as follows:

1. Inspect the entire 78-inch PCCP aqueduct from Structure 'C' at the Philip J. Holton Water Purification Plant in Scituate, Rhode Island to Structure 'D' in West Warwick, Rhode Island.
2. Inspect the upstream section of the 102-inch PCCP aqueduct from Structure 'E' in West Warwick, Rhode Island to the 102-inch butterfly valve in West Warwick.
3. Slipline sections of the 78-inch PCCP aqueduct identified in this RFP with 69-inch FRP to rehabilitate sections of this aqueduct.
4. Perform any other needed rehabilitation along the 78- and 102-inch aqueducts, as identified by the inspection work and as authorized by the Owner.
5. Provide confined space entry support to facilitate Pure Technologies' replacement and upgrading of the AFO cable in the 102-inch aqueduct from Structure 'E' in West Warwick, Rhode Island to the 102-inch butterfly valve in West Warwick (the AFO cable in the rest of the 102-inch aqueduct was replaced during the 2018-2019 work).
6. Perform all other ancillary work as required and as described herein in this RFP.

The detailed scope of work required for the Work of this Project is discussed in the following section of this RFP.

## **1.5 SCOPE OF WORK**

The work breakdown structure with anticipated tasks and scope and summary of work corresponding to the items on the Bid Form for the Work of this Project to be performed by the Project Team, include, ~~but are not limited to the following:~~ the following tasks. This section also serves as a Measurement and Payment summary for the Work associated with all tasks of this Project.

### 1. Project Administration & Management

Overall Project Administration & Management shall include providing all necessary day-to-day administration and management activities for the duration of the entire Project to manage all Work for timely and proper execution of all tasks, Work, submittals, and deliverables in adherence with the project budget and schedule, including but not limited to: developing project management plan(s); preparing all contractual agreements and subagreements/subcontracts; preparing and continuously updating project schedule(s); facilitating a project kickoff meeting and recurring project status meetings (project status meetings shall at minimum be held monthly, and more frequently if and as needed), including preparing draft and final agendas and meeting reports for all meetings; coordinating and managing the work of all subconsultants, subcontractors, outside professionals, specialty firms, etc.; all coordination and communications with Owner; preparing and submitting to Owner monthly Applications For Payment (invoices) and progress reports for review, approval, and processing by Owner (all Applications For Payment shall be prepared in a standard industry format acceptable to Owner and must include sufficient detail with all supporting data and information to substantiate all costs incurred and all progress reports at minimum shall summarize all work performed during the reporting/billing period, ongoing

and projected work for the next period, problems encountered with proposed corrective action(s), potential additional and/or out of scope work, an overall project financial summary, and an updated project schedule); providing all general quality assurance/quality control (QA/QC) for the entire Project; and performing all needed and/or required project closeout activities.

2. Inspection Preparation

Inspection Preparation to inspect the aqueducts shall include all required planning and coordination, health and safety and confined space entry planning, procurement of all needed and required equipment and supplies, meetings to review and discuss inspection preparations as needed, and preparation and procurement of permits (if and as needed). Inspection preparation to inspect the aqueducts shall prioritize the safety of all personnel and protection of the aqueducts from contamination. Work of this task includes but is not limited to: preparation of detailed and step-by-step draining and dewatering plans for review and approval by Owner; health and safety (H&S) and confined space entry (CSE) plans for review and approval by Owner; procuring all needed and required equipment and supplies to fully perform all inspection work; meeting with all local authorities having jurisdiction and fire and rescue departments as needed to review and coordinate all H&S and CSE plans with emergency response protocols; any other meetings needed with Owner to review, discuss and plan for the inspections of the aqueducts; and any other ancillary and associated Work necessary for the completion of this task. All plans at minimum should discuss in detail required training and protocols; step-by-step pipeline isolation and draining and dewatering procedures; required entry and safety personnel; manholes and structures intended to be utilized during all draining, dewatering, and inspection work; necessary personal protective equipment (PPE); all inspection equipment; how the pipelines will be secured and protected from contamination during all Work; communications procedures during internal inspections; schedules for all Work; all necessary protocols, including what agency or firm has the requisite training, experience, capability, and availability to serve as confined space rescuer; and pertinent contact information.

3. Inspection of the Aqueducts

Manned internal inspections of the aqueducts shall be performed, while maintaining continued and uninterrupted water supply to Owner's wholesale customers supplied by the STA system. Inspection of the aqueducts shall include, but not be limited to: all project management and administration services related to this task; all construction management and administration services related to this task; obtaining all necessary approvals and/or permits (if required) to perform all Work; mobilizing all equipment, supplies, and personnel to the Project site(s); unbolting and opening any required manhole and structure covers; fully draining and dewatering the pipelines to facilitate the inspections and permit safe manned entry for inspection, including operating all valves and sluice gates as needed and/or required, installing stop logs/shutters as required, and pumping as needed and/or required; dechlorinating all water discharged from draining and dewatering operations; preparing the pipelines for inspection, including unbolting, opening, securing, and preparing access/egress locations; performing all H&S and CSE procedures, including lockout/tagout of valves as needed and/or required; providing all necessary ancillary support services required; performing all manned internal inspections, including visual inspections, electromagnetic (EM) inspections, and structural hammer sounding; evaluating preliminary findings and



REQUEST FOR PROPOSALS  
INSPECTION & REHABILITATION OF THE SUPPLEMENTAL TUNNEL & AQUEDUCT – 2025-2026  
78-INCH AQUEDUCT & UPSTREAM SECTION OF 102-INCH AQUEDUCT

results of the internal inspections to assess preliminary risk and rehabilitation priorities; performing a rapid qualitative analysis of the inspection data within one week following completion of the internal inspection of each phase/section to immediately identify any pipes that may be in an advanced state of deterioration and/or warrant additional, immediate internal or external investigations and/or rehabilitation, including preparing a summary technical memorandum to document the findings of this rapid qualitative analysis (rapid qualitative analysis must also include findings and results and technical memos from all subcontractors, subconsultants, specialty firms, etc.); providing recommendations for next steps for any pipe sections identified that warrant additional, immediate internal or external investigations and/or rehabilitation; performing a failure risk analysis to update previously developed failure risk curves as well as develop new failure risk curves for newly identified distressed pipe sections as needed and use the results of the failure risk analysis to provide Owner with recommendations to prioritize additional investigations and rehabilitation; restoring the pipelines to full service following completion of all inspection and rehabilitation work, including all required disinfection in accordance with all applicable American Water Works Association (AWWA) standards and recommendations, closing and securing all access/egress locations covers, operating all sluice gates and valves as needed, flushing the pipelines and dechlorinating all discharged water, refilling the pipelines in a slow and controlled manner, sampling and testing in accordance with Owner's water quality requirements to achieve successful water quality results to reactivate the pipelines to full and normal service, and reactivating and returning the aqueducts to full, normal service upon acceptable water quality results consistent with Owner's requirements; restoring all areas disturbed by all Work to a condition equal to or better than existed prior to the start of Work; demobilizing and cleaning up from all inspection work; and performing all other engineering services, assessments, evaluations, and any other Work required for successful completion of this task.

The Project Team shall perform all CSE work and support services utilizing their own personnel and/or by hiring a dedicated CSE inspection and rescue team. Proposals and all CSE plans should discuss and clearly demonstrate an understanding of the required CSE requirements and emergency response protocols and rescue services, including what agency or firm has the requisite training, experience, capability, and availability to serve as confined space rescuer.

Visual observations at minimum shall inspect the condition of each individual pipe section and all pipe joints for any indication of pipe distress and/or deterioration.

The EM inspection and testing shall be performed along the entire length of the aqueducts to detect and quantify the number of broken prestressing wires in each individual PCCP section and provide information on the location, distribution, and number of wire breaks along the entire length of the pipeline.

Structural hammer sounding shall completely and thoroughly evaluate all pipe sections for any structural deficiencies around their full circumference along the entire pipeline length, including delamination of the concrete core that is indicative of loss of prestressing due to wire break damage. Proposals and all work plans must indicate the method and firm/staff that will be utilized to perform structural hammer sounding of all pipe sections around their full circumference along the entire length of the aqueducts. [Results of structural hammer](#)

sounding shall delineate the specific areas of each pipe segment identified with any structural deficiencies and shall also provide an estimate of the percentage of each pipe segment identified with deficiencies (e.g. hollow sounding areas).

To maintain continuity with previous failure risk analysis, the Project Team shall engage Simpson Gumpertz & Heger (SGH) to again perform a failure risk analysis for this Project. SGH shall analyze the EM inspection results along with internal visual and structural inspection findings and results to update past finite-element analysis and failure risk curves, which consider serviceability, structural conditions, depth of bury, internal pressure, and ultimate limit strengths. This failure risk analysis shall be used to prioritize recommendations by the Project Team for additional investigations and rehabilitation, both immediate (if warranted) and short- and long-term. Critical risk factors, including likelihood and consequence of failure, shall be considered by the Project Team for all recommendations.

All inspection data, findings, and results must be correlated with and identified to each specific PCCP segment consistent with Owners records and tracking from all previous work. Proposals and Work plans shall clearly indicate how this will be accomplished.

During all internal inspection work, the Project Team shall also inspect and document the condition of the internal FRP slipliner that was installed previously during past project campaigns.

Following rapid qualitative analysis of all inspection data and findings and review of the technical memorandum prepared to summarize this rapid qualitative analysis along with recommendations, the Project Team shall perform a walk-through of the inspected aqueduct section(s) to review findings and recommendations with the Owner and to perform any follow up structural hammer sounding and investigations to assist Owner in making final decisions on recommended rehabilitation. Project Teams are highly encouraged to include engineering staff from SGH in these walk-throughs.

At the conclusion of all Work of this task, as well as at the conclusion of all rehabilitation and sliplining work in the inspected section(s), and prior to disinfection, flushing, refilling, sampling, and reactivation, the Project Team shall perform a final walk-through of the inspected and rehabilitated sections with the Owner to review and document all Work performed.

The sections of the STA system to be inspected as described above as part of the Work of this Project include the following:

- A. 102-inch Aqueduct – Upstream Section (Structure ‘E’ to 102-inch Butterfly Valve).
- B. 78-inch Aqueduct – Upstream Section (Structure ‘C’ to Flow Tube)\*.
- C. 78-inch Aqueduct – Upstream Section (Flow Tube to 78-inch Butterfly Valve).
- D. 78-inch Aqueduct – Downstream Section (78-inch Butterfly Valve to Structure ‘D’).

\* To-date, because of the current configuration and safety concerns with no safeguards over the Structure ‘C’ drop shaft as well as limited access from Structure ‘C’ to the flow tube, it has not been permissible to inspect this section of the 78-inch aqueduct by manned entry. This

approximately 70-foot section of the 78-inch aqueduct has therefore never been inspected. As part of this Project, Owner is requesting an inspection of this section of the 78-inch aqueduct. Owner understands that this section from Structure 'C' to the flow tube likely can only be inspected by robotic vehicle that provides visual and EM inspection findings and results and that a structural hammer sounding in this section may not be able to be performed.

4. ~~CSE Support~~ Support for Replacement of AFO Cable in 102-inch Aqueduct – Upstream Section

As part of a separate contract between Owner and Pure Technologies for AFO monitoring, the AFO cable in the 102-inch aqueduct – upstream section (Structure 'E' to the 102-inch butterfly valve) is due to be upgraded and replaced by Pure Technologies. This AFO cable replacement work will be performed by Pure Technologies through this existing, separate AFO monitoring contract with Owner, with no costs associated with this Project. However, as part of this Project, the Project Team shall provide additional CSE support, if and as needed, to facilitate Pure Technologies replacing the AFO cable in the 102-inch aqueduct – upstream section. The Owner anticipates that much, if not all this work by Pure Technologies, can be performed concurrently during the Project Team's inspection of the 102-inch aqueduct – upstream section as described above. This task and Bid Item are provided for the Project Team to provide any additional CSE support, if needed, above and beyond what is already being provided for the inspection of the 102-inch aqueduct – upstream section. Further, the Project Team in this Bid Item shall include costs for all services to dispose of the removed AFO cable and any and all removed appurtenances.

5. Sliplining the 78-inch Aqueduct

The Project Team shall perform all project administration and management, design engineering, construction administration and management, construction inspection and oversight, and construction services to design, furnish, install, and construct the sliplining of the sections of the 78-inch aqueduct listed below. It is the intent of the Owner to slipline the following sections (~~see attached drawings~~) of the 78-inch aqueduct with 69-inch fiberglass-reinforced pipe (FRP) for potable water pressure service as part of the Work of this Project (drawings that show these sections and locations can be requested by Proposers by contacting the Owner's subject matter expert as indicated in the Cover Documents of this RFP; Proposers will be required to complete and submit to Owner a Confidentiality and Non-Disclosure Agreement):

- A. Global Station 175+~~1206~~ to Global Station 178+~~85-76~~ (connect to previous FRP slipliner) – ~~365-360~~ feet
- B. Global Station ~~181-182~~+~~94-04~~ (connect to previous FRP slipliner) to Global Station 187+~~59-50~~ (connect to previous FRP slipliner) – ~~565-546~~ feet
- C. Global Station 193+~~98-82~~ (connect to previous FRP slipliner) to Global Station 208+~~56-55~~ (termination of 78-inch aqueduct at Structure 'D') – ~~1,458-473~~ feet

The Project Team shall perform all design engineering services as part of this Task, including but not limited to: gathering all data and information needed for design; performing any field work and investigations and site visits as needed and/or required to review existing

conditions and review and evaluate proposed work; meetings as required to review and discuss design work; developing technical design requirements in accordance with all industry standards, requirements, guidelines, and best practices; preparing CAD-based design drawings and details to illustrate all Work; preparing design specifications that outline all requirements of the Work; and performing all required quality assurance and quality control (QA/QC) and technical reviews by senior technical reviewers. Contract Documents (drawings and specifications) and corresponding opinion of probable construction costs (cost estimates) shall be prepared and reviewed with the Owner at the 30%, 60% and 90% design levels and shall be updated at each stage and finalized to 100% based on all Owner feedback and review comments. The Project Team shall also submit to the Owner for review a detailed approach and work plan with step-by-step sequence of all construction and installation activities.

The Project Team shall then provide all labor, materials, equipment, tools, appurtenances, services, and incidentals required to construct and install the FRP inside the 78-inch aqueduct by segmental sliplining in accordance with the 100% design Contract Documents developed as part of this task.

During all construction work, the Project Team shall provide all construction administration, management, and oversight, including but not limited to: administering, coordinating, and managing all construction phase and work activities; reviewing and responding to submittals (requests for information, shop drawings, samples, etc.); observing, documenting, and recording all day-to-day construction activity for compliance with all Contract Documents (including digital photo and video documentation); coordinating and administering all construction meetings, including preparation of all draft and final agendas and meeting reports; all required construction phase reporting including routine progress reports to Owner; preparing all as-built record drawings for all Work performed; and all construction closeout activities.

The design, construction, and installation of FRP by sliplining inside the PCCP aqueducts for all Work of this Task and Project shall meet the following requirements:

- All Work for design and installation of FRP by sliplining shall be in accordance with the following standards:
  - American Water Works Association (AWWA) C950 – Fiberglass Pressure Pipe.
  - American Water Works Association (AWWA) M45 – Fiberglass Pipe Design.
  - American Society for Testing and Materials (ASTM) D3517 – Standard Specification for Fiberglass (Glass-Fiber-Reinforced Thermosetting-Resin) Pressure Pipe.
  - American Water Works Association (AWWA) C651 – Disinfecting Water Mains.
  - National Sanitation Foundation (NSF) 61 – Drinking Water System Components – Health Effects.

The revision of these standards in effect during the design phase of this Work shall apply. If any referenced standards are discontinued by the issuing organization, references to those standards shall mean the replacement documents issued or otherwise identified by

that organization; if there are no replacement documents then the last version of the document before it was discontinued shall apply.

- All pipe and fittings for this Project shall be:
  - Suitable for pressure service for potable water supply and transmission.
  - Designed and manufactured in accordance with AWWA C950, AWWA M45, and ASTM D3517 (for all FRP).
  - Suitable for contact with potable water and tested and approved for compliance with NSF/ANSI 61, including all pipe gaskets and any other associated materials that will be in contact with potable water.
  - Designed for a pressure of at least 100 psi (working pressure plus surge/transient pressure) (minimum pipe pressure class for this Project is 100 psi).
  - Provided with a minimum nominal pipe stiffness of 46 psi (for FRP), with thickness increased as necessary based on pipe design and thickness calculations.
  - Designed for all earth cover and earth loads from the existing ground surface to the top of the pipe as well as all live loads.
  - Fully structural and capable of independently withstanding all internal hydrostatic forces and all external forces and loads from earth cover and traffic loading. Liners shall not be considered as contributing to the structural strength of the pipe.
  - Capable of being installed in both direct-bury and sliplining applications.
  - Capable of withstanding all forces that will be imposed from all installation means and methods.
  - Capable of withstanding all grouting forces without any internal support and without deformation.
  - Designed and manufactured with an intended service life of at least 100 years.
  - Manufactured in the United States and provided by a single manufacturer who is acceptable to the Owner.
  - Supplied in factory-cut lengths based on Project Team’s means and methods for installation and such that the allowable deflection of joints is not exceeded.
- All Work shall be designed, constructed and installed to meet the requirements of the geometry and alignment of the existing aqueducts. The Project Team shall be aware that the PCCP host pipe may not be consistently straight between points – full bevels, half bevels, bends, and/or curves may exist on sections of the aqueduct to be sliplined. It is the Project Team’s sole responsibility to verify locations of the existing PCCP host pipe and the geometry of the existing PCCP host pipe for purposes of design, fabrication, and installation approach. Failure of the Project Team to verify the locations of the existing

aqueduct and/or existing geometry or alignment shall not warrant any claims for delay or additional costs for incorrect materials ordered or issues encountered during installation.

- All excavations shall be excavated and secured with sheeting, shoring and bracing for excavation support and protection as required. Excavation support and protection shall be designed by a Registered Professional Engineer (P.E.).
- Any PCCP section that was cut for access pits for sliplining or any other reason is structurally compromised and must be completely lined through with new FRP slipliner.
- The terminations of the new FRP slipliner shall not terminate corresponding with existing joints of the existing PCCP aqueduct; they shall terminate within the concrete core of an existing PCCP segment.
- The terminations of the new FRP slipliner inside the PCCP aqueducts shall be provided with watertight end seals. These end seals shall be completely watertight to prevent potable water from leaking external to the aqueducts and shall also prevent non-potable water intrusion into the aqueducts. The end seals shall be removable in the future to allow for joining to new FRP sections during future continuation of sliplining the aqueducts.
- All pipes installed shall be sequentially numbered and identified and this information for all pipe segments shall be recorded for as-built record documentation.
- All assembled pipe joints must pass an air pressure test to confirm watertightness of the assembled joints. Any joint found defective shall be corrected to successfully pass the required air pressure test. Acceptance of all Work is contingent upon successful joint pressure testing and the aqueduct will not be returned to service until all joints pass the required field pressure test. Joint pressure tests must be performed prior to grouting.
- The annular space between the new FRP slipliner and the existing PCCP host pipe must be filled with an approved cement-based non-shrink grout to support the FRP slipliner in place and provide long-term stability. The grout mix shall have sufficient strength and durability to prevent any movement of the FRP liner pipe in the PCCP host pipe. The grout shall be installed in lifts in such a way to prevent any flotation of the new FRP slipliner. All grout installation and grouting operations, including surface preparation, shall be performed in accordance with manufacturer instructions, guidance, recommendations, and requirements. At the end points/transition of the new slipliner back to the existing PCCP aqueduct, these interfaces shall be grouted with an approved NSF-61 certified grout, given its proximity to possible contact with potable water.
- The PCCP host pipe and all annular space grout between the FRP and PCCP host pipe shall be assumed to provide no support for resisting any internal and external forces.
- Grouting should take place as soon as practical following slipliner installation and shall be performed in a continuous and progressive operation to completely fill the annular space, prevent the occurrence of any voids, and to prevent any damage to the FRP slipliner. Grouting shall establish complete contact and fill between the FRP slipliner and PCCP host pipe. Bulkheads shall be installed as needed for grouting to seal the annular space between the FRP slipliner and PCCP host pipe to permit grout to set and shall be capable

of withstanding all grouting forces. Following completion of all grouting activities, any grout ports shall be completely and securely sealed.

- All pipe, fittings, materials, etc. shall be transported, delivered, handled, stored on-site, protected, installed, joined, and/or connected in accordance with manufacturer instructions, guidance, recommendations, and requirements. Joints shall be joined with gaskets as needed to maintain joint watertightness and shall be suitable for pressure service up to 150 psi. Any damaged materials shall be replaced at no additional cost to the Owner.
- The aqueducts shall always be protected during construction to prevent and minimize all sources of contamination and vandalism (debris, dirt, foreign objects, sediment, animals, rodents, human intrusion, etc.). The safety and integrity of the existing aqueducts is of paramount importance and protection of the aqueducts during all Work is the sole responsibility of the Project Team.
- All pits and open excavations and the ends of open pipe shall be protected and secured at all times against any and all contamination and intrusion. It is the Project Team's responsibility for all traffic management and control and for the safety of all work areas and adjacent vehicular and pedestrian traffic.
- At the conclusion of Work, the existing aqueducts and new FRP shall be thoroughly cleaned, disinfected, flushed, refilled, and sampled to achieve acceptable water quality results consistent with Owner's requirements before being returned to service. All disinfection shall be in accordance with AWWA standards. The pipelines shall not be returned to service until water quality results are acceptable to the Owner.
- The Owner reserves the right to inspect and reject any materials. Any material that is damaged or defective shall be removed and replaced at no additional cost to the Owner.
- All materials removed or otherwise not installed in the Work or stockpiled on-site shall be removed and disposed of by the Project Team.
- All design, construction, and installation Work shall consider Owner's intent to continue the installation of FRP by sliplining in the future and connect to the FRP that is installed as part of the Work of this Project.
- All means and methods are the sole responsibility of the Project Team.
- Submittals for this Task during the design and construction phases shall include but not be limited to the following:
  - Pipe structural design calculations, including all design conditions and assumptions, prepared and stamped by a Registered Professional Engineer (P.E.).
  - Draft and final drawings and specifications (at all design stages as indicated herein in this RFP).
  - Product certifications, certificates of compliance, data, information, and test reports for all materials and products to be used and installed as part of the Work, including

copies of FRP factory hydrostatic burst testing results for the specific pipe design showing no leakage at the required pressures.

- Detailed work plan for the installation of all pipe, fittings, and appurtenances, including drawings, schematics, means and methods, plans, procedures, and schedules, and the same for all grouting work (equipment, stages, lifts, volumes, measuring volumes, buoyancy calculations to ensure FRP slipliner will not float, venting, confirmation of full grouting, monitoring and maintaining grout pressures, etc.).
- Final as-built record drawings, details, and specifications in both PDF and CAD formats.

6. Allowance for Other Rehabilitation or Work

Should the inspections of the aqueducts reveal deficiencies that warrant additional investigation and/or rehabilitation, or should additional work or services be needed as part of this project, this allowance is provided for such purposes. Owner may also elect to utilize this Contract to provide additional engineering and/or construction services for project or non-project related project work. Any additional services and/or work performed as part of this allowance shall be negotiated with Owner prior to performing any work. The Project Team shall provide Owner with detailed cost proposals and breakdown of costs for any such work for Owner review and approval before proceeding. Owner will issue a written Notice-To-Proceed (NTP) for any work approved to be performed by the Project Team as part of this allowance. The total amount of this allowance item shall be included in the total bonded amounts by the Project Team for this Project.

At minimum, it is anticipated that Owner will authorize rehabilitation of pipe joints identified as deficient from the inspection work as part of this allowance to rehabilitate missing or loose grout in any deficient joints. Proposers in their Proposals and understanding of the Work should discuss some potential PCCP or other project rehabilitation techniques that may be needed as part of this allowance item.

7. Report

The Project Team shall prepare a comprehensive report summarizing the Project and all Work performed. The report shall be organized and provided in a format acceptable to the Owner, both hard copy and electronic PDF. At minimum, the report shall: provide necessary introduction and background information; summarize the project approach and methodology; provide assessments and comprehensive evaluations of all data, information, and results, including that from subconsultants and subcontractors; describe and summarize all rehabilitation work performed; describe and summarize all sliplining work performed; provide as-built record drawings, documentation, and information for all Work performed; provide recommendations and options with engineering cost estimates; summarize all project expenditures; and provide/attach all supporting backup information and documentation, including reports generated by subconsultants and/or subcontractors and all project technical memos. The Project Team shall prepare a draft outline of the report for Owner's review and approval prior to preparing the report. The Project Team shall then prepare a draft report and submit to Owner for review within 90 days of the completion of all Work of the Project. Within 60 days of receiving review comments and feedback from the Owner on the draft report, the



Project Team shall update and finalize the report and submit the final report to the Owner. The draft and final reports shall be submitted to the Owner in a format acceptable to the Owner, both hard copy and electronic PDF. Final as-built record drawings shall also be submitted to the Owner in CAD format.

## 1.6 SCHEDULE

Project Teams and Proposers shall submit an overall proposed project schedule with their Proposal that meets Owner’s objectives for this Project. At minimum, the schedule shall be broken down by task/phase and detail all major milestones and all major deliverables and submittals. This schedule shall serve as the basis of the overall project schedule that would be updated as the Project progresses.

The overall Contract Time for this Project shall be as indicated in the cover documents of this RFP. All Work of this Project shall be performed and completed by December 31, ~~2026~~2027, unless an extension is otherwise granted and approved by the Owner. However, time is of the essence to complete the Work of this Project, and Proposers and Project Teams should propose a project schedule for Owner’s consideration that is efficient and expedient at performing all Work.

Key considerations and requirements related to the Work and Schedule include the following:

- All Work of this Project shall be completed within/by the dates herein indicated, including submission of all final reports, final as-built documentation, and final Applications For Payment. The Contract Time shall only be extended at the discretion of and with the written approval of the Owner.
- It is the sole responsibility of the Project Team to administer and coordinate all Work of their partner firms, subcontractors, subconsultants, specialty firms, outside professionals, contractors, etc.
- The aqueducts must be isolated, inspected, and rehabilitated in phases/sections to maintain continued and uninterrupted supply to Owner’s wholesale customers supplied by these pipelines.
- The entire STA system must be fully active and operational in the months of June, July, August, and September to supply high system-wide demands. All Work needs to be planned, performed, and completed so that the pipelines are fully active and in service from June 1<sup>st</sup> through September 30<sup>th</sup>, unless otherwise approved by the Owner.

## 1.7 COMPENSATION

The Project Team shall submit the Bid Forms included with this RFP with their Proposal, showing all proposed costs for all Work of this Project. Costs proposed for all Bid Items and for all Work shall be inclusive of all required costs for each Bid Item/Task, including but not limited to direct labor salary costs; all indirect costs; outside professionals (subconsultants, subcontractors, etc.); other direct costs for items and expenses directly incurred; all mobilization and demobilization for all Work; all required approvals, bonds, insurance, and permits; and all equipment, materials, tools, supplies, incidentals and

appurtenances. The Project Team shall be compensated for all Work based on the terms and conditions provided in the Price Proposal Forms and Agreement. - Each of the Bid Items/Tasks shall also have not-to-exceed upper limits, which may be exceeded only with approval of the Owner and provided that the total not-to-exceed upper limit cost (Guaranteed Maximum Price (GMP)) is not exceeded. All overhead and profit shall be built into the Proposed Prices. There shall be no additional markup on costs for direct labor, outside professionals, subconsultants, subcontractors, and expenses (other direct costs); all profit shall be built into the proposed fixed fee.

There shall also be no additional markup for any subcontractor and/or supplier that in turn subcontracts their work or portions thereof. The Project Team in their Proposal shall provide their rates for all indirect costs and their proposed fixed fee (profit) all requested cost information on the Bid Forms. The ~~fixed~~ Contract fee will be paid proportional to the percentage of actual work performed and billed on each Application For Payment up to and not to exceed the total ~~fixed~~ fee value (GMP); the total Contract ~~fixed~~ fee is not guaranteed to be payable by Owner unless the total Work performed equals the total Contract. Further, the ~~fixed~~ total fee shall not increase if the not-to-exceed upper limit cost(s) are exceeded by the Project Team. Applications For Payment shall be submitted to Owner monthly for review and approval, and five percent retainage will be withheld from all payments by the Owner until satisfactory completion of all Work of the Project, unless retainage is otherwise released by the Owner at Owner's sole discretion.

Project Teams are encouraged to provide as much detail and information as possible in their Proposal and with their Bid Forms to assist Owner in evaluating cost versus value for all proposed Work. In evaluating the cost proposal and provided pricing in Proposals, Owner will consider factors such as consistency with historical pricing of similar and related work and the cost versus value of all proposed Work.

Owner is exempt from sales tax on materials and equipment permanently incorporated into the Work. A sales tax exemption certificate can be made available by Owner upon request. The cost of such taxes shall not be included with any proposed or invoiced costs.

For Work of this Contract associated with the included allowance authorization Task and Bid Item, all costs and pricing shall be negotiated with Owner before commencing any Work. Owner may elect to perform these negotiated services as not-to-exceed lump sum, cost plus fixed fee, or time and materials (T&M). Should any Work be authorized and performed as T&M, Proposers with their Proposals shall submit hourly billing rates for all equipment needed and all labor categories. The Project Team shall provide a schedule of equipment rates (e.g., excavators, backhoes, generators, utility trucks, trench boxes, road plates, pumps, compressors, etc.) that the Project Team feels is necessary to complete any Work of this Project. Payment for all equipment for any T&M work authorized and approved by the Owner shall be based off these provided equipment rates. T&M hourly billing rates for all labor shall be inclusive of all costs for direct labor, indirect costs, overhead, fringe benefits, expenses and profit; no additional payment will be made for any travel, meals, mileage, personal vehicles, cell phones, etc. Proposers may provide hourly billing rates for additional labor positions and categories that they feel may be needed during the Work, but at minimum, Proposals shall include hourly T&M billing rates for the following labor categories:

*Officer-In-Charge:* The Officer-In-Charge shall be a principal or officer of the Project Team who will be Owner's primary point of contact for all negotiations and Contracts and shall be responsible for compliance with all requirements of this RFP and the Contract for the Work of this Project. The Office-

In-Charge must have the authority to negotiate all aspects of the scope of services, provisions, and terms and conditions on behalf of the Project Team. The Officer-In-Charge shall possess a minimum of 10+ years of demonstrated relevant experience. It is highly preferred by the Owner that the Officer-In-Charge possess relevant degrees in engineering and be a Registered Professional Engineer (P.E.) (registration in Rhode Island is highly preferred, but other jurisdictions in the United States will be considered).

*Project Manager:* The Project Manager shall be a senior engineer that holds a bachelor's degree in engineering (master's degree preferred), possesses a minimum of 10+ years of demonstrated relevant experience, and must be a Registered Professional Engineer (P.E.) in the State of Rhode Island. The Project Manager shall be in responsible charge of all Work and all day-to-day Project activities and along with the Officer-In-Charge shall be responsible for compliance with all requirements of this RFP and the Contract for the Work of this Project. Only one individual may be designated and invoiced as the Project Manager.

*Project Engineer – Junior:* Junior level Project Engineers shall hold a bachelor's degree in engineering and shall possess 1 to 5 years of demonstrated relevant experience. It is encouraged, but not required, that Junior Project Engineers possess their Engineer-In-Training (EIT) certification.

*Project Engineer – Intermediate:* Intermediate level Project Engineers shall hold a bachelor's degree in engineering (master's degree is highly encouraged, but not required) and shall possess 5 to 10 years of demonstrated relevant experience. It is encouraged, but not required, that Intermediate Project Engineers be a registered P.E. (registration in Rhode Island is preferred, but registration in another jurisdiction in the United States will be considered).

*Project Engineer – Senior:* Senior level Project Engineers shall hold a bachelor's degree in engineering (master's degree preferred), possess a minimum of 10+ years of demonstrated relevant experience, and shall be a Registered P.E. (registration in Rhode Island is preferred, but registration in another jurisdiction in the United States will be considered).

*CAD Designer/Drafter – Junior:* Junior CAD Designer/Drafters shall have 1 to 5 years of experience using computer-aided design (CAD) software to create technical drawings and details.

*CAD Designer/Drafter – Intermediate:* Intermediate CAD Designer/Drafters shall have 5 to 10 years of experience using computer-aided design (CAD) software to create technical drawings and details.

*CAD Designer/Drafter – Senior:* Senior CAD Designer/Drafters shall have 10+ years of experience using computer-aided design (CAD) software to create technical drawings and details.

*GIS Specialist – Junior:* Junior GIS Specialists shall have 1 to 5 years of experience using GIS software and data collection equipment to create data visualizations (maps, charts, graphs, etc.) to help portray geospatial data, information, and results; analyze and manage special data, information, and databases; and develop and implement GIS-based analyses and evaluations.

*GIS Specialist – Intermediate:* Intermediate GIS Specialists shall have 5 to 10 years of experience using GIS software and data collection equipment to create data visualizations (maps, charts, graphs, etc.) to help portray geospatial data, information, and results; analyze and manage special data, information, and databases; and develop and implement GIS-based analyses and evaluations.

*GIS Specialist – Senior:* Senior GIS Specialists shall have 10+ years of experience using GIS software and data collection equipment to create data visualizations (maps, charts, graphs, etc.) to help portray geospatial data, information, and results; analyze and manage special data, information, and databases; and develop and implement GIS-based analyses and evaluations.

*Construction Manager:* Construction Manager shall be responsible for administering, managing, and overseeing all construction Work of the Project, including monitoring and compliance with construction scopes, schedules, budgets, as well as all construction administration and coordination. The Construction Manager shall be a Senior Engineer holding a bachelor's degree in engineering with a minimum of 10+ years of demonstrated relevant experience. It is preferred, but not required, that the Construction Manager be a registered P.E. (registration in Rhode Island is preferred, but registration in another jurisdiction in the United States will be considered). Only one individual may be designated and invoiced as the Construction Manager.

*Construction Superintendent:* Construction Superintendent, or Construction Supervisor, who will be responsible for overseeing and coordinating all the field and construction activities and providing quality control on all construction sites of the Project, including those activities of subcontractors and subconsultants, shall be a Senior Engineer or otherwise have 10+ years of demonstrated relevant prior experience as a Construction Superintendent. Only one individual may be designated and invoiced as the Construction Superintendent. The Construction Superintendent shall serve as the Project Team's primary point of contact in the field for all construction and field activities.

*Assistant Construction Superintendent:* Assistant Construction Superintendents, who will assist the Construction Superintendent, shall be at minimum be an Intermediate Engineer or otherwise have at least 5 to 10 years of demonstrated relevant prior experience as a Construction Superintendent. Duties and responsibilities of Assistant Construction Superintendents shall be similar to those of the Construction Superintendent.

*Resident Project Representative – Senior:* Senior Resident Project Representative (RPR) (Resident Engineer or Inspector) who will conduct on-site observations, monitor the progress and quality of Work and compliance with all Contract Documents and requirements, and keep records of all Work performed, shall be a Senior Engineer with 10+ years of demonstrated relevant prior experience as an RPR.

*Resident Project Representative – Intermediate:* Intermediate Resident Project Representative (RPR) (Resident Engineer or Inspector) who will conduct on-site observations, monitor the progress and quality of Work and compliance with all Contract Documents and requirements, and keep records of all Work performed, shall be an Intermediate Engineer with 5 to 10 years of demonstrated relevant prior experience as an RPR.

Note: the duties and responsibilities of the Project Team's Construction Superintendents and RPRs may overlap; Proposers should feel free to provide separate billing rates or combine these roles and responsibilities into combined classifications.

*Administrative – Junior:* Junior Administrative support personnel shall be any administrative or clerical staff with 1 to 5 years of demonstrated relevant experience supporting engineering and/or construction work.

*Administrative – Intermediate:* Intermediate Administrative support personnel shall be any administrative or clerical staff with 5 to 10 years of demonstrated relevant experience supporting engineering and/or construction work.

*Administrative – Senior:* Senior Administrative support personnel shall be any administrative or clerical staff with 10+ years of demonstrated relevant experience supporting engineering and/or construction work.

All submitted Applications For Payment (invoices) must include all backup information to support all costs, including but not limited to invoices from any subcontractors, subconsultants, outside professionals, as well as copies of invoices and receipts for all expenses and purchases.

## **1.8 EXPERIENCE & QUALIFICATIONS**

To demonstrate experience and qualifications to perform the Work of this Project, the Project Team must submit with their Proposal written evidence of their experience and qualifications and licenses to perform work in the State of Rhode Island in accordance with Rhode Island General Laws (RIGL). The Project Team must submit written evidence that demonstrates meeting the minimum requirements described in the following paragraphs. In addition to the requirements of this section of the RFP, all staff of the Project Team shall meet the qualifications previously stated in the compensation section for T&M billing rate classifications. All companies and firms that are part of the Project Team shall be licensed and registered to perform work in the State of Rhode Island in accordance with RIGL.

The Project Team, and any company, firm, subcontractor, subconsultant, outside professional, etc. that comprises the Project Team in their Proposal, may be investigated by the Owner to determine if they have the requisite experience and if they are qualified to perform the Work of this Project. The Project Team shall also be prepared to submit within five days of Owner's request any additional information needed for Owner to properly evaluate capabilities, experience, and qualifications. During review and evaluation of Proposals, Owner reserves the right to request that members of Project Teams attend a meeting/[interview](#) with Owner to review and discuss their capabilities, experience, qualifications, and submitted Proposal.

Only Proposals that meet all specified experience, qualifications, and requirements will be considered by the Owner; all others may be considered non-responsive and may be rejected. The following paragraphs discuss the minimum requirements for experience and qualifications on this Project. With Proposals, the Project Team shall submit resumes of all proposed staff and a minimum of three project references for each qualification requirement below, demonstrating compliance with all criteria. Project references shall include the project name(s); date(s) of the project(s); project location(s); total contract/project dollar value of the project(s); and name(s) of owner(s) with address, contact person, phone number and email address(es). In evaluating project references from the Project Team, Owner will consider factors such as the experience and quality of work previously performed, and will also heavily weigh and consider the quality of work previously performed for the Owner; the record of the Project Team in accomplishing and completing work within required and contractual timeframes and costs; and the availability and adequacy of resources that the Project Team has available for the Work of this Project.

### **1.8.1 Experience & Qualifications for Engineering Firms**

Engineering firms must have a minimum of 10 years of experience and demonstrated ability in multi-disciplinary engineering services with strong emphasis in structural engineering for large diameter potable water pipes, conduits, and/or tunnel projects, including but not limited to: performing inspections; evaluating inspection results and preparing reports with recommendations; providing design engineering, including developing specifications, drawings and details, and construction documents; and providing construction services, including construction administration, management and inspection. Engineering firms and their proposed personnel for this Project must have successfully completed the inspection of large diameter potable water pipes, conduits, and/or tunnels, including PCCP (with specific emphasis on PCCP big enough for internal manned entry and inspection). Experience that does not include PCCP will not be considered. PCCP inspection experience must include preparation and execution of confined space entry, safety, and dewatering and drainage plans and procedures; manned entry for inspections, internal visual inspections and structural hammer sounding; tabulating and evaluating inspection results; providing recommendations for repairs based on inspection results; and preparing reports to summarize all work. Key personnel of engineering firms proposed for the Project shall have this same demonstrated experience as the firm. The intent of this requirement is that engineering firms and their staff have demonstrated experience consistent with the required Work of this Project.

### **1.8.2 Experience & Qualifications for Sliplining Contractors**

Contractors and/or subcontractors as part of the Project Team performing sliplining work as part of this Project must have previous successful experience in the installation of FRP by segmental sliplining in pipelines owned by municipalities or public agencies in the United States. This experience must include successful installation of at least 5,000 total linear feet of minimum 48-inch diameter FRP by sliplining within the past 10 years in the United States, and of these 5,000 total linear feet, at least 1,000 linear feet of FRP shall have been installed by sliplining continuously and consecutively as part of a single sliplining project/operation. Construction Superintendents for sliplining work must have a minimum of five years of supervisory field experience on at least three successfully completed sliplining projects with associated annular space grouting. Superintendent's experience must total at least ~~32,000~~ 500 linear feet of minimum 48-inch or larger FRP installed by sliplining in the United States. The Construction Superintendent for the sliplining contractor/subcontractor assigned to this Project must be present on the job site during all construction and installation activities, including sliplining and grouting activities. At least two members of the sliplining contractor shall have a minimum of two years of sliplining experience and they shall always be on the Project site.

The contractor/subcontractor that will perform grouting shall have experience within the past 10 years with grouting annular spaces between liner pipes installed by segmental sliplining and host pipes. This contractor/subcontractor shall retain an full-time, on-site grouting manager or supervisor with at least 10 years of related work experience on similar projects to be on-site during all grouting operations and to manage the grouting program by designing, testing and overseeing the injection of grout mixes of the type required.

In addition to the previously stated required reference information to demonstrate qualifications in the Proposal, for any Contractor experience the Project team shall also submit the name(s) of engineer(s) with address, contact person, phone numbers, and email address(es); material, depth, and diameter of the existing host pipe; diameter and material of slipliner installed; total length of slipliner installed; and type of grout and method of annular space grouting. The Project Team with their

Proposal shall provide the name and qualifications of the proposed Superintendent, sliplining crew members, and grouting manager/supervisor.

### **1.8.3 Experience & Qualifications of FRP Pipe and Fittings Manufacturer/Supplier**

The manufacturer/supplier of FRP pipe and fittings for the sliplining work as part of this Project shall have employed manufacturing and product technology used in the manufacturing of FRP for a minimum of 10 years and must have manufactured and supplied at least 10,000 linear feet of 48-inch or greater and 5,000 linear feet of 60-inch diameter or greater FRP pipe for potable water pressure service of the same type and pressure class as this Project within the past 10 years. The Project Team shall provide reference information as previously described to demonstrate the FRP pipe and fittings manufacturing manufacturer/supplier meeting these requirements, having all required certifications, having the capability to meet the required schedule of this Project, and certifications indicating compliance with all required standards.

## **1.9 SPECIAL CONDITIONS, CONSIDERATIONS & REQUIREMENTS**

The following special conditions, considerations, and requirements shall be considered by the Project Team when preparing Proposals to respond to this RFP:

- Upon request, Owner can facilitate visits to discuss the Project and the proposed Work and/or to visit site(s) of the proposed Work of this Project for Proposers to conduct examinations, investigations, explorations, etc. To request a site visit, Proposers should contact the Owner's subject matter expert listed in the cover documents of this RFP. Proposers shall provide Owner with a minimum of 72 hours of notice of any such request. Visits are at Owner's sole discretion and availability is not guaranteed.
- Upon request, Owner can make available for review copies of relevant data, drawings, information, maps, plans, reports, etc. Due to the sensitive nature of information pertaining to critical infrastructure, Proposers will first be required to execute a Confidentiality and Non-Disclosure Agreement to request any such documents. The Owner does not assume any responsibility or liability for errors and/or misinterpretations resulting from the Proposer's review of such documents and information. Owner may make such documents available for the sole purpose of obtaining Proposals for this Work and does not confer any license or grant for any other use. To request any existing documents and/or information, Proposers should contact the Owner's subject matter expert listed in the cover documents of this RFP.
- All Work of this Project shall be in compliance with State of Rhode Island General Laws (RIGL) (<http://webserver.rilin.state.ri.us/Statutes/>).
- All applicable laws, ordinances, regulations, and requirements of federal, state, local, and municipal governmental agencies as well as any other authority having jurisdiction applies to this Project and shall be deemed to be included in this RFP and Contract herein by reference. Proposers shall be familiar with and comply with all applicable laws, regulations, ordinances, and requirements that may in any way affect the cost, progress, and/or performance of the Work and the price submitted with their Proposals. Proposers assume full responsibility for full compliance with all applicable federal, state, and local laws, regulations, ordinances, and requirements.

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- Project Teams shall not enter into any exclusive agreements with any subconsultant, subcontractor, specialty firm, supplier, manufacturer, etc.
- The named companies, firms, subconsultants, subcontractors, manufacturers, suppliers, and key personnel (e.g., Project Manager, Construction Manager, Construction Superintendent) shall be employed to perform the Work of this Project throughout its entire duration, unless changes are specifically requested by the Project Team in writing and approved by the Owner.
- Owner does not assume any responsibility for errors or misinterpretations resulting from the use of incomplete sets of this RFP, any Contract Documents, or any other documents or information.
- Proposers are made aware that Pure Technologies SoundPrint® AFO fiber optic monitoring system cable is installed along the invert of the 102-inch aqueduct. Manned inspection teams need to be cognizant of the AFO cable during internal inspections to prevent damage to this cable and system.
- The datum for all drawings to be provided by the Project Team shall be vertical datum – Providence Mean High Water and horizontal datum – NAD 83.
- Before submitting a Proposal, each Proposer must (1) examine the RFP and Contract Documents thoroughly, (2) visit the site(s) at their discretion to become familiar with local conditions that may in any manner affect cost, progress or performance of the Work, (3) become familiar with all Federal, State and local laws, ordinances, rules and regulations that may in any manner affect cost, progress or performance of the Work; and (4) study and carefully correlate Proposer’s observations with the requirements of this RFP and Contract Documents.
- Prior to the submission of a Proposal, Proposers shall promptly give written notice to the Owner of any conflict, error, ambiguity, and/or discrepancy in the RFP and Contract Documents and Proposers bear full responsibility for determining that Owner's written resolution by formal written Addenda is acceptable.
- The submission of a Proposal will constitute an incontrovertible representation that the Proposer has complied with every requirement of this RFP and these Contract Documents; that no additional examinations, investigations, explorations, studies, or tests are needed; that the RFP and Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance of the Work; and that the Proposer provided written notice of any conflict, error, ambiguity, and/or discrepancy in the Contract Documents and that Owner's written resolution by formal written Addenda is acceptable to the Proposer.
- The Contract, if awarded, will be based on materials and equipment specified or described in the RFP and Contract Documents, including any Addenda issued prior to the receipt of Proposals. The materials and equipment described in the RFP and Contract Documents establish a standard of required type, function, quality, and performance to be met by any proposed substitute or “equal” item. Whenever it is specified or described in the Contract Documents that a substitute or “equal” item of material or equipment may be furnished or



used by the Project Team if acceptable to the Owner, application for such acceptance will not be formally considered by the Owner until after the execution date of the Contract Agreement. The procedure for submission of any such application by the Project Team and consideration by the Owner is set forth in the Contract Documents. The burden of proof of the merit of a proposed substitute or “equal” item is solely upon the Project Team and Proposers, and the Owner’s decision of approval or disapproval will be final. Proposers shall not rely on any assumption of approval by the Owner in preparing their Bid.

- Prior to the aqueducts being reactivated and returned to full service after all inspection and rehabilitation Work of this Project, the Project Team shall perform a final walk-through of the pipeline section(s) with the Owner to review all Work performed on the Project. For sections sliplined with FRP, this final walk-through with the Project Team and Owner shall also include a representative from the FRP pipe manufacturer to confirm satisfactory installation of all FRP slipliners; the pipe manufacturer representative shall provide a final field inspection report to the Project Team and Owner.
- All materials and products installed, and all services and workmanship performed during the Work of this Project shall be free from defects and flaws and shall be fully guaranteed for a period of not less than one year from the date that the aqueduct was reactivated and returned to full, normal service. Any defects or defective items found during this warranty period shall be removed and replaced by the Project Team in a manner acceptable to the Owner and at no additional cost to the Owner. The date of acceptance shall be defined as the date that the aqueduct, or section of the aqueduct, is successfully reactivated and returned to full, normal water supply service; Owner will provide written notification and confirmation of this date to the Project Team.
- If at any time within the said period of guarantee/warranty any part of the Work requires repairing, correction or replacement, the Owner may notify the Project Team in writing to make the required repairs, corrections or replacements. If the Project Team neglects to commence making such repairs, corrections or replacements to the satisfaction of the Owner within seven days from the date of receipt of such notice or having commenced fails to prosecute such Work with diligence, the Owner may employ other persons to make said repairs, corrections or replacements, and charge the costs, including compensation for additional professional services, to the Project Team.
- All deliverables and submittals provided to Owner become property of the Owner for future use by the Owner at Owner’s discretion.

## **1.10 PROPOSAL FORMAT & SUBMISSION REQUIREMENTS**

Project Teams and Proposers responding to this RFP shall submit Proposals as outlined in this section and in the cover documents of this RFP. Failure to adhere to the prescribed format and/or respond to all requirements of this RFP may result in the Proposal being deemed non-responsive and being rejected. Proposers should submit one original and five copies of their Proposals, along with a combined PDF file in electronic format of their entire Proposal. No Proposal may be withdrawn for a period of 90 days after the actual date of the opening of the Proposals.

It is the responsibility of all Proposers and Project Teams to ensure that their Proposal is in the possession of the responsible official or designated alternate prior to the stated time and at the place of opening. Owner is not responsible for any delays of any nature for Proposals delayed by mail and/or delivery services or for any other reason that Proposals are not in the possession of the responsible official prior to the stated time and place of opening. Any Proposal received after the date and time specified may not be considered.

In their Proposals, Proposers must identify any unknown or variable issue that may impact their proposed cost and must also clearly describe any assumptions made. Proposers must also identify any tasks that will require Owner to complete as part of the Work, and reasons why the Owner's services or assistance is required.

Proposals shall be organized and divided into the following sections:

Cover Letter

The cover letter shall introduce the Proposer and their Project Team and provide a brief history and overview of the companies, firms, contractors, subcontractors, subconsultants, specialty firms, outside professionals, etc. that make up the proposed Project Team. The cover letter shall also provide a summary of the Project Team's experience and qualifications, highlights of the proposed technical approach and proposal and proposed schedule, briefly discuss the overall proposed costs, highlight any proposed alternates or value-added services, and note and explain any exceptions to the requirements of this RFP. The cover letter must indicate the principal or officer of the Project Team who will be Owner's primary point of contact for negotiations, and this individual must have the authority to negotiate all aspects of the scope of services, provisions, and terms and conditions on behalf of the Project Team. The cover letter transmitting the Proposal must be signed by said principal or officer to bind the respondent to the terms and conditions of this RFP. Forms and documentation required in the City of Providence Board of Contract and Supply Bid Package Checklist must follow the cover letter in all submitted Proposals.

Section 1 – Experience & Qualifications

This section of the Proposal should provide a history of the Project Team and a detailed response to the required experience and qualifications of the Project Team as specified in this RFP. This section should describe the capabilities, experience, and qualifications of all companies, firms, contractors, subcontractors, subconsultants, specialty firms, outside professionals, etc., and all the key personnel that make up the proposed Project Team. This section must clearly identify the personnel who will be the Project Manager, Technical Lead, Construction Manager, and Construction Superintendent / Inspector / Resident Project Representative on-site to coordinate all field and construction activities. This section should also describe the hierarchal relationships and authoritative structure of the Project Team and all its personnel; an organizational chart should be provided for this purpose. Additional information to support this section, such as project references and resumes of key personnel should be included in this section. Project references must include all requested experience and qualifications requirements as specified in this RFP. Resumes should clearly indicate name, position/title/role, education, professional licensing, and relevant experience and qualifications.

Section 2 – Technical Approach & Proposal (Understanding of the Work & Proposed Approach)

The technical approach and proposal section of the Proposal is intended for the Project Team to demonstrate their understanding of all requirements of this RFP and the Work of this Project, including PW and its system; the background and history of this Program and Project; the purpose, goals, and objectives of this Project; the scope of services to be provided as part of the Work of this Project; detailed step-by-step work plans to demonstrate understanding of the required approach and the Project Team’s methodology; schedule requirements; key issues, considerations, and requirements; and understanding of the response required to this RFP. In this section, the Project Team shall provide detailed and step-by-step approaches and work plans to accomplish all tasks and Work of this Project. At minimum, this detailed approach, methodology, and work plans for performing all Work must include detailed and step-by-step explanations of how the Project Team will:

- Perform all detailed planning and coordination work.
- Address and perform all confined space entry and health and safety requirements and work, including communications plans and the approach for the designated confined space rescuer.
- Perform all required mobilization activities.
- Shut down, isolate, drain, and fully dewater the aqueducts, including what structures and appurtenances will be utilized.
- Protect ~~and~~ the aqueducts from contamination and secure the aqueducts and all Work areas and sites.
- Perform all inspection work while maintaining continued and uninterrupted supply to all of Owner’s wholesale customers, including how the work will be performed in phases (if any).
- Safely inspect the aqueducts by manned entry, including what structures and appurtenances will be utilized for access and egress.
- Inspect the aqueducts, including the approach and plans for the required internal visual, electromagnetic, and structural inspections.
- Perform rapid qualitative analysis of all inspection data and failure risk analysis to provide Owner with recommendations as required by this RFP.
- Perform all required rehabilitation work, including installation of the FRP slipliner and associated annular space grouting. Proposals should discuss and summarize potential PCCP rehabilitation methods and techniques that may be required for rehabilitation work.
- Perform final walk-throughs of the aqueducts with Owner, as required.
- Disinfect, flush, refill, sample and reactivate the aqueducts following completion of all Work.

- Perform all work within the schedule requirements of this Project.
- Perform any other associated Work of this Project.
- Perform all required demobilization, cleanup, and restoration activities.
- Address key issues, considerations and any other special requirements.

### Section 3 – Proposed Schedule

This section of the Proposal shall include an overall proposed project schedule, showing how the Project Team will accomplish all objectives and Work of this Project. The schedule should be broken down by phase/task and detail all major milestones, deliverables, and submittals. The proposed schedule will serve as the basis of the overall project schedule to be updated as the Project progresses. The project schedule should also address all key considerations related to the Work and schedule requirements. Additional detailed schedule breakdowns can and should be provided, as needed, by the Project Team in their Proposal to help Owner understand any specific detailed schedule of Work.

### Section 4 – Bid Form & Cost Proposal

This section of the Proposal should discuss all the Project Team's proposed costs to perform the Work of this Project, including the completed and filled out Bid Form(s) as well as all other requested cost information and pricing. Bid Forms shall be completed in ink or be type written. The cost of each item on the Bid Form shall be stated in words and figures. If unit prices are required on the Bid Form, discrepancies between unit prices and their respective total amounts will be resolved in favor of the unit prices. Discrepancies between words and figures will be resolved in favor of words. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. Bid Forms shall be signed and executed in ink. Bid Forms shall contain an acknowledgement of all Addenda (the numbers of which shall be filled in on the Bid Form). Bid Forms shall include evidence of Bidder's authority and qualifications to do business in the State of Rhode Island (e.g., contractor license numbers). The Bid Forms shall be submitted with all required and requested forms and information.

### Section 5 – Proposed Alternates & Value-Added Services

Proposed alternates and/or value-added services outside the scope of this RFP will be considered. Proposers should clearly describe in detail any alternates or additional proposed services and how they add value to the Project. Any alternates or services proposed should contain sufficient detail and evidence for Owner to consider and properly evaluate their value to the Project.

### Section 6 – Miscellaneous

Proposers should include any additional information necessary to support their Proposal and assist Owner in evaluating their Proposal, including but not limited to additional experience and qualification information, bonds, certifications, certificates of insurance, financial reports, MBE/WBE information, and any other information requested in this RFP.

Proposals submitted by corporations shall be executed in the corporate name by a corporate officer (whose title must appear under all required signatures), accompanied by evidence of authority to sign. The corporate address and state of incorporation shall be shown. The corporate seal shall be affixed and attested by the corporate secretary or an assistant corporate secretary.

Proposals submitted by a partnership shall be executed in the partnership name and signed by a partner (whose title must appear under all required signatures), accompanied by evidence of authority to sign. The official address of the partnership shall be shown.

Proposals submitted by limited liability companies shall be executed in the name of the firm by a member or other authorized person and accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm shall be shown.

Proposals submitted by a joint venture shall be executed by an authorized representative of each joint venturer in the manner indicated on the Proposal Forms. The official address of the joint venture shall be shown.

All names on all Proposal Forms shall be printed in ink below all signatures.

Proposals shall contain an acknowledgement of receipt of all Addenda, the numbers and dates of which shall be shown on the respective Proposal and Bid Forms.

Postal and email addresses and telephone numbers for communications regarding Proposals shall be shown on the respective Proposal Forms.

### **1.11 EVALUATION CRITERIA & BASIS OF AWARD**

In evaluating Proposals, Owner will consider whether Proposals comply with the prescribed requirements of this RFP, the Project Team’s experience and qualifications, the understanding of the Work and Project and proposed technical approach and methodology for all Work, the proposed project schedule, proposed pricing and the cost proposal and the value that all proposed costs bring to the Project, any proposed alternates and value-added services, and any other relevant data and information as may be requested by Owner. In evaluating Proposals, Owner will consider the experience and qualifications of all entities and personnel that make up the Project Team. Owner may conduct such investigations as Owner deems necessary to establish the capability, experience, qualifications, responsibility, and financial ability of the Project Team. Proposers shall be prepared to submit additional information, if requested by Owner, following submission of their Proposal.

Proposals will be evaluated based on the following weighted criteria:

<b>PROPOSAL EVALUATION CRITERIA</b>	<b>WEIGHTED CRITERIA</b>
PROPOSAL FORMAT & RESPONSIVENESS	10%
EXPERIENCE & QUALIFICATIONS	30%
TECHNICAL APPROACH & PROPOSAL (UNDERSTANDING OF THE WORK)	30%
PROPOSED SCHEDULE	10%
PROPOSED COST VS. VALUE	15%
PROPOSED ALTERNATES & VALUE-ADDED SERVICES	5%

During review and evaluation of Proposals, Owner reserves the right to request that members of Project Teams attend a meeting/interview with Owner to review and discuss their capabilities, experience, qualifications, and submitted Proposal.

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Based on the above evaluation of Proposals, the intent of the Owner is to award one Contract to the responsive, responsible, and eligible Project Team and Proposer that adhered to all RFP requirements and Proposal format stipulations; has the required ability, capability, experience, integrity, qualifications and skills and health and safety performance history; demonstrates understanding of PW, the STA system, and the purpose, goals, and objectives of this Project; demonstrates understanding of the Work of this Project within the required schedule requirements, considerations, and constraints; provides a comprehensive and detailed approach and methodology to perform the Work of this Project that is satisfactory to the Owner and meets the requirements of this RFP and the objectives of the Project; provided any alternates or value-added services that represent benefits or value to the Owner and/or the Project; and whose proposed pricing and cost proposal to perform the Work of this Project represents the best value to the Owner for successful completion of all Work of this Project and is in the Owner's best interests to make an award.

Owner reserves the right to award one, multiple, or all the tasks provided on the Bid Form to a Proposer. Owner awarding only select tasks shall not be grounds for additional compensation or time and the provided pricing for each Bid Item must be inclusive of all costs for that Task. The Owner also reserves the right to reject any and all Proposals, to waive any and all informalities if it is in the Owner's best interest to do so, and the right to disregard all nonconforming, nonresponsive, unbalanced, or conditional Proposals. Owner further reserves the right to reject the Proposal of any Project Team who it finds, after reasonable inquiry and evaluation, to not be responsible and/or not meet the required experience and qualifications specified in this RFP and that Owner considers unqualified to perform the Work of this Project. Owner also reserves the right to reject any Proposal if in Owner's sole opinion would not be in the best interest of the Owner or Project.

If the Contract is to be awarded, Owner will award Contract to the successful Proposer (Project Team) whose Proposal represents the best interests of the Owner and Project and Owner will provide a Notice of Award to said successful Proposer. When Owner gives a Notice of Award to the successful Proposer, it will be followed by a Notice-To-Proceed (NTP) to commence Work of the Project, the Contract Agreement for execution, and a Purchase Order (P.O.) to indicate the agreed upon services and pricing for all Work for purposes of compensation. With the executed Contract Agreement, the Successful Proposer and awarded Project Team must furnish Performance and Payment Bonds, as specified in the cover documents of this RFP, with a surety company acceptable to the Owner, as well as all required and specified Certificates of Insurance. The Contract Agreement shall be executed and returned by Project Team within 15 calendar days after receiving from the Owner. Owner will provide fully executed copies of the Contract Agreement upon execution by the Owner.

## PART II – TERMS & CONDITIONS

In addition to the requirements stipulated in this RFP, including the *City of Providence Standard Terms & Conditions*, the terms and conditions of this Work and Project shall be governed by the attached *Standard General Conditions of the Contract Between Owner and Design-Builder* prepared by the Engineers Joint Contract Documents Committee (EJCDC), EJCDC D-700. The attached document is a modified version of EJCDC D-700, showing all changes and additions to the standard EJCDC text using tracked changes to clearly indicate additions, deletions, and modifications. This modified, tracked changes version of EJCDC D-700 is provided in lieu of any Supplementary Conditions, as amended and supplemented by the following Supplementary Conditions:

## ATTACHMENTS

1. EJCDC D-425 – Price Proposal Form – Design-Build Project.
2. EJCDC D-520 – Agreement Between Owner and Design-Builder.
3. EJCDC D-700 – Standard General Conditions of the Contract Between Owner and Design-Builder.



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78-INCH AQUEDUCT & UPSTREAM SECTION OF 102-INCH AQUEDUCT



PROVIDENCE WATER

125 DUPONT DRIVE  
PROVIDENCE, RHODE ISLAND 02907  
TELEPHONE: (401) 521-6300

## **REQUEST FOR PROPOSALS**

### **INSPECTION & REHABILITATION OF THE SUPPLEMENTAL TUNNEL & AQUEDUCT**

**2025 – 2026  
78-INCH AQUEDUCT &  
102-INCH AQUEDUCT – UPSTREAM SECTION**

**PROJECT NUMBER: 848-20242**

**OCTOBER 21, 2024  
UPDATED JANUARY 27, 2025**

REQUEST FOR PROPOSALS  
INSPECTION & REHABILITATION OF THE SUPPLEMENTAL TUNNEL & AQUEDUCT – 2025-2026  
78-INCH AQUEDUCT & 102-INCH AQUEDUCT – UPSTREAM SECTION  
PROJECT NO. 848-20242

**BOARD OF CONTRACT & SUPPLY  
TERMS & REQUIREMENTS FOR BIDDING  
(INSTRUCTIONS FOR SUBMISSION)**



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

# REQUEST FOR PROPOSALS

**Item Description: INSPECTION & REHABILITATION OF THE SUPPLEMENTAL TUNNEL & AQUEDUCT – 2025-2026  
78-INCH AQUEDUCT & 102-INCH AQUEDUCT – UPSTREAM SECTION  
(CONTRACT THROUGH 12/31/2027 WITH 1-YEAR EXTENSION OPTION)**

**Procurement/MinuteTraq #:** Click or tap here to enter text.

**Date to be opened: 2:15 P.M. ON FEBRUARY 10, 2025**

**Issuing Department:** Providence Water Supply Board

## QUESTIONS

- Please direct questions related to the bidding process, how to fill out forms, and how to submit a bid (Pages 1-11) 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 12-13) 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 to the issuing department’s subject matter expert:
  - Name: **Leo Fontaine**
  - Title: **Project Manager**
  - Email Address: [leof@provwater.com](mailto:leof@provwater.com)

## Pre-Bid Conference

A pre-bid conference will be held for this project on Thursday, November 7, 2024 at 10:00 AM in person at the Providence Water Central Operations Facility (COF), 125 Dupont Drive, Providence, RI and by Microsoft Teams:

[https://teams.microsoft.com/join/19%3ameeting\\_N2M2MTBjMWUtZjU1Mi00YTJmLTg2YWUtODFjYTE0ZGZhY2Mw%40thread.v2/0?context=%7b%22Tid%22%3a%22479ad3fc-a924-446b-91ec-092c231593ed%22%2c%22Oid%22%3a%22900d92ab-f428-4afc-80d2-01980905acd9%22%7d](https://teams.microsoft.com/join/19%3ameeting_N2M2MTBjMWUtZjU1Mi00YTJmLTg2YWUtODFjYTE0ZGZhY2Mw%40thread.v2/0?context=%7b%22Tid%22%3a%22479ad3fc-a924-446b-91ec-092c231593ed%22%2c%22Oid%22%3a%22900d92ab-f428-4afc-80d2-01980905acd9%22%7d)

Meeting ID: 251 320 687 772      Passcode: dRFxad

Attendance at the pre-bid conference is not mandatory, but is strongly recommended.

All questions must be submitted in writing as indicated in this Request For Proposals.



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

**INSTRUCTIONS FOR SUBMISSION**

**MEETING DATE 2/10/2025**

Bids may be submitted up to **2:15 P.M.** on the above meeting date at the **Department of the City Clerk, Room 311, City Hall, 25 Dorrance Street, Providence.** At 2:15 P.M. all bids 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 **one original and five copies along with an electronic PDF file** of their bid in sealed envelopes or packages labeled with the captioned **Item Description** 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).
- If required by the Department, please keep the original bid bond and check in only one of the envelopes.
- 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.
- The bid 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**

**\*\*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.



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

**BID PACKAGE CHECKLIST**

Bid Documents (drawings, specifications, etc.) can be obtained from the City of Providence Bid Opportunities web portal at <https://www.bidnetdirect.com/rhode-island/providenceri>

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 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 6 of this document*)
- Bid Form 2: Certification of Bidder as 2<sup>nd</sup> page (*see page 7 of this document*)
- Bid Form 3: Certificate Regarding Public Records (*see page 8 of this document*)
- Bid Form 4: Affidavit of City Vendor (*see pages 9 and 10 of this document*)
- Bid Form 5: Bidder Certification – Experience & Qualifications (*see page 11 of this document*)
- Forms from the Minority and Women Business Enterprise Program: Based on Bidder Category. See *forms and instructions enclosed (pages 12-13) 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 the above-listed documents are REQUIRED.** (With the exception of financial assurances, which are only required if specified under Bid Terms below).

**\*\*\*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  
CITY OF PROVIDENCE, RHODE ISLAND**

**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 qualified and 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 the event of an error in the extension of prices quoted, the unit price shall prevail.
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 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 copies of the bid to the City Clerk as indicated above, 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.)



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

**BID TERMS**

1. Financial assurances may be required 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 percent (100%) of the awarded contract.
  - d)  No financial assurance is necessary for this item.
2. Awards will be made within **ninety (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 amount satisfactory to the City.





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

**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:

**INSPECTION & REHABILITATION OF THE SUPPLEMENTAL TUNNEL & AQUEDUCT  
2025-2026  
78-INCH AQUEDUCT & 102-INCH AQUEDUCT – UPSTREAM SECTION  
(CONTRACT THROUGH 12/31/2027 WITH 1-YEAR EXTENSION OPTION)**

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\*: \_\_\_\_\_

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

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

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

Bidder acknowledges receipt of addenda numbered: \_\_\_\_\_

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

\_\_\_\_\_  
Title



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

**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 based on race, color, national origin, gender, sexual orientation and/or religion in its business and hiring practices.
2. All Bidder's employees were hired to comply 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



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

**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



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

**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):



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

**Affidavit of City Vendor (continued)**

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



**BID FORM 5: Bidder Certification – Experience and Qualifications**

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

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

being its \_\_\_\_\_ (Title or “Self”), hereby certify an understanding that:

Proposer conforms to the requirements as set forth in the Experience and Qualifications section of this Request For Proposals.

I affirm by signing below that I am duly authorized on behalf of Bidder, on this \_\_\_\_\_ day of \_\_\_\_\_ 2024.

\_\_\_\_\_

Signature of Representation

\_\_\_\_\_

Printed Name



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

**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.**



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

**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 [gdi@providenceri.gov](mailto:gdi@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  
CITY OF PROVIDENCE, RHODE ISLAND**

## **BID PACKAGE SPECIFICATIONS**

### **Overview**

See attached Request For Proposals.

### **Scope of Work**

See attached Request For Proposals.

### **Proposed Schedule**

See attached Request For Proposals.

### **Evaluation Criteria**

See attached Request For Proposals.



## 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 department's request may lead to your bid's disqualification.

*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 records. 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.
- Bidders shall provide all required supplemental documents and information as specified in the Bidding/Contract Documents.



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

**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 City’s election. 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.

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## **PART I – PROJECT DESCRIPTION & REQUIREMENTS**

### **1.1 INVITATION TO PROPOSE**

Providence Water (PW) (Owner) is seeking Proposals from qualified Project Teams for engineering and construction services for the next campaign of its Inspection and Rehabilitation of the Supplemental Tunnel and Aqueduct Program. The Project Work shall be as described herein in this Request For Proposals (RFP). Proposals will be received as indicated in the City of Providence Board of Contract and Supply (BOCS) Cover Documents of this RFP. Proposers shall be comprised of engineering firms, construction contractors, and specialty firms/subcontractors, as needed and required, that meet the required qualifications to form a Project Team to submit a Proposal to respond to this RFP. The intent of this RFP is that Owner will make an award to one Proposer and Project Team to perform the Work of this Project in accordance with terms and conditions herein.

All questions about the meaning or intent of this RFP and Work of this Project shall be directed to and received in writing by the Owner's subject matter expert as indicated in the Cover Documents of this RFP. All written questions shall be received by the Owner at least ten calendar days before the date specified for the opening of Proposals; questions received after this date may not be answered. It is the sole responsibility of all Proposers to ensure that the Owner is in receipt of any submitted written questions.

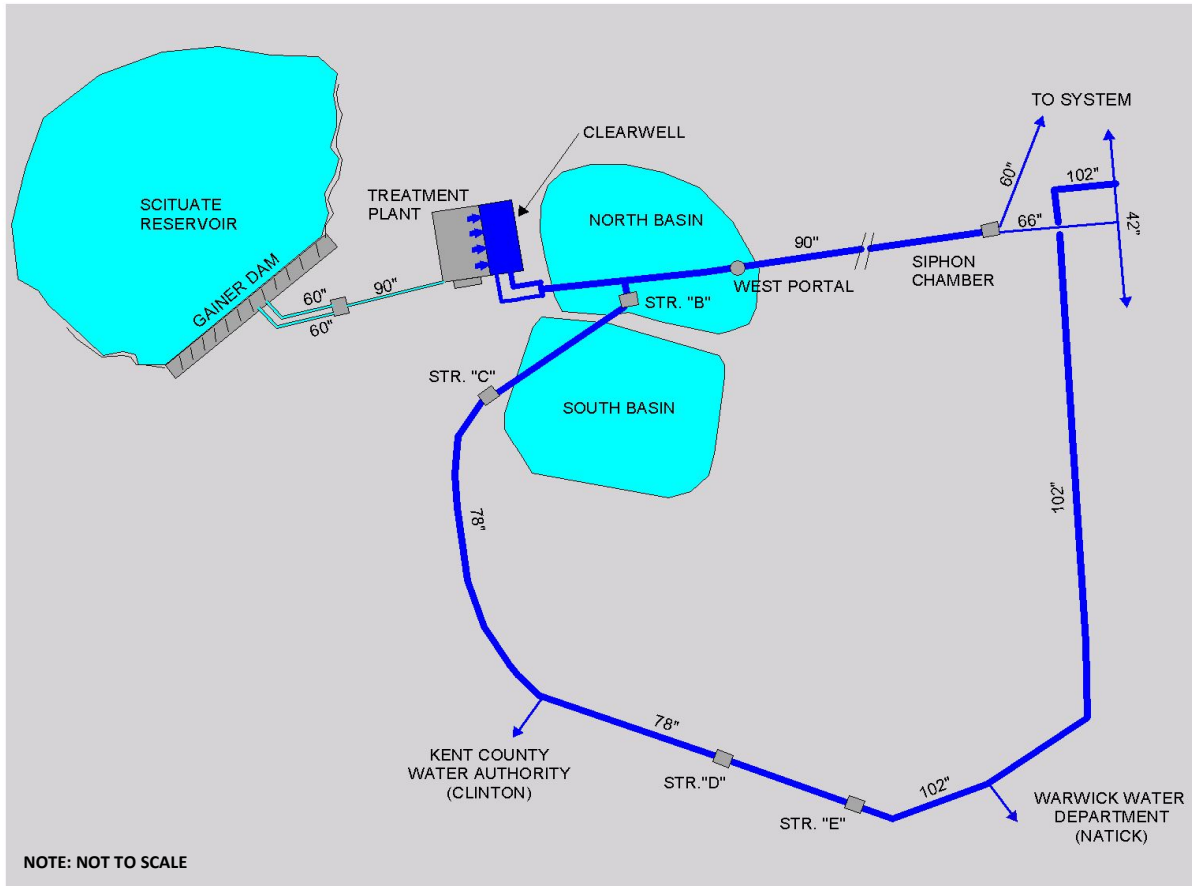
Written clarifications or interpretations will be issued by Owner by Addenda not later than five calendar days before the date specified for the opening of Proposals. Only questions answered by formal written Addenda will be binding. Oral and other clarifications or interpretations will be without legal effect. Addenda will be issued by delivery service with delivery confirmation and/or transmitted electronically to all parties recorded as having received this RFP. All Proposers are solely responsible for confirming that they received all issued Addenda.

### **1.2 INTRODUCTION**

PW is the main supplier of potable water for approximately 600,000 people in the State of Rhode Island, supplying water for domestic, commercial and industrial use, as well as for fire protection. PW directly serves customers in its retail area in five communities in Rhode Island – the City of Providence, City of Cranston, Town of North Providence, Town of Smithfield, and Town of Johnston. PW also provides wholesale supply to seven utilities in the greater Providence area of Rhode Island – the City of East Providence, City of Warwick, Bristol County Water Authority, Kent County Water Authority, Lincoln Water Commission, Town of Smithfield, and the Greenville Water District. PW has many assets in its water system, including a 144-million-gallon-per-day (MGD) water treatment plant (WTP), five distribution system finished water storage reservoirs and two finished water storage tanks with a total capacity of 120 million gallons (MG), 12 pumping stations, over 1,000 miles of water mains ranging in size from 6- to 102-inches, over 6,000 fire hydrants, and about 77,000 service connections. In total, PW supplies potable water to about 60 percent of the State of Rhode Island.

PW treats water from its 37-billion-gallon Scituate Reservoir (Scituate, Rhode Island), with a watershed of approximately 93 square miles, at its Philip J. Holton Water Purification Plant in Scituate, Rhode Island. The plant is a conventional plant with a maximum treatment capacity of 144 MGD. Currently, PW's system-wide Average Day Demand (ADD) and Maximum Day Demand (MDD) are about 60 MGD and 100 MGD, respectively. Treated water is supplied from the plant to PW's

distribution system through two major transmission mains – the 4-mile long 90-inch diameter concrete Scituate Tunnel and Aqueduct and the over 9-mile long 78- and 102-inch Supplemental Tunnel and Aqueduct (STA). A schematic of PW's Scituate Reservoir, WTP, and major transmission mains is shown in **Figure 1**.



**Figure 1: Schematic of Providence Water Aqueduct System**

### 1.3 BACKGROUND

The 78- and 102-inch aqueducts were designed and constructed in the mid- to late 1960s to provide additional transmission capacity and a redundant transmission main to PW's entire distribution system, separate from the original 90-inch aqueduct. The 78- and 102-inch aqueducts, installed in 1967 and 1968 as part of eight separate construction contracts, are both prestressed concrete cylinder pipe (PCCP). The 78-inch aqueduct, comprised of about 1,200 individual PCCP segments, starts at PW's WTP and traverses about 4 miles through mostly rural cross-country and rural residential areas in Scituate, Cranston, and West Warwick, crossing residential roads as well as a busy state-maintained road. At its terminus is a drop shaft structure (Structure 'D'), where the 78-inch aqueduct transitions to a 78-inch concrete tunnel that traverses under a golf course. The pipeline then rises up another drop shaft structure (Structure 'E') where the 102-inch aqueduct begins. The 102-inch aqueduct is comprised of about 1,700 individual PCCP segments. It traverses over 5 miles in West Warwick and Cranston, through some rural cross-country and residential areas, and urban residential

and commercial areas. The 102-inch aqueduct also crosses beneath many residential roads, a 4-lane state highway, and a major 4-lane Interstate highway. The 102-inch aqueduct terminates in PW's distribution system, where it connects to and supplies other major water transmission mains. Both the 78- and 102-inch aqueducts are critical components of PW's water supply and transmission system.

In November 1996, a catastrophic failure occurred on the 102-inch PCCP aqueduct just east of Oaklawn Avenue in Cranston, Rhode Island. The rupture, in a section of the 102-inch aqueduct with operating pressure of about 70 pounds per square inch (psi), caused considerable flooding and damage to the community and surrounding areas, as well as periods of water shortage and concerns of insufficient fire protection. The failed section of 102-inch PCCP was ultimately removed and replaced, and PW immediately commissioned an investigation to determine the cause of the failure and a comprehensive risk assessment to evaluate the likelihood of another failure occurring in the future. The cause of this 1996 failure of the 102-inch PCCP aqueduct was found to be separation of the outer coating of the failed PCCP pipe section and corrosion of its reinforcing steel pre-stressing wires along the full length of the failed pipe section. It was also determined that there was additional concern with issues discovered related to the original manufacturing and installation of the entire PCCP aqueduct system from the 1960s. Given this failure and these concerns, it was imperative for PW to inspect and rehabilitate these PCCP aqueducts.

Following the 1996 failure and repair of the 102-inch aqueduct, planning work immediately began to fully inspect the entire 5-mile long 102-inch PCCP aqueduct. A new 102-inch butterfly valve was designed and installed so that the 102-inch aqueduct could be isolated and shut down in two distinct sections while maintaining supply to a wholesale customer (City of Warwick) that is directly supplied from the 102-inch aqueduct. Detailed plans were developed to drain and dewater the pipeline and for confined space entry (CSE) and health and safety. This detailed planning work facilitated manned entry inside to perform a thorough internal inspection along the entire length.

In 1998 and 1999, a detailed internal inspection of the entire 5-mile long 102-inch PCCP aqueduct was performed, along with sonic/ultrasonic impact-echo testing to evaluate the condition of the concrete core of each PCCP segment. During this inspection, several additional PCCP sections of concern were identified, and these additional pipes of concern were repaired either externally by wrapping with reinforcing wire tendons that were encased in concrete or internally by utilizing a fully structural carbon fiber reinforced polymer (CFRP) liner. At that time, the use of the CFRP liner was an innovative, trenchless repair method that was the first ever use of a CFRP liner in a drinking water pipeline.

Following the 1996 failure and repair of the 102-inch aqueduct and the findings of the subsequent failure investigation, risk assessment, and full inspection of the 102-inch aqueduct in 1998, PW embarked on a systematic and comprehensive inspection, repair, and risk assessment program to continue to inspect and repair the 78- and 102-inch PCCP aqueducts and address areas of concern. The objectives of this comprehensive program, which continues today, are to conduct internal inspections at recurring intervals and perform rehabilitation as needed to provide safeguards against and minimize the risk of another failure of the PCCP aqueducts.

Each inspection of the 78- and 102-inch aqueducts involves fully isolating, shutting down, and draining and dewatering the pipelines in distinct sections and phases, as well as detailed CSE and safety planning to permit manned entry through various access/egress manholes along the pipelines. Once fully drained and dewatered, internal manned inspections are performed to visually assess the



interior of the pipelines, perform structural hammer sounding along the entire length and circumference to evaluate the structural condition and integrity of the PCCP, and to perform specialty electromagnetic (EM) inspections to assess the condition of the PCCP pre-stressing wires and identify wire breaks. The inspection results are used with finite-element analysis failure risk curves developed as part of this program to evaluate the condition of each pipe segment based on wire breaks and maximum pressures, to determine PCCP sections that need to be rehabilitated, and to evaluate risk to prioritize other sections for future monitoring and/or rehabilitation. After completion of all internal inspection work and needed rehabilitation during each campaign, the entire pipeline is thoroughly disinfected and flushed, slowly refilled, sampled, and returned to full service upon acceptable water quality sampling results.

Over the years, this comprehensive program led to the identification and rehabilitation of numerous distressed PCCP sections before they reached a state of failure. It also included the design and construction of new access manholes to better accommodate dewatering, access/egress, and CSE support teams; new control valves (78- and 102-inch) to maintain service to wholesale customers; piping and valve improvements to existing blowoff structures to help facilitate draining and dewatering the pipelines; and other ancillary improvements. In 2007-2008, a new 78-inch butterfly valve was designed and installed on the 78-inch aqueduct so that it could be shut down and isolated for its first (as well as future) inspection along its entire length while maintaining supply to a wholesale customer (Kent County Water Authority) that is directly supplied by the 78-inch aqueduct. All the rehabilitation and improvements made to the 78- and 102-inch aqueducts over the years have allowed PW to continue to operate and maintain this critical transmission main.

In 2005 and 2006, an acoustic fiber optic (AFO) cable and system was installed inside and along the entire length of the 102-inch aqueduct by Pure Technologies (A Xylem brand) to continuously monitor the 102-inch pipeline for acoustic activity associated with the failure of PCCP pre-stressing wires. An AFO cable was not installed in the 78-inch aqueduct, because typical operating pressures are lower than the pressure that would cause the steel cylinder to yield, and therefore pipe failure on the 78-inch aqueduct under typical operating conditions would be expected to manifest itself as a slow cylinder leak and not a sudden, catastrophic rupture. The AFO system in the 102-inch aqueduct helps continuously track the condition of each PCCP section in real time through a web-based management and reporting system and helps identify additional wire breaks and actively deteriorating pipe sections between inspection phases. PW uses the information reported by the AFO system to shut down the 102-inch aqueduct in between planned inspection phases, if needed, to perform further investigations and/or to rehabilitate pipe sections of concern.

Inspections of the 102-inch aqueduct have been performed in 1998, 2005-2006, 2011-2012 and most recently in 2018-2019. The 78-inch aqueduct was inspected for the first time in 2007-2008, again in 2013, and most recently in 2015-2016. All inspection campaigns included rehabilitation to various PCCP sections of concern, along with other ancillary rehabilitation and improvements. Historically, rehabilitation for the 78- and 102-inch aqueducts was made reactively, based on the findings and results of the internal inspections. That approach served PW very well over the years, rehabilitating distressed pipe sections that were found to be in a state of distress before they reached a state of failure.

As previously stated, over the years, the PCCP aqueducts have been rehabilitated reactively through various approaches, including external reinforcing wire tendons encased in concrete and internal CFRP liner, both of which have been used to rehabilitate numerous PCCP segments. Given that both

the 78- and 102-inch aqueducts are now over 50 years old, PW recently shifted its methodology to a more proactive approach of rehabilitating longer, higher risk and critical segments of the aqueducts during controlled shutdowns for inspections. Based on acoustic activity identified by the AFO system in the 102-inch aqueduct, the depressurization and re-pressurization cycles from each controlled shut down to perform the necessary inspection work causes addition wire breaks, further straining and aging the pipelines. Inspections are still performed on a recurring basis, but in 2015-2017, PW for the first time rehabilitated distressed pipe sections along the 78-inch aqueduct by sliplining with 69-inch fiberglass-reinforced pipe (FRP) for potable water pressure applications. Specifically, centrifugally cast fiberglass-reinforced polymer mortar pipe (CCFRPMP) for potable water pressure applications was provided by HOBAS Pipe USA of Houston, Texas. This same sliplining approach was used again in 2017 along the 78-inch aqueduct and again in 2018-2019 along the 102-inch aqueduct, using 90-inch FRP. Performing rehabilitation work during planned, controlled shutdowns for inspections allows PW to perform this work during planned times and aims to minimize additional, unanticipated shutdowns.

In arriving at the 69- and 90-inch FRP diameters for sliplining the 78- and 102-inch PCCP aqueducts, respectively, modeling was performed using PW's water distribution system hydraulic computer model to evaluate various conditions and scenarios. These modeling scenarios established these slipliner diameters to maintain the same or otherwise acceptable hydraulic capacity (flow, pressure, velocity, etc.) based on the smoother interior surface that the FRP provides compared to the PCCP, therefore resulting in less roughness and head losses due to pipe wall friction. The added hydraulic efficiency of the FRP provided for acceptable diameter reductions to 69- and 90-inch while maintaining similar hydraulics.

To-date, about 1,300 feet of the 78-inch aqueduct was replaced with 69-inch FRP and about 1,900 feet of the 102-inch aqueduct was replaced with 90-inch FRP. Areas that have been sliplined have included some of the most critical and high-risk areas of the PCCP aqueducts, including across a main state road and a major 4-lane interstate highway, both in areas where traffic could not be shut down and detoured. Other areas sliplined included cross-country rural areas and urban residential areas. The FRP sliplining approach not only immediately rehabilitated distressed pipe sections of concern by sliplining but it also proactively replaced critical and/or high-risk sections of the aqueducts with a corrosion resistant, fully structural "pipe within a pipe" that is completely independent of the PCCP. To-date, the FRP sliplining approach has been the most cost effective and expedient rehabilitation method for this program for PW.

This Project represents the next inspection and rehabilitation campaign as part of this comprehensive program. This comprehensive inspection and rehabilitation program has been and continues to be necessary for PW to maintain the integrity and operation of these major water transmission mains to its entire water distribution system.

#### **1.4 PURPOSE, GOALS & OBJECTIVES**

The purpose of this Project is to perform the next recurring inspection and rehabilitation campaign along the entire 78-inch aqueduct as well as the upstream section of the 102-inch aqueduct, with the goal of providing reasonable safeguards against and minimizing the risk of another failure of the PCCP aqueducts to continue to maintain the integrity and operation of these critical water transmission mains.

The specific, major objectives of this Project and Work are as follows:

1. Inspect the entire 78-inch PCCP aqueduct from Structure 'C' at the Philip J. Holton Water Purification Plant in Scituate, Rhode Island to Structure 'D' in West Warwick, Rhode Island.
2. Inspect the upstream section of the 102-inch PCCP aqueduct from Structure 'E' in West Warwick, Rhode Island to the 102-inch butterfly valve in West Warwick.
3. Slipline sections of the 78-inch PCCP aqueduct identified in this RFP with 69-inch FRP to rehabilitate sections of this aqueduct.
4. Perform any other needed rehabilitation along the 78- and 102-inch aqueducts, as identified by the inspection work and as authorized by the Owner.
5. Provide confined space entry support to facilitate Pure Technologies' replacement and upgrading of the AFO cable in the 102-inch aqueduct from Structure 'E' in West Warwick, Rhode Island to the 102-inch butterfly valve in West Warwick (the AFO cable in the rest of the 102-inch aqueduct was replaced during the 2018-2019 work).
6. Perform all other ancillary work as required and as described herein in this RFP.

The detailed scope of work required for the Work of this Project is discussed in the following section of this RFP.

## **1.5 SCOPE OF WORK**

The work breakdown structure with anticipated tasks and scope and summary of work corresponding to the items on the Bid Form for the Work of this Project to be performed by the Project Team, include, the following tasks. This section also serves as a Measurement and Payment summary for the Work associated with all tasks of this Project.

1. Project Administration & Management  
Overall Project Administration & Management shall include providing all necessary day-to-day administration and management activities for the duration of the entire Project to manage all Work for timely and proper execution of all tasks, Work, submittals, and deliverables in adherence with the project budget and schedule, including but not limited to: developing project management plan(s); preparing all contractual agreements and subagreements/subcontracts; preparing and continuously updating project schedule(s); facilitating a project kickoff meeting and recurring project status meetings (project status meetings shall at minimum be held monthly, and more frequently if and as needed), including preparing draft and final agendas and meeting reports for all meetings; coordinating and managing the work of all subconsultants, subcontractors, outside professionals, specialty firms, etc.; all coordination and communications with Owner; preparing and submitting to Owner monthly Applications For Payment (invoices) and progress reports for review, approval, and processing by Owner (all Applications For Payment shall be prepared in a standard industry format acceptable to Owner and must include sufficient detail with all supporting data and information to substantiate all costs incurred and all progress reports at minimum shall summarize all work performed during the reporting/billing period, ongoing and projected work for the next period, problems encountered with proposed corrective action(s), potential additional and/or out of scope work, an overall project financial summary,

and an updated project schedule); providing all general quality assurance/quality control (QA/QC) for the entire Project; and performing all needed and/or required project closeout activities.

2. Inspection Preparation

Inspection Preparation to inspect the aqueducts shall include all required planning and coordination, health and safety and confined space entry planning, procurement of all needed and required equipment and supplies, meetings to review and discuss inspection preparations as needed, and preparation and procurement of permits (if and as needed). Inspection preparation to inspect the aqueducts shall prioritize the safety of all personnel and protection of the aqueducts from contamination. Work of this task includes but is not limited to: preparation of detailed and step-by-step draining and dewatering plans for review and approval by Owner; health and safety (H&S) and confined space entry (CSE) plans for review and approval by Owner; procuring all needed and required equipment and supplies to fully perform all inspection work; meeting with all local authorities having jurisdiction and fire and rescue departments as needed to review and coordinate all H&S and CSE plans with emergency response protocols; any other meetings needed with Owner to review, discuss and plan for the inspections of the aqueducts; and any other ancillary and associated Work necessary for the completion of this task. All plans at minimum should discuss in detail required training and protocols; step-by-step pipeline isolation and draining and dewatering procedures; required entry and safety personnel; manholes and structures intended to be utilized during all draining, dewatering, and inspection work; necessary personal protective equipment (PPE); all inspection equipment; how the pipelines will be secured and protected from contamination during all Work; communications procedures during internal inspections; schedules for all Work; all necessary protocols, including what agency or firm has the requisite training, experience, capability, and availability to serve as confined space rescuer; and pertinent contact information.

3. Inspection of the Aqueducts

Manned internal inspections of the aqueducts shall be performed, while maintaining continued and uninterrupted water supply to Owner's wholesale customers supplied by the STA system. Inspection of the aqueducts shall include, but not be limited to: all project management and administration services related to this task; all construction management and administration services related to this task; obtaining all necessary approvals and/or permits (if required) to perform all Work; mobilizing all equipment, supplies, and personnel to the Project site(s); unbolting and opening any required manhole and structure covers; fully draining and dewatering the pipelines to facilitate the inspections and permit safe manned entry for inspection, including operating all valves and sluice gates as needed and/or required, installing stop logs/shutters as required, and pumping as needed and/or required; dechlorinating all water discharged from draining and dewatering operations; preparing the pipelines for inspection, including unbolting, opening, securing, and preparing access/egress locations; performing all H&S and CSE procedures, including lockout/tagout of valves as needed and/or required; providing all necessary ancillary support services required; performing all manned internal inspections, including visual inspections, electromagnetic (EM) inspections, and structural hammer sounding; evaluating preliminary findings and results of the internal inspections to assess preliminary risk and rehabilitation priorities; performing a rapid qualitative analysis of the inspection data within one week following

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completion of the internal inspection of each phase/section to immediately identify any pipes that may be in an advanced state of deterioration and/or warrant additional, immediate internal or external investigations and/or rehabilitation, including preparing a summary technical memorandum to document the findings of this rapid qualitative analysis (rapid qualitative analysis must also include findings and results and technical memos from all subcontractors, subconsultants, specialty firms, etc.); providing recommendations for next steps for any pipe sections identified that warrant additional, immediate internal or external investigations and/or rehabilitation; performing a failure risk analysis to update previously developed failure risk curves as well as develop new failure risk curves for newly identified distressed pipe sections as needed and use the results of the failure risk analysis to provide Owner with recommendations to prioritize additional investigations and rehabilitation; restoring the pipelines to full service following completion of all inspection and rehabilitation work, including all required disinfection in accordance with all applicable American Water Works Association (AWWA) standards and recommendations, closing and securing all access/egress locations covers, operating all sluice gates and valves as needed, flushing the pipelines and dechlorinating all discharged water, refilling the pipelines in a slow and controlled manner, sampling and testing in accordance with Owner's water quality requirements to achieve successful water quality results to reactivate the pipelines to full and normal service, and reactivating and returning the aqueducts to full, normal service upon acceptable water quality results consistent with Owner's requirements; restoring all areas disturbed by all Work to a condition equal to or better than existed prior to the start of Work; demobilizing and cleaning up from all inspection work; and performing all other engineering services, assessments, evaluations, and any other Work required for successful completion of this task.

The Project Team shall perform all CSE work and support services utilizing their own personnel and/or by hiring a dedicated CSE inspection and rescue team. Proposals and all CSE plans should discuss and clearly demonstrate an understanding of the required CSE requirements and emergency response protocols and rescue services, including what agency or firm has the requisite training, experience, capability, and availability to serve as confined space rescuer.

Visual observations at minimum shall inspect the condition of each individual pipe section and all pipe joints for any indication of pipe distress and/or deterioration.

The EM inspection and testing shall be performed along the entire length of the aqueducts to detect and quantify the number of broken prestressing wires in each individual PCCP section and provide information on the location, distribution, and number of wire breaks along the entire length of the pipeline.

Structural hammer sounding shall completely and thoroughly evaluate all pipe sections for any structural deficiencies around their full circumference along the entire pipeline length, including delamination of the concrete core that is indicative of loss of prestressing due to wire break damage. Proposals and all work plans must indicate the method and firm/staff that will be utilized to perform structural hammer sounding of all pipe sections around their full circumference along the entire length of the aqueducts. Results of structural hammer sounding shall delineate the specific areas of each pipe segment identified with any structural

deficiencies and shall also provide an estimate of the percentage of each pipe segment identified with deficiencies (e.g., hollow sounding areas).

To maintain continuity with previous failure risk analysis, the Project Team shall engage Simpson Gumpertz & Heger (SGH) to again perform a failure risk analysis for this Project. SGH shall analyze the EM inspection results along with internal visual and structural inspection findings and results to update past finite-element analysis and failure risk curves, which consider serviceability, structural conditions, depth of bury, internal pressure, and ultimate limit strengths. This failure risk analysis shall be used to prioritize recommendations by the Project Team for additional investigations and rehabilitation, both immediate (if warranted) and short- and long-term. Critical risk factors, including likelihood and consequence of failure, shall be considered by the Project Team for all recommendations.

All inspection data, findings, and results must be correlated with and identified to each specific PCCP segment consistent with Owners records and tracking from all previous work. Proposals and Work plans shall clearly indicate how this will be accomplished.

During all internal inspection work, the Project Team shall also inspect and document the condition of the internal FRP slipliner that was installed previously during past project campaigns.

Following rapid qualitative analysis of all inspection data and findings and review of the technical memorandum prepared to summarize this rapid qualitative analysis along with recommendations, the Project Team shall perform a walk-through of the inspected aqueduct section(s) to review findings and recommendations with the Owner and to perform any follow up structural hammer sounding and investigations to assist Owner in making final decisions on recommended rehabilitation. Project Teams are highly encouraged to include engineering staff from SGH in these walk-throughs.

At the conclusion of all Work of this task, as well as at the conclusion of all rehabilitation and sliplining work in the inspected section(s), and prior to disinfection, flushing, refilling, sampling, and reactivation, the Project Team shall perform a final walk-through of the inspected and rehabilitated sections with the Owner to review and document all Work performed.

The sections of the STA system to be inspected as described above as part of the Work of this Project include the following:

- A. 102-inch Aqueduct – Upstream Section (Structure ‘E’ to 102-inch Butterfly Valve).
- B. 78-inch Aqueduct – Upstream Section (Structure ‘C’ to Flow Tube)\*.
- C. 78-inch Aqueduct – Upstream Section (Flow Tube to 78-inch Butterfly Valve).
- D. 78-inch Aqueduct – Downstream Section (78-inch Butterfly Valve to Structure ‘D’).

\* To-date, because of the current configuration and safety concerns with no safeguards over the Structure ‘C’ drop shaft as well as limited access from Structure ‘C’ to the flow tube, it has not been permissible to inspect this section of the 78-inch aqueduct by manned entry. This approximately 70-foot section of the 78-inch aqueduct has therefore never been inspected. As

part of this Project, Owner is requesting an inspection of this section of the 78-inch aqueduct. Owner understands that this section from Structure 'C' to the flow tube likely can only be inspected by robotic vehicle that provides visual and EM inspection findings and results and that a structural hammer sounding in this section may not be able to be performed.

4. Support for Replacement of AFO Cable in 102-inch Aqueduct – Upstream Section

As part of a separate contract between Owner and Pure Technologies for AFO monitoring, the AFO cable in the 102-inch aqueduct – upstream section (Structure 'E' to the 102-inch butterfly valve) is due to be upgraded and replaced by Pure Technologies. This AFO cable replacement work will be performed by Pure Technologies through this existing, separate AFO monitoring contract with Owner, with no costs associated with this Project. However, as part of this Project, the Project Team shall provide additional CSE support, if and as needed, to facilitate Pure Technologies replacing the AFO cable in the 102-inch aqueduct – upstream section. The Owner anticipates that much, if not all this work by Pure Technologies, can be performed concurrently during the Project Team's inspection of the 102-inch aqueduct – upstream section as described above. This task and Bid Item are provided for the Project Team to provide any additional CSE support, if needed, above and beyond what is already being provided for the inspection of the 102-inch aqueduct – upstream section. Further, the Project Team in this Bid Item shall include costs for all services to dispose of the removed AFO cable and any and all removed appurtenances.

5. Sliplining the 78-inch Aqueduct

The Project Team shall perform all project administration and management, design engineering, construction administration and management, construction inspection and oversight, and construction services to design, furnish, install, and construct the sliplining of the sections of the 78-inch aqueduct listed below. It is the intent of the Owner to slipline the following sections of the 78-inch aqueduct with 69-inch fiberglass-reinforced pipe (FRP) for potable water pressure service as part of the Work of this Project (drawings that show these sections and locations can be requested by Proposers by contacting the Owner's subject matter expert as indicated in the Cover Documents of this RFP; Proposers will be required to complete and submit to Owner a Confidentiality and Non-Disclosure Agreement):

- A. Global Station 175+16 to Global Station 178+76 (connect to previous FRP slipliner) – 360 feet
- B. Global Station 182+04 (connect to previous FRP slipliner) to Global Station 187+50 (connect to previous FRP slipliner) – 546 feet
- C. Global Station 193+82 (connect to previous FRP slipliner) to Global Station 208+55 (termination of 78-inch aqueduct at Structure 'D') – 1,473 feet

The Project Team shall perform all design engineering services as part of this Task, including but not limited to: gathering all data and information needed for design; performing any field work and investigations and site visits as needed and/or required to review existing conditions and review and evaluate proposed work; meetings as required to review and discuss design work; developing technical design requirements in accordance with all industry standards, requirements, guidelines, and best practices; preparing CAD-based design drawings and details to illustrate all Work; preparing design specifications that outline all

requirements of the Work; and performing all required quality assurance and quality control (QA/QC) and technical reviews by senior technical reviewers. Contract Documents (drawings and specifications) and corresponding opinion of probable construction costs (cost estimates) shall be prepared and reviewed with the Owner at the 30%, 60% and 90% design levels and shall be updated at each stage and finalized to 100% based on all Owner feedback and review comments. The Project Team shall also submit to the Owner for review a detailed approach and work plan with step-by-step sequence of all construction and installation activities.

The Project Team shall then provide all labor, materials, equipment, tools, appurtenances, services, and incidentals required to construct and install the FRP inside the 78-inch aqueduct by segmental sliplining in accordance with the 100% design Contract Documents developed as part of this task.

During all construction work, the Project Team shall provide all construction administration, management, and oversight, including but not limited to: administering, coordinating, and managing all construction phase and work activities; reviewing and responding to submittals (requests for information, shop drawings, samples, etc.); observing, documenting, and recording all day-to-day construction activity for compliance with all Contract Documents (including digital photo and video documentation); coordinating and administering all construction meetings, including preparation of all draft and final agendas and meeting reports; all required construction phase reporting including routine progress reports to Owner; preparing all as-built record drawings for all Work performed; and all construction closeout activities.

The design, construction, and installation of FRP by sliplining inside the PCCP aqueducts for all Work of this Task and Project shall meet the following requirements:

- All Work for design and installation of FRP by sliplining shall be in accordance with the following standards:
  - American Water Works Association (AWWA) C950 – Fiberglass Pressure Pipe.
  - American Water Works Association (AWWA) M45 – Fiberglass Pipe Design.
  - American Society for Testing and Materials (ASTM) D3517 – Standard Specification for Fiberglass (Glass-Fiber-Reinforced Thermosetting-Resin) Pressure Pipe.
  - American Water Works Association (AWWA) C651 – Disinfecting Water Mains.
  - National Sanitation Foundation (NSF) 61 – Drinking Water System Components – Health Effects.

The revision of these standards in effect during the design phase of this Work shall apply. If any referenced standards are discontinued by the issuing organization, references to those standards shall mean the replacement documents issued or otherwise identified by that organization; if there are no replacement documents then the last version of the document before it was discontinued shall apply.

- All pipe and fittings for this Project shall be:



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- Suitable for pressure service for potable water supply and transmission.
  - Designed and manufactured in accordance with AWWA C950, AWWA M45, and ASTM D3517 (for all FRP).
  - Suitable for contact with potable water and tested and approved for compliance with NSF/ANSI 61, including all pipe gaskets and any other associated materials that will be in contact with potable water.
  - Designed for a pressure of at least 100 psi (working pressure plus surge/transient pressure) (minimum pipe pressure class for this Project is 100 psi).
  - Provided with a minimum nominal pipe stiffness of 46 psi (for FRP), with thickness increased as necessary based on pipe design and thickness calculations.
  - Designed for all earth cover and earth loads from the existing ground surface to the top of the pipe as well as all live loads.
  - Fully structural and capable of independently withstanding all internal hydrostatic forces and all external forces and loads from earth cover and traffic loading. Liners shall not be considered as contributing to the structural strength of the pipe.
  - Capable of being installed in both direct-bury and sliplining applications.
  - Capable of withstanding all forces that will be imposed from all installation means and methods.
  - Capable of withstanding all grouting forces without any internal support and without deformation.
  - Designed and manufactured with an intended service life of at least 100 years.
  - Manufactured in the United States and provided by a single manufacturer who is acceptable to the Owner.
  - Supplied in factory-cut lengths based on Project Team’s means and methods for installation and such that the allowable deflection of joints is not exceeded.
- All Work shall be designed, constructed and installed to meet the requirements of the geometry and alignment of the existing aqueducts. The Project Team shall be aware that the PCCP host pipe may not be consistently straight between points – full bevels, half bevels, bends, and/or curves may exist on sections of the aqueduct to be sliplined. It is the Project Team’s sole responsibility to verify locations of the existing PCCP host pipe and the geometry of the existing PCCP host pipe for purposes of design, fabrication, and installation approach. Failure of the Project Team to verify the locations of the existing aqueduct and/or existing geometry or alignment shall not warrant any claims for delay or additional costs for incorrect materials ordered or issues encountered during installation.
  - All excavations shall be excavated and secured with sheeting, shoring and bracing for excavation support and protection as required. Excavation support and protection shall be designed by a Registered Professional Engineer (P.E.).

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- Any PCCP section that was cut for access pits for sliplining or any other reason is structurally compromised and must be completely lined through with new FRP slipliner.
- The terminations of the new FRP slipliner shall not terminate corresponding with existing joints of the existing PCCP aqueduct; they shall terminate within the concrete core of an existing PCCP segment.
- The terminations of the new FRP slipliner inside the PCCP aqueducts shall be provided with watertight end seals. These end seals shall be completely watertight to prevent potable water from leaking external to the aqueducts and shall also prevent non-potable water intrusion into the aqueducts. The end seals shall be removable in the future to allow for joining to new FRP sections during future continuation of sliplining the aqueducts.
- All pipes installed shall be sequentially numbered and identified and this information for all pipe segments shall be recorded for as-built record documentation.
- All assembled pipe joints must pass an air pressure test to confirm watertightness of the assembled joints. Any joint found defective shall be corrected to successfully pass the required air pressure test. Acceptance of all Work is contingent upon successful joint pressure testing and the aqueduct will not be returned to service until all joints pass the required field pressure test. Joint pressure tests must be performed prior to grouting.
- The annular space between the new FRP slipliner and the existing PCCP host pipe must be filled with an approved cement-based non-shrink grout to support the FRP slipliner in place and provide long-term stability. The grout mix shall have sufficient strength and durability to prevent any movement of the FRP liner pipe in the PCCP host pipe. The grout shall be installed in lifts in such a way to prevent any flotation of the new FRP slipliner. All grout installation and grouting operations, including surface preparation, shall be performed in accordance with manufacturer instructions, guidance, recommendations, and requirements. At the end points/transition of the new slipliner back to the existing PCCP aqueduct, these interfaces shall be grouted with an approved NSF-61 certified grout, given its proximity to possible contact with potable water.
- The PCCP host pipe and all annular space grout between the FRP and PCCP host pipe shall be assumed to provide no support for resisting any internal and external forces.
- Grouting should take place as soon as practical following slipliner installation and shall be performed in a continuous and progressive operation to completely fill the annular space, prevent the occurrence of any voids, and to prevent any damage to the FRP slipliner. Grouting shall establish complete contact and fill between the FRP slipliner and PCCP host pipe. Bulkheads shall be installed as needed for grouting to seal the annular space between the FRP slipliner and PCCP host pipe to permit grout to set and shall be capable of withstanding all grouting forces. Following completion of all grouting activities, any grout ports shall be completely and securely sealed.
- All pipe, fittings, materials, etc. shall be transported, delivered, handled, stored on-site, protected, installed, joined, and/or connected in accordance with manufacturer instructions, guidance, recommendations, and requirements. Joints shall be joined with gaskets as needed to maintain joint watertightness and shall be suitable for pressure

service up to 150 psi. Any damaged materials shall be replaced at no additional cost to the Owner.

- The aqueducts shall always be protected during construction to prevent and minimize all sources of contamination and vandalism (debris, dirt, foreign objects, sediment, animals, rodents, human intrusion, etc.). The safety and integrity of the existing aqueducts is of paramount importance and protection of the aqueducts during all Work is the sole responsibility of the Project Team.
- All pits and open excavations and the ends of open pipe shall be protected and secured at all times against any and all contamination and intrusion. It is the Project Team's responsibility for all traffic management and control and for the safety of all work areas and adjacent vehicular and pedestrian traffic.
- At the conclusion of Work, the existing aqueducts and new FRP shall be thoroughly cleaned, disinfected, flushed, refilled, and sampled to achieve acceptable water quality results consistent with Owner's requirements before being returned to service. All disinfection shall be in accordance with AWWA standards. The pipelines shall not be returned to service until water quality results are acceptable to the Owner.
- The Owner reserves the right to inspect and reject any materials. Any material that is damaged or defective shall be removed and replaced at no additional cost to the Owner.
- All materials removed or otherwise not installed in the Work or stockpiled on-site shall be removed and disposed of by the Project Team.
- All design, construction, and installation Work shall consider Owner's intent to continue the installation of FRP by sliplining in the future and connect to the FRP that is installed as part of the Work of this Project.
- All means and methods are the sole responsibility of the Project Team.
- Submittals for this Task during the design and construction phases shall include but not be limited to the following:
  - Pipe structural design calculations, including all design conditions and assumptions, prepared and stamped by a Registered Professional Engineer (P.E.).
  - Draft and final drawings and specifications (at all design stages as indicated herein in this RFP).
  - Product certifications, certificates of compliance, data, information, and test reports for all materials and products to be used and installed as part of the Work, including copies of FRP factory hydrostatic burst testing results for the specific pipe design showing no leakage at the required pressures.
  - Detailed work plan for the installation of all pipe, fittings, and appurtenances, including drawings, schematics, means and methods, plans, procedures, and schedules, and the same for all grouting work (equipment, stages, lifts, volumes, measuring volumes, buoyancy calculations to ensure FRP slipliner will not float,

venting, confirmation of full grouting, monitoring and maintaining grout pressures, etc.).

- Final as-built record drawings, details, and specifications in both PDF and CAD formats.

6. Allowance for Other Rehabilitation or Work

Should the inspections of the aqueducts reveal deficiencies that warrant additional investigation and/or rehabilitation, or should additional work or services be needed as part of this project, this allowance is provided for such purposes. Owner may also elect to utilize this Contract to provide additional engineering and/or construction services for project or non-project related project work. Any additional services and/or work performed as part of this allowance shall be negotiated with Owner prior to performing any work. The Project Team shall provide Owner with detailed cost proposals and breakdown of costs for any such work for Owner review and approval before proceeding. Owner will issue a written Notice-To-Proceed (NTP) for any work approved to be performed by the Project Team as part of this allowance. The total amount of this allowance item shall be included in the total bonded amounts by the Project Team for this Project.

At minimum, it is anticipated that Owner will authorize rehabilitation of pipe joints identified as deficient from the inspection work as part of this allowance to rehabilitate missing or loose grout in any deficient joints. Proposers in their Proposals and understanding of the Work should discuss some potential PCCP or other project rehabilitation techniques that may be needed as part of this allowance item.

7. Report

The Project Team shall prepare a comprehensive report summarizing the Project and all Work performed. The report shall be organized and provided in a format acceptable to the Owner, both hard copy and electronic PDF. At minimum, the report shall: provide necessary introduction and background information; summarize the project approach and methodology; provide assessments and comprehensive evaluations of all data, information, and results, including that from subconsultants and subcontractors; describe and summarize all rehabilitation work performed; describe and summarize all sliplining work performed; provide as-built record drawings, documentation, and information for all Work performed; provide recommendations and options with engineering cost estimates; summarize all project expenditures; and provide/attach all supporting backup information and documentation, including reports generated by subconsultants and/or subcontractors and all project technical memos. The Project Team shall prepare a draft outline of the report for Owner's review and approval prior to preparing the report. The Project Team shall then prepare a draft report and submit to Owner for review within 90 days of the completion of all Work of the Project. Within 60 days of receiving review comments and feedback from the Owner on the draft report, the Project Team shall update and finalize the report and submit the final report to the Owner. The draft and final reports shall be submitted to the Owner in a format acceptable to the Owner, both hard copy and electronic PDF. Final as-built record drawings shall also be submitted to the Owner in CAD format.

## 1.6 SCHEDULE

Project Teams and Proposers shall submit an overall proposed project schedule with their Proposal that meets Owner’s objectives for this Project. At minimum, the schedule shall be broken down by task/phase and detail all major milestones and all major deliverables and submittals. This schedule shall serve as the basis of the overall project schedule that would be updated as the Project progresses.

The overall Contract Time for this Project shall be as indicated in the cover documents of this RFP. All Work of this Project shall be performed and completed by December 31, 2027, unless an extension is otherwise granted and approved by the Owner. However, time is of the essence to complete the Work of this Project, and Proposers and Project Teams should propose a project schedule for Owner’s consideration that is efficient and expedient at performing all Work.

Key considerations and requirements related to the Work and Schedule include the following:

- All Work of this Project shall be completed within/by the dates herein indicated, including submission of all final reports, final as-built documentation, and final Applications For Payment. The Contract Time shall only be extended at the discretion of and with the written approval of the Owner.
- It is the sole responsibility of the Project Team to administer and coordinate all Work of their partner firms, subcontractors, subconsultants, specialty firms, outside professionals, contractors, etc.
- The aqueducts must be isolated, inspected, and rehabilitated in phases/sections to maintain continued and uninterrupted supply to Owner’s wholesale customers supplied by these pipelines.
- The entire STA system must be fully active and operational in the months of June, July, August, and September to supply high system-wide demands. All Work needs to be planned, performed, and completed so that the pipelines are fully active and in service from June 1<sup>st</sup> through September 30<sup>th</sup>, unless otherwise approved by the Owner.

## 1.7 COMPENSATION

The Project Team shall submit the Bid Forms included with this RFP with their Proposal, showing all proposed costs for all Work of this Project. Costs proposed for all Bid Items and for all Work shall be inclusive of all required costs for each Bid Item/Task, including but not limited to direct labor salary costs; all indirect costs; outside professionals (subconsultants, subcontractors, etc.); other direct costs for items and expenses directly incurred; all mobilization and demobilization for all Work; all required approvals, bonds, insurance, and permits; and all equipment, materials, tools, supplies, incidentals and appurtenances. The Project Team shall be compensated for all Work based on the terms and conditions provided in the Price Proposal Forms and Agreement. Each of the Bid Items/Tasks shall also have not-to-exceed upper limits, which may be exceeded only with approval of the Owner and provided that the total not-to-exceed upper limit cost (Guaranteed Maximum Price (GMP)) is not exceeded. All overhead and profit shall be built into the Proposed Prices.

The Project Team in their Proposal shall provide all requested cost information on the Bid Forms. The Contract fee will be paid proportional to the percentage of actual work performed and billed on each

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Application For Payment up to and not to exceed the total fee value (GMP); the total Contract fee is not guaranteed to be payable by Owner unless the total Work performed equals the total Contract. Further, the total fee shall not increase if the not-to-exceed upper limit cost(s) are exceeded by the Project Team. Applications For Payment shall be submitted to Owner monthly for review and approval, and five percent retainage will be withheld from all payments by the Owner until satisfactory completion of all Work of the Project, unless retainage is otherwise released by the Owner at Owner's sole discretion.

Project Teams are encouraged to provide as much detail and information as possible in their Proposal and with their Bid Forms to assist Owner in evaluating cost versus value for all proposed Work. In evaluating the cost proposal and provided pricing in Proposals, Owner will consider factors such as consistency with historical pricing of similar and related work and the cost versus value of all proposed Work.

Owner is exempt from sales tax on materials and equipment permanently incorporated into the Work. A sales tax exemption certificate can be made available by Owner upon request. The cost of such taxes shall not be included with any proposed or invoiced costs.

For Work of this Contract associated with the included allowance authorization Task and Bid Item, all costs and pricing shall be negotiated with Owner before commencing any Work. Owner may elect to perform these negotiated services as not-to-exceed lump sum, cost plus fixed fee, or time and materials (T&M). Should any Work be authorized and performed as T&M, Proposers with their Proposals shall submit hourly billing rates for all equipment needed and all labor categories. The Project Team shall provide a schedule of equipment rates (e.g., excavators, backhoes, generators, utility trucks, trench boxes, road plates, pumps, compressors, etc.) that the Project Team feels is necessary to complete any Work of this Project. Payment for all equipment for any T&M work authorized and approved by the Owner shall be based off these provided equipment rates. T&M hourly billing rates for all labor shall be inclusive of all costs for direct labor, indirect costs, overhead, fringe benefits, expenses and profit; no additional payment will be made for any travel, meals, mileage, personal vehicles, cell phones, etc. Proposers may provide hourly billing rates for additional labor positions and categories that they feel may be needed during the Work, but at minimum, Proposals shall include hourly T&M billing rates for the following labor categories:

*Officer-In-Charge:* The Officer-In-Charge shall be a principal or officer of the Project Team who will be Owner's primary point of contact for all negotiations and Contracts and shall be responsible for compliance with all requirements of this RFP and the Contract for the Work of this Project. The Office-In-Charge must have the authority to negotiate all aspects of the scope of services, provisions, and terms and conditions on behalf of the Project Team. The Officer-In-Charge shall possess a minimum of 10+ years of demonstrated relevant experience. It is highly preferred by the Owner that the Officer-In-Charge possess relevant degrees in engineering and be a Registered Professional Engineer (P.E.) (registration in Rhode Island is highly preferred, but other jurisdictions in the United States will be considered).

*Project Manager:* The Project Manager shall be a senior engineer that holds a bachelor's degree in engineering (master's degree preferred), possesses a minimum of 10+ years of demonstrated relevant experience, and must be a Registered Professional Engineer (P.E.) in the State of Rhode Island. The Project Manager shall be in responsible charge of all Work and all day-to-day Project activities and along with the Officer-In-Charge shall be responsible for compliance with all requirements of this RFP

and the Contract for the Work of this Project. Only one individual may be designated and invoiced as the Project Manager.

*Project Engineer – Junior:* Junior level Project Engineers shall hold a bachelor’s degree in engineering and shall possess 1 to 5 years of demonstrated relevant experience. It is encouraged, but not required, that Junior Project Engineers possess their Engineer-In-Training (EIT) certification.

*Project Engineer – Intermediate:* Intermediate level Project Engineers shall hold a bachelor’s degree in engineering (master’s degree is highly encouraged, but not required) and shall possess 5 to 10 years of demonstrated relevant experience. It is encouraged, but not required, that Intermediate Project Engineers be a registered P.E. (registration in Rhode Island is preferred, but registration in another jurisdiction in the United States will be considered).

*Project Engineer – Senior:* Senior level Project Engineers shall hold a bachelor’s degree in engineering (master’s degree preferred), possess a minimum of 10+ years of demonstrated relevant experience, and shall be a Registered P.E. (registration in Rhode Island is preferred, but registration in another jurisdiction in the United States will be considered).

*CAD Designer/Drafter – Junior:* Junior CAD Designer/Drafters shall have 1 to 5 years of experience using computer-aided design (CAD) software to create technical drawings and details.

*CAD Designer/Drafter – Intermediate:* Intermediate CAD Designer/Drafters shall have 5 to 10 years of experience using computer-aided design (CAD) software to create technical drawings and details.

*CAD Designer/Drafter – Senior:* Senior CAD Designer/Drafters shall have 10+ years of experience using computer-aided design (CAD) software to create technical drawings and details.

*GIS Specialist – Junior:* Junior GIS Specialists shall have 1 to 5 years of experience using GIS software and data collection equipment to create data visualizations (maps, charts, graphs, etc.) to help portray geospatial data, information, and results; analyze and manage special data, information, and databases; and develop and implement GIS-based analyses and evaluations.

*GIS Specialist – Intermediate:* Intermediate GIS Specialists shall have 5 to 10 years of experience using GIS software and data collection equipment to create data visualizations (maps, charts, graphs, etc.) to help portray geospatial data, information, and results; analyze and manage special data, information, and databases; and develop and implement GIS-based analyses and evaluations.

*GIS Specialist – Senior:* Senior GIS Specialists shall have 10+ years of experience using GIS software and data collection equipment to create data visualizations (maps, charts, graphs, etc.) to help portray geospatial data, information, and results; analyze and manage special data, information, and databases; and develop and implement GIS-based analyses and evaluations.

*Construction Manager:* Construction Manager shall be responsible for administering, managing, and overseeing all construction Work of the Project, including monitoring and compliance with construction scopes, schedules, budgets, as well as all construction administration and coordination. The Construction Manager shall be a Senior Engineer holding a bachelor’s degree in engineering with a minimum of 10+ years of demonstrated relevant experience. It is preferred, but not required, that the Construction Manager be a registered P.E. (registration in Rhode Island is preferred, but

registration in another jurisdiction in the United States will be considered). Only one individual may be designated and invoiced as the Construction Manager.

*Construction Superintendent:* Construction Superintendent, or Construction Supervisor, who will be responsible for overseeing and coordinating all the field and construction activities and providing quality control on all construction sites of the Project, including those activities of subcontractors and subconsultants, shall be a Senior Engineer or otherwise have 10+ years of demonstrated relevant prior experience as a Construction Superintendent. Only one individual may be designated and invoiced as the Construction Superintendent. The Construction Superintendent shall serve as the Project Team’s primary point of contact in the field for all construction and field activities.

*Assistant Construction Superintendent:* Assistant Construction Superintendents, who will assist the Construction Superintendent, shall be at minimum be an Intermediate Engineer or otherwise have at least 5 to 10 years of demonstrated relevant prior experience as a Construction Superintendent. Duties and responsibilities of Assistant Construction Superintendents shall be similar to those of the Construction Superintendent.

*Resident Project Representative – Senior:* Senior Resident Project Representative (RPR) (Resident Engineer or Inspector) who will conduct on-site observations, monitor the progress and quality of Work and compliance with all Contract Documents and requirements, and keep records of all Work performed, shall be a Senior Engineer with 10+ years of demonstrated relevant prior experience as an RPR.

*Resident Project Representative – Intermediate:* Intermediate Resident Project Representative (RPR) (Resident Engineer or Inspector) who will conduct on-site observations, monitor the progress and quality of Work and compliance with all Contract Documents and requirements, and keep records of all Work performed, shall be an Intermediate Engineer with 5 to 10 years of demonstrated relevant prior experience as an RPR.

Note: the duties and responsibilities of the Project Team’s Construction Superintendents and RPRs may overlap; Proposers should feel free to provide separate billing rates or combine these roles and responsibilities into combined classifications.

*Administrative – Junior:* Junior Administrative support personnel shall be any administrative or clerical staff with 1 to 5 years of demonstrated relevant experience supporting engineering and/or construction work.

*Administrative – Intermediate:* Intermediate Administrative support personnel shall be any administrative or clerical staff with 5 to 10 years of demonstrated relevant experience supporting engineering and/or construction work.

*Administrative – Senior:* Senior Administrative support personnel shall be any administrative or clerical staff with 10+ years of demonstrated relevant experience supporting engineering and/or construction work.

All submitted Applications For Payment (invoices) must include all backup information to support all costs, including but not limited to invoices from any subcontractors, subconsultants, outside professionals, as well as copies of invoices and receipts for all expenses and purchases.



## **1.8 EXPERIENCE & QUALIFICATIONS**

To demonstrate experience and qualifications to perform the Work of this Project, the Project Team must submit with their Proposal written evidence of their experience and qualifications and licenses to perform work in the State of Rhode Island in accordance with Rhode Island General Laws (RIGL). The Project Team must submit written evidence that demonstrates meeting the minimum requirements described in the following paragraphs. In addition to the requirements of this section of the RFP, all staff of the Project Team shall meet the qualifications previously stated in the compensation section for T&M billing rate classifications. All companies and firms that are part of the Project Team shall be licensed and registered to perform work in the State of Rhode Island in accordance with RIGL.

The Project Team, and any company, firm, subcontractor, subconsultant, outside professional, etc. that comprises the Project Team in their Proposal, may be investigated by the Owner to determine if they have the requisite experience and if they are qualified to perform the Work of this Project. The Project Team shall also be prepared to submit within five days of Owner's request any additional information needed for Owner to properly evaluate capabilities, experience, and qualifications. During review and evaluation of Proposals, Owner reserves the right to request that members of Project Teams attend a meeting/interview with Owner to review and discuss their capabilities, experience, qualifications, and submitted Proposal.

Only Proposals that meet all specified experience, qualifications, and requirements will be considered by the Owner; all others may be considered non-responsive and may be rejected. The following paragraphs discuss the minimum requirements for experience and qualifications on this Project. With Proposals, the Project Team shall submit resumes of all proposed staff and a minimum of three project references for each qualification requirement below, demonstrating compliance with all criteria. Project references shall include the project name(s); date(s) of the project(s); project location(s); total contract/project dollar value of the project(s); and name(s) of owner(s) with address, contact person, phone number and email address(es). In evaluating project references from the Project Team, Owner will consider factors such as the experience and quality of work previously performed, and will also heavily weigh and consider the quality of work previously performed for the Owner; the record of the Project Team in accomplishing and completing work within required and contractual timeframes and costs; and the availability and adequacy of resources that the Project Team has available for the Work of this Project.

### **1.8.1 Experience & Qualifications for Engineering Firms**

Engineering firms must have a minimum of 10 years of experience and demonstrated ability in multi-disciplinary engineering services with strong emphasis in structural engineering for large diameter potable water pipes, conduits, and/or tunnel projects, including but not limited to: performing inspections; evaluating inspection results and preparing reports with recommendations; providing design engineering, including developing specifications, drawings and details, and construction documents; and providing construction services, including construction administration, management and inspection. Engineering firms and their proposed personnel for this Project must have successfully completed the inspection of large diameter potable water pipes, conduits, and/or tunnels, including PCCP (with specific emphasis on PCCP big enough for internal manned entry and inspection). Experience that does not include PCCP will not be considered. PCCP inspection experience must include preparation and execution of confined space entry, safety, and dewatering and drainage plans and procedures; manned entry for inspections, internal visual inspections and structural

hammer sounding; tabulating and evaluating inspection results; providing recommendations for repairs based on inspection results; and preparing reports to summarize all work. Key personnel of engineering firms proposed for the Project shall have this same demonstrated experience as the firm. The intent of this requirement is that engineering firms and their staff have demonstrated experience consistent with the required Work of this Project.

### **1.8.2 Experience & Qualifications for Sliplining Contractors**

Contractors and/or subcontractors as part of the Project Team performing sliplining work as part of this Project must have previous successful experience in the installation of FRP by segmental sliplining in pipelines owned by municipalities or public agencies in the United States. This experience must include successful installation of at least 5,000 total linear feet of minimum 48-inch diameter FRP by sliplining within the past 10 years in the United States, and of these 5,000 total linear feet, at least 1,000 linear feet of FRP shall have been installed by sliplining continuously and consecutively as part of a single sliplining project/operation. Construction Superintendents for sliplining work must have a minimum of five years of supervisory field experience on at least three successfully completed sliplining projects with associated annular space grouting. Superintendent's experience must total at least 2,500 linear feet of minimum 48-inch or larger FRP installed by sliplining in the United States. The Construction Superintendent for the sliplining contractor/subcontractor assigned to this Project must be present on the job site during all construction and installation activities, including sliplining and grouting activities. At least two members of the sliplining contractor shall have a minimum of two years of sliplining experience and they shall always be on the Project site.

The contractor/subcontractor that will perform grouting shall have experience within the past 10 years with grouting annular spaces between liner pipes installed by segmental sliplining and host pipes. This contractor/subcontractor shall retain an on-site grouting manager or supervisor with at least 10 years of related work experience on similar projects to be on-site during all grouting operations and to manage the grouting program by designing, testing and overseeing the injection of grout mixes of the type required.

In addition to the previously stated required reference information to demonstrate qualifications in the Proposal, for any Contractor experience the Project team shall also submit the name(s) of engineer(s) with address, contact person, phone numbers, and email address(es); material, depth, and diameter of the existing host pipe; diameter and material of slipliner installed; total length of slipliner installed; and type of grout and method of annular space grouting. The Project Team with their Proposal shall provide the name and qualifications of the proposed Superintendent, sliplining crew members, and grouting manager/supervisor.

### **1.8.3 Experience & Qualifications of FRP Pipe and Fittings Manufacturer/Supplier**

The manufacturer/supplier of FRP pipe and fittings for the sliplining work as part of this Project shall have employed manufacturing and product technology used in the manufacturing of FRP for a minimum of 10 years and must have manufactured and supplied at least 10,000 linear feet of 48-inch or greater and 5,000 linear feet of 60-inch diameter or greater FRP pipe for potable water pressure service of the same type and pressure class as this Project within the past 10 years. The Project Team shall provide reference information as previously described to demonstrate the FRP pipe and fittings manufacturer/supplier meeting these requirements, having all required certifications, having the capability to meet the required schedule of this Project, and certifications indicating compliance with all required standards.

## 1.9 SPECIAL CONDITIONS, CONSIDERATIONS & REQUIREMENTS

The following special conditions, considerations, and requirements shall be considered by the Project Team when preparing Proposals to respond to this RFP:

- Upon request, Owner can facilitate visits to discuss the Project and the proposed Work and/or to visit site(s) of the proposed Work of this Project for Proposers to conduct examinations, investigations, explorations, etc. To request a site visit, Proposers should contact the Owner's subject matter expert listed in the cover documents of this RFP. Proposers shall provide Owner with a minimum of 72 hours of notice of any such request. Visits are at Owner's sole discretion and availability is not guaranteed.
- Upon request, Owner can make available for review copies of relevant data, drawings, information, maps, plans, reports, etc. Due to the sensitive nature of information pertaining to critical infrastructure, Proposers will first be required to execute a Confidentiality and Non-Disclosure Agreement to request any such documents. The Owner does not assume any responsibility or liability for errors and/or misinterpretations resulting from the Proposer's review of such documents and information. Owner may make such documents available for the sole purpose of obtaining Proposals for this Work and does not confer any license or grant for any other use. To request any existing documents and/or information, Proposers should contact the Owner's subject matter expert listed in the cover documents of this RFP.
- All Work of this Project shall be in compliance with State of Rhode Island General Laws (RIGL) (<http://webserver.rilin.state.ri.us/Statutes/>).
- All applicable laws, ordinances, regulations, and requirements of federal, state, local, and municipal governmental agencies as well as any other authority having jurisdiction applies to this Project and shall be deemed to be included in this RFP and Contract herein by reference. Proposers shall be familiar with and comply with all applicable laws, regulations, ordinances, and requirements that may in any way affect the cost, progress, and/or performance of the Work and the price submitted with their Proposals. Proposers assume full responsibility for full compliance with all applicable federal, state, and local laws, regulations, ordinances, and requirements.
- Project Teams shall not enter into any exclusive agreements with any subconsultant, subcontractor, specialty firm, supplier, manufacturer, etc.
- The named companies, firms, subconsultants, subcontractors, manufacturers, suppliers, and key personnel (e.g., Project Manager, Construction Manager, Construction Superintendent) shall be employed to perform the Work of this Project throughout its entire duration, unless changes are specifically requested by the Project Team in writing and approved by the Owner.
- Owner does not assume any responsibility for errors or misinterpretations resulting from the use of incomplete sets of this RFP, any Contract Documents, or any other documents or information.
- Proposers are made aware that Pure Technologies SoundPrint® AFO fiber optic monitoring system cable is installed along the invert of the 102-inch aqueduct. Manned

inspection teams need to be cognizant of the AFO cable during internal inspections to prevent damage to this cable and system.

- The datum for all drawings to be provided by the Project Team shall be vertical datum – Providence Mean High Water and horizontal datum – NAD 83.
- Before submitting a Proposal, each Proposer must (1) examine the RFP and Contract Documents thoroughly, (2) visit the site(s) at their discretion to become familiar with local conditions that may in any manner affect cost, progress or performance of the Work, (3) become familiar with all Federal, State and local laws, ordinances, rules and regulations that may in any manner affect cost, progress or performance of the Work; and (4) study and carefully correlate Proposer’s observations with the requirements of this RFP and Contract Documents.
- Prior to the submission of a Proposal, Proposers shall promptly give written notice to the Owner of any conflict, error, ambiguity, and/or discrepancy in the RFP and Contract Documents and Proposers bear full responsibility for determining that Owner's written resolution by formal written Addenda is acceptable.
- The submission of a Proposal will constitute an incontrovertible representation that the Proposer has complied with every requirement of this RFP and these Contract Documents; that no additional examinations, investigations, explorations, studies, or tests are needed; that the RFP and Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance of the Work; and that the Proposer provided written notice of any conflict, error, ambiguity, and/or discrepancy in the Contract Documents and that Owner's written resolution by formal written Addenda is acceptable to the Proposer.
- The Contract, if awarded, will be based on materials and equipment specified or described in the RFP and Contract Documents, including any Addenda issued prior to the receipt of Proposals. The materials and equipment described in the RFP and Contract Documents establish a standard of required type, function, quality, and performance to be met by any proposed substitute or “equal” item. Whenever it is specified or described in the Contract Documents that a substitute or “equal” item of material or equipment may be furnished or used by the Project Team if acceptable to the Owner, application for such acceptance will not be formally considered by the Owner until after the execution date of the Contract Agreement. The procedure for submission of any such application by the Project Team and consideration by the Owner is set forth in the Contract Documents. The burden of proof of the merit of a proposed substitute or “equal” item is solely upon the Project Team and Proposers, and the Owner’s decision of approval or disapproval will be final. Proposers shall not rely on any assumption of approval by the Owner in preparing their Bid.
- Prior to the aqueducts being reactivated and returned to full service after all inspection and rehabilitation Work of this Project, the Project Team shall perform a final walk-through of the pipeline section(s) with the Owner to review all Work performed on the Project. For sections sliplined with FRP, this final walk-through with the Project Team and Owner shall also include a representative from the FRP pipe manufacturer to confirm

satisfactory installation of all FRP slipliners; the pipe manufacturer representative shall provide a final field inspection report to the Project Team and Owner.

- All materials and products installed, and all services and workmanship performed during the Work of this Project shall be free from defects and flaws and shall be fully guaranteed for a period of not less than one year from the date that the aqueduct was reactivated and returned to full, normal service. Any defects or defective items found during this warranty period shall be removed and replaced by the Project Team in a manner acceptable to the Owner and at no additional cost to the Owner. The date of acceptance shall be defined as the date that the aqueduct, or section of the aqueduct, is successfully reactivated and returned to full, normal water supply service; Owner will provide written notification and confirmation of this date to the Project Team.
- If at any time within the said period of guarantee/warranty any part of the Work requires repairing, correction or replacement, the Owner may notify the Project Team in writing to make the required repairs, corrections or replacements. If the Project Team neglects to commence making such repairs, corrections or replacements to the satisfaction of the Owner within seven days from the date of receipt of such notice or having commenced fails to prosecute such Work with diligence, the Owner may employ other persons to make said repairs, corrections or replacements, and charge the costs, including compensation for additional professional services, to the Project Team.
- All deliverables and submittals provided to Owner become property of the Owner for future use by the Owner at Owner's discretion.

## **1.10 PROPOSAL FORMAT & SUBMISSION REQUIREMENTS**

Project Teams and Proposers responding to this RFP shall submit Proposals as outlined in this section and in the cover documents of this RFP. Failure to adhere to the prescribed format and/or respond to all requirements of this RFP may result in the Proposal being deemed non-responsive and being rejected. Proposers should submit one original and five copies of their Proposals, along with a combined PDF file in electronic format of their entire Proposal. No Proposal may be withdrawn for a period of 90 days after the actual date of the opening of the Proposals.

It is the responsibility of all Proposers and Project Teams to ensure that their Proposal is in the possession of the responsible official or designated alternate prior to the stated time and at the place of opening. Owner is not responsible for any delays of any nature for Proposals delayed by mail and/or delivery services or for any other reason that Proposals are not in the possession of the responsible official prior to the stated time and place of opening. Any Proposal received after the date and time specified may not be considered.

In their Proposals, Proposers must identify any unknown or variable issue that may impact their proposed cost and must also clearly describe any assumptions made. Proposers must also identify any tasks that will require Owner to complete as part of the Work, and reasons why the Owner's services or assistance is required.

Proposals shall be organized and divided into the following sections:

Cover Letter

The cover letter shall introduce the Proposer and their Project Team and provide a brief history and overview of the companies, firms, contractors, subcontractors, subconsultants, specialty firms, outside professionals, etc. that make up the proposed Project Team. The cover letter shall also provide a summary of the Project Team’s experience and qualifications, highlights of the proposed technical approach and proposal and proposed schedule, briefly discuss the overall proposed costs, highlight any proposed alternates or value-added services, and note and explain any exceptions to the requirements of this RFP. The cover letter must indicate the principal or officer of the Project Team who will be Owner’s primary point of contact for negotiations, and this individual must have the authority to negotiate all aspects of the scope of services, provisions, and terms and conditions on behalf of the Project Team. The cover letter transmitting the Proposal must be signed by said principal or officer to bind the respondent to the terms and conditions of this RFP. Forms and documentation required in the City of Providence Board of Contract and Supply Bid Package Checklist must follow the cover letter in all submitted Proposals.

Section 1 – Experience & Qualifications

This section of the Proposal should provide a history of the Project Team and a detailed response to the required experience and qualifications of the Project Team as specified in this RFP. This section should describe the capabilities, experience, and qualifications of all companies, firms, contractors, subcontractors, subconsultants, specialty firms, outside professionals, etc., and all the key personnel that make up the proposed Project Team. This section must clearly identify the personnel who will be the Project Manager, Technical Lead, Construction Manager, and Construction Superintendent / Inspector / Resident Project Representative on-site to coordinate all field and construction activities. This section should also describe the hierarchal relationships and authoritative structure of the Project Team and all its personnel; an organizational chart should be provided for this purpose. Additional information to support this section, such as project references and resumes of key personnel should be included in this section. Project references must include all requested experience and qualifications requirements as specified in this RFP. Resumes should clearly indicate name, position/title/role, education, professional licensing, and relevant experience and qualifications.

Section 2 – Technical Approach & Proposal (Understanding of the Work & Proposed Approach)

The technical approach and proposal section of the Proposal is intended for the Project Team to demonstrate their understanding of all requirements of this RFP and the Work of this Project, including PW and its system; the background and history of this Program and Project; the purpose, goals, and objectives of this Project; the scope of services to be provided as part of the Work of this Project; detailed step-by-step work plans to demonstrate understanding of the required approach and the Project Team’s methodology; schedule requirements; key issues, considerations, and requirements; and understanding of the response required to this RFP. In this section, the Project Team shall provide detailed and step-by-step approaches and work plans to accomplish all tasks and Work of this Project. At minimum, this detailed approach, methodology, and work plans for performing all Work must include detailed and step-by-step explanations of how the Project Team will:

- Perform all detailed planning and coordination work.

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- Address and perform all confined space entry and health and safety requirements and work, including communications plans and the approach for the designated confined space rescuer.
- Perform all required mobilization activities.
- Shut down, isolate, drain, and fully dewater the aqueducts, including what structures and appurtenances will be utilized.
- Protect the aqueducts from contamination and secure the aqueducts and all Work areas and sites.
- Perform all inspection work while maintaining continued and uninterrupted supply to all of Owner’s wholesale customers, including how the work will be performed in phases (if any).
- Safely inspect the aqueducts by manned entry, including what structures and appurtenances will be utilized for access and egress.
- Inspect the aqueducts, including the approach and plans for the required internal visual, electromagnetic, and structural inspections.
- Perform rapid qualitative analysis of all inspection data and failure risk analysis to provide Owner with recommendations as required by this RFP.
- Perform all required rehabilitation work, including installation of the FRP slipliner and associated annular space grouting. Proposals should discuss and summarize potential PCCP rehabilitation methods and techniques that may be required for rehabilitation work.
- Perform final walk-throughs of the aqueducts with Owner, as required.
- Disinfect, flush, refill, sample and reactivate the aqueducts following completion of all Work.
- Perform all work within the schedule requirements of this Project.
- Perform any other associated Work of this Project.
- Perform all required demobilization, cleanup, and restoration activities.
- Address key issues, considerations and any other special requirements.

Section 3 – Proposed Schedule

This section of the Proposal shall include an overall proposed project schedule, showing how the Project Team will accomplish all objectives and Work of this Project. The schedule should be broken down by phase/task and detail all major milestones, deliverables, and submittals. The proposed schedule will serve as the basis of the overall project schedule to be updated as the Project progresses. The project schedule should also address all key considerations related to the Work and schedule requirements. Additional detailed schedule breakdowns can and should be provided, as needed, by the Project Team in their Proposal to help Owner understand any specific detailed schedule of Work.

**Section 4 – Bid Form & Cost Proposal**

This section of the Proposal should discuss all the Project Team’s proposed costs to perform the Work of this Project, including the completed and filled out Bid Form(s) as well as all other requested cost information and pricing. Bid Forms shall be completed in ink or be type written. The cost of each item on the Bid Form shall be stated in words and figures. If unit prices are required on the Bid Form, discrepancies between unit prices and their respective total amounts will be resolved in favor of the unit prices. Discrepancies between words and figures will be resolved in favor of words. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. Bid Forms shall be signed and executed in ink. Bid Forms shall contain an acknowledgement of all Addenda (the numbers of which shall be filled in on the Bid Form). Bid Forms shall include evidence of Bidder’s authority and qualifications to do business in the State of Rhode Island (e.g., contractor license numbers). The Bid Forms shall be submitted with all required and requested forms and information.

**Section 5 – Proposed Alternates & Value-Added Services**

Proposed alternates and/or value-added services outside the scope of this RFP will be considered. Proposers should clearly describe in detail any alternates or additional proposed services and how they add value to the Project. Any alternates or services proposed should contain sufficient detail and evidence for Owner to consider and properly evaluate their value to the Project.

**Section 6 – Miscellaneous**

Proposers should include any additional information necessary to support their Proposal and assist Owner in evaluating their Proposal, including but not limited to additional experience and qualification information, bonds, certifications, certificates of insurance, financial reports, MBE/WBE information, and any other information requested in this RFP.

Proposals submitted by corporations shall be executed in the corporate name by a corporate officer (whose title must appear under all required signatures), accompanied by evidence of authority to sign. The corporate address and state of incorporation shall be shown. The corporate seal shall be affixed and attested by the corporate secretary or an assistant corporate secretary.

Proposals submitted by a partnership shall be executed in the partnership name and signed by a partner (whose title must appear under all required signatures), accompanied by evidence of authority to sign. The official address of the partnership shall be shown.

Proposals submitted by limited liability companies shall be executed in the name of the firm by a member or other authorized person and accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm shall be shown.

Proposals submitted by a joint venture shall be executed by an authorized representative of each joint venturer in the manner indicated on the Proposal Forms. The official address of the joint venture shall be shown.

All names on all Proposal Forms shall be printed in ink below all signatures.

Proposals shall contain an acknowledgement of receipt of all Addenda, the numbers and dates of which shall be shown on the respective Proposal and Bid Forms.



Postal and email addresses and telephone numbers for communications regarding Proposals shall be shown on the respective Proposal Forms.

### **1.11 EVALUATION CRITERIA & BASIS OF AWARD**

In evaluating Proposals, Owner will consider whether Proposals comply with the prescribed requirements of this RFP, the Project Team’s experience and qualifications, the understanding of the Work and Project and proposed technical approach and methodology for all Work, the proposed project schedule, proposed pricing and the cost proposal and the value that all proposed costs bring to the Project, any proposed alternates and value-added services, and any other relevant data and information as may be requested by Owner. In evaluating Proposals, Owner will consider the experience and qualifications of all entities and personnel that make up the Project Team. Owner may conduct such investigations as Owner deems necessary to establish the capability, experience, qualifications, responsibility, and financial ability of the Project Team. Proposers shall be prepared to submit additional information, if requested by Owner, following submission of their Proposal.

Proposals will be evaluated based on the following weighted criteria:

PROPOSAL EVALUATION CRITERIA	WEIGHTED CRITERIA
PROPOSAL FORMAT & RESPONSIVENESS	10%
EXPERIENCE & QUALIFICATIONS	30%
TECHNICAL APPROACH & PROPOSAL (UNDERSTANDING OF THE WORK)	30%
PROPOSED SCHEDULE	10%
PROPOSED COST VS. VALUE	15%
PROPOSED ALTERNATES & VALUE-ADDED SERVICES	5%

During review and evaluation of Proposals, Owner reserves the right to request that members of Project Teams attend a meeting/interview with Owner to review and discuss their capabilities, experience, qualifications, and submitted Proposal.

Based on the above evaluation of Proposals, the intent of the Owner is to award one Contract to the responsive, responsible, and eligible Project Team and Proposer that adhered to all RFP requirements and Proposal format stipulations; has the required ability, capability, experience, integrity, qualifications and skills and health and safety performance history; demonstrates understanding of PW, the STA system, and the purpose, goals, and objectives of this Project; demonstrates understanding of the Work of this Project within the required schedule requirements, considerations, and constraints; provides a comprehensive and detailed approach and methodology to perform the Work of this Project that is satisfactory to the Owner and meets the requirements of this RFP and the objectives of the Project; provided any alternates or value-added services that represent benefits or value to the Owner and/or the Project; and whose proposed pricing and cost proposal to perform the Work of this Project represents the best value to the Owner for successful completion of all Work of this Project and is in the Owner’s best interests to make an award.

Owner reserves the right to award one, multiple, or all the tasks provided on the Bid Form to a Proposer. Owner awarding only select tasks shall not be grounds for additional compensation or time and the provided pricing for each Bid Item must be inclusive of all costs for that Task. The Owner also reserves the right to reject any and all Proposals, to waive any and all informalities if it is in the

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Owner's best interest to do so, and the right to disregard all nonconforming, nonresponsive, unbalanced, or conditional Proposals. Owner further reserves the right to reject the Proposal of any Project Team who it finds, after reasonable inquiry and evaluation, to not be responsible and/or not meet the required experience and qualifications specified in this RFP and that Owner considers unqualified to perform the Work of this Project. Owner also reserves the right to reject any Proposal if in Owner's sole opinion would not be in the best interest of the Owner or Project.

If the Contract is to be awarded, Owner will award Contract to the successful Proposer (Project Team) whose Proposal represents the best interests of the Owner and Project and Owner will provide a Notice of Award to said successful Proposer. When Owner gives a Notice of Award to the successful Proposer, it will be followed by a Notice-To-Proceed (NTP) to commence Work of the Project, the Contract Agreement for execution, and a Purchase Order (P.O.) to indicate the agreed upon services and pricing for all Work for purposes of compensation. With the executed Contract Agreement, the Successful Proposer and awarded Project Team must furnish Performance and Payment Bonds, as specified in the cover documents of this RFP, with a surety company acceptable to the Owner, as well as all required and specified Certificates of Insurance. The Contract Agreement shall be executed and returned by Project Team within 15 calendar days after receiving from the Owner. Owner will provide fully executed copies of the Contract Agreement upon execution by the Owner.

## **PART II – TERMS & CONDITIONS**

In addition to the requirements stipulated in this RFP, including the *City of Providence Standard Terms & Conditions*, the terms and conditions of this Work and Project shall be governed by the attached *Standard General Conditions of the Contract Between Owner and Design-Builder* prepared by the Engineers Joint Contract Documents Committee (EJCDC), EJCDC D-700. The attached document is a modified version of EJCDC D-700, showing all changes and additions to the standard EJCDC text using tracked changes to clearly indicate additions, deletions, and modifications. This modified, tracked changes version of EJCDC D-700 is provided in lieu of any Supplementary Conditions.

## **ATTACHMENTS**

1. EJCDC D-425 – Price Proposal Form – Design-Build Project.
2. EJCDC D-520 – Agreement Between Owner and Design-Builder.
3. EJCDC D-700 – Standard General Conditions of the Contract Between Owner and Design-Builder.

# PRICE PROPOSAL FORM— DESIGN-BUILD PROJECT

Prepared by



Issued and Published Jointly by



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EJCDC® D-425, Price Proposal Form—Design-Build Project.

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# PRICE PROPOSAL FORM

## PROVIDENCE WATER

### INSPECTION & REHABILITATION OF THE SUPPLEMENTAL TUNNEL & AQUEDUCT

2025-2026

### 78-INCH AQUEDUCT & 102-INCH AQUEDUCT-UPSTREAM SECTION

Project No. 848-20242

#### ARTICLE 1 – PRICE PROPOSAL RECIPIENT

1.01 This Price Proposal is submitted to:

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

1.02 The undersigned Proposer proposes and agrees, if this Price Proposal is accepted and Owner awards the contract to Proposer, to enter into the contract with Owner in the form included in the RFP Documents, to perform all Work as specified or indicated in the RFP Documents for the prices and within the times indicated in this Price Proposal and in accordance with the other terms and conditions of the RFP Documents.

#### ARTICLE 2 – PROPOSER’S ACKNOWLEDGEMENTS

2.01 Proposer accepts all of the terms and conditions of the Request for Proposals, including without limitation those dealing with the disposition of Price Proposal security. This Price Proposal will remain subject to acceptance for 90 days after the Price Proposal opening, or for such longer period of time that Proposer may agree to in writing upon request of Owner.

#### ARTICLE 3 – PROPOSER’S REPRESENTATIONS

3.01 In submitting this Price Proposal, Proposer represents that:

A. Proposer has examined and carefully studied the RFP Documents, and any data and reference items identified in the RFP Documents, and hereby acknowledges receipt of the following Addenda:

Addendum No.

Addendum Date

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

---

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- B. Proposer has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and satisfied itself as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Proposer is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Proposer has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site (if any), and all drawings (if any) of physical conditions relating to existing surface or subsurface structures at the Site, that Owner has identified or made available to Proposer, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that Owner has identified or made available to Proposer, especially with respect to Technical Data in such reports and drawings.
- E. Proposer has considered the information known to Proposer itself, and to members of Proposer's design-build team; information commonly known to design professionals, design-builders, and contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the RFP Documents; and the Site-related reports and drawings (if any) identified in the RFP Documents or otherwise made available to Proposer, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the project design; (3) the means, methods, techniques, sequences, and procedures of construction to be employed by Proposer; and (4) Proposer's safety precautions and programs.
- F. Proposer agrees, based on the information and observations referred to in the preceding paragraph, that no further examinations, investigations, explorations, tests, studies, or data are necessary for the preparation of its Proposal for performance of the Work at the prices stated and within the times required, and in accordance with the other terms and conditions of the RFP Documents.
- G. Proposer is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the RFP Documents.
- H. Proposer has given Owner written notice of all conflicts, errors, ambiguities, and discrepancies that Proposer has discovered in the RFP Documents, and confirms that the written response from Owner is acceptable to Proposer.
- I. The RFP Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance and furnishing of the Work.
- J. The submission of this Price Proposal constitutes an incontrovertible representation by Proposer that Proposer has complied with every requirement of this Article, and that without exception the Price Proposal and all prices in the Price Proposal are premised upon performing and furnishing the Work required by the RFP Documents.

**ARTICLE 4 – PROPOSER’S CERTIFICATION**

4.01 Proposer certifies that:

- A. This Price Proposal is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation;
- B. Proposer has not directly or indirectly induced or solicited any other Proposer to submit a false or sham Price Proposal;
- C. Proposer has not solicited or induced any individual or entity to refrain from submitting a Price Proposal; and
- D. Proposer has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 4.01.D:
  - 1. “corrupt practice” means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process;
  - 2. “fraudulent practice” means an intentional misrepresentation of facts made (a) to influence the proposal process to the detriment of Owner, (b) to establish prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
  - 3. “collusive practice” means a scheme or arrangement between two or more Proposers, with or without the knowledge of Owner, a purpose of which is to establish prices at artificial, non-competitive levels; and
  - 4. “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the proposal process or affect the execution of the Contract.

**ARTICLE 5 – BASIS OF PRICE PROPOSAL**

5.01 Proposer will complete the Work in accordance with the Contract Documents for the following price(s):

---

**The Guaranteed Maximum Price (Total Not-To-Exceed Lump Sum) to Owner will not exceed \$[   ], as broken down by the Proposer in the following table.**

---

The Guaranteed Maximum Price (GMP) will not exceed the above stated value. This price will be paid proportional to the percentage of actual work performed and billed on each Application For Payment up to and not to exceed this GMP; the total GMP is not guaranteed to be payable by Owner unless the total Work performed equals the total Contract. Further, the GMP shall not increase if the not-to-exceed upper limit cost(s) (Guaranteed Maximum Price) are exceeded by the Project Team.

Bonds required under Paragraph 6.01 of the General Conditions will be based on the not-to-exceed Contract Price (Guaranteed Maximum Price).

Item No.	Description	Total Labor Hours	Total Labor Costs (Direct Labor, Indirect Labor/ Overhead & Profit) (\$)	Outside Professionals/ Subcontractor Costs* (including Overhead & Profit) (\$)	Expenses/ Other Direct Costs* (\$)	Total Stipulated (Lump Sum) Price (\$)
1	Project Administration & Management					
2	Inspection Preparation					
3A	Inspection of the Aqueducts – 102-inch Aqueduct (Upstream Section - Structure 'E' to 102-inch Butterfly Valve)					
3B	Inspection of the Aqueducts – 78-inch Aqueduct (Upstream Section – Structure 'C' to Flow Tube)					
3C	Inspection of the Aqueducts – 78-inch Aqueduct (Upstream Section – Flow Tube to 78-inch Butterfly Valve)					
3D	Inspection of the Aqueducts – 78-inch Aqueduct (Downstream Section – 78-inch Butterfly Valve to Structure 'D')					
4	Support for Replacement of AFO Cable in 102-inch Aqueduct-Upstream Section					
5A	Slipline the 78-inch Aqueduct – Global STA. 175+16 to 178+76 (360 feet)					
5B	Slipline the 78-inch Aqueduct – Global STA. 182+04 to 187+50 (546 feet)					
5C	Slipline the 78-inch Aqueduct – Global STA. 193+82 to 208+55 (1,473 feet)					
6	Allowance for Other Rehabilitation Work	N/A	N/A	N/A	N/A	\$3,000,000.00
7	Report					
<b>Subtotal of All Items</b>						\$
<b>Total Guaranteed Maximum Price (Not-To-Exceed Total Stipulated (Lump Sum) Price)</b>						\$

\* Provide supplemental itemized breakdowns in Proposal of all Outside Professional/Subcontractor and Expense costs for each task.

## 5.02 Changes in Contract Price

- A. Any changes in the Contract will be as defined in Article 11 of the General Conditions.
- B. Proposer shall provide the following information in their submitted Price Proposal, should the value of any Work covered by a Change Order or of any adjustment in the Contract Price be determined based on Article 11.05.D of the General Conditions:
  - 1. Design-Builder's proposed fee for overhead and profit on Change Orders under Article 11.05.D.1 shall be a percentage/fee of [ ] ***[Proposer shall insert percentage/fee].***
  - 2. If the price of Design Professional Services covered by a Change Order or an adjustment in the Contract Price is determined on the basis of Cost of the Work, then for such Design Professional Services (exclusive of reimbursable expenses, if any) the Engineer, Project Design Professional, or other design entity performing the Design Professional Services (regardless of tier) may invoice no more than the salary cost of each employee providing services multiplied by a factor of [ ] ***[Proposer shall insert factor/multiplier for such services]*** in accordance with Article 12.01.B.1.b.

## ARTICLE 6 – TIME OF COMPLETION

- 6.01 Proposer agrees that the Work will be substantially complete on or before [ ], and will be completed and ready for final payment in accordance with Paragraph 14.06 of the General Conditions on or before [ ]. All Work must be completed no later than December 31, 2027, unless an extension is otherwise approved and granted by the Owner.
- 6.02 Proposer accepts the provisions of the Agreement as to liquidated damages.

## ARTICLE 7 – ATTACHMENTS TO THIS PRICE PROPOSAL

- 7.01 The following documents are submitted with and made a condition of this Price Proposal:
  - A. Required Price Proposal security; and
  - B. All documents listed in the Request For Proposal Bid Package Checklist.

## ARTICLE 8 – DEFINED TERMS

- 8.01 The terms used in this Price Proposal with initial capital letters have the meanings stated in the RFP, the General Conditions, and the Supplementary Conditions.

**ARTICLE 9 – PRICE PROPOSAL SUBMITTAL**

PROPOSER: *[Indicate correct name of proposing entity]*

\_\_\_\_\_  
By:  
Signature: \_\_\_\_\_

Printed name: \_\_\_\_\_

***(If Proposer is a corporation, a limited liability company, a partnership, or a joint venture, attach evidence of authority to sign.)***

Attest:  
Signature: \_\_\_\_\_

Printed name: \_\_\_\_\_

Title: \_\_\_\_\_

Submittal Date: \_\_\_\_\_

Address for giving notices: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

Contact Name and e-mail  
address: \_\_\_\_\_  
\_\_\_\_\_

Proposer's License No.: \_\_\_\_\_

**AGREEMENT  
BETWEEN OWNER AND DESIGN-BUILDER  
ON THE BASIS OF A STIPULATED PRICE**

Prepared by



Issued and Published Jointly by



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EJCDC® D-520, Agreement Between Owner and Design-Builder on the Basis of a Stipulated Price.

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**AGREEMENT  
BETWEEN OWNER AND DESIGN-BUILDER  
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**THIS AGREEMENT** is by and between Providence Water acting through the City of Providence, a municipal corporation created by the General Assembly of the State of Rhode Island in the County of Providence in said State (“Owner”), and [ ] (“Design-Builder”).

**PROJECT INFORMATION**

Project: Inspection & Rehabilitation of the Supplemental Tunnel & Aqueduct – 2025-2026 – 78-inch Aqueduct & 102-inch Aqueduct-Upstream Section, Project No. 848-20242

Design-Build Contract: Inspection & Rehabilitation of the Supplemental Tunnel & Aqueduct – 2025-2026 – 78-inch Aqueduct & 102-inch Aqueduct-Upstream Section, Project No. 848-20242 (“Contract”)

Owner’s Consultant: N/A

Engineer: Design-Builder has retained [ ] (“Engineer”) for the performance of professional engineering services under this Contract.

Authorized Representatives: Owner and Design-Builder each hereby designates a specific individual authorized to act as representative with respect to the performance of responsibilities under this Contract. Such an individual shall have authority to transmit instructions, receive formal notices, receive information, and render decisions relative to this Contract on behalf of the respective party that the individual represents.

1. Owner’s Authorized Representative: Matthew P. Gallant, P.E., Senior Manager–Engineering ([matthewg@provwater.com](mailto:matthewg@provwater.com)) & Leo Fontaine, Principal Engineer ([leof@provwater.com](mailto:leof@provwater.com)); Providence Water, 125 Dupont Drive, Providence, Rhode Island 02907, Phone: (401) 521-6300
2. Design-Builder’s Authorized Representative: [ ]

Owner and Design-Builder further agree as follows:

**ARTICLE 1 – THE WORK**

1.01 *General Description of Work*

- A. Design-Builder shall complete all Work as specified or indicated in the Contract. The Work is generally described as the design, construction and all services for the following: Inspection & Rehabilitation of the Supplemental Tunnel & Aqueduct – 2025-2026 – 78-inch Aqueduct & 102-inch Aqueduct-Upstream Section.

**ARTICLE 2 – CONTRACT TIMES**

2.01 *Time of the Essence*

- A. All time limits for Design-Builder’s attainment of Milestones, if any, Substantial Completion, and completion and readiness for final payment, as stated in the Contract, are of the essence of the Contract.



2.02 *Contract Times: Dates*

- A. Design-Builder will complete all Work on or before December 31, 2027, unless an extension is otherwise approved and granted by the Owner.
- B. Design-Builder will have the Work completed and ready for final payment, in accordance with Paragraph 14.06 of the General Conditions, on or before December 31, 2027, unless an extension is otherwise approved and granted by the Owner.
- C. Design-Builder shall attain the following Milestone(s) [To be inserted based on Proposer's submitted project schedule]:
  - 1. Milestone 1 [event & date/days]
  - 2. Milestone 2 [event & date/days]
  - 3. Milestone 3 [event & date/days]

2.03 *Liquidated Damages*

- A. Design-Builder and Owner recognize that time is of the essence as stated in Paragraph 2.01 above, and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 2.02 above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving, in a lawsuit or arbitration proceeding, the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Design-Builder agree that as liquidated damages for delay (but not as a penalty):
  - 1. Design-Builder shall pay Owner \$1,000 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 2.02.A above for Completion until the Work is complete.

**ARTICLE 3 – CONTRACT PRICE**

3.01 *Stipulated Sums*

- A. Owner shall pay Design-Builder for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:

**The Guaranteed Maximum Price (Total Not-To-Exceed Lump Sum) to Owner will not exceed \$[ ], as broken down by the Proposer in the following table.**

The Guaranteed Maximum Price (GMP) will not exceed the above stated value. This price will be paid proportional to the percentage of actual work performed and billed on each Application For Payment up to and not to exceed this GMP; the total GMP is not guaranteed to be payable by Owner unless the total Work performed equals the total Contract. Further, the GMP shall not increase if the not-to-exceed upper limit cost(s) (Guaranteed Maximum Price) are exceeded by the Project Team.

For all Work, the prices stated in Design-Builder's Proposal are attached hereto as an exhibit.

Item No.	Description	Total Labor Hours	Total Labor Costs (Direct Labor, Indirect Labor/ Overhead & Profit) (\$)	Outside Professionals/ Subcontractor Costs (including Overhead & Profit) (\$)	Expenses/ Other Direct Costs (\$)	Total Stipulated (Lump Sum) Price (\$)
1	Project Administration & Management					
2	Inspection Preparation					
3A	Inspection of the Aqueducts – 102-inch Aqueduct (Upstream Section - Structure 'E' to 102-inch Butterfly Valve)					
3B	Inspection of the Aqueducts – 78-inch Aqueduct (Upstream Section – Structure 'C' to Flow Tube)					
3C	Inspection of the Aqueducts – 78-inch Aqueduct (Upstream Section – Flow Tube to 78-inch Butterfly Valve)					
3D	Inspection of the Aqueducts – 78-inch Aqueduct (Downstream Section – 78-inch Butterfly Valve to Structure 'D')					
4	Support for Replacement of AFO Cable in 102-inch Aqueduct-Upstream Section					
5A	Slipline the 78-inch Aqueduct – Global STA. 175+16 to 178+76 (360 feet)					
5B	Slipline the 78-inch Aqueduct – Global STA. 182+04 to 187+50 (546 feet)					
5C	Slipline the 78-inch Aqueduct – Global STA. 193+82 to 208+55 (1,473 feet)					
6	Allowance for Other Rehabilitation Work	N/A	N/A	N/A	N/A	\$3,000,000.00
7	Report					
<b>Subtotal of All Items</b>						\$
<b>Total Guaranteed Maximum Price (Not-To-Exceed Total Stipulated (Lump Sum) Price)</b>						\$

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### 3.02 *Changes in Contract Price*

- A. Any changes in the Contract will be as defined in Article 11 of the General Conditions.
- B. Should the value of any Work covered by a Change Order or of any adjustment in the Contract Price be determined based on Article 11.05.D of the General Conditions:
  - 1. Design-Builder's fee for overhead and profit on Change Orders under Article 11.05.D.1 shall be a percentage/fee of [ ] .
  - 2. If the price of Design Professional Services covered by a Change Order or an adjustment in the Contract Price is determined on the basis of Cost of the Work, then for such Design Professional Services (exclusive of reimbursable expenses, if any) the Engineer, Project Design Professional, or other design entity performing the Design Professional Services (regardless of tier) may invoice no more than the salary cost of each employee providing services multiplied by a factor of [ ] in accordance with Article 12.01.B.1.b.

## **ARTICLE 4 – PAYMENT PROCEDURES**

### 4.01 *Submittal and Processing of Payments*

- A. Design-Builder shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Owner will process Applications for Payment as provided in the General Conditions.

### 4.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on account of the Contract Price on the basis of Design-Builder's Applications for Payment during performance of the Work as provided in Paragraph 4.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.
  - 1. Progress payments will be made in an amount equal to the percentage of Work completed as agreed upon by Owner and Design-Builder but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to retainage and liquidated damages, in accordance with the Contract.
- B. Notwithstanding the provisions above, at Owner's sole discretion, Owner may elect to not withhold retainage with respect to the portion of a payment application pertaining to engineering, design, and other professional services.

### 4.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 14.06 of the General Conditions, Owner shall pay the remainder of the balance due.

## ARTICLE 5 – INTEREST

### 5.01 *Interest Rate*

- A. All amounts not paid when due shall bear interest at the rate of **zero** percent per annum, or if applicable at the rate stated in a governing prompt payment statute.

## ARTICLE 6 – DESIGN-BUILDER’S REPRESENTATIONS

### 6.01 *Representations*

- A. Design-Builder makes the following representations for Owner’s reliance:
  1. Design-Builder has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
  2. Design-Builder has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  3. Design-Builder is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
  4. Design-Builder has carefully studied all: (a) reports of explorations and tests of subsurface conditions at or adjacent to the Site (if any), and all drawings of physical conditions relating to existing surface or subsurface structures at the Site, if any, that Owner has identified or made available to Design-Builder, especially with respect to Technical Data in such reports and drawings, and (b) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site, that Owner has identified or made available to Design-Builder, especially with respect to Technical Data in such reports and drawings.
  5. Design-Builder has considered the information known to Design-Builder itself, and to Construction Subcontractors and Project Design Professionals that Design-Builder has selected as of the Effective Date; information commonly known to design professionals, design-builders, and contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings (if any) identified in the Contract Documents or otherwise made available to Design-Builder, with respect to the effect of such information, observations, and documents on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Design-Builder; and (c) Design-Builder’s safety precautions and programs.
  6. Based on the information and observations referred to in the preceding paragraph, Design-Builder agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary prior to entry into the Contract at the Contract Price, subject to the Contract Times.
  7. Design-Builder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.

8. Design-Builder has given Owner written notice of all conflicts, errors, ambiguities, or discrepancies that Design-Builder has discovered in the Contract Documents, and the written response from Owner is acceptable to Design-Builder.
9. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
10. Design-Builder's entry into this Contract constitutes an incontrovertible representation by Design-Builder that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

## **ARTICLE 7 – ACCOUNTING RECORDS**

### **7.01 *Maintaining and Preserving Cost Records***

- A. Design-Builder shall keep such full and detailed accounts of materials incorporated and labor, services, and equipment utilized for the Work as may be necessary for proper financial management under this Agreement, in accordance with generally accepted accounting principles. Subject to prior written notice, Owner shall be afforded reasonable access during normal business hours to all Design-Builder's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to compensation or reimbursement of any type or description, including but not limited to change order pricing and the Cost of the Work. Design-Builder shall preserve all such documents for a period of three years after the final payment by Owner.

## **ARTICLE 8 – CONTRACT DOCUMENTS**

### **8.01 *Contents***

- A. The Contract Documents consist of the following:
  1. This Agreement (pages 1 to [ ], inclusive).
  2. Performance bond (pages [ ] to [ ], inclusive).
  3. Payment bond (pages [ ] to [ ], inclusive).
  4. Other bonds.
    - a. [ ] (pages [ ] to [ ], inclusive).
  5. General Conditions (pages [ ] to [ ], inclusive).
  6. Supplementary Conditions (pages [ ] to [ ], inclusive).
  7. Conceptual Documents.
    - a. Request For Proposals dated January 27, 2025, including referenced drawings of planned sliplining locations.
  8. Addenda (numbers [ ] to [ ], inclusive).
  9. Design-Builder's Proposal.
  10. Proposal Amendment.
  11. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:

- a. Work Change Directives.
- b. Change Orders.
- c. Record Drawings and Record Specifications.

12. Other Exhibits to this Agreement (enumerated as follows):

- a. [ ]
- B. The documents listed in Paragraph 7.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 7.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

## **ARTICLE 9 – MISCELLANEOUS**

### **9.01 Terms**

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and Supplementary Conditions.

### **9.02 Assignment of Contract**

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on the other party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract.

### **9.03 Successors and Assigns**

- A. Owner and Design-Builder each binds itself, its successors, assigns, and legal representatives to the other party hereto, and its successors, assigns, and legal representatives, in respect to all covenants, agreements, and obligations contained in the Contract.

### **9.04 Severability**

- A. Any provision or part of the Contract held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Design-Builder, who agree that the Contract shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

### **9.05 Design-Builder's Certifications**

- A. Design-Builder certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 8.05:

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1. “corrupt practice” means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
2. “fraudulent practice” means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
3. “collusive practice” means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
4. “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

9.06 *Other Provisions*

- A. [To be inserted, if any, based on awarded Proposal].

DRAFT

IN WITNESS WHEREOF, Owner and Design-Builder have signed this Agreement.

This Agreement will be effective on [ ] (which is the Effective Date of the Contract).

OWNER:

DESIGN-BUILDER:

City of Providence, Rhode Island

By: \_\_\_\_\_

Title: Mayor & Chairman

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

Address for giving notices:

Providence Water

125 Dupont Drive

Providence, Rhode Island 02907

By: \_\_\_\_\_

Title: \_\_\_\_\_

*[If Design-Builder is a corporation, partnership, LLC, or a joint venture, attach evidence of authority to sign. In the case of a joint venture, expand the signature section to accommodate execution of the Agreement by an authorized representative of each joint venturer.]*

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

Address for giving notices:

License No.: \_\_\_\_\_  
*(where applicable)*

Approved As To Form & Correctness:

Providence Water Legal Counsel

Approved As To Form & Correctness:

City Solicitor



~~This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.~~

## STANDARD GENERAL CONDITIONS OF THE CONTRACT BETWEEN OWNER AND DESIGN-BUILDER

Prepared by



Issued and Published Jointly by



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# STANDARD GENERAL CONDITIONS OF THE CONTRACT BETWEEN OWNER AND DESIGN-BUILDER

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# STANDARD GENERAL CONDITIONS OF THE CONTRACT BETWEEN OWNER AND DESIGN-BUILDER

## ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

### 1.01 *Defined Terms*

- A. Wherever used in the Contract Documents and printed with initial capital letters, the following terms have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*: Written or graphic instruments issued by Owner prior to the opening of Proposals which clarify, correct, or change the Request for Qualifications, Request for Proposals, or the proposed Contract Documents, including the Conceptual Documents.
  2. *Agreement*: The written instrument, executed by Owner and Design-Builder, that sets forth the Contract Price and Contract Times, identifies the parties, and designates the specific items that are Contract Documents.
  3. *Application for Payment*: The form which is to be used by Design-Builder during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
  4. *Authorized Representative*: The individual designated by a party to represent it with respect to this Contract, as indicated in the Agreement.
  5. *Change Order*: A document which is signed by Design-Builder and Owner and authorizes an addition, deletion, or revision in the Work, or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.
  6. *Claim*: A demand or assertion by Owner or Design-Builder seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A request or proposal for a Change Order is not a Claim.
  7. *Conceptual Documents*: The documents prepared by or for the Owner to describe the Work to be performed, issued to Proposers in the Request for Proposals or during the design-builder selection process, and expressly identified in the Agreement.
  8. *Constituent of Concern*: Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5101 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act,

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15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other Laws or Regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

9. *Construction*: The part of the Work that consists generally of making physical improvements at the Site(s), and is the result of performing or furnishing of labor, the furnishing and incorporating of materials and equipment into the Work (including any correction of defective Construction), and the furnishing of services (other than Design Professional Services) and documents, all as required by the Contract Documents and Construction Drawings and Construction Specifications, as duly modified.
10. *Construction Drawings*: Documents prepared by or for Design-Builder, and approved by Owner for purposes of allowing Design-Builder to proceed with the Construction or specific portions of the Construction, and consisting of drawings, diagrams, illustrations, schedules, and other data that graphically show the scope, extent, and character of the Construction (or specific portions of the Construction) to be performed by or for Design-Builder. Construction Drawings are not Contract Documents.
11. *Construction Specifications*: Documents prepared by or for Design-Builder, and approved by Owner for purposes of allowing Design-Builder to proceed with the Construction or a specific portion of the Construction, and consisting of written requirements for materials, equipment, systems, standards, workmanship, and administrative procedures as applied to the Construction (or a specific portion of the Construction). Construction Specifications are not Contract Documents.
12. *Construction Subcontract*: A written agreement between Design-Builder and a Construction Subcontractor for provision of all or a portion of the Construction, and any delegated Design Professional Services.
13. *Construction Subcontractor*: An individual or entity (other than a Supplier) having a direct contract with Design-Builder or with any other Construction Subcontractor for the performance of a part of the Construction, and any delegated Design Professional Services.
14. *Contract*: The entire and integrated written agreement between Owner and Design-Builder concerning the Work.
15. *Contract Documents*: Those items so designated in the Agreement, and which together comprise the Contract.
16. *Contract Price*: The money that Owner has agreed to pay Design-Builder for completion of the Work in accordance with the Contract Documents.
17. *Contract Times*: The numbers of days or the dates stated in the Agreement to (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
18. *Design-Builder*: The individual or entity with which Owner has contracted for performance of the Work, as designated in the Agreement. The term "Project Team" as

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used in the Request for Proposals shall be synonymous with and have the same meaning as "Design-Builder".

19. *Design Professional Services:* That part of the Work comprised of the furnishing of engineering, surveying, architecture, and other design services, and including but not limited to providing research, inspections, analysis, evaluations, and conclusions regarding engineering and related matters; exercising professional judgment with respect to technical issues; the preparation of plans, reports, calculations, models, schematics, drawings, specifications, Design Submittals, the Construction Drawings, Construction Specifications, and other instruments of service; other services included in the Contract Documents and required to be performed by or under the responsible charge of licensed design professionals; and the review of shop drawings, observation of construction, response to requests for information or interpretation, analysis of the technical aspects of Change Orders, and other engineering and related professional services provided by or for licensed design professionals during Construction.
20. *Design Agreement:* A written agreement between Design-Builder and a design firm or entity for provision of Design Professional Services.
21. *Design Submittal:* A Submittal that pursuant to Laws and Regulations or this Contract must be prepared by or under the supervision of a licensed engineer or other licensed design professional, including drawings, specifications, Construction Drawings, Construction Specifications, and revisions to such documents (but not including Record Documents).
22. *Effective Date of the Contract:* The date indicated in the Agreement on which the Contract becomes effective, but if no such date is indicated it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
23. *Engineer:* The Project Design Professional identified as Engineer in the Agreement, and engaged by Design-Builder to provide engineering and related professional services under a Design Agreement.
24. *Hazardous Environmental Condition:* The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated in the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, does not establish a Hazardous Environmental Condition.
25. *Laws and Regulations; Laws or Regulations:* Any and all applicable laws, statutes, rules, regulations, ordinances, binding resolutions, codes, decrees, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
26. *Liens:* Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
27. *Milestone:* A principal event in the performance of the Work that the Contract requires Design-Builder to achieve by an intermediate completion date or by a time prior to Substantial Completion of Construction.

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28. *Notice of Award*: The written notice by Owner to a Proposer stating that Owner will enter into the design-build contract with the Proposer.
29. *Notice to Proceed*: A written notice by Owner to Design-Builder fixing the date on which the Contract Times will commence to run and on which Design-Builder shall start to perform the Work.
30. *Owner*: The individual or entity with which Design-Builder has contracted regarding the Work, and which has agreed to pay Design-Builder for the performance of the Work, pursuant to the terms of the Contract.
31. *Owner's Consultant*: An individual or entity with which the Owner has contracted to furnish services (typically including planning, preparation of Conceptual Documents, and advisory services) to Owner with respect to the Project, and which is identified as such in the Agreement.
32. *Owner's Site Representative*: A representative of Owner at the Site, as indicated in Paragraph 10.05.
33. *Project*: The total undertaking to be accomplished for Owner by engineers, consultants, Design-Builder, subcontractors, and others, including planning, study, design, construction, testing, start-up, and commissioning, and of which the Work to be performed under the Contract Documents is a part.
34. *Project Design Professionals*: The Engineer and any other independent entities or individuals, or employees of Design-Builder, engaged by Design-Builder or a Construction Subcontractor to provide Design Professional Services with respect to a portion of the Work.
35. *Proposal*: The documents submitted by Design-Builder in response to the Request for Proposals, setting forth technical concepts, proposed prices, and other conditions for the Work to be performed, and stating any proposed revisions, modifications, clarifications, exceptions, or supplements to the proposed Contract Documents.
36. *Proposal Amendment*: A Contract Document that is prepared after submittal of Design-Builder's Proposal; identifies mutually agreed revisions, modifications, exceptions, supplements, and clarifications to the Proposal or proposed Contract Documents; and is executed by Owner and Design-Builder.
37. *Proposer*: An entity that submits a Statement of Qualifications or Proposal to Owner.
38. *Purchase Order(s)*: Document(s) provided to Design-Builder from Owner authorizing funds for payment to Design-Builder for performance of the Work of the Project.
- 38-39. *Record Documents*: The record copy of all Construction Drawings, Construction Specifications, Addenda, Change Orders, Work Change Directives, and approved Submittals maintained by Design-Builder at the Site, including any annotations to such documents made by Design-Builder during Construction.
- 39-40. *Record Drawings and Record Specifications*: Documents depicting the completed Project, or a specific portion of the completed Project, based on or comprised of the

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Record Documents delivered to Owner by Design-Builder at the completion of the Construction.

- 40-41.** *Request for Proposals:* The document prepared by or for Owner specifying and describing Owner's objectives, the procedures to be followed in preparing and submitting a Proposal, and the process for evaluating Proposals and awarding a contract.
- 41-42.** *Request for Qualifications:* The document prepared by or for Owner requesting that Proposers submit a Statement of Qualifications with respect to their candidacy for selection as Design-Builder.
- 42-43.** *Schedule of Values:* A schedule, prepared and maintained by Design-Builder, allocating portions of the Contract Price to various portions of the Work, and used as the basis for reviewing Design-Builder's Applications for Payment.
- 43-44.** *Site:* Lands or areas indicated in the Contract Documents as being furnished by Owner upon which Construction is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for use of Design-Builder.
- 44-45.** *Statement of Qualifications:* The document submitted by a Proposer in response to the Request for Qualifications, including any completed forms, attachments, and exhibits.
- 45-46.** *Submittal:* A written or graphic document, prepared by or for Design-Builder, which the Contract Documents require the Design-Builder to submit to the Owner. Submittals may include reports, preliminary drawings and specifications, cost estimates, proposed Construction Drawings and Construction Specifications, progress schedules, cash flow projections, Schedules of Values, shop drawings, product data, samples, delegated designs, certifications, proposed modifications to the Construction Drawings and Construction Specifications, results of tests and evaluations, results of source quality control testing and inspections, results of field or Site quality control testing and evaluations, sustainable design information, information on special procedures, operations and maintenance data, sustainable design closeout information, record documents, records of spare parts and extra stock materials, and other such documents required by the Contract Documents. Submittals, whether approved or accepted by Owner or not, are not Contract Documents. Claims, notices, Change Orders, Applications for Payment, and requests for information/interpretation are not Submittals.
- 46-47.** *Substantial Completion:* The time at which the Construction (or a specified part thereof) has progressed to the point where it is sufficiently complete, in accordance with the Contract Documents, so that the Construction (or the specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Construction refer to Substantial Completion thereof.

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47-48. *Supplementary Conditions:* The part of the Contract Documents which amends or supplements these General Conditions, if any.

48-49. *Supplier:* A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Design-Builder or with any Construction Subcontractor to furnish materials or equipment to be incorporated in the Work by Design-Builder or a Construction Subcontractor, and any lessor of rental equipment used by Design-Builder or a Construction Subcontractor during Construction at the Site.

49-50. *Technical Data:* Data contained in boring logs, recorded measurements of subsurface water levels, laboratory test results, and other factual, objective information regarding (a) subsurface conditions at the Site, (b) physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), or (c) environmental conditions at the Site, that are set forth in any geotechnical or environmental report prepared for the Project and relied upon by Design-Builder in agreeing to a price (either stipulated, or a Guaranteed Maximum Price) that includes Construction.

50-51. *Underground Facilities:* All underground lines, pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems, including but not limited to those that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, fire or police signal systems, or traffic or other control systems; and any encasements containing such facilities or systems.

51-52. *Underground Facilities Data:* Information and data shown or indicated in the Contract Documents or otherwise provided to Design-Builder by Owner with respect to existing Underground Facilities at or adjacent to the Site.

52-53. *Unit Price Work:* Work to be paid for on the basis of unit prices.

53-54. *Work:* The entire engineering services, design and construction or the various separately identifiable parts thereof required to be performed or furnished by Design-Builder under the Contract Documents. Work includes and is the result of performing or furnishing Design Professional Services and Construction required by the Contract Documents and all labor, services, and documentation necessary to produce such Design Professional Services and Construction; furnishing, installing, and incorporating all materials and equipment into such Construction; and related services such as testing, start-up, and commissioning, all as required by the Contract Documents.

54-55. *Work Change Directive:* A written directive to Design-Builder, issued on or after the Effective Date of the Contract, signed by Owner, ordering an addition, deletion or revision in the Work.

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## 1.02 Terminology

- A. The words and terms discussed in Paragraph 1.02.B are not defined terms that require initial capital letters, but when used in the Contract Documents have the indicated meanings.
- B. *Intent of Certain Terms or Adjectives:*
1. The word “day” shall constitute a calendar day of 24 hours measured from midnight to the next midnight.
  2. The word “defective,” when modifying the word “Construction” refers to Construction that is unsatisfactory, faulty, or deficient in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to Owner’s final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion) provided that the defect was not caused by Owner.
  3. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
  4. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials or equipment or equipment complete and ready for intended use.
  5. The words “perform” or “provide” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
  6. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Design-Builder, “provide” is implied.
  7. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with that meaning.

## ARTICLE 2 – PRELIMINARY MATTERS

### 2.01 Delivery of Bonds and Evidence of Insurance

- A. *Bonds:* When Design-Builder delivers the executed Agreements to Owner, Design-Builder shall also deliver to Owner such Bonds as Design-Builder may be required to furnish in accordance with Paragraph 6.01.A.
- B. *Evidence of Insurance:* Before any Work is started, Design-Builder and Owner shall each deliver to the other those certificates of insurance that Design-Builder and Owner respectively are required to purchase and maintain in accordance with Article 6.

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## 2.02 *Copies of Documents*

- A. Owner shall furnish to Design-Builder ~~four~~ printed copies of the Contract (including one fully executed counterpart of the Agreement), and one copy in electronic portable document format (PDF). ~~Additional printed copies will be furnished upon request at the cost of reproduction.~~
- B. Owner shall maintain and safeguard at least one original printed record version of the Contract. Owner shall make such original printed record version of the Contract available to Design-Builder for review.

## 2.03 *Conceptual Documents*

- A. *Design-Builder's Review of Conceptual Documents:*
  - 1. Design-Builder acknowledges that the Conceptual Documents furnished by Owner are preliminary and incomplete, and subject to stated limitations and reservations.
  - 2. Design-Builder shall carefully review, analyze, and verify the contents and suitability of the Conceptual Documents before proceeding with the Work (including but not limited to the Design Professional Services).
  - 3. Design-Builder shall promptly report in writing to Owner any conflict, error, ambiguity, or discrepancy that Design-Builder may discover in the Conceptual Documents, whether during such review or at any later point.
  - 4. Upon receipt of a report from Design-Builder that there is a conflict, error, ambiguity, or discrepancy in the Conceptual Documents, Owner shall either provide a written interpretation, clarification, or correction to Design-Builder, or authorize Design-Builder to correct or resolve the issue under a Change Order providing an equitable adjustment in Contract Times or Contract Price, or both.
  - 5. Design-Builder shall not proceed with any Work affected by a reported conflict, error, ambiguity, or discrepancy in the Conceptual Documents until the issue is resolved.
- B. Owner shall not be responsible for any deficiency in the Conceptual Documents that Design-Builder does not discover or report to Owner.
- C. Subject to the foregoing review and reporting obligations, Design-Builder may use the Conceptual Documents as a partial basis for performing or furnishing Design Professional Services, including the preparation of Design Submittals such as the Construction Drawings and Construction Specifications, but despite any such use of the Conceptual Documents the Design-Builder nonetheless shall be responsible to Owner for the quality and soundness of the Design Professional Services.

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#### 2.04 *Before Starting the Work*

- A. *Preliminary Schedules:* Within 10 days after commencement of the Contract Times (unless otherwise specified in the Contract Documents), Design-Builder shall submit the following to Owner for Owner's timely review:
1. A preliminary progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;
  2. A preliminary schedule of Submittals (including Design Submittals) which will list each required Submittal and the times for submitting, reviewing, and processing each Submittal;
  3. A preliminary Schedule of Values for all of the Work which will include quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work; and
  4. A preliminary cash flow projection estimating that portion of the Contract Price to be due during each month of performance.

#### 2.05 *Authorized Representatives*

- A. The Authorized Representative for each party has been designated in the Agreement. A party may change its Authorized Representative at any time by giving notice to the other party of the name, mailing and delivery addresses, e-mail address, and telephone numbers of the new Authorized Representative.

#### 2.06 *Initial Conference*

- A. Within 20 days after the Contract Times start to run, Design-Builder will arrange a conference attended by Owner and Design-Builder and others as appropriate to establish a working understanding among the parties as to the Work and to discuss the design concepts, schedules referred to in Paragraph 2.04.A, procedures for handling Submittals, processing Applications for Payment, maintaining required records, and other matters.

#### 2.07 *Review of Schedules*

- A. Not less than 10 days before submission of the first Application for Payment (unless otherwise provided in the Contract Documents), Design-Builder will arrange a conference attended by Design-Builder, Owner, and others as appropriate to review and discuss the schedules submitted in accordance with Paragraph 2.04.A. Design-Builder shall have an additional 10 days after the conference to make corrections and adjustments and to complete and resubmit the schedules for Owner's acceptance. No progress payment shall be made to Design-Builder until Design-Builder submits schedules that comply with the following requirements:
1. Design-Builder's progress schedule shall provide an orderly progression of the Work to completion within any specified Milestones and the Contract Times.

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2. Design-Builder's schedule of Submittals shall provide a workable arrangement for submitting, reviewing, and processing Submittals in accordance with Article 8.
3. Design-Builder's Schedule of Values shall provide a reasonable allocation of the Contract Price to component parts of the Work.

#### 2.08 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner and Design-Builder may transmit, and shall accept, Project-related correspondence, text, data, documents, drawings, information, and graphics, including but not limited to Submittals, in electronic media or digital format, either directly, or through access to a secure Project website.
- B. If the Contract does not establish protocols for electronic or digital transmittals, then Owner and Design-Builder shall jointly develop such protocols.
- C. ~~Unless expressly stated otherwise elsewhere in this Contract,~~ Design-Builder shall not be obligated to furnish documents (including but not limited to Construction Drawings, Construction Specifications, or Record Drawings and Record Specifications) to Owner in any executable, native-file format unless expressly stated otherwise elsewhere in this Contract or specifically requested by the Owner.
- D. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

### ARTICLE 3 – DOCUMENTS: INTENT, AMENDING, REUSE

#### 3.01 *Contract Documents*

- A. The Contract Documents are complementary; what is called for by one is as binding as if called for by all.
- B. It is the intent of the Contract Documents to require the design and construction of a functionally complete project (or part thereof).
- C. Design-Builder shall prepare or furnish Construction Drawings and Construction Specifications that are in accord with the Contract Documents and that describe a functionally complete Project (or part thereof) to be constructed in accordance with such Construction Drawings and Construction Specifications, as duly modified.
- D. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.
- E. Design-Builder will furnish or perform all labor, documentation, services (including professional services), materials, and equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result whether or not specifically called, for at no additional cost to Owner.

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### 3.02 *Reference Standards*

#### A. *Standards, Specifications, Codes, Laws or Regulations:*

1. Reference to standards, specifications, manuals or codes of any technical society, organization or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect on the Effective Date except as may be otherwise specifically stated in the Contract Documents.
2. No provision of any such standard, specification, manual, or code, or instruction of a Supplier, shall be effective to change the duties and responsibilities of Owner, Design-Builder, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall it be effective to assign to Owner or its officers, directors, members, partners, employees, agents, consultants, or subcontractors any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

### 3.03 *Resolving Discrepancies*

- A. If there is a discrepancy between (1) the Conceptual Documents or other Contract Documents issued with the Request for Qualifications or Request for Proposals and (2) the Proposal, the Proposal will control.
- B. If there is a discrepancy between (1) the Conceptual Documents, other Contract Documents issued with the Request for Qualifications or Request for Proposals, or the Proposal and (2) the Proposal Amendment, the Proposal Amendment will control.
- C. If there is a discrepancy between (1) the Contract Documents and (2) the Construction Drawings and Construction Specifications, the Contract Documents will control unless Design-Builder gave notice of the discrepancy in a Submittal, and Owner approved the Submittal, pursuant to the provisions of Article 8.

### 3.04 *Ownership and Reuse of Documents*

- A. All documents prepared for or furnished to Owner by Design-Builder pursuant to this Contract (including but not limited to Design Submittals) are instruments of service. With respect to such documents:
  1. Design-Builder shall have and retain the ownership, title, and property rights, including copyright, patent, intellectual property, and common law rights, in the documents.
  2. During the course of the Project, Design-Builder will provide copies of Design Submittals to Owner for purposes of review and comment. Owner may retain copies of such documents for its records.
  3. Owner may use its copy of the Record Drawings and Record Specifications for Owner's purposes in operating and maintaining the constructed facilities.

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4. Upon Owner's termination of this Contract for cause pursuant to Paragraph 15.02, Owner shall receive a limited, non-exclusive license to use any completed Design Submittals in continuing the Project, subject to the limitations in this Paragraph 3.04.
5. The documents prepared or furnished by Design-Builder under this Contract, regardless of ownership, transfer, license, completion status, or termination of the Contract, are for Design-Builder's use, and are not intended or represented to be suitable for use on the Project by Owner or any party other than Design-Builder, or for reuse by Owner or others on extensions of the Project or on any other project, except as otherwise stated in this Contract. Any use or reuse by Owner or others on Owner's behalf will be at Owner's sole risk, and without liability or legal exposure to Design-Builder, the Project Design Professionals, or their subconsultants, and Owner shall indemnify and hold harmless Design-Builder, the Project Design Professionals, and their subconsultants from all claims, damages, losses and expenses, including attorneys' fees, arising out of or resulting from any such use or reuse.

#### ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK

##### 4.01 *Commencement of Contract Times*

- A. The Contract Times will commence to run on the Effective Date of the Contract.

##### 4.02 *Starting the Work*

- A. Design-Builder shall start to perform the Work ~~as of the Effective Date of the Contract. No Construction shall be done at the Site prior to the Effective Date of the Contract.~~in accordance with the Notice to Proceed issued by Owner.

##### 4.03 *Progress Schedule*

- A. Owner may rely on the progress schedule established in accordance with Paragraph 2.04, as duly adjusted, in planning and conducting ongoing operations and other work at the Site.
- B. Design-Builder shall adhere to the progress schedule established in accordance with Paragraph 2.04 as it may be adjusted from time to time, as provided below:
  1. Design-Builder shall submit to Owner proposed adjustments in the progress schedule that will not change the Contract Times (or Milestones). Owner shall accept such adjustments provided that Owner, in planning and conducting ongoing operations and other work at the Site, has not reasonably relied on the schedule element that is proposed to be adjusted. If Owner has so relied, then Owner and Design-Builder shall promptly meet and seek a resolution that addresses the objectives of both parties, or adjust the Contract Price.
  2. Design-Builder shall submit proposed adjustments in the progress schedule that will change the Contract Times (including Milestones) in accordance with the requirements of Paragraph 11.06. Such adjustments may only be made by a Change Order.
- C. *Continuing the Work:* Design-Builder shall continue the Work and adhere to the progress schedule during all disputes or disagreements with Owner. No Work shall be delayed or

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postponed pending resolution of any disputes or disagreements, except as Design-Builder and Owner may otherwise agree in writing.

#### 4.04 *Delays in Design-Builder's Progress*

- A. If Owner or anyone for whom Owner is responsible delays, disrupts, or interferes with the performance or progress of the Work, then Design-Builder shall be entitled to an equitable adjustment in the Contract Times and Contract Price. Design-Builder's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Design-Builder's ability to complete the Work within the Contract Times.
- B. Design-Builder shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference within the control of Design-Builder. Delay, disruption, and interference attributable to and within the control of a Project Design Professional, Construction Subcontractor, or Supplier shall be deemed to be delays within the control of Design-Builder.
- C. If Design-Builder's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Design-Builder, and those for which they are responsible, then Design-Builder shall be entitled to an equitable adjustment in Contract Times. Design-Builder's entitlement to such an adjustment of the Contract Times is conditioned on such adjustment being essential to Design-Builder's ability to complete the Work within the Contract Times. Such an adjustment shall be Design-Builder's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
  - 1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, pandemics and earthquakes;
  - 2. Abnormal weather conditions (abnormal weather shall be defined as excessive abnormal weather conditions in excess of the adverse weather typically expected by the National Oceanic Atmospheric Administration (NOAA) (<https://www.ncei.noaa.gov/>) for the Project area (i.e., unusually severe weather));
  - 3. Acts or failures to act of utility owners (other than those performing other work at or adjacent to the Site by arrangement with the Owner, as contemplated in Article 9); and
  - 4. Acts of war or terrorism.
- D. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5.
- E. Paragraph 9.03 governs delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.

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- F. Design-Builder shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Design-Builder.
- G. If Design-Builder seeks an adjustment in Contract Price or Contract Times under this paragraph, Design-Builder shall submit a request for a Change Order to Owner within 30 days of the commencement of the delaying, disrupting, or interfering event.
- G.H. If Design-Builder seeks an adjustment in Contract Price or Contract Times under this paragraph related to abnormal weather conditions, the Design Builder must provide Owner with evidence of excessive abnormal weather conditions in excess of the adverse weather typically expected by the National Oceanic Atmospheric Administration (NOAA) (<https://www.ncei.noaa.gov/>) for the Project area, in order to justify a delay due to excess abnormal adverse weather (i.e., unusually severe weather).

## **ARTICLE 5 – SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS**

### **5.01 Availability of Lands**

- A. Owner shall furnish the Site. Owner shall notify Design-Builder of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Design-Builder will have to comply in performing the Work.
- B. Upon reasonable written request, Owner shall furnish Design-Builder with a current statement of record legal title and legal description of the lands upon which the Construction is to be performed and Owner’s interest therein as necessary for giving notice of or filing a mechanic’s or construction lien against such lands in accordance with applicable Laws or Regulations.
- C. Design-Builder shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

### **5.02 Use of Site and Other Areas**

- A. *Limitation on Use of Site and Other Areas:*
  - 1. Design-Builder shall confine construction equipment, the storage of materials and equipment, and the operations of construction workers to the Site and other areas permitted by Laws or Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Design-Builder shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any adjacent land or areas, resulting from the performance of the Work.
  - 2. Should any claim be made by any such owner or occupant because of the performance of Work, Design-Builder shall promptly settle with such other party by negotiation, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or at law.

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3. To the fullest extent permitted by Laws or Regulations, Design-Builder shall indemnify and hold harmless Owner, Owner's consultants, and anyone directly or indirectly employed by any of them from and against all claims, costs, losses and damages (including, but not limited to, fees of engineers, architects, attorneys and other professionals and court and arbitration or other dispute resolution costs) arising out of or resulting from any claim brought by any such owner or occupant against Owner, or any other party indemnified hereunder to the extent caused by or based upon Design-Builder's performance of the Construction.
- B. *Removal of Debris:* During the performance of the Construction, Design-Builder shall keep the premises free from accumulations of waste materials, rubbish, and other debris resulting from the Construction. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws or Regulations.
  - C. *Cleaning:* Prior to Substantial Completion, Design-Builder shall clean the Site and make it ready for utilization by Owner. At completion of Construction, Design-Builder shall remove all tools, appliances, construction equipment, temporary construction and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
  - D. *Loading Structures:* Design-Builder shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Design-Builder subject any part of the Construction or adjacent property to stresses or pressures that will endanger it.

#### 5.03 *Reference Points*

- A. Design-Builder shall be responsible for laying out the Work and shall protect and preserve reference points and property monuments established by Owner, and shall make no changes or relocations of such reference points or monuments without the prior written approval of Owner. Design-Builder shall report to Owner whenever any reference point or property monument is lost or destroyed, or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

#### 5.04 *Differing Site Conditions*

- A. Design-Builder shall promptly, and before the conditions are disturbed, give a written notice to Owner of (i) subsurface or latent physical conditions at the Site (whether discovered during investigation of the Site or during Construction) which differ materially from those indicated in the Contract Documents, or in any Technical Data, or (ii) unknown physical conditions at the Site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character called for by the Contract Documents.
- B. Owner will investigate the Site conditions promptly after receiving the notice. Design-Builder shall supplement the notice by promptly submitting to Owner any additional information regarding schedule and cost impacts, and a specific request for a Change Order. Owner shall then make a determination regarding the site condition and the impact, if any,

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on Contract Price and Contract Times. If the conditions do materially so differ and cause an increase or decrease in the Design-Builder's cost of, or the time required for, performing any part of the Work, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the Contract Price or Times modified in writing by Change Order in accordance with Article 11.

- C. No request by Design-Builder for an equitable adjustment under this Paragraph 5.04 shall be allowed unless Design-Builder has given the written notice required.
- D. The provisions of this Paragraph 5.04 are not intended to apply to a Hazardous Environmental Condition or Underground Facility uncovered or revealed at the Site.

#### 5.05 *Underground Facilities*

A. *Procedure for Identifying Underground Facilities:* Promptly after the Effective Date of the Contract, Design-Builder shall review the Underground Facilities Data furnished by Owner and use ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data," as a basis for establishing a procedure ("Underground Facilities Procedure") for the further identification, investigation, and mapping of Underground Facilities at or adjacent to the Site. Design-Builder shall establish and use the Underground Facilities Procedure to aid in the provision of Design Professional Services and the performance of Construction, and to reduce and manage risks associated with Underground Facilities. Such Underground Facilities Procedure shall take into account the Site and the nature of the Project.

1. The Underground Facilities Procedure shall include a plan to keep Underground Facilities information current as Design-Builder proceeds with the provision of Design Professional Services, and to add new or relocated Underground Facilities information to the base utility or Site drawings.
2. To manage the potential impact of design changes on Underground Facilities, Design-Builder shall modify or reapply the Underground Facilities Procedure as the design progresses and changes.

B. *Design-Builder's Responsibilities:* Unless otherwise expressly provided in the Contract, Design-Builder shall have full responsibility for the following; and, subject to the provisions of Paragraphs 5.05.C, D, and E, the cost of all of the following will be included in the Contract Price:

1. Establishing and executing the Underground Facilities Procedure referred to in Paragraph 5.05.A, including updating, modification, and reapplication duties;
2. Coordinating the Work with the owners (including Owner) of such Underground Facilities, during the provision of Design Professional Services and Construction;
3. Verifying the actual location of specific Underground Facilities through exposure, as needed for the Design Professional Services;
4. Complying with applicable state and local utility damage prevention Laws and Regulations during Construction, including contacting DigSafe and utility agencies to mark out the location of underground utilities, structures, and facilities; and

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5. The safety and protection of all existing Underground Facilities at the Site, and repairing any damage to such Underground Facilities resulting from the Construction, subject to the provisions of Paragraph 5.05.D.
- C. *Results of Design-Builder's Execution of Underground Facilities Procedure:* If, during the execution of the Underground Facilities Procedure referred to in Paragraph 5.05.A, the Design-Builder identifies an Underground Facility that was not shown or indicated in the Underground Facilities Data, or was not shown or indicated with reasonable accuracy, causing an increase or decrease in the Design-Builder's cost of, or the time required for, providing Design Professional Services or performing the Construction, then Design-Builder shall submit to Owner a request for a Change Order seeking an equitable adjustment to the Contract Price or Times under this clause. Such request shall be made within 30 days of the identification of the Underground Facility in question.
- D. *Underground Facility Found During Construction:* If Design-Builder believes that an Underground Facility that is uncovered, exposed, or revealed at the Site during Construction was not shown or indicated in the Underground Facilities Data, or was not shown or indicated with reasonable accuracy, and also that such Underground Facility was not identified or mapped with reasonable accuracy despite Design-Builder's adequate establishment and execution of the Underground Facilities Procedure referred to in Paragraph 5.05.A, then Design-Builder shall promptly give written notice to Owner, and supplement the notice by submitting to Owner a request for a Change Order seeking an equitable adjustment to the Contract Price or Times under this clause. Such request shall be made within 30 days of the uncovering or revealing of the Underground Facility in question.
1. *Owner's Review:* Owner will investigate the Underground Facility found during Construction promptly after receiving the notice. If Owner concurs with Design-Builder that the Underground Facility that is uncovered, exposed, or revealed at the Site was not shown or indicated in the Underground Facilities Data, or was not shown or indicated with reasonable accuracy, and further was not identified or mapped with reasonable accuracy despite Design-Builder's adequate establishment and execution of the Underground Facilities Procedure referred to in Paragraph 5.05.A, causing an increase or decrease in the Design-Builder's cost of, or the time required for, performing any part of the Work, whether or not changed as a result of the actual location, then an equitable adjustment shall be made under this clause and the Contract Price or Times modified in writing by Change Order in accordance with Article 11. If Owner does not concur with Design-Builder, then Owner shall so indicate in writing, with a specific explanation of the reason for non-concurrence.
  2. No request by Design-Builder for an equitable adjustment under Paragraph 5.05.D shall be allowed unless Design-Builder has given the written notice required.
- E. *Inadequate Establishment or Execution of Underground Facilities Procedure:* If Design-Builder does not establish an Underground Facilities Procedure that is (1) adequate for the Site and the nature of the Project and (2) consistent with the guidelines set forth in ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data," or Design-Builder does not adequately execute a duly established Underground Facilities Procedure, then Design-Builder shall bear all costs associated with the presence of an

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Underground Facility that was not identified or located with reasonable accuracy, including but not limited to delay, redesign, relocation, and increased Construction costs, if such Underground Facility would have been identified and located with reasonable accuracy by an adequate and properly executed Underground Facilities Procedure that was consistent with ASCE 38.

5.06 *Hazardous Environmental Conditions at Site*

- A. *Reliance by Design-Builder on Technical Data Authorized:* Design-Builder may rely on the accuracy of the Technical Data with respect to environmental conditions at the Site.
- B. Design-Builder shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- C. Design-Builder shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Design-Builder, Project Design Professionals, Construction Subcontractors, Suppliers, or anyone else for whom Design-Builder is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- D. If Design-Builder encounters, uncovers, or reveals a Hazardous Environmental Condition (whether during Site investigation or during Construction) whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Design-Builder or anyone for whom Design-Builder is responsible creates a Hazardous Environmental Condition, then Design-Builder shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.16); and (3) notify Owner (and promptly thereafter confirm such notice in writing). Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take corrective action, if any, and take such actions as are necessary to permit Owner to timely obtain required permits and provide Design-Builder the written notice required by Paragraph 5.06.E. If Design-Builder or anyone for whom Design-Builder is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.
- E. Design-Builder shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Design-Builder either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- F. If after receipt of such written notice Design-Builder does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then the portion of the Work that is in the area affected by such

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condition shall be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 9.

- G. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Design-Builder, Project Design Professionals, Construction Subcontractors, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Contract Documents or the Technical Data, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Design-Builder or by anyone for whom Design-Builder is responsible. Nothing in this Paragraph 5.06.G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- H. To the fullest extent permitted by Laws and Regulations, Design-Builder shall indemnify and hold harmless Owner and its officers, directors, members, partners, employees, agents, consultants, and subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the Design-Builder's failure to control, contain, or remove a Constituent of Concern brought to the Site by Design-Builder or by anyone for whom Design-Builder is responsible, or to a Hazardous Environmental Condition created by Design-Builder or by anyone for whom Design-Builder is responsible. Nothing in this Paragraph 5.06.H shall obligate Design-Builder to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

## **ARTICLE 6 – BONDS AND INSURANCE**

### **6.01 *Performance, Payment, and Other Bonds***

- A. Design-Builder shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of Design-Builder's obligations under the Contract. These bonds shall remain in effect until one year after the date when final payment becomes due, or until completion of the correction period specified in Paragraph 14.08, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other specific provisions of the Contract. Design-Builder shall also furnish such other bonds as are required by the Supplementary Conditions or other specific provisions of the Contract.
- B. All bonds shall be in the form prescribed by the Contract except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (as amended and supplemented) by the

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Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.

- C. Design-Builder shall obtain the required bonds from surety companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds in the required amounts.
- D. If the surety on a bond furnished by Design-Builder is declared bankrupt or becomes insolvent, or its right to do business is terminated in any state or jurisdiction where any part of the Project is located, or the surety ceases to meet the requirements above, then Design-Builder shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the bond and surety requirements above.
- E. If Design-Builder has failed to obtain a required bond, Owner may exclude the Design-Builder from the Site and exercise Owner's termination rights under Article 15.
- F. Upon request to either Owner or Design-Builder from any Construction Subcontractor, Project Design Professional, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, the recipient of the request shall provide a copy of the payment bond to such person or entity.

#### 6.02 *Insurance—General Provisions*

- A. Owner and Design-Builder shall obtain and maintain insurance as required in this Article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Design-Builder shall be obtained from insurance companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. All insurance required by the Contract to be purchased and maintained by Design-Builder shall be primary and without contribution by insurance maintained by Owner.
- D. Alternative forms of insurance coverage, including but not limited to self-insurance and "Occupational Accident and Excess Employer's Indemnity Policies," are not sufficient to meet the insurance requirements of this Contract, unless expressly permitted in the Supplementary Conditions.
- E. Design-Builder shall require (a) its Construction Subcontractors and Engineer (and any other Project Design Professional that is an independent individual or entity) to purchase and maintain commercial general liability, automobile liability, workers' compensation, employer's liability, professional liability (as applicable), and umbrella or excess liability insurance, and (b) its Construction Subcontractors to purchase and maintain contractor's pollution liability insurance. All such required insurance shall meet the same requirements

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for the applicable category of insurance established in this Contract for Design-Builder, unless otherwise indicated in the Supplementary Conditions.

- F. Design-Builder shall deliver to Owner, with copies to each additional insured (as identified in this Article, in the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Design-Builder has obtained and is maintaining the policies, coverages, and endorsements required by the Contract. Upon request by Owner or any other insured, Design-Builder shall also furnish other evidence of such required insurance, including but not limited to copies of policies and endorsements, documentation of applicable self-insured retentions (if permitted) and deductibles, and evidence of insurance required to be purchased and maintained by Design-Builder's Construction Subcontractors, Engineer, and any other Project Design Professional that is an independent individual or entity. Design-Builder may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.
- G. Owner shall deliver to Design-Builder, with copies to each additional insured (as identified in this Article, the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Owner has obtained and is maintaining the policies, coverages, and endorsements required of Owner by the Contract (if any). Upon request by Design-Builder or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Owner may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.
- H. Failure of Owner or Design-Builder to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Design-Builder to identify a deficiency in compliance from the evidence provided, shall not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- I. If either party does not purchase or maintain all of the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
- J. If Design-Builder has failed to obtain and maintain required insurance, Owner may exclude the Design-Builder from the Site, impose an appropriate set-off against payment, and exercise Owner's termination rights under Article 15.
- K. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price shall be adjusted accordingly.
- L. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Design-Builder or Design-Builder's interests.

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- M. The insurance and insurance limits required herein shall not be deemed as a limitation on Design-Builder's liability under the indemnities granted to Owner and other individuals and entities in the Contract.

6.03 *Design-Builder's Insurance*

- A. *Workers' Compensation and Employer's Liability*: Design-Builder shall purchase and maintain workers' compensation and employer's liability insurance with limits of not less than \$500,000 each accident or illness for:
1. Claims under workers' compensation, disability benefits, and other similar employee benefit acts.
  2. United States Longshoreman and Harbor Workers' Compensation Act and Jones Act coverage (if applicable).
  3. Claims for damages because of bodily injury, occupational sickness or disease, or death of Design-Builder's employees (by stop-gap endorsement in monopolist worker's compensation states).
  4. Foreign voluntary worker compensation (if applicable).
- B. *Commercial General Liability—Claims Covered*: Design-Builder shall purchase and maintain commercial general liability insurance with limits of not less than \$5,000,000 per occurrence and \$10,000,000 in the aggregate, covering all operations by or on behalf of Design-Builder, on an occurrence basis, against:
1. Claims for damages because of bodily injury, sickness or disease, or death of any person other than Design-Builder's employees.
  2. Claims for damages insured by reasonably available personal injury liability coverage.
  3. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.
- C. *Commercial General Liability—Form and Content*: Design-Builder's commercial liability policy shall be written on a 1996 (or later) ISO commercial general liability form (occurrence form) and include the following coverages and endorsements:
1. Products and completed operations coverage:
    - a. Such insurance shall be maintained for three years after final payment.
    - b. Design-Builder shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.
  2. Blanket contractual liability coverage, to the extent permitted by law, including but not limited to coverage of Design-Builder's contractual indemnity obligations in Paragraph 7.19.
  3. Broad form property damage coverage.
  4. Severability of interests and no insured-versus-insured or cross-liability exclusions.

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5. Underground, explosion, and collapse coverage.
  6. Personal injury coverage.
  7. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together). If Design-Builder demonstrates to Owner that the specified ISO endorsements are not commercially available, then Design-Builder may satisfy this requirement by providing equivalent endorsements.
  8. For design professional additional insureds, ISO Endorsement CG 20 32 07 04, "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent.
- D. *Commercial General Liability—Excluded Content:* The commercial general liability insurance policy, including its coverages, endorsements, and incorporated provisions, shall not include any of the following:
1. Any modification of the standard definition of "insured contract."
  2. Any exclusion for water intrusion or water damage.
  3. Any provisions resulting in the erosion of insurance limits by defense costs.
  4. Any exclusion of coverage relating to earth movement.
  5. Any exclusion for the insured's vicarious liability, strict liability, or statutory liability.
  6. Any limitation or exclusion based on the nature of Design-Builder's work.
  7. Any professional liability exclusion broader in effect than ISO form CG 22 79 07 98.
- E. *Automobile liability:* Design-Builder shall purchase and maintain automobile liability insurance against claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy shall be written on an occurrence basis. The coverage limits for automobile liability insurance shall not be less than \$1,000,000 per occurrence, combined single limit, for bodily injury and property damage.
- F. *Umbrella or excess liability:* Design-Builder shall purchase and maintain umbrella or excess liability insurance written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in the paragraphs above. Subject to industry-standard exclusions, the coverage afforded shall be procured on a "follow the form" basis as to each and every one of the underlying policies. Design-Builder may meet the combined limits of insurance (underlying policy plus applicable umbrella or excess) specified for employer's liability, commercial general liability, and automobile liability through the primary policies alone, or through combinations of the primary insurance policies and an umbrella or excess liability policy that follows the form of the underlying policy, as specified herein.
- G. *Contractor's pollution liability insurance:* Design-Builder shall purchase and maintain a policy covering third-party injury and property damage claims, including clean-up costs, as a result

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of pollution conditions arising from Design-Builder's operations and completed operations. This insurance shall be maintained for no less than three years after final completion.

- H. *Additional insureds:* The Design-Builder's commercial general liability, automobile liability, umbrella or excess, and pollution liability policies shall include and list as additional insureds Owner and any individuals or entities identified as required additional insureds in the Supplementary Conditions; include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds; and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby (including as applicable those arising from both ongoing and completed operations) on a non-contributory basis. Design-Builder shall obtain all necessary endorsements to support these requirements. The City of Providence, Providence Water Supply Board, and Providence Water shall be named as additional insured as described herein.
- I. *Professional liability insurance:*
1. Design-Builder shall be responsible for purchasing and maintaining professional liability insurance with limits of not less than \$3,000,000 per occurrence and aggregate. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which Design-Builder is legally liable.
  2. If in the performance of this Contract any Design Professional Services, or other professional engineering or similar services, are to be performed by an independent design professional, under direct contract to Design-Builder or at any lower contractual tier, then Design-Builder shall be responsible for assuring that such independent design professional purchases and maintains professional liability insurance. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which the independent design professional is legally liable.
  3. If a Construction Subcontractor at any tier will provide or furnish design, engineering, or other similar professional services under this Contract, as the result of a delegation of professional design responsibilities or otherwise, then Design-Builder shall assure that such Construction Subcontractor purchases and maintains applicable professional liability insurance. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which the insured party is legally liable.
  4. Any professional liability insurance required under this Contract shall be maintained throughout the duration of the Contract and for a minimum of three years after Substantial Completion. For each claims-made professional liability policy furnished and maintained to satisfy the requirements of this Paragraph 6.03.I, the retroactive date on the policy shall pre-date the commencement of furnishing services on the Project.
- J. *General provisions:* The policies of insurance required by this Paragraph 6.03 shall:

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1. Include at least the specific coverages provided in this Article. In no case shall the coverage limits stated herein for Commercial General Liability, Automobile Liability, and professional liability be less than the total Contract Price. If the total Contract Price exceeds any stated limit, the limit shall be adjusted to the satisfaction of the Owner to the next highest \$1,000,000 exceeding the total Contract Price.
  2. Be written for not less than the limits of coverage provided in this Article and in the Supplementary Conditions, or required by Laws or Regulations, whichever is greater.
  3. Contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least 10-30 days' prior written notice has been given to Owner by Design-Builder and each insured under the policy. Within 3 days of receipt of any such written notice, Design-Builder shall provide a copy of the notice to Owner and each other insured under the policy.
  4. Remain in effect at least until final payment and Design-Builder's departure from the Site (and longer if expressly required elsewhere in this Contract), and at all times thereafter when Design-Builder may be correcting, removing, or replacing defective Construction as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract Documents.
  5. Provide applicable protection from claims that may arise out of or result from the performance of the Work, whether such performance is by Design-Builder, a Project Design Professional, any Construction Subcontractor or Supplier, or anyone directly or indirectly retained by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable.
- 5-6. If any insurance policy or certificate are not satisfactory to the Owner, the Design-Builder shall secure other policies in form and amounts and with companies satisfactory to the Owner. The Design-Builder shall not cause policies to be cancelled or permit them to lapse, and all insurance policies shall contain a clause to the effect that the policy shall not be subject to cancellation or a reduction in the required limits of liability or amounts of insurance until notice has been sent to Owner not less than 30 days prior to when cancellation of or change in insurance will take effect. Such notice to Owner shall contain true transcripts from the policy, authenticated by the proper officer of the insurer evidencing in particular those insured, the extent of the insurance, the location and operations to which the insurance applies, the expiration date and the above mentioned notice of cancellation clause.

#### 6.04 *Owner's Liability Insurance*

- A. In addition to the liability insurance required to be provided by Design-Builder, the Owner, at Owner's option and expense, may purchase and maintain Owner's own liability insurance to protect Owner against claims which may arise with respect to the Project.
- B. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Design-Builder, and Design-Builder cannot rely upon Owner's liability policies for any of Design-Builder's obligations to the Owner or third parties.

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## 6.05 *Property Insurance*

- A. *Builder's Risk*: Unless otherwise provided in the Supplementary Conditions, Design-Builder shall purchase and maintain builder's risk insurance upon the Construction on a completed value basis, in the amount of the full insurable replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:
1. Include the Owner and Design-Builder as named insureds, and all Construction Subcontractors, and any individuals or entities required by the Supplementary Conditions to be insured under such builder's risk policy, as insureds or named insureds. For purposes of the remainder of this Paragraph 6.05, Paragraphs 6.06 and 6.07, and any corresponding Supplementary Conditions, the parties required to be insured shall collectively be referred to as "insureds."
  2. Be written on a builder's risk "all risk" policy form that shall at least include insurance for physical loss or damage to the Construction, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire; lightning; windstorm; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; flood; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; water damage (other than that caused by flood); and such other perils or causes of loss as may be specifically required by the Supplementary Conditions. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; or flood, are not commercially available under builder's risk policies, by endorsement or otherwise, such insurance may be provided through other insurance policies acceptable to Owner and Design-Builder.
  3. Cover, as insured property, at least the following: (a) the Construction (including but not limited to all buildings, structures, foundations, excavations, underground property, pilings, underground pipes, flues, drains, wiring, cables, and the like) and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into the Construction, including Owner-furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent Construction but which are intended to provide working access to the Site, or to the Construction, or which are intended to provide temporary support for the Construction, including scaffolding, form work, fences, shoring, lighting, cribbing, falsework, and temporary structures.
  4. Cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects).
  5. Extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site (but not including property stored at the premises of a manufacturer or Supplier).

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6. Extend to cover damage or loss to insured property while in transit.
  7. Allow for partial occupation or use of the Construction by Owner, such that those portions of the Construction that are not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
  8. Provide for the waiver of claims and waiver of the insurer's subrogation rights, as set forth in Paragraph 6.06.
  9. Provide primary coverage for all losses and damages caused by the perils or causes of loss covered.
  10. Not include a co-insurance clause.
  11. Include an exception for ensuing losses from physical damage or loss with respect to any defective workmanship, design, or materials exclusions.
  12. Include performance/hot testing and start-up.
  13. Be maintained in effect, subject to the provisions herein regarding Substantial Completion and partial occupancy or use of the Construction by Owner, until the Construction is complete.
- B. *Notice of Cancellation or Change:* All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 6.05 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 10 days' prior written notice has been given to the purchasing policyholder. Within 3 days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured.
- C. *Deductibles:* The purchaser of any required builder's risk or property insurance shall pay for costs not covered because of the application of a policy deductible.
- D. *Partial Occupancy or Use by Owner:* If Owner will occupy or use a portion or portions of the Construction prior to Substantial Completion of all the Work as provided in Paragraph 14.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Design-Builder) will provide notice of such occupancy or use to the builder's risk insurer. The builder's risk insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy; rather, those portions of the Construction that are occupied or used by Owner may come off the builder's risk policy, while those portions of the Construction not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
- E. *Additional Insurance:* If Design-Builder elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.05, it may do so at Design-Builder's expense.
- F. *Insurance of Other Property:* If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, such as tools, construction equipment, or other personal property owned by Design-Builder, a Construction

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Subcontractor, or an employee of Design-Builder or a Construction Subcontractor, then the entity or individual owning such property item will be responsible for deciding whether to insure it, and if so in what amount.

- G. *Loss of Use and Delay in Start-up*: Unless otherwise expressly stated elsewhere in this Contract, the Owner is responsible, at its option, for purchase and maintenance of insurance to protect Owner against the loss of use or delays in start-up caused by property damage.

#### 6.06 *Waiver of Rights*

- A. All policies purchased in accordance with Paragraph 6.05, expressly including the builder's risk policy, shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insureds thereunder, or against any Project Design Professional or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors. Owner and Design-Builder waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Construction; and, in addition, waive all such rights against the Project Design Professionals, their consultants, all Construction Subcontractors, all individuals or entities identified in the Supplementary Conditions as insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Design-Builder as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. Owner waives all rights against Design-Builder, the Project Design Professionals, and the Construction Subcontractors, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for:
1. Loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Construction caused by, arising out of, or resulting from fire (unless the fire is a result of Design-Builder's negligence) or other perils whether or not insured by Owner; and
  2. Loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire (unless the fire is a result of Design-Builder's negligence) or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial occupancy or use pursuant to Paragraph 14.04, after Substantial Completion pursuant to Paragraph 14.03, or after final payment pursuant to Paragraph 14.06.
- C. Any insurance policy maintained by Owner covering any loss, damage, or consequential loss referred to in Paragraph 6.06.B shall contain provisions to the effect that the insured is allowed to waive the insurer's rights of subrogation against Design-Builder, Project Design Professionals, Construction Subcontractors, and the officers, directors, members, partners,

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employees, agents, consultants, and subcontractors of each and any of them, in a written contract executed prior to the loss, damage, or consequential loss.

- D. Design-Builder shall be responsible for assuring that each Construction Subcontract contains provisions whereby the Construction Subcontractor waives all rights against Owner, Design-Builder, all individuals or entities identified in the Supplementary Conditions as insureds, the Project Design Professionals, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by builder's risk insurance and any other property insurance applicable to the Project.

#### 6.07 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of property insurance required by Paragraph 6.05 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.
- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.05 shall maintain such funds in a segregated account, and distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.
- C. If no other special agreement is reached, the damaged Construction shall be repaired or replaced, the money so received applied on account thereof, and the Construction and the cost thereof covered by Change Order, if needed.

### **ARTICLE 7 – DESIGN-BUILDER'S RESPONSIBILITIES**

#### 7.01 *Design Professional Services*

- A. Design-Builder shall provide the Design Professional Services needed to successfully perform and complete the Work required under this Contract.
- B. *Standard of Care:* The standard of care for all Design Professional Services performed or furnished by Design-Builder under this Contract will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality.

#### 7.02 *Construction*

- A. Design-Builder shall perform and furnish the Construction pursuant to the Contract Documents, the Construction Drawings, and the Construction Specifications, as duly modified.

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B. Design-Builder shall keep Owner advised as to the progress of the Construction.

7.03 *Supervision and Superintendence of Construction*

A. Design-Builder shall supervise, inspect, and direct the Construction competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to provide the Construction in accordance with the Contract Documents. Design-Builder shall be solely responsible for the means, methods, techniques, sequences, and procedures of Construction.

B. At all times during the progress of Construction, the Design-Builder shall assign a competent resident superintendent who shall not be replaced without written notice to Owner except under extraordinary circumstances.

7.04 *Labor; Working Hours*

A. Design-Builder shall provide competent, suitably qualified personnel to perform the Work as required by the Contract Documents. Design-Builder shall at all times maintain good discipline and order at the Site.

B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise indicated in the Contract Documents, and in the absence of any Laws or Regulations to the contrary, Design-Builder may only perform the Construction from 7:30 AM to 5:00 PM Monday through Friday and may not perform Construction on Saturdays, Sundays, or on legal holidays, during any or all hours of the day, and on any or all days of the week, at Design-Builder's sole discretion unless Owner has provided written authorization.

7.05 *Services, Materials, and Equipment*

A. Unless otherwise specified in the Contract Documents, Design-Builder shall furnish or cause to be furnished and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.

B. All materials and equipment incorporated into the Work shall be as specified by Owner or in the Construction Drawings or Construction Specifications, and unless specified otherwise shall be new and of good quality. All warranties and guarantees specifically called for by the Contract Documents shall expressly run to the benefit of Owner. If required by Owner, Design-Builder shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise provided in the Contract Documents.

7.06 *"Or Equals" and Substitutions*

A. If an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, then during the

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preparation of the proposed Construction Drawings and Construction Specifications, the Design-Builder may request that Owner authorize the use of other items of material or equipment, or items from other proposed suppliers, by including the proposed items in the proposed Construction Drawings or Construction Specifications, with required notice to Owner that the Submittal contains a variation from the Contract Documents. Owner in its sole discretion may approve the use of the item if Owner determines that the item is functionally equal to that named and sufficiently similar so that no change in related Work will be required, taking into consideration whether the item:

1. Is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
  2. Will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
  3. Has a proven record of performance and availability of responsive service; and
  4. Is not objectionable.
- B. *Effect of Owner's Determination:* Neither approval nor denial of an "or-equal" request shall result in any change in Contract Price. The denial of an "or-equal" request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents.
- C. *Substitutes:* During the preparation of the proposed Construction Drawings and Construction Specifications, the Design-Builder may propose a substitute to an item of material or equipment that is required to be furnished by the Contract Documents. Any such proposal shall be made in a transmittal to Owner that is separate from and independent of any Design Submittals. The proposal shall describe the advantages, disadvantages, and changes in Contract Price or Contract Time associated with the proposed substitute. Approval of the proposed substitute shall be at Owner's sole discretion. If approved, the substitute item shall be incorporated in the Construction Drawings and Construction Specifications.
- D. *Design Professional Review:* Before Design-Builder transmits its proposal to Owner, the Project Design Professional that designed the portion of the Work affected by the proposed "or equal" or substitute shall review and approve the proposal.
- E. *Construction Drawings and Construction Specifications:* "Or equal" or substitute proposals with respect to items of material or equipment that are required in the Construction Drawings and Construction Specifications shall be considered proposed modifications of the Construction Drawings and Construction Specifications, and shall be governed by the provisions of Paragraph 8.02.H.

7.07 *Concerning Project Design Professionals, Construction Subcontractors, Suppliers, and Others*

- A. Design-Builder may retain Project Design Professionals, Construction Subcontractors, and Suppliers for the performance of parts of the Work. Such Project Design Professionals, Construction Subcontractors, and Suppliers must be acceptable to Owner.

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- B. Design-Builder shall retain specific Project Design Professionals, Construction Subcontractors, Suppliers, or other individuals or entities for the performance of designated parts of the Work if required to do so by the Contract Documents (including but not limited to the Proposal Amendment) as of the Effective Date.
- C. Prior to entry into any binding Design Agreement, Construction Subcontract, or purchase order, Design-Builder shall submit to Owner the identity of the proposed Project Design Professional, Construction Subcontractor, or Supplier (unless Owner has already deemed such proposed contractual party acceptable, during the bidding process or otherwise). Such proposed contractual party shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection ~~within 5 days prior to execution of the Contract.~~
- D. Owner may require the replacement of any Project Design Professional, Construction Subcontractor, Supplier, or other entity retained by Design-Builder to perform any part of the Work solely on the basis of substantive, reasonable objection after due investigation. Design-Builder shall submit an acceptable replacement for the rejected Project Design Professional, Construction Subcontractor, Supplier, or other entity.
- E. If Owner requires the replacement of any Project Design Professional, Construction Subcontractor, Supplier, or other entity retained by Design-Builder to perform any part of the Work, ~~then~~ Design-Builder ~~shall will not~~ be entitled to an adjustment in Contract Price or Contract Times, or both, with respect to the replacement.
- F. No acceptance by Owner of Engineer or of any Project Design Professional, Construction Subcontractor, Supplier, or other entity, whether initially or as a replacement, shall constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.
- G. Design-Builder shall be fully responsible to Owner for all acts and omissions of the Project Design Professionals, Construction Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work, just as Design-Builder is responsible for Design-Builder's own acts and omissions.
- H. Design-Builder shall be solely responsible for scheduling and coordinating the services and work of the Project Design Professionals, Construction Subcontractors, Suppliers, and all other individuals or entities performing or furnishing any of the Work.
- I. Design-Builder shall restrict all Project Design Professionals, Construction Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work from communicating directly with Owner, except in case of an emergency or a matter involving public health, safety, or welfare, or as otherwise expressly allowed herein.
- J. Owner may furnish to any Project Design Professional, Construction Subcontractor, or Supplier, to the extent practicable, information about amounts paid to Design-Builder on account of Work performed for Design-Builder by the requesting party.
- K. Nothing in the Contract Documents:

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1. Shall create for the benefit of any Project Design Professional, Construction Subcontractor, Supplier, or other third-party individual or entity any contractual relationship between Owner and such third-party individual or entity; nor
2. Shall create any obligation on the part of Owner to pay or to see to the payment of any money due any Project Design Professional, Construction Subcontractor, Supplier, or other third-party individual or entity except as may otherwise be required by Laws and Regulations.

7.08 *Patent Fees and Royalties*

- A. Design-Builder shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Conceptual Documents or other Contract Documents for use in the performance of the Construction, and if to the actual knowledge of Owner its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, then Owner has disclosed the existence of such rights to Design-Builder in the Conceptual Documents or other Contract Documents.
- B. To the fullest extent permitted by Laws or Regulations, Design-Builder shall indemnify and hold harmless Owner and Owner's Consultant(s), and the officers, directors, partners, employees or agents, and other consultants of each and any of them from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or resulting from any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the specification or incorporation in the Work of any invention, design, process, product or device, except those required by the Contract Documents.
- C. To the fullest extent permitted by Laws or Regulations, Owner shall indemnify and hold harmless Design-Builder and its officers, directors, members, partners, employees or agents, Project Design Professionals, Construction Subcontractors, and Suppliers from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or resulting from any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device required by the Contract Documents, but not identified by Owner as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.

7.09 *Permits and Utility Charges*

- A. The Contract Documents allocate responsibility for obtaining and paying for specified permits, licenses, certificates of occupancy, and approvals of governmental authorities having jurisdiction over the Work. Each party shall assist the other, when necessary, in obtaining such permits, licenses, certificates, and approvals.

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- B. Design-Builder shall pay all charges of utility owners for temporary service to the Work. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work, and for capital costs related thereto.

#### 7.10 *Taxes*

- A. Design-Builder shall pay all sales, consumer, use, and other similar taxes required to be paid by Design-Builder in accordance with the Laws or Regulations of the place of the Project which are applicable during the performance of the Work. The Request for Proposals and Contract Documents indicate any tax exemptions of the Owner.

#### 7.11 *Laws and Regulations*

- A. Design-Builder shall give all notices required by and comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, Owner shall not be responsible for monitoring Design-Builder's compliance with any Laws or Regulations.
- B. If Design-Builder performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Design-Builder shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work.
- C. Changes in Laws or Regulations that occur after the date on which the Design-Builder committed to the Contract Price (whether by negotiation or making an offer or proposal) and affect the cost or time of performance shall be the subject of an equitable change in Contract Price or Contract Times.

#### 7.12 *Record Documents*

- A. Design-Builder shall maintain the Record Documents in good order, in a safe place at the Site. Design-Builder shall annotate the Record Documents to show all changes and clarifications made (whether in the field or otherwise) during performance of Construction. The Record Documents, as annotated, will be available to Owner for reference. Upon completion of the Construction, Design-Builder shall deliver the Record Documents, as annotated, to Owner.
- B. After receipt and review of the Record Documents from Design-Builder upon completion of Construction, the Owner may comment on any possible inaccuracies. After Owner and Design-Builder collaboratively address any such comments, the Record Documents shall be deemed to be Record Drawings and Record Specifications.
- C. The Record Drawings and Record Specifications are Contract Documents, and are binding upon Design-Builder with respect to its obligations to comply with the Contract Documents, including but not limited to correction period responsibilities and warranty obligations.

#### 7.13 *Safety and Protection*

- A. Design-Builder shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not

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relieve Construction Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Design-Builder shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:

1. All persons on the Site or who may be affected by the Work;
2. All the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
3. Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and Underground Facilities not designated for removal, relocation, or replacement in the course of Construction.

3-4. The Site itself, including the protection of all existing conditions and facilities.

- B. Design-Builder shall comply with applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Design-Builder shall notify Owner; the owners of adjacent property, Underground Facilities, and other utilities; and other contractors and utility owners performing work at or adjacent to the Site, when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
- C. Design-Builder shall comply with the applicable requirements of Owner's safety programs, if any. These General Conditions and the Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
- D. Design-Builder shall inform Owner of the specific requirements of Design-Builder's safety program with which Owner and its employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 7.13.A.2 or 7.13.A.3 caused, directly or indirectly, in whole or in part, by Design-Builder, any Construction Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Design-Builder.
- F. Design-Builder's duties and responsibilities for safety and for protection of the Construction shall continue until such time as all the Work is completed, Owner has issued a notice to Design-Builder in accordance with Paragraph 14.06.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion), and Design-Builder has left the Site.
- G. Design-Builder's duties and responsibilities for safety and protection shall resume whenever Design-Builder or any Construction Subcontractor, Supplier, or other representative returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

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7.14 *Safety Representative*

- A. Design-Builder shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

7.15 *Hazard Communication Programs*

- A. Design-Builder shall be responsible for coordinating any exchange of safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

7.16 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Design-Builder is obligated to act to prevent threatened damage, injury or loss. Design-Builder shall give Owner prompt written notice if Design-Builder believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If a change in the Contract Documents is required because of the action taken by Design-Builder in response to such an emergency, a Work Change Directive or Change Order will be issued.

7.17 *Post-Construction Phase*

- A. Design-Builder shall:
  - 1. Provide assistance in connection with the start-up and testing of any equipment or system.
  - 2. Assist Owner in training staff to operate and maintain the Work.

7.18 *Design-Builder's General Warranty and Guarantee*

- A. Design-Builder warrants and guarantees to Owner that Design-Builder will perform and complete the Construction as required by the Contract Documents, and that all Construction will be in accordance with the Contract Documents, the Construction Drawings, and the Construction Specifications (as duly modified in accordance with the Contract), and will not be defective.
- B. Design-Builder's warranty and guarantee hereunder excludes defects or damage caused by:
  - 1. Abuse, modification or improper maintenance or operation by persons other than Design-Builder, Construction Subcontractors, or Suppliers or any other individual for whom Design-Builder is responsible; or
  - 2. Normal wear and tear under normal usage.
- C. None of the following will constitute an acceptance by Owner of Work that is not in accordance with the Contract Documents or a release of Design-Builder's obligation to perform the Work in accordance with the Contract Documents, unless expressly stated otherwise in writing:
  - 1. Observations by Owner;

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2. The making of any progress or final payment;
3. The issuance of a certificate of Substantial Completion;
4. Use or occupancy of the Work or any part thereof by Owner;
5. Any review and approval of a Submittal;
6. Any inspection, test, or approval by others; or
7. Any correction of defective Construction by Owner.

7.19 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, Design-Builder shall indemnify and hold harmless Owner, Owner's Consultant(s), and their officers, directors, members, partners, employees, agents, consultants, and subcontractors, from losses, damages, and judgments (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising from third-party claims or actions relating to or resulting from the performance or furnishing of the Work, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Design-Builder, a Project Design Professional, any Construction Subcontractor, any Supplier, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors.
- B. In any and all claims or actions against Owner, Owner's Consultant, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, by any employee (or the survivor or personal representative of such employee) of Design-Builder, a Project Design Professional, any Construction Subcontractor, any Supplier, any individual or entity directly or indirectly employed or retained by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.19.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Design-Builder, a Project Design Professional, or any Construction Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- C. The indemnification obligations of Design-Builder under Paragraph 7.19.A shall not extend to the liability of Owner's Consultant, other consultants or design professionals of Owner, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, designs, or specifications.

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## ARTICLE 8 – SUBMITTALS

### 8.01 *Design-Builder's Preparation of Submittals*

- A. Design Submittals shall be prepared by Project Design Professionals, on behalf of Design-Builder.
- B. The appropriate Project Design Professional shall review and approve each Submittal (including but not limited to all Design Submittals), other than those Submittals not involving technical or engineering matters, before Design-Builder's transmittal of such Submittal to Owner. Such review and approval shall account for the following, as appropriate:
  1. That any items covered by such Submittal will, after installation or incorporation in the Construction, comply with the information and requirements in the Contract Documents and the Construction Drawings and Construction Specifications, as duly modified, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents, Construction Drawings, and Construction Specifications, as duly modified.
  2. That if the Submittal includes any proposed modification of the Contract Documents, Construction Drawings, or Construction Specifications, or any proposed variation from the requirements of such documents, such proposed modification or variation is acceptable based on the standards of the engineering profession (or other applicable design profession), and if implemented will be supported by signing or sealing by a licensed design professional, as necessary.
- C. Before Design-Builder's transmittal of a Submittal to Owner, the Design-Builder shall, as applicable:
  1. Review and coordinate the Submittal with other Submittals and with the requirements of the Work, the Contract Documents, the Construction Drawings, and the Construction Specifications, as duly modified;
  2. Determine and verify all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal, and confirm that the Submittal is complete with respect to all related data included in the Submittal;
  3. Determine and verify the suitability of proposed materials and equipment with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation; and
  4. Determine and verify all information relative to Design-Builder's responsibilities for the means, methods, techniques, sequences, and procedures of construction, and for safety precautions and programs incident thereto.
- D. Design-Builder shall give Owner specific written notice of any proposed modification of the Contract Documents, Construction Drawings, or Construction Specifications, and any variations that a Submittal may have from the requirements of the Contract Documents, Construction Drawings, and Construction Specifications, as duly modified. This notice shall

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be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Submittal in drawing form, by a specific notation made on the drawing itself.

- E. Each Submittal shall bear a stamp or specific written certification by Design-Builder that it has satisfied its obligations under the Contract Documents with respect to preparation of the Submittal, and that Design-Builder approves the Submittal.
- F. All Submittals must be acceptable based on compliance with form and content requirements of the Contract Documents. Design-Builder shall submit Design Submittals for Owner's review and approval. Other Submittals shall not require express approval, except as indicated in the Supplementary Conditions or elsewhere in the Contract Documents.

#### 8.02 *Owner's Review of Submittals*

- A. Owner will review all Submittals, and may comment on any Submittal. Any response to a Submittal by Owner shall be in accordance with the schedule of required Submittals accepted by Owner as required by Paragraph 2.07, and the provisions of the Contract Documents.
- B. For those Submittals requiring Owner's review and approval, Owner's response will be in writing and will indicate either that Owner approves the Submittal or rejects the Submittal. Owner may also include comments regarding the approved or rejected Submittal. For those Submittals that do not require approval, the Submittal shall be deemed acceptable to Owner unless Owner responds with a timely objection or adverse comment.
- C. Unless a specific provision of the Contract Documents expressly provides otherwise, Owner's review of a Submittal will be to determine if the Submittal complies with and is consistent with the Contract Documents. If Owner concludes that a Submittal requiring approval complies with and is consistent with the Contract Documents, the Owner shall approve such Submittal.
- D. Owner's approval, rejection, or acceptance of a Submittal will not extend to the means, methods, techniques, sequences, or procedures of Construction, or to safety precautions or programs incident thereto.
- E. Owner's review, comments, approval, rejection, or acceptance of Submittals shall not relieve Design-Builder from responsibility for (1) performance of the Work in accordance with the Contract Documents, (2) the scheduling and progress of the Work, (3) the means, methods, sequences, techniques, and procedures of Construction, and safety precautions and programs incident thereto, or (4) any variation from the requirements of the Contract Documents, unless Design-Builder has in a separate written communication at the time of submission called Owner's attention to each such variation, and Owner has given written approval of each such variation; nor shall Owner's review, comments, approval, rejection, or acceptance of a Submittal impose any such responsibility on Owner.
- F. Construction tasks and expenditures by Design-Builder prior to Owner's review and approval or acceptance of any Submittal will be at the sole risk of Design-Builder.
- G. In reviewing, approving, rejecting, accepting, or commenting on any Design Submittal, Owner does not assume responsibility for the design, for any deficiencies in the Design

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Submittal or in the Design Professional Services by which they were prepared, or for constructability, cost, or schedule problems that may arise in connection with the Design Submittal.

- H. The parties acknowledge that Design-Builder's design responsibilities continue after commencement of Construction. During the course of Construction, the Design-Builder may propose modifications to the Construction Drawings and Construction Specifications. Owner shall approve such proposed modifications if (1) they comply with and are consistent with the Contract Documents, (2) Design-Builder has demonstrated that the modification is minor in character, or will not be detrimental to the quality and function of the Work, (3) the appropriate Project Design Professional has reviewed and approved the proposed modification with respect to any technical or engineering matters, and (4) Owner has not relied on the previously-approved Construction Drawings and Construction Specifications, such that the proposed modification would be detrimental to the Owner's interests. At its option, Owner may also approve more substantial or divergent proposed modifications, provided that the appropriate Project Design Professional has reviewed and approved the proposed modification with respect to any technical or engineering matters.

## **ARTICLE 9 – OTHER CONSTRUCTION**

### **9.01 *Other Work***

- A. In addition to and apart from the Work to be performed and furnished by Design-Builder under the Contract Documents, the Owner may perform other construction work at or adjacent to the Site during the course of the Project. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Design-Builder written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any third-party utility work at or adjacent to the Site, Owner shall provide such information to Design-Builder.
- C. Design-Builder shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and to Owner, if Owner is performing other work with Owner's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work. Design-Builder shall do all cutting, fitting, and patching of the Construction that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Design-Builder shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Design-Builder may cut or alter others' work with the written consent of Owner and the others whose work will be affected.
- D. If the proper execution or results of any part of the Construction depends upon work performed by others under this Article 9, Design-Builder shall inspect such other work and promptly report to Owner in writing any delays, defects, or deficiencies in such other work

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that render it unavailable or unsuitable for the proper execution and results of the Construction. Design-Builder's failure to so report will constitute an acceptance of such other work as fit and proper for integration with the Construction, except for latent defects and deficiencies in such other work.

#### 9.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Design-Builder prior to the start of any such other work:
  - 1. The identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
  - 2. An itemization of the specific matters to be covered by such authority and responsibility; and
  - 3. The extent of such authority and responsibilities.
- B. If the Supplementary Conditions do not identify the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors, Owner shall have sole authority and responsibility for such coordination.

#### 9.03 *Legal Relationships*

- A. If, in the course of performing other work for Owner at or adjacent to the Site, the Owner's employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, causes damage to the Construction or to the property of Design-Builder or the Construction Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Construction, through actions or inaction, then Design-Builder shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. The entitlement to, and extent of, any such equitable adjustment shall take into account information (if any) regarding such other work that was provided to Design-Builder in the Contract Documents, and any provisions in Laws or Regulations concerning utility action or inaction, or related remedies. When applicable, any such equitable adjustment in Contract Price shall be conditioned on Design-Builder assigning to Owner all Design-Builder's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Design-Builder's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Design-Builder's ability to complete the Work within the Contract Times.
- B. Design-Builder shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site. If Design-Builder fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due to Design-Builder, and assign to such other contractor or utility owner the Owner's contractual

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rights against Design-Builder with respect to the breach of the obligations set forth in this paragraph.

- C. When Owner is performing other work at or adjacent to the Site with Owner's employees, Design-Builder shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Design-Builder's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due to Design-Builder.
- D. If Design-Builder damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Design-Builder's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Design-Builder's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Design-Builder or Owner, then Design-Builder shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and its officers, directors, members, partners, employees, agents, consultants and subcontractors from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

## ARTICLE 10 – OWNER'S RESPONSIBILITIES

### 10.01 General

- A. Owner shall do the following in a timely manner so as not to delay the services of Design-Builder:
  - 1. If requested in writing by Design-Builder, furnish reasonable evidence satisfactory to Design-Builder that sufficient funds are available and committed for the entire cost of the Project. Unless such reasonable evidence is furnished, Design-Builder is not required to commence or continue any Work, or may, if such evidence is not presented within a reasonable time, stop Work upon 15 days' notice to the Owner;
  - 2. Make payments to Design-Builder promptly when they are due, as provided in Paragraph 14.01 and 14.06;
  - 3. Furnish the Site as set forth in Paragraph 5.01; arrange for safe access to and make all provisions for Design-Builder to enter upon public and private property as may reasonably be required for Design-Builder to perform Work under the Contract.
  - 4. Furnish to Design-Builder, as required for performance of the Work, the following (if available), all of which Design-Builder may use and rely upon in performing services under this Agreement:
    - a. Environmental assessment and impact statements;

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- b. Property, boundary, easement, right-of-way, and other special engineering surveys or data;
  - c. Property descriptions;
  - d. Zoning, deed, and other land use restrictions;
  - e. Utility and topographic mapping and surveys;
  - f. Explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at the Site; any information or data known to Owner concerning underground facilities at the Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; with appropriate professional interpretation of such information or data;
  - g. Any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site;
  - h. Engineering surveys to establish reference points which in Owner's judgment are necessary to enable Design-Builder to proceed with the Work;
  - i. Assistance to Design-Builder in filing documents required to obtain necessary permits, licenses, and approvals of governmental authorities having jurisdiction over the Project; and
  - j. Permits, licenses, and approvals of government authorities that the Contract Documents expressly require Owner to obtain.
5. Provide information known to Owner relating to the presence of materials and substances at the Site that could create a Hazardous Environmental Condition.
- B. If an obligation ascribed to Owner in Paragraph 10.01.A is expressly assigned to Design-Builder, in the description of the Work or elsewhere in the Contract Documents, then such express assignment to Design-Builder shall supersede the provision in Paragraph 10.01.A.
- C. Recognizing and acknowledging that Design-Builder's services and expertise do not include the following services, Owner shall furnish or obtain, as required for the Project:
- a. Accounting, bond and financial advisory (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.
  - b. Legal services with regard to issues pertaining to the Project as Owner requires, or Design-Builder reasonably requests.
  - c. Such auditing services as Owner requires to review cost submittals or ascertain how or for what purpose Design-Builder has used the money paid.
- D. Examine all studies, reports, alternate solutions, sketches, drawings, specifications, proposals, Submittals (including Design Submittals), and other documents presented by

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Design-Builder (including obtaining advice of an attorney, insurance counselor, and other consultants as Owner deems appropriate with respect to such examination), and if a decision is required with respect to any such document, render such decision in writing pursuant to any specific schedule, or if no specific schedule pertains, within a reasonable time after receipt of the document.

#### 10.02 *Insurance*

- A. Owner's responsibilities with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.

#### 10.03 *Limitations on Owner's Responsibilities*

- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Design-Builder's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Design-Builder to comply with Laws or Regulations applicable to the furnishing or performance of the Work. Owner will not be responsible for Design-Builder's failure to perform the Work in accordance with the Contract Documents.

#### 10.04 *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility with respect to undisclosed Hazardous Environmental Conditions uncovered or revealed at the Site is set forth in Paragraph 5.06.

#### 10.05 *Owner's Site Representative*

- A. Owner may furnish an Owner's Site Representative to observe the performance of Construction. The duties, responsibilities and limitations of authority of any such Owner's Site Representative and assistants will be as provided in [these General Conditions or Supplementary Conditions](#).

#### 10.06 *Owner's Consultants and Managers*

- A. Owner's Consultant(s), if any, [is-are](#) identified in the Agreement.
- B. Owner shall advise Design-Builder of the identity and scope of services of any other independent consultants or managers retained by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, constructability review, program management, project management, or contract administration.
- C. Neither Owner's Consultant(s), Owner's Site Representative, nor any other consultant or manager retained by Owner, has any duties, responsibilities, or authorities with respect to Design-Builder, unless expressly provided in this Contract. Owner's Consultant and such other consultants and managers shall not supervise, direct, or have control or authority over, nor be responsible for, Design-Builder's means, methods, techniques, sequences, or procedures of construction or the safety precautions and programs incident thereto, or for any failure of Design-Builder to comply with Laws or Regulations applicable to the furnishing or performance of the Work; and will not be responsible for Design-Builder's failure to perform the Work in accordance with the Contract Documents.

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#### 10.07 *Safety Programs*

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Design-Builder's safety programs of which Owner has been informed pursuant to Paragraph 7.13.D.
- B. Owner shall inform Design-Builder of any specific requirements of safety or security programs that are applicable to Design-Builder while at the Site.

#### 10.08 *Permits and Approvals*

- A. For any permits or approvals not required of the Design-Builder as part of the scope of services for the Work of this Project, Owner shall obtain reviews, approvals, certificates, and permits from governmental authorities having jurisdiction over the Project as indicated in the Contract Documents.

### **ARTICLE 11 – AMENDING THE CONTRACT DOCUMENTS; CHANGES IN THE WORK**

#### 11.01 *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended or supplemented by a Change Order or a Work Change Directive.
  - 1. *Change Orders:* If an amendment or supplement to the Contract Documents includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order. A Change Order also may be used to establish amendments and supplements of the Contract Documents that do not affect the Contract Price or Contract Times.
  - 2. *Work Change Directives:* The Work modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order. When a Work Change Directive is issued, the parties will promptly meet to attempt to negotiate the Work Change Directive's effect, if any, on the Contract Times and Contract Price. The effect, if any, on Contract Times and Contract Price, together with the Work Change Directive's addition, deletion, or revision to the Work, will be set forth in a subsequently issued Change Order.
- B. Either Owner or Design-Builder may propose or request a Change Order. With respect to certain events, this Contract may indicate specific times in which such requests or proposals must be submitted to the other party. With respect to all other events, the request or proposal shall be submitted to the other party within 30 days of the event giving rise to the request or proposal.

#### 11.02 *Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, and notwithstanding any other provision of the Contract, Owner may, at any time or from time to time, order or authorize additions, deletions, or revisions in the Work within the general scope of the Contract. Such changes may be accomplished by a Change Order, if Owner and Design-Builder have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Design-Builder

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shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work shall be performed under the applicable conditions of the Contract Documents. Nothing in this paragraph shall obligate Design-Builder to undertake work that Design-Builder reasonably concludes cannot be performed in a manner consistent with Design-Builder's safety or professional obligations under the Contract Documents or Laws and Regulations.

#### 11.03 *Unauthorized Changes in the Work*

- A. Design-Builder shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any Work performed that is not required by the Contract Documents, as duly amended, except in the case of an emergency as provided in Paragraph 7.16, or in the case of uncovering Construction as provided in Paragraph 13.03.A.3.

#### 11.04 *Changes Involving the Design*

- A. To the extent a change, whether proposed by Design-Builder or Owner, ordered by Owner, or set forth in a proposed Change Order or in a Work Change Directive, involves the design (as set forth in the Construction Drawings, Construction Specifications, or otherwise) or other engineering or technical matters, such changes must be reviewed and approved by the applicable Project Design Professional. The review and approval may occur at the time the change occurs, or as part of Design-Builder's provision of Professional Design Services in response to the change.

#### 11.05 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Claim regarding an adjustment in the Contract Price shall be presented by written notice to the other party in accordance with Paragraph 16.01.
- B. If the Contract Price is based on Cost of the Work, then the provisions in the Agreement regarding Cost of the Work and changes in the Design-Builder's fee, Contract Price, Guaranteed Maximum Price, and Guaranteed Maximum Fee, apply.
- C. The value of any Work covered by a Change Order or of any adjustment in the Contract Price will be determined as follows:
  1. Where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 12.02); or
  2. Where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.05.D); or
  - 2.3. Where the Work involved is not covered by unit prices contained in the Contract Documents, and agreement to a lump sum is not reached under Paragraph 11.05.C.2, then on the basis of time and materials (T&M) (determined by the agreed upon rates as provided in the Proposal and Agreement); or

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4. Where the Work involved is not covered by unit prices contained in the Contract Documents, and agreement to a lump sum is not reached under Paragraph 11.05.C.2, and time and materials are not utilized in Paragraph 11.05.C.3, then on the basis of the Cost of the Work for price adjustments (determined as provided in the Cost of the Work provisions in the Agreement, if applicable, or in Paragraph 12.01), plus a Design-Builder's Fee for overhead and profit (determined as provided in Paragraph 11.05.D) ~~of~~.

D. *Design-Builder's Fee*: The Design-Builder's fee for overhead and profit on Change Orders shall be determined as follows:

1. A mutually negotiated and acceptable fixed percentage/fee, ~~or~~
2. If a fixed percentage/fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
  - a. For costs incurred under Paragraphs 12.01.B.1.a. and 12.01.B.2, the Design-Builder's fee shall be 15 percent;
  - b. For costs incurred under Paragraphs ~~12.01.B.3~~, 12.01.B.4, 12.01.B.5, and 12.01.B.6, the Design-Builder's fee shall be 5 percent;
  - c. With respect to Construction Subcontracts, where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of this Contract is that the Design-Builder's fee shall be based on: (1) a fee of 15 percent of the costs incurred under Paragraph 12.01 by the subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Design-Builder itself, and to any Construction Subcontractors of a tier higher than that of the Construction Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Construction Subcontractor; provided, however, that for any such subcontracted work the maximum total fee to be paid by Owner shall be no greater than 27 percent of the costs incurred by the Construction Subcontractor that actually performs the Work;
  - d. With respect to Design Agreements, the Engineer or other invoicing Project Design Professional under a Design Agreement may add a fee of 5 percent to an invoice from a lower tier design entity, and Design-Builder may add a fee of 5 percent to an invoice from Engineer or other invoicing Project Design Professional; Owner shall not be responsible for any other mark-up at any tier (other than those incorporated in a factor, multiplier, hourly rate, or stipulated sum from the entity performing the subject Design Professional Services);
  - e. No fee will be payable on the basis of costs itemized in Paragraphs 12.01.B.3, 12.01.B.7 or 12.01.C;
  - f. The amount of credit to be allowed by Design-Builder to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Design-Builder's fee by an amount equal to computed on

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the basis of the net change in accordance with Paragraphs 11.05.D.2.a through 11.05.D.2.e., inclusive, 5 percent of such net decrease; and

- g. When both additions and credits are involved in any one change, the adjustment in Design-Builder's fee shall be computed on the basis of the net change in accordance with Paragraphs 11.05.D.2.a through 11.05.D.2.e., inclusive.

#### 11.06 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Claim regarding an adjustment of the Contract Times shall be presented by written notice to the other party pursuant to Paragraph 16.01.
- B. Design-Builder's entitlement to an adjustment of the Contract Times under this Contract is conditioned on such adjustment being essential to Design-Builder's ability to complete the Work within the Contract Times.

#### 11.07 *Execution of Change Orders*

- A. Owner and Design-Builder shall execute appropriate Change Orders covering:
  - 1. Changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
  - 2. Changes in Contract Price resulting from an Owner set-off, unless Design-Builder has duly contested such set-off;
  - 3. Changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.02, (b) required because of Owner's correction of defective Work under Paragraph 13.05 or Owner's acceptance of defective Work under Paragraph 13.07, or (c) agreed to by the parties (all subject to the need for review and approval by the applicable Project Design Professional pursuant to Paragraph 11.04); and
  - 4. Changes in the Contract Price or Contract Times, or other changes, which embody the substance of any final and binding results under Article 16.
- B. If Owner or Design-Builder refuses to execute a Change Order that is required to be executed under the terms of this Paragraph 11.07, it shall be deemed to be of full force and effect, as if fully executed.

#### 11.08 *Notice to Sureties*

- A. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be Design-Builder's responsibility. The amount of each applicable Bond will be adjusted to reflect the effect of any such change.

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## ARTICLE 12 – COST OF THE WORK ADJUSTMENTS; UNIT PRICE WORK

### 12.01 *Cost of the Work*

- A. *Costs of the Work Adjustment:* When the price of Work covered by a Change Order or an adjustment in Contract Price is to be determined on the basis of Cost of the Work, the Cost of the Work adjustment means the sum of all costs necessarily incurred and paid by Design-Builder in the proper performance of the specific portion of the Work. The costs to be reimbursed to Design-Builder will be only those additional or incremental costs required because of the change of the Work or because of the event giving rise to the adjustment. If the Agreement contains Cost of the Work provisions, such provisions shall govern in determining the Cost of the Work for Change Order or adjustment purposes. If the Agreement does not contain Cost of the Work provisions, then the provisions in Paragraph 12.01 shall apply.
- B. *Costs Included:* The Cost of the Work adjustment does not include any of the costs itemized in Paragraph 12.01.C, and shall include only the following items with respect to the subject Work:
1. Payroll costs for employees in the direct employ of Design-Builder in the performance of the subject Work, under schedules of job classifications agreed upon by Owner and Design-Builder in advance of such performance.
    - a. Such employees shall include without limitation superintendents, foremen, and other personnel employed full-time at the Site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the subject Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation, and holiday pay applicable thereto. The expenses of performing the subject Work outside the hours or days permitted by this Contract shall be included in the above to the extent such performance of Work is authorized by Owner.
    - b. Such employees shall also include engineers, engineering technicians, architects, and others providing Design Professional Services as employees of Design-Builder. For purposes of this Paragraph 12.01.B.1.b, Design-Builder shall be entitled to payment for such employees an amount equal to salary costs times a factor, as designated in the Agreement, for services in the performance of the subject Work.
  2. Cost of all materials and equipment furnished and incorporated in the subject Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Design-Builder unless Owner deposits funds with Design-Builder with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Design-Builder shall make provisions so that they may be obtained.
  3. Cost of permits obtained by Design-Builder.

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4. Payments made by Design-Builder to Construction Subcontractors for subject Work performed or furnished by such Construction Subcontractors. If any subcontract provides that the Construction Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Construction Subcontractor's Cost of the Work and fee shall be determined in the same manner as Design-Builder's Cost of the Work and fee.
5. Payments made by Design-Builder for Design Professional Services provided or furnished with respect to the subject Work under a Design Agreement.
6. Costs of special consultants (not including Project Design Professionals), including but not limited to testing laboratories, attorneys, and accountants, retained for services specifically related to the subject Work.
7. Supplemental costs including the following items:
  - a. The proportion of necessary transportation, travel, and subsistence expenses of Design-Builder's employees incurred in discharge of duties connected with the Work.
  - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the Site and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed that remain the property of Design-Builder.
  - c. Rentals of all construction or engineering equipment and machinery, and their parts, whether rented from Design-Builder or from others in accordance with rental agreements approved by Owner, and the costs of transportation, loading, unloading, installation, dismantling and removal of such equipment, machinery, and parts. All such costs shall be in accordance with the terms of such rental agreements. The rental of any such equipment, machinery, or parts shall cease when its use is no longer necessary for the Work.
  - d. Sales, consumer, use, and other similar taxes related to the subject Work, and for which Design-Builder is liable, imposed by Laws or Regulations. The Contract Documents and Request for Proposals state any Owner tax exemptions, if applicable.
  - e. Deposits lost for causes other than negligence of Design-Builder, any Construction Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
  - f. Losses, damages, and related expenses caused by damage to the subject Work not compensated by insurance or otherwise, sustained by Design-Builder in connection with the furnishing and performance of the Work provided they have resulted from causes other than the negligence of Design-Builder, any Construction Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be

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included in the Cost of the Work for the purpose of determining Design-Builder's fee.

- g. The cost of utilities, fuel, and sanitary facilities at the Site, as applicable to the subject Work.
- h. Minor expenses such as long distance telephone calls, telephone service at the Site, express and courier services, and similar petty cash items in connection with the Work.
- i. Cost of premiums for all Bonds and insurance Design-Builder is required by the Contract Documents to purchase and maintain.

C. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:

- 1. Payroll costs and other compensation of Design-Builder's officers, executives, principals (of partnerships and sole proprietorships), general managers, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Design-Builder whether at the Site or in Design-Builder's principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 12.01.B.1, all of which are to be considered administrative costs covered by the Design-Builder's fee.
- 2. Expenses of Design-Builder's principal and branch offices other than Design-Builder's office at the Site.
- 3. Any part of Design-Builder's capital expenses, including interest on Design-Builder's capital employed for the subject Work and charges against Design-Builder for delinquent payments.
- 4. Costs due to the negligence of Design-Builder, any Construction Subcontractor, Engineer or other Project Design Professionals, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
- 5. Other overhead or general expense costs of any kind, and the costs of any item not specifically and expressly included in Paragraph 12.01.B.

D. *Design-Builder's Fee:* When the value of the Work covered by a Change Order is determined on the basis of Cost of the Work, Design-Builder's fee shall be determined as set forth in Paragraph 11.05.D.

E. *Documentation:* Whenever the cost of any Work is to be determined pursuant to Paragraph 12.01.B and 12.01.C, Design-Builder will establish and maintain cost records in accordance with generally accepted accounting practices and submit in a form acceptable to Owner an itemized cost breakdown together with supporting data.

## 12.02 *Unit Price Work*

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all of Unit Price Work an amount equal to the sum of the established unit prices for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Design-Builder will be made by Owner.
- B. If Design-Builder's compensation is based on Cost of the Work, this Contract will not include compensation under unit prices unless expressly stated otherwise.
- C. Each unit price will be deemed to include an amount considered by Design-Builder to be adequate to cover Design-Builder's overhead and profit for each separately identified item.
- D. Design-Builder or Owner may seek an adjustment in the Contract Price if:
  - 1. The quantity of any item of Unit Price Work performed by Design-Builder differs materially and significantly from the estimated quantity of such item indicated in the Agreement;
  - 2. Such an adjustment would not duplicate, and is coordinated with, any other related adjustments of Contract Price; and
  - 3. Design-Builder has incurred additional expense, or less expense, as a result of the variation in quantity.

## **ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE CONSTRUCTION**

### 13.01 *Access to Construction*

- A. Owner, Owner's Consultant, Owner's Site Representative, and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Construction at reasonable times for their observation, inspecting, and testing. Design-Builder shall provide them proper and safe conditions for such access and advise them of Design-Builder's Site safety procedures and programs so that they may comply therewith as applicable.

### 13.02 *Tests, Inspections, and Approvals*

- A. Design-Builder shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
  - 1. By the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
  - 2. By Laws and Regulations, unless the Contract Documents or Laws and Regulations expressly allocate responsibility for a specific inspection or test to Owner;
  - 3. To attain Owner's acceptance of materials or equipment to be incorporated in the Construction;

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4. By manufacturers of equipment furnished under the Contract Documents;
  5. To meet the requirements of the Construction Drawings and Construction Specifications;
  6. For testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Construction; and
  7. For acceptance of materials, mix designs, or equipment submitted for approval prior to Design-Builder's purchase thereof for incorporation in the Construction.
- B. Owner shall be responsible for arranging, obtaining, and paying for all inspections and tests expressly required by the Contract Documents by the Owner or Laws and Regulations to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Construction shall be governed by the provisions of Paragraph 13.03.
  - C. All inspections and tests shall be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Design-Builder.
  - D. If the Contract Documents require the Construction (or part thereof) to be approved by Owner or another designated individual or entity, then Design-Builder shall assume full responsibility for arranging and obtaining such approvals.
  - E. Design-Builder shall give Owner reasonable notice of the planned schedule for all required inspections, tests, and approvals.
  - F. Design-Builder shall give Owner timely notice of readiness of the Construction (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
  - G. Each party shall provide the other with copies of any certificates of inspection or approval obtained with respect to tests and inspections.
  - H. Both parties may rely on the results of inspections and tests, performed pursuant to this paragraph and the governing provisions of the Contract Documents, Laws and Regulations, and the Construction Drawings and Construction Specifications.
  - I. If any Construction (or the construction work of others) that is required to be inspected, tested, or approved is covered by Design-Builder without written concurrence of Owner, then Contractor shall, if requested by Owner, uncover such Construction for observation. Such uncovering shall be at Design-Builder's expense unless Design-Builder has given Owner timely notice of Design-Builder's intention to cover the same and Owner has not acted with reasonable promptness in response to such notice.

### 13.03 *Uncovering Construction*

- A. If Owner considers it necessary or advisable that covered Construction be observed by Owner or inspected or tested by others, then Design-Builder, at Owner's request, shall uncover, expose or otherwise make available for observation, inspection, or testing, as Owner may require, that portion of the Construction in question, furnishing all necessary labor, material, and equipment.

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1. If the Construction had been covered contrary to the written request of Owner or a requirement of the Contract Documents, then uncovering it for Owner's observation and re-covering it shall be at Design-Builder's expense, regardless of whether it is defective.
2. If it is found that the covered Construction is defective, Design-Builder shall pay all costs and damages caused by or resulting from such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement, re-covering, or reconstruction (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, all court or arbitration or other dispute resolution costs, and all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price.
3. If the covered Construction is not found to be defective, Design-Builder shall be allowed an increase in the Contract Price or an extension of the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, re-covering, and reconstruction, subject to the provisions of Paragraph 13.03.A.1.

#### 13.04 *Defective Construction*

- A. It is Design-Builder's obligation to assure that the Construction is not defective.
- B. Owner shall give Design-Builder prompt written notice of all defective Construction of which Owner has actual knowledge. Owner may reject, accept, or correct defective Construction.
- C. Promptly after receipt of written notice of defective Construction, unless Owner expressly indicates that it will accept the defective Construction, Design-Builder shall correct all such defective Construction, whether or not fabricated, installed, or completed; or, if Owner has rejected the defective Construction, remove it from the Project and replace it with Construction that is not defective.
- D. When correcting defective Construction, Design-Builder shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Construction.

#### 13.05 *Owner May Correct Defective Construction*

- A. If Design-Builder fails within a reasonable time after written notice from Owner to correct defective Construction or to remove and replace rejected Construction, or if Design-Builder fails to perform the Construction in accordance with the Contract Documents, or if Design-Builder fails to comply with any other provision of the Contract Documents, Owner may, after 7 days' written notice to Design-Builder, correct and remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 13.05 Owner shall proceed expeditiously. In connection with such corrective and remedial action, Owner may exclude Design-Builder from all or part of the Site, take possession of all or part of the Construction, and suspend Design-Builder's services related thereto, and incorporate in the Construction all materials and equipment stored at the Site or for which Owner has paid Design-Builder but which are stored elsewhere. Design-Builder shall allow Owner, Owner's Consultant, Owner's Site Representative, and Owner's other representatives, agents, employees, and

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contractors, access to the Site to enable Owner to exercise the rights and remedies under this paragraph.

#### 13.06 *Costs*

- A. Design-Builder shall bear all costs arising out of or relating to the correction, removal, or replacement of defective Construction, including but not limited to repair of adjacent Work or property; delay costs and impacts; fees and charges of engineers, architects, attorneys, and other professionals; and all court, arbitration, or other dispute resolution costs.
- B. All costs, losses, and damages (included but not limited to fees and charges of engineers, architects, attorneys and other professionals, all court or arbitration or other dispute resolution costs, and all costs of repair or replacement of work of others) incurred or sustained by Owner in exercising its rights and remedies arising from defective Construction under this Article will be charged against Design-Builder, by set-off against payment or otherwise.
- C. Design-Builder shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to defective Construction.

#### 13.07 *Owner's Acceptance of Defective Construction*

- A. If, instead of requiring correction or removal and replacement of defective Construction, Owner prefers to accept it, Owner may do so. If such acceptance is proposed prior to final payment, it shall be subject to confirmation by the applicable Project Design Professional that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety. Design-Builder shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Construction. If any such acceptance occurs prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents, and Owner shall be entitled to an appropriate decrease in the Contract Price reflecting the diminished value of the Construction so accepted.

#### 13.08 *Owner May Stop Construction*

- A. If Construction is defective, or Design-Builder fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform Construction in such a way that the completed Construction will conform to the Contract Documents, Owner may order Design-Builder to stop Construction or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop Construction will not give rise to any duty on the part of Owner to exercise this right for the benefit of Design-Builder or any other party.

### **ARTICLE 14 – PAYMENTS TO DESIGN-BUILDER; COMPLETION**

#### 14.01 *Progress Payments*

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Paragraph 2.04 will serve as the basis for progress payments. In no case shall any Application for

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Payment exceed the value of the Contract Price or the value of any issued Purchase Order(s). Progress payments on account of Unit Price Work will be based on the number of units completed.

- B. *Application for Progress Payment:* On or about the date established in the Agreement for submission of each application for progress payment (but not more often than once a month), Design-Builder shall submit to Owner for review an Application for Payment filled out and signed by Design-Builder covering the Work completed as of the date indicated on the Application and accompanied by supporting documentation as required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect Owner's interest therein, all of which will be satisfactory to Owner.
- C. *Payment of Obligations:*
1. Beginning with the second Application for Payment, each Application shall include an affidavit of Design-Builder stating that all previous progress payments received on account of the Work have been applied on account to discharge Design-Builder's legitimate obligations associated with prior Applications for Payment.
  2. If Design-Builder contends that it has withheld payment of underlying obligations for good cause, then Design-Builder shall inform Owner of the identity of the entity from which Design-Builder has withheld payment, the amount of the withholding, and the reason for the withholding.
- D. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.
- E. *Review of Applications:*
1. Owner will, within ~~1410~~ days of receipt of each Application for Payment, either indicate in writing its acceptance of the Application and state that the Application is being processed for payment, or return the Application to Design-Builder indicating in writing its reasons for refusing to accept the Application.
- F. Not more than ~~10-60~~ days after accepting such Application the amount will become due and when due will be paid by Owner to Design-Builder.
1. If Owner should fail to pay Design-Builder at the time the payment of any amount becomes due, then Design-Builder may, at any time thereafter, upon serving written notice that he will stop the Work within 7 days after receipt of the notice by Owner, and after such 7-day period, stop the Work until payment of the amount owing has been received. Written notice shall be deemed to have been duly served if sent by certified mail to the last known business address of Owner.

~~2.—Payments due but unpaid shall bear interest at the rate specified in the Agreement.~~

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~~3-2~~. No Progress Payment nor any partial or entire use or occupancy of the Project by Owner shall constitute an acceptance of any Work not in accordance with the Contract Documents.

G. *Reduction in or Refusal to Make Payment:*

1. Owner may impose a set-off against the whole or any part of any such payment, or nullify any previous payment because of subsequently discovered evidence or the results of subsequent inspections or tests, to the extent that is reasonably necessary to protect Owner from loss because:
  - a. Claims have been made against Owner on account of Design-Builder's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages on account of Design-Builder's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from breach of warranty, workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;
  - b. Design-Builder has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
  - c. Design-Builder has failed to provide and maintain required bonds or insurance;
  - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Design-Builder is responsible;
  - e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
  - f. The Construction is defective, requiring correction or replacement;
  - g. Owner has been required to correct defective Construction in accordance with Paragraph 13.05, or has accepted defective Construction pursuant to Paragraph 13.07;
  - h. The Contract Price has been reduced by Change Orders;
  - i. An event that would constitute a default by Design-Builder and therefore justify a termination for cause has occurred;
  - j. Liquidated damages, special damages, or performance damages have accrued under the Contract Documents as a result of Design-Builder's failure to achieve Milestones, Substantial Completion, final completion of the Work, or performance requirements, as applicable;
  - k. Liens have been filed in connection with the Work, except where Design-Builder has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such liens; or
  - l. There are other items entitling Owner to a set off against the amount recommended.

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2. If Owner imposes any set-off against payment, Owner will give Design-Builder immediate written notice stating the reasons for such action and the specific amount of the reduction, and promptly pay Design-Builder any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Design-Builder the amount so withheld, or any adjustment thereto agreed to by Owner and Design-Builder, if Design-Builder remedies the reasons for such action. The reduction imposed shall be binding on Design-Builder unless it duly presents a written notice of Claim contesting the reduction.

#### 14.02 *Design-Builder's Warranty of Title*

- A. Design-Builder warrants and guarantees that title to all Construction, materials, and equipment covered by any Application for Payment, whether already incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

#### 14.03 *Substantial Completion*

- A. When Design-Builder considers the Work ready for its intended use Design-Builder shall notify Owner in writing that the Work is substantially complete (except for items specifically listed by Design-Builder as incomplete) and request that Owner issue a certificate of Substantial Completion. Promptly thereafter, Owner and Design-Builder shall make an inspection of the Work to determine the status of completion. If Owner does not consider the Work substantially complete, Owner will notify Design-Builder in writing giving the reasons therefor.
- B. If Owner considers the Work substantially complete:
  1. Owner and Design-Builder will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Design-Builder agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.
  2. Owner will prepare and deliver to Design-Builder a certificate of Substantial Completion which shall fix the date of Substantial Completion. Owner shall attach to the certificate a punch list of items to be completed or corrected before final payment.
- C. After Substantial Completion the Design-Builder shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Design-Builder may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
- D. Owner shall have the right to exclude Design-Builder from the Site after the date of Substantial Completion subject to allowing Design-Builder reasonable access to remove its property and complete or correct items on the punch list.

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#### 14.04 *Partial Use or Occupancy*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Construction which (1) has specifically been identified in the Contract Documents, or (2) Owner and Design-Builder agree constitute a separately functioning and usable part of the Construction that can be used by Owner for its intended purpose without significant interference with Design-Builder's performance of the remainder of the Construction, subject to the following:
1. Owner at any time may request Design-Builder in writing to permit Owner to use or occupy any such part of the Construction that Owner believes to be ready for its intended use and substantially complete. If Design-Builder agrees that such part of the Work is substantially complete, Design-Builder and Owner will follow the procedures of Paragraph 14.03 for that part of the Construction.
  2. Design-Builder at any time may notify Owner in writing that Design-Builder considers any such part of the Work ready for its intended use and substantially complete and request Owner to issue a certificate of Substantial Completion for that part of the Work.
  3. Within a reasonable time after either such request, Owner and Design-Builder shall make an inspection of that part of the Work to determine its status of completion. If Owner does not consider that part of the Work to be substantially complete, Owner will notify Design-Builder in writing giving the reasons therefor. If Owner considers that part of the Work to be substantially complete, the provisions of Paragraph 14.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
  4. No use or occupancy of part of the Construction will be accomplished prior to compliance with the requirements of Paragraph 6.05 regarding property insurance.

#### 14.05 *Final Inspection*

- A. Upon written notice from Design-Builder that the entire Work or an agreed portion thereof is complete, Owner will make a final inspection with Design-Builder and will notify Design-Builder in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Design-Builder shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

#### 14.06 *Final Payment*

A. *Application for Payment:*

1. After Design-Builder has completed all such corrections to the satisfaction of Owner and delivered in accordance with the Contract Documents all reports, maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance, certificates of inspection, and Record Documents, Design-Builder may make application for final payment following the procedure for progress payments.
2. The final Application for Payment shall be accompanied (unless previously delivered) by:
  - a. All documentation called for in the Contract Documents;

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- b. Consent of the surety, if any, to final payment;
  - c. Satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment;
  - d. A list of all disputes that Design-Builder believes are unsettled; and
  - e. Complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
3. In lieu of such releases or waivers of Liens specified in Paragraph 14.06.A.2, and as approved by Owner, Design-Builder may furnish receipts or releases in full and an affidavit of Design-Builder that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed, and (b) all payrolls, material and equipment bills and other indebtedness connected with the Work for which Owner might in any way be responsible, or which in any way might result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Project Design Professional, Construction Subcontractor, or Supplier fails to furnish such a release or receipt in full, Design-Builder may furnish a Bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.
- B. *Final Payment and Acceptance:* If Owner is satisfied that the Work has been completed and Design-Builder's other obligations under the Contract Documents have been fulfilled, Owner will, within ~~10-30~~ days after receipt of the final Application for Payment, give written notice to Design-Builder that the Work is acceptable. Otherwise, Owner will return the Application to Design-Builder, indicating in writing the reasons for refusing to process final payment, in which case Design-Builder shall make the necessary corrections and resubmit the Application.
- C. *Completion of Work:* The Work is complete (subject to surviving obligations) when it is ready for final payment.
- D. *Payment Becomes Due:* The amount will become due and will be paid by Owner to Design-Builder ~~30-60~~ days after the presentation to Owner of the acceptable Application and accompanying documentation, in appropriate form and substance and with Owner's notice of acceptability.

#### 14.07 Waiver of Claims

- A. The making of final payment will not constitute a waiver by Owner of claims or rights against Design-Builder. Owner expressly reserves claims and rights arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.05, from Design-Builder's failure to comply with the Contract Documents or the terms of any special guarantees specified therein, from unresolved disputes or Claims presented by Owner, or from Design-Builder's continuing obligations under the Contract.
- B. The acceptance of final payment by Design-Builder will constitute a waiver by Design-Builder of all claims and rights against Owner other than those pending matters that have been duly submitted to dispute resolution under the provisions of Article 16.

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#### 14.08 *Correction Period*

- A. If within one year after the date of Substantial Completion of the entire Work or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Construction is found to be defective, Design-Builder shall promptly, without cost to Owner and in accordance with Owner's written instructions, (1) correct such defective Construction, or, if it has been rejected by Owner, remove it from the Site and replace it with Construction that is not defective, and (2) satisfactorily correct or remove and replace any damage to other Construction or the work of others resulting therefrom. If Design-Builder does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Construction corrected or the rejected Construction removed and replaced, and all costs, losses, and damages caused by or resulting from such removal and replacement (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, all court or arbitration or other dispute resolution costs, and all costs of repair or replacement of work of others) will be paid by Design-Builder.
- B. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Conceptual Documents.
- C. Where defective Construction (and damage to other Construction resulting therefrom) has been corrected, or removed or replaced, under this Paragraph 14.08, the correction period hereunder with respect to such Construction will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

### ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

#### 15.01 *Owner May Suspend Work*

- A. At any time and without cause, Owner may suspend the Work or any portion thereof ~~for a period of not more than 90 days~~ by notice in writing to Design-Builder, which will fix the date on which Work will be resumed. Design-Builder shall resume the Work on the date so fixed. Design-Builder ~~shall may request be entitled to for Owner's consideration~~ an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension.

#### 15.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events justifies termination for cause:
  - 1. Design-Builder's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the progress schedule as duly adjusted).
  - 2. Design-Builder's disregard of Laws or Regulations of any public body having jurisdiction.

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3. Design-Builder's violation in any substantial way of provisions of the Contract Documents.
- B. If one or more of the events identified in Paragraph 15.02.A occurs, Owner may, after giving Design-Builder (and the surety, if any) 7 days' written notice, terminate the services of Design-Builder, take possession of any completed Design Submittals prepared by or for Design-Builder (subject to the limited license and indemnification provisions of Paragraph 3.04), exclude Design-Builder from the Site, take possession of the Work, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Design-Builder but which are stored elsewhere, and finish the Work as Owner may deem expedient. In such case Design-Builder shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all costs, losses and damages sustained by Owner arising out of or resulting from completing the Work (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) such excess will be paid to Design-Builder. If such costs, losses and damages exceed such unpaid balance, Design-Builder shall pay the difference to Owner. Such costs, losses and damages incurred by Owner will be incorporated in a Change Order. When exercising any rights or remedies under this paragraph Owner shall not be required to obtain the lowest price for the Work performed.
  - C. Notwithstanding Paragraph 15.02.B, Design-Builder's services will not be terminated if Design-Builder begins, within 7 days of receipt of notice of intent to terminate, to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.
  - D. Where Design-Builder's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Design-Builder then existing or which may thereafter accrue. Any retention or payment of moneys due Design-Builder by Owner will not release Design-Builder from liability.

#### 15.03 *Owner May Terminate for Convenience*

- A. Upon 7 days' written notice to Design-Builder, Owner may, without cause and without prejudice to any other right or remedy of Owner, elect to terminate the Contract. In such case, Design-Builder shall be paid (without duplication of any items) for:
  1. Completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
  2. Expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
  3. Amounts paid in settlement of terminated contracts with Project Design Professionals, Construction Subcontractors, Suppliers and others (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or

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arbitration or other dispute resolution costs incurred in connection with such terminated contracts); and

4. Reasonable expenses directly attributable to termination.
- B. Design-Builder shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

#### 15.04 *Design-Builder May Stop Work or Terminate*

- A. If, through no act or fault of Design-Builder, the Work is suspended for a period of more than 90 days by Owner or under an order of court or other public authority, Owner fails to act on any Application for Payment within 30 days after it is submitted, or Owner fails for ~~30~~ 60 days to pay Design-Builder any sum finally determined to be due, then Design-Builder may, upon 7 days' written notice to Owner, and provided Owner does not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.A. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Owner has failed for ~~30-60~~ days to pay Design-Builder any sum finally determined to be due, Design-Builder may upon 7 days' written notice to Owner stop the Work until payment is made of all such amounts due Design-Builder, including interest thereon. The provisions of this paragraph are not intended to preclude Design-Builder from obtaining an increase in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Design-Builder's stopping Work as permitted by this paragraph.

### ARTICLE 16 – DISPUTES

#### 16.01 *Methods and Procedures*

- A. *Notice of Claim:* If Owner and Design-Builder are not in agreement regarding a proposed or requested Change Order, other proposed adjustment of Contract Price or Contract Times, a Work Change Directive issued by Owner, or any other relief proposed or requested under the Contract, then either party may provide written notice of a Claim to the other party. Such notice of Claim shall be given within 90 days of: the proposal or request for a Change Order; such other proposed adjustment of Contract Price or Contract Times; the issuance of the Work Change Directive; or the proposal or request for other relief under the Contract. The notice of Claim shall be given within the 90 days regardless of whether the other party has responded to such proposal, request, or issuance, and regardless of whether discussions or negotiations are in progress; provided, however, that the parties may extend the time to give such notice of Claim by mutual written agreement. The notice of Claim shall include a statement of position, specification of the remedy sought, and supporting documentation.
- B. *Response:* Within 30 days of the date of notice of Claim, the receiving party shall respond with a written statement of position and any supporting documentation.
- C. *Direct Negotiations:* Owner and Design-Builder agree to directly negotiate all Claims between them in good faith for a period of 60 days from the date of notice of Claim.
- D. *Mediation:* If direct negotiations are unsuccessful in resolving a Claim, then Owner and Design-Builder shall submit the unsettled Claim to mediation by a mutually agreeable

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mediator or mediation service. Owner and Design-Builder agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days.

1. The fees and expenses, including filing fees, of the mediator and any mediation service shall be shared equally by Owner and Design-Builder.
2. The mediation shall be held in the locality where the Project is located, unless another location is mutually agreed upon by the parties.
3. A settlement (if any) resulting from such mediation will be specifically enforceable under the prevailing law, by any court having jurisdiction.
4. Participation in the mediation process in good faith is a condition precedent to commencing final or binding dispute resolution.

E. If mediation is unsuccessful in resolving a Claim, then within 120 days of the completion of the mediation (1) the parties may mutually agree to a binding dispute resolution process of their choice, or (2) the claimant may give notice to the other that the claimant will seek to have the dispute resolved by a binding dispute resolution method established in this Contract, or if no such method has been established, by a court of competent jurisdiction. Failure by claimant to give such notice in a timely manner shall result in a waiver of the Claim.

E-F. It is understood by Design-Builder that any claim resolution as a result of this Article 16 will require the final approval of the City of Providence and City of Providence Board of Contract and Supply before any agreement can be finalized and executed.

## ARTICLE 17 – MISCELLANEOUS

### 17.01 *Giving Notice*

- A. Whenever any provision of the Contract Documents requires the giving of written notice to the other party to this Contract, it will be deemed to have been validly given if delivered to the Authorized Representative of the other party:
1. In person, by a commercial courier service or otherwise; or
  2. By registered or certified mail, postage prepaid; or
  3. By e-mail, with the words “Formal Notice” or similar in the e-mail’s subject line.

### 17.02 *Computation of Times*

- A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

### 17.03 *Cumulative Remedies*

- A. Unless expressly stated otherwise in this Contract, the duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, or waiver

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of, any rights and remedies available to any or all of them which are otherwise imposed or available by:

1. Laws or Regulations; or
  2. Any special warranty or guarantee; or
  3. Other provisions of the Contract.
- B. The provisions of Paragraph 17.03.A will be as effective as if repeated specifically in the Contract in connection with each particular duty, obligation, right and remedy to which they apply.

#### 17.04 *Limitation of Damages*

- A. With respect to this Contract and any and all Claims and other matters at issue, Owner shall not be liable to Design-Builder for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Design-Builder on or in connection with any other project or anticipated project.

#### 17.05 *No Waiver*

- A. A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Contract.

#### 17.06 *Survival of Obligations*

- A. All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion and acceptance of the Work and termination or completion of the Contract.

A.B. In the event that any provision of the Contract Agreement is found to be invalid or unenforceable, all remaining provisions of the Contract Agreement shall remain binding and in full force.

#### 17.07 *Controlling Law*

- A. The Contract Documents will be construed in accordance with the law of the place of the Project.

#### 17.08 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

#### 17.09 *Conflict of Interest*

- A. Design-Builder shall promptly inform Owner of any contract, agreement, or arrangement that Design-Builder may have or enter into during the performance of the Work of the Project and Contract Agreement that may conflict with Owner's interests. Design-Builder shall take all necessary measures to prevent actual or perceived conflicts of interest.

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B. Design-Builder shall promptly inform the Owner of any pre-existing or gained financial interest it may have in any property that is part of or is affected by the Work of the Project.

17.10 Wage Rates and Payroll Requirements

A. Design-Builder shall comply with any and all applicable minimum wage rates in accordance with State or Rhode Island General Laws, Chapter 37 and shall be responsible for obtaining copies of the latest wage rates. No additional compensation will be considered by Owner for failure of the Design-Builder to comply with minimum wage rates.

B. Design-Builder shall regularly submit to Owner, but no less frequently than monthly with Applications for Payment, certified payrolls for all applicable employees performing Work on the Project. Certified payrolls shall be submitted on "Statement of Compliance" forms or other such forms as prescribed and provided by the State of Rhode Island Department of Labor and Training.

17.11 Minority and Women Business Enterprise Program and Requirements

A. Design-Builder shall comply with all requirements of the City of Providence Minority and Women-Owned Business (MBE/WBE) Program.

B. Design-Builder shall also provide any and all additional information that may be required in accordance with all applicable federal, state, and local laws and regulations.

17.12 Other

A. The Design-Builder is and shall be an independent Project Team and the Design-Builder and its employees are not employees of the Owner. The Design-Builder shall be solely responsible for, and shall save Owner harmless from, all matters relating to payment of Design-Builder's employees, including those of Design-Builder, Project Design Professionals, engineers, consultants, and subcontractors, including compliance with social security requirements, federal and state tax withholding, and all other regulations governing employer-employee relations.

B. Nothing contained in the Contract Documents nor any act of the Owner or Design-Builder shall be deemed or construed to create any third-party beneficiary or principal and agent association or relationship involving the Owner. Design-Builder has no authority to take any action or execute any documents on behalf of the Owner except as otherwise authorized by the Contract Documents.

C. Neither the Owner nor the Design-Builder may assign any rights or interests in the Contract without the express written consent of the other.

D. Unless expressly provided in the Contract Documents, nothing in the Contract Documents shall be construed to create or impose any duty owed by the Owner or Design-Builder to any other party not a signatory to the Contract.

E. Unless expressly provided in the Contract Documents, all duties and responsibilities undertaken as part of the Contract will be for the sole and exclusive benefit of the Owner and Design-Builder and not for that of any other party.

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# STANDARD GENERAL CONDITIONS OF THE CONTRACT BETWEEN OWNER AND DESIGN-BUILDER

Prepared by



Issued and Published Jointly by



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**STANDARD GENERAL CONDITIONS OF THE  
CONTRACT BETWEEN OWNER AND DESIGN-BUILDER**

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# STANDARD GENERAL CONDITIONS OF THE CONTRACT BETWEEN OWNER AND DESIGN-BUILDER

## ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

### 1.01 *Defined Terms*

- A. Wherever used in the Contract Documents and printed with initial capital letters, the following terms have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*: Written or graphic instruments issued by Owner prior to the opening of Proposals which clarify, correct, or change the Request for Qualifications, Request for Proposals, or the proposed Contract Documents, including the Conceptual Documents.
  2. *Agreement*: The written instrument, executed by Owner and Design-Builder, that sets forth the Contract Price and Contract Times, identifies the parties, and designates the specific items that are Contract Documents.
  3. *Application for Payment*: The form which is to be used by Design-Builder during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
  4. *Authorized Representative*: The individual designated by a party to represent it with respect to this Contract, as indicated in the Agreement.
  5. *Change Order*: A document which is signed by Design-Builder and Owner and authorizes an addition, deletion, or revision in the Work, or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.
  6. *Claim*: A demand or assertion by Owner or Design-Builder seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A request or proposal for a Change Order is not a Claim.
  7. *Conceptual Documents*: The documents prepared by or for the Owner to describe the Work to be performed, issued to Proposers in the Request for Proposals or during the design-builder selection process, and expressly identified in the Agreement.
  8. *Constituent of Concern*: Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5101 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean

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Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other Laws or Regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

9. *Construction*: The part of the Work that consists generally of making physical improvements at the Site(s), and is the result of performing or furnishing of labor, the furnishing and incorporating of materials and equipment into the Work (including any correction of defective Construction), and the furnishing of services (other than Design Professional Services) and documents, all as required by the Contract Documents and Construction Drawings and Construction Specifications, as duly modified.
10. *Construction Drawings*: Documents prepared by or for Design-Builder, and approved by Owner for purposes of allowing Design-Builder to proceed with the Construction or specific portions of the Construction, and consisting of drawings, diagrams, illustrations, schedules, and other data that graphically show the scope, extent, and character of the Construction (or specific portions of the Construction) to be performed by or for Design-Builder. Construction Drawings are not Contract Documents.
11. *Construction Specifications*: Documents prepared by or for Design-Builder, and approved by Owner for purposes of allowing Design-Builder to proceed with the Construction or a specific portion of the Construction, and consisting of written requirements for materials, equipment, systems, standards, workmanship, and administrative procedures as applied to the Construction (or a specific portion of the Construction). Construction Specifications are not Contract Documents.
12. *Construction Subcontract*: A written agreement between Design-Builder and a Construction Subcontractor for provision of all or a portion of the Construction, and any delegated Design Professional Services.
13. *Construction Subcontractor*: An individual or entity (other than a Supplier) having a direct contract with Design-Builder or with any other Construction Subcontractor for the performance of a part of the Construction, and any delegated Design Professional Services.
14. *Contract*: The entire and integrated written agreement between Owner and Design-Builder concerning the Work.
15. *Contract Documents*: Those items so designated in the Agreement, and which together comprise the Contract.
16. *Contract Price*: The money that Owner has agreed to pay Design-Builder for completion of the Work in accordance with the Contract Documents.
17. *Contract Times*: The numbers of days or the dates stated in the Agreement to (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
18. *Design-Builder*: The individual or entity with which Owner has contracted for performance of the Work, as designated in the Agreement. The term “*Project Team*” as used in the Request for Proposals shall be synonymous with and have the same meaning as “*Design-Builder*”.

19. *Design Professional Services*: That part of the Work comprised of the furnishing of engineering, surveying, architecture, and other design services, and including but not limited to providing research, inspections, analysis, evaluations, and conclusions regarding engineering and related matters; exercising professional judgment with respect to technical issues; the preparation of plans, reports, calculations, models, schematics, drawings, specifications, Design Submittals, the Construction Drawings, Construction Specifications, and other instruments of service; other services included in the Contract Documents and required to be performed by or under the responsible charge of licensed design professionals; and the review of shop drawings, observation of construction, response to requests for information or interpretation, analysis of the technical aspects of Change Orders, and other engineering and related professional services provided by or for licensed design professionals during Construction.
20. *Design Agreement*: A written agreement between Design-Builder and a design firm or entity for provision of Design Professional Services.
21. *Design Submittal*: A Submittal that pursuant to Laws and Regulations or this Contract must be prepared by or under the supervision of a licensed engineer or other licensed design professional, including drawings, specifications, Construction Drawings, Construction Specifications, and revisions to such documents (but not including Record Documents).
22. *Effective Date of the Contract*: The date indicated in the Agreement on which the Contract becomes effective, but if no such date is indicated it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
23. *Engineer*: The Project Design Professional identified as Engineer in the Agreement, and engaged by Design-Builder to provide engineering and related professional services under a Design Agreement.
24. *Hazardous Environmental Condition*: The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated in the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, does not establish a Hazardous Environmental Condition.
25. *Laws and Regulations; Laws or Regulations*: Any and all applicable laws, statutes, rules, regulations, ordinances, binding resolutions, codes, decrees, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
26. *Liens*: Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
27. *Milestone*: A principal event in the performance of the Work that the Contract requires Design-Builder to achieve by an intermediate completion date or by a time prior to Substantial Completion of Construction.
28. *Notice of Award*: The written notice by Owner to a Proposer stating that Owner will enter into the design-build contract with the Proposer.

29. *Notice to Proceed*: A written notice by Owner to Design-Builder fixing the date on which the Contract Times will commence to run and on which Design-Builder shall start to perform the Work.
30. *Owner*: The individual or entity with which Design-Builder has contracted regarding the Work, and which has agreed to pay Design-Builder for the performance of the Work, pursuant to the terms of the Contract.
31. *Owner's Consultant*: An individual or entity with which the Owner has contracted to furnish services (typically including planning, preparation of Conceptual Documents, and advisory services) to Owner with respect to the Project, and which is identified as such in the Agreement.
32. *Owner's Site Representative*: A representative of Owner at the Site, as indicated in Paragraph 10.05.
33. *Project*: The total undertaking to be accomplished for Owner by engineers, consultants, Design-Builder, subcontractors, and others, including planning, study, design, construction, testing, start-up, and commissioning, and of which the Work to be performed under the Contract Documents is a part.
34. *Project Design Professionals*: The Engineer and any other independent entities or individuals, or employees of Design-Builder, engaged by Design-Builder or a Construction Subcontractor to provide Design Professional Services with respect to a portion of the Work.
35. *Proposal*: The documents submitted by Design-Builder in response to the Request for Proposals, setting forth technical concepts, proposed prices, and other conditions for the Work to be performed, and stating any proposed revisions, modifications, clarifications, exceptions, or supplements to the proposed Contract Documents.
36. *Proposal Amendment*: A Contract Document that is prepared after submittal of Design-Builder's Proposal; identifies mutually agreed revisions, modifications, exceptions, supplements, and clarifications to the Proposal or proposed Contract Documents; and is executed by Owner and Design-Builder.
37. *Proposer*: An entity that submits a Statement of Qualifications or Proposal to Owner.
38. *Purchase Order(s)*: Document(s) provided to Design-Builder from Owner authorizing funds for payment to Design-Builder for performance of the Work of the Project.
39. *Record Documents*: The record copy of all Construction Drawings, Construction Specifications, Addenda, Change Orders, Work Change Directives, and approved Submittals maintained by Design-Builder at the Site, including any annotations to such documents made by Design-Builder during Construction.
40. *Record Drawings and Record Specifications*: Documents depicting the completed Project, or a specific portion of the completed Project, based on or comprised of the Record Documents delivered to Owner by Design-Builder at the completion of the Construction.
41. *Request for Proposals*: The document prepared by or for Owner specifying and describing Owner's objectives, the procedures to be followed in preparing and

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submitting a Proposal, and the process for evaluating Proposals and awarding a contract.

42. *Request for Qualifications*: The document prepared by or for Owner requesting that Proposers submit a Statement of Qualifications with respect to their candidacy for selection as Design-Builder.
43. *Schedule of Values*: A schedule, prepared and maintained by Design-Builder, allocating portions of the Contract Price to various portions of the Work, and used as the basis for reviewing Design-Builder's Applications for Payment.
44. *Site*: Lands or areas indicated in the Contract Documents as being furnished by Owner upon which Construction is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for use of Design-Builder.
45. *Statement of Qualifications*: The document submitted by a Proposer in response to the Request for Qualifications, including any completed forms, attachments, and exhibits.
46. *Submittal*: A written or graphic document, prepared by or for Design-Builder, which the Contract Documents require the Design-Builder to submit to the Owner. Submittals may include reports, preliminary drawings and specifications, cost estimates, proposed Construction Drawings and Construction Specifications, progress schedules, cash flow projections, Schedules of Values, shop drawings, product data, samples, delegated designs, certifications, proposed modifications to the Construction Drawings and Construction Specifications, results of tests and evaluations, results of source quality control testing and inspections, results of field or Site quality control testing and evaluations, sustainable design information, information on special procedures, operations and maintenance data, sustainable design closeout information, record documents, records of spare parts and extra stock materials, and other such documents required by the Contract Documents. Submittals, whether approved or accepted by Owner or not, are not Contract Documents. Claims, notices, Change Orders, Applications for Payment, and requests for information/interpretation are not Submittals.
47. *Substantial Completion*: The time at which the Construction (or a specified part thereof) has progressed to the point where it is sufficiently complete, in accordance with the Contract Documents, so that the Construction (or the specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Construction refer to Substantial Completion thereof.
48. *Supplementary Conditions*: The part of the Contract Documents which amends or supplements these General Conditions, if any.
49. *Supplier*: A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Design-Builder or with any Construction Subcontractor to furnish materials or equipment to be incorporated in the Work by Design-Builder or a Construction Subcontractor, and any lessor of rental equipment used by Design-Builder or a Construction Subcontractor during Construction at the Site.

50. *Technical Data*: Data contained in boring logs, recorded measurements of subsurface water levels, laboratory test results, and other factual, objective information regarding (a) subsurface conditions at the Site, (b) physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), or (c) environmental conditions at the Site, that are set forth in any geotechnical or environmental report prepared for the Project and relied upon by Design-Builder in agreeing to a price (either stipulated, or a Guaranteed Maximum Price) that includes Construction.
51. *Underground Facilities*: All underground lines, pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems, including but not limited to those that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, fire or police signal systems, or traffic or other control systems; and any encasements containing such facilities or systems.
52. *Underground Facilities Data*: Information and data shown or indicated in the Contract Documents or otherwise provided to Design-Builder by Owner with respect to existing Underground Facilities at or adjacent to the Site.
53. *Unit Price Work*: Work to be paid for on the basis of unit prices.
54. *Work*: The entire engineering services, design and construction or the various separately identifiable parts thereof required to be performed or furnished by Design-Builder under the Contract Documents. Work includes and is the result of performing or furnishing Design Professional Services and Construction required by the Contract Documents and all labor, services, and documentation necessary to produce such Design Professional Services and Construction; furnishing, installing, and incorporating all materials and equipment into such Construction; and related services such as testing, start-up, and commissioning, all as required by the Contract Documents.
55. *Work Change Directive*: A written directive to Design-Builder, issued on or after the Effective Date of the Contract, signed by Owner, ordering an addition, deletion or revision in the Work.

## 1.02 Terminology

- A. The words and terms discussed in Paragraph 1.02.B are not defined terms that require initial capital letters, but when used in the Contract Documents have the indicated meanings.
- B. *Intent of Certain Terms or Adjectives*:
1. The word "day" shall constitute a calendar day of 24 hours measured from midnight to the next midnight.
  2. The word "defective," when modifying the word "Construction" refers to Construction that is unsatisfactory, faulty, or deficient in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to Owner's final payment (unless responsibility for the protection thereof has been

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assumed by Owner at Substantial Completion) provided that the defect was not caused by Owner.

3. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
4. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials or equipment or equipment complete and ready for intended use.
5. The words “perform” or “provide” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
6. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Design-Builder, “provide” is implied.
7. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with that meaning.

## **ARTICLE 2 – PRELIMINARY MATTERS**

### **2.01 *Delivery of Bonds and Evidence of Insurance***

- A. *Bonds:* When Design-Builder delivers the executed Agreements to Owner, Design-Builder shall also deliver to Owner such Bonds as Design-Builder may be required to furnish in accordance with Paragraph 6.01.A.
- B. *Evidence of Insurance:* Before any Work is started, Design-Builder and Owner shall each deliver to the other those certificates of insurance that Design-Builder and Owner respectively are required to purchase and maintain in accordance with Article 6.

### **2.02 *Copies of Documents***

- A. Owner shall furnish to Design-Builder printed copies of the Contract (including one fully executed counterpart of the Agreement), and one copy in electronic portable document format (PDF).
- B. Owner shall maintain and safeguard at least one original printed record version of the Contract. Owner shall make such original printed record version of the Contract available to Design-Builder for review.

### **2.03 *Conceptual Documents***

- A. *Design-Builder’s Review of Conceptual Documents:*
  1. Design-Builder acknowledges that the Conceptual Documents furnished by Owner are preliminary and incomplete, and subject to stated limitations and reservations.



2. Design-Builder shall carefully review, analyze, and verify the contents and suitability of the Conceptual Documents before proceeding with the Work (including but not limited to the Design Professional Services).
  3. Design-Builder shall promptly report in writing to Owner any conflict, error, ambiguity, or discrepancy that Design-Builder may discover in the Conceptual Documents, whether during such review or at any later point.
  4. Upon receipt of a report from Design-Builder that there is a conflict, error, ambiguity, or discrepancy in the Conceptual Documents, Owner shall either provide a written interpretation, clarification, or correction to Design-Builder, or authorize Design-Builder to correct or resolve the issue under a Change Order providing an equitable adjustment in Contract Times or Contract Price, or both.
  5. Design-Builder shall not proceed with any Work affected by a reported conflict, error, ambiguity, or discrepancy in the Conceptual Documents until the issue is resolved.
- B. Owner shall not be responsible for any deficiency in the Conceptual Documents that Design-Builder does not discover or report to Owner.
- C. Subject to the foregoing review and reporting obligations, Design-Builder may use the Conceptual Documents as a partial basis for performing or furnishing Design Professional Services, including the preparation of Design Submittals such as the Construction Drawings and Construction Specifications, but despite any such use of the Conceptual Documents the Design-Builder nonetheless shall be responsible to Owner for the quality and soundness of the Design Professional Services.

#### 2.04 *Before Starting the Work*

- A. *Preliminary Schedules:* Within 10 days after commencement of the Contract Times (unless otherwise specified in the Contract Documents), Design-Builder shall submit the following to Owner for Owner's timely review:
1. A preliminary progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;
  2. A preliminary schedule of Submittals (including Design Submittals) which will list each required Submittal and the times for submitting, reviewing, and processing each Submittal;
  3. A preliminary Schedule of Values for all of the Work which will include quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work; and
  4. A preliminary cash flow projection estimating that portion of the Contract Price to be due during each month of performance.

2.05 *Authorized Representatives*

- A. The Authorized Representative for each party has been designated in the Agreement. A party may change its Authorized Representative at any time by giving notice to the other party of the name, mailing and delivery addresses, e-mail address, and telephone numbers of the new Authorized Representative.

2.06 *Initial Conference*

- A. Within 20 days after the Contract Times start to run, Design-Builder will arrange a conference attended by Owner and Design-Builder and others as appropriate to establish a working understanding among the parties as to the Work and to discuss the design concepts, schedules referred to in Paragraph 2.04.A, procedures for handling Submittals, processing Applications for Payment, maintaining required records, and other matters.

2.07 *Review of Schedules*

- A. Not less than 10 days before submission of the first Application for Payment (unless otherwise provided in the Contract Documents), Design-Builder will arrange a conference attended by Design-Builder, Owner, and others as appropriate to review and discuss the schedules submitted in accordance with Paragraph 2.04.A. Design-Builder shall have an additional 10 days after the conference to make corrections and adjustments and to complete and resubmit the schedules for Owner's acceptance. No progress payment shall be made to Design-Builder until Design-Builder submits schedules that comply with the following requirements:
  - 1. Design-Builder's progress schedule shall provide an orderly progression of the Work to completion within any specified Milestones and the Contract Times.
  - 2. Design-Builder's schedule of Submittals shall provide a workable arrangement for submitting, reviewing, and processing Submittals in accordance with Article 8.
  - 3. Design-Builder's Schedule of Values shall provide a reasonable allocation of the Contract Price to component parts of the Work.

2.08 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner and Design-Builder may transmit, and shall accept, Project-related correspondence, text, data, documents, drawings, information, and graphics, including but not limited to Submittals, in electronic media or digital format, either directly, or through access to a secure Project website.
- B. If the Contract does not establish protocols for electronic or digital transmittals, then Owner and Design-Builder shall jointly develop such protocols.
- C. Design-Builder shall not be obligated to furnish documents (including but not limited to Construction Drawings, Construction Specifications, or Record Drawings and Record Specifications) to Owner in any executable, native-file format unless expressly stated otherwise elsewhere in this Contract or specifically requested by the Owner.
- D. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or

computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

### **ARTICLE 3 – DOCUMENTS: INTENT, AMENDING, REUSE**

#### **3.01 Contract Documents**

- A. The Contract Documents are complementary; what is called for by one is as binding as if called for by all.
- B. It is the intent of the Contract Documents to require the design and construction of a functionally complete project (or part thereof).
- C. Design-Builder shall prepare or furnish Construction Drawings and Construction Specifications that are in accord with the Contract Documents and that describe a functionally complete Project (or part thereof) to be constructed in accordance with such Construction Drawings and Construction Specifications, as duly modified.
- D. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.
- E. Design-Builder will furnish or perform all labor, documentation, services (including professional services), materials, and equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result whether or not specifically called, for at no additional cost to Owner.

#### **3.02 Reference Standards**

- A. *Standards, Specifications, Codes, Laws or Regulations:*
  - 1. Reference to standards, specifications, manuals or codes of any technical society, organization or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect on the Effective Date except as may be otherwise specifically stated in the Contract Documents.
  - 2. No provision of any such standard, specification, manual, or code, or instruction of a Supplier, shall be effective to change the duties and responsibilities of Owner, Design-Builder, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall it be effective to assign to Owner or its officers, directors, members, partners, employees, agents, consultants, or subcontractors any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

#### **3.03 Resolving Discrepancies**

- A. If there is a discrepancy between (1) the Conceptual Documents or other Contract Documents issued with the Request for Qualifications or Request for Proposals and (2) the Proposal, the Proposal will control.
- B. If there is a discrepancy between (1) the Conceptual Documents, other Contract Documents issued with the Request for Qualifications or Request for Proposals, or the Proposal and (2) the Proposal Amendment, the Proposal Amendment will control.

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- C. If there is a discrepancy between (1) the Contract Documents and (2) the Construction Drawings and Construction Specifications, the Contract Documents will control unless Design-Builder gave notice of the discrepancy in a Submittal, and Owner approved the Submittal, pursuant to the provisions of Article 8.

3.04 *Ownership and Reuse of Documents*

- A. All documents prepared for or furnished to Owner by Design-Builder pursuant to this Contract (including but not limited to Design Submittals) are instruments of service. With respect to such documents:
  - 1. Design-Builder shall have and retain the ownership, title, and property rights, including copyright, patent, intellectual property, and common law rights, in the documents.
  - 2. During the course of the Project, Design-Builder will provide copies of Design Submittals to Owner for purposes of review and comment. Owner may retain copies of such documents for its records.
  - 3. Owner may use its copy of the Record Drawings and Record Specifications for Owner's purposes in operating and maintaining the constructed facilities.
  - 4. Upon Owner's termination of this Contract for cause pursuant to Paragraph 15.02, Owner shall receive a limited, non-exclusive license to use any completed Design Submittals in continuing the Project, subject to the limitations in this Paragraph 3.04.
  - 5. The documents prepared or furnished by Design-Builder under this Contract, regardless of ownership, transfer, license, completion status, or termination of the Contract, are for Design-Builder's use, and are not intended or represented to be suitable for use on the Project by Owner or any party other than Design-Builder, or for reuse by Owner or others on extensions of the Project or on any other project, except as otherwise stated in this Contract. Any use or reuse by Owner or others on Owner's behalf will be at Owner's sole risk, and without liability or legal exposure to Design-Builder, the Project Design Professionals, or their subconsultants, and Owner shall indemnify and hold harmless Design-Builder, the Project Design Professionals, and their subconsultants from all claims, damages, losses and expenses, including attorneys' fees, arising out of or resulting from any such use or reuse.

**ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK**

4.01 *Commencement of Contract Times*

- A. The Contract Times will commence to run on the Effective Date of the Contract.

4.02 *Starting the Work*

- A. Design-Builder shall start to perform the Work in accordance with the Notice to Proceed issued by Owner.

4.03 *Progress Schedule*

- A. Owner may rely on the progress schedule established in accordance with Paragraph 2.04, as duly adjusted, in planning and conducting ongoing operations and other work at the Site.

- B. Design-Builder shall adhere to the progress schedule established in accordance with Paragraph 2.04 as it may be adjusted from time to time, as provided below:
  - 1. Design-Builder shall submit to Owner proposed adjustments in the progress schedule that will not change the Contract Times (or Milestones). Owner shall accept such adjustments provided that Owner, in planning and conducting ongoing operations and other work at the Site, has not reasonably relied on the schedule element that is proposed to be adjusted. If Owner has so relied, then Owner and Design-Builder shall promptly meet and seek a resolution that addresses the objectives of both parties, or adjust the Contract Price.
  - 2. Design-Builder shall submit proposed adjustments in the progress schedule that will change the Contract Times (including Milestones) in accordance with the requirements of Paragraph 11.06. Such adjustments may only be made by a Change Order.
- C. *Continuing the Work:* Design-Builder shall continue the Work and adhere to the progress schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as Design-Builder and Owner may otherwise agree in writing.

#### 4.04 *Delays in Design-Builder's Progress*

- A. If Owner or anyone for whom Owner is responsible delays, disrupts, or interferes with the performance or progress of the Work, then Design-Builder shall be entitled to an equitable adjustment in the Contract Times and Contract Price. Design-Builder's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Design-Builder's ability to complete the Work within the Contract Times.
- B. Design-Builder shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference within the control of Design-Builder. Delay, disruption, and interference attributable to and within the control of a Project Design Professional, Construction Subcontractor, or Supplier shall be deemed to be delays within the control of Design-Builder.
- C. If Design-Builder's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Design-Builder, and those for which they are responsible, then Design-Builder shall be entitled to an equitable adjustment in Contract Times. Design-Builder's entitlement to such an adjustment of the Contract Times is conditioned on such adjustment being essential to Design-Builder's ability to complete the Work within the Contract Times. Such an adjustment shall be Design-Builder's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
  - 1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, pandemics and earthquakes;
  - 2. Abnormal weather conditions (abnormal weather shall be defined as excessive abnormal weather conditions in excess of the adverse weather typically expected by the

National Oceanic Atmospheric Administration (NOAA) (<https://www.ncei.noaa.gov/>) for the Project area (i.e., unusually severe weather));

3. Acts or failures to act of utility owners (other than those performing other work at or adjacent to the Site by arrangement with the Owner, as contemplated in Article 9); and
  4. Acts of war or terrorism.
- D. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5.
  - E. Paragraph 9.03 governs delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.
  - F. Design-Builder shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Design-Builder.
  - G. If Design-Builder seeks an adjustment in Contract Price or Contract Times under this paragraph, Design-Builder shall submit a request for a Change Order to Owner within 30 days of the commencement of the delaying, disrupting, or interfering event.
  - H. If Design-Builder seeks an adjustment in Contract Price or Contract Times under this paragraph related to abnormal weather conditions, the Design Builder must provide Owner with evidence of excessive abnormal weather conditions in excess of the adverse weather typically expected by the National Oceanic Atmospheric Administration (NOAA) (<https://www.ncei.noaa.gov/>) for the Project area, in order to justify a delay due to excess abnormal adverse weather (i.e., unusually severe weather).

## **ARTICLE 5 – SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS**

### **5.01 *Availability of Lands***

- A. Owner shall furnish the Site. Owner shall notify Design-Builder of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Design-Builder will have to comply in performing the Work.
- B. Upon reasonable written request, Owner shall furnish Design-Builder with a current statement of record legal title and legal description of the lands upon which the Construction is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws or Regulations.
- C. Design-Builder shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

## 5.02 *Use of Site and Other Areas*

### A. *Limitation on Use of Site and Other Areas:*

1. Design-Builder shall confine construction equipment, the storage of materials and equipment, and the operations of construction workers to the Site and other areas permitted by Laws or Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Design-Builder shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any adjacent land or areas, resulting from the performance of the Work.
  2. Should any claim be made by any such owner or occupant because of the performance of Work, Design-Builder shall promptly settle with such other party by negotiation, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or at law.
  3. To the fullest extent permitted by Laws or Regulations, Design-Builder shall indemnify and hold harmless Owner, Owner's consultants, and anyone directly or indirectly employed by any of them from and against all claims, costs, losses and damages (including, but not limited to, fees of engineers, architects, attorneys and other professionals and court and arbitration or other dispute resolution costs) arising out of or resulting from any claim brought by any such owner or occupant against Owner, or any other party indemnified hereunder to the extent caused by or based upon Design-Builder's performance of the Construction.
- B. *Removal of Debris:* During the performance of the Construction, Design-Builder shall keep the premises free from accumulations of waste materials, rubbish, and other debris resulting from the Construction. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws or Regulations.
- C. *Cleaning:* Prior to Substantial Completion, Design-Builder shall clean the Site and make it ready for utilization by Owner. At completion of Construction, Design-Builder shall remove all tools, appliances, construction equipment, temporary construction and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. *Loading Structures:* Design-Builder shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Design-Builder subject any part of the Construction or adjacent property to stresses or pressures that will endanger it.

## 5.03 *Reference Points*

- A. Design-Builder shall be responsible for laying out the Work and shall protect and preserve reference points and property monuments established by Owner, and shall make no changes or relocations of such reference points or monuments without the prior written approval of Owner. Design-Builder shall report to Owner whenever any reference point or property monument is lost or destroyed, or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

#### 5.04 *Differing Site Conditions*

- A. Design-Builder shall promptly, and before the conditions are disturbed, give a written notice to Owner of (i) subsurface or latent physical conditions at the Site (whether discovered during investigation of the Site or during Construction) which differ materially from those indicated in the Contract Documents, or in any Technical Data, or (ii) unknown physical conditions at the Site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character called for by the Contract Documents.
- B. Owner will investigate the Site conditions promptly after receiving the notice. Design-Builder shall supplement the notice by promptly submitting to Owner any additional information regarding schedule and cost impacts, and a specific request for a Change Order. Owner shall then make a determination regarding the site condition and the impact, if any, on Contract Price and Contract Times. If the conditions do materially so differ and cause an increase or decrease in the Design-Builder's cost of, or the time required for, performing any part of the Work, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the Contract Price or Times modified in writing by Change Order in accordance with Article 11.
- C. No request by Design-Builder for an equitable adjustment under this Paragraph 5.04 shall be allowed unless Design-Builder has given the written notice required.
- D. The provisions of this Paragraph 5.04 are not intended to apply to a Hazardous Environmental Condition or Underground Facility uncovered or revealed at the Site.

#### 5.05 *Underground Facilities*

- A. *Procedure for Identifying Underground Facilities:* Promptly after the Effective Date of the Contract, Design-Builder shall review the Underground Facilities Data furnished by Owner and use ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data," as a basis for establishing a procedure ("Underground Facilities Procedure") for the further identification, investigation, and mapping of Underground Facilities at or adjacent to the Site. Design-Builder shall establish and use the Underground Facilities Procedure to aid in the provision of Design Professional Services and the performance of Construction, and to reduce and manage risks associated with Underground Facilities. Such Underground Facilities Procedure shall take into account the Site and the nature of the Project.
  - 1. The Underground Facilities Procedure shall include a plan to keep Underground Facilities information current as Design-Builder proceeds with the provision of Design Professional Services, and to add new or relocated Underground Facilities information to the base utility or Site drawings.
  - 2. To manage the potential impact of design changes on Underground Facilities, Design-Builder shall modify or reapply the Underground Facilities Procedure as the design progresses and changes.
- B. *Design-Builder's Responsibilities:* Unless otherwise expressly provided in the Contract, Design-Builder shall have full responsibility for the following; and, subject to the provisions



of Paragraphs 5.05.C, D, and E, the cost of all of the following will be included in the Contract Price:

1. Establishing and executing the Underground Facilities Procedure referred to in Paragraph 5.05.A, including updating, modification, and reapplication duties;
  2. Coordinating the Work with the owners (including Owner) of such Underground Facilities, during the provision of Design Professional Services and Construction;
  3. Verifying the actual location of specific Underground Facilities through exposure, as needed for the Design Professional Services;
  4. Complying with applicable state and local utility damage prevention Laws and Regulations during Construction, including contacting DigSafe and utility agencies to mark out the location of underground utilities, structures, and facilities; and
  5. The safety and protection of all existing Underground Facilities at the Site, and repairing any damage to such Underground Facilities resulting from the Construction, subject to the provisions of Paragraph 5.05.D.
- C. *Results of Design-Builder's Execution of Underground Facilities Procedure:* If, during the execution of the Underground Facilities Procedure referred to in Paragraph 5.05.A, the Design-Builder identifies an Underground Facility that was not shown or indicated in the Underground Facilities Data, or was not shown or indicated with reasonable accuracy, causing an increase or decrease in the Design-Builder's cost of, or the time required for, providing Design Professional Services or performing the Construction, then Design-Builder shall submit to Owner a request for a Change Order seeking an equitable adjustment to the Contract Price or Times under this clause. Such request shall be made within 30 days of the identification of the Underground Facility in question.
- D. *Underground Facility Found During Construction:* If Design-Builder believes that an Underground Facility that is uncovered, exposed, or revealed at the Site during Construction was not shown or indicated in the Underground Facilities Data, or was not shown or indicated with reasonable accuracy, and also that such Underground Facility was not identified or mapped with reasonable accuracy despite Design-Builder's adequate establishment and execution of the Underground Facilities Procedure referred to in Paragraph 5.05.A, then Design-Builder shall promptly give written notice to Owner, and supplement the notice by submitting to Owner a request for a Change Order seeking an equitable adjustment to the Contract Price or Times under this clause. Such request shall be made within 30 days of the uncovering or revealing of the Underground Facility in question.
1. *Owner's Review:* Owner will investigate the Underground Facility found during Construction promptly after receiving the notice. If Owner concurs with Design-Builder that the Underground Facility that is uncovered, exposed, or revealed at the Site was not shown or indicated in the Underground Facilities Data, or was not shown or indicated with reasonable accuracy, and further was not identified or mapped with reasonable accuracy despite Design-Builder's adequate establishment and execution of the Underground Facilities Procedure referred to in Paragraph 5.05.A, causing an increase or decrease in the Design-Builder's cost of, or the time required for, performing any part of the Work, whether or not changed as a result of the actual location, then an

equitable adjustment shall be made under this clause and the Contract Price or Times modified in writing by Change Order in accordance with Article 11. If Owner does not concur with Design-Builder, then Owner shall so indicate in writing, with a specific explanation of the reason for non-concurrence.

2. No request by Design-Builder for an equitable adjustment under Paragraph 5.05.D shall be allowed unless Design-Builder has given the written notice required.
- E. *Inadequate Establishment or Execution of Underground Facilities Procedure:* If Design-Builder does not establish an Underground Facilities Procedure that is (1) adequate for the Site and the nature of the Project and (2) consistent with the guidelines set forth in ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data," or Design-Builder does not adequately execute a duly established Underground Facilities Procedure, then Design-Builder shall bear all costs associated with the presence of an Underground Facility that was not identified or located with reasonable accuracy, including but not limited to delay, redesign, relocation, and increased Construction costs, if such Underground Facility would have been identified and located with reasonable accuracy by an adequate and properly executed Underground Facilities Procedure that was consistent with ASCE 38.

#### 5.06 *Hazardous Environmental Conditions at Site*

- A. *Reliance by Design-Builder on Technical Data Authorized:* Design-Builder may rely on the accuracy of the Technical Data with respect to environmental conditions at the Site.
- B. Design-Builder shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- C. Design-Builder shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Design-Builder, Project Design Professionals, Construction Subcontractors, Suppliers, or anyone else for whom Design-Builder is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- D. If Design-Builder encounters, uncovers, or reveals a Hazardous Environmental Condition (whether during Site investigation or during Construction) whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Design-Builder or anyone for whom Design-Builder is responsible creates a Hazardous Environmental Condition, then Design-Builder shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.16); and (3) notify Owner (and promptly thereafter confirm such notice in writing). Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take corrective action, if any, and take such actions as are necessary to permit Owner to timely obtain required permits and provide Design-Builder the written notice required by Paragraph 5.06.E. If Design-Builder or anyone for whom Design-Builder is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate

the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.

- E. Design-Builder shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Design-Builder either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- F. If after receipt of such written notice Design-Builder does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then the portion of the Work that is in the area affected by such condition shall be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 9.
- G. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Design-Builder, Project Design Professionals, Construction Subcontractors, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Contract Documents or the Technical Data, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Design-Builder or by anyone for whom Design-Builder is responsible. Nothing in this Paragraph 5.06.G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- H. To the fullest extent permitted by Laws and Regulations, Design-Builder shall indemnify and hold harmless Owner and its officers, directors, members, partners, employees, agents, consultants, and subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the Design-Builder's failure to control, contain, or remove a Constituent of Concern brought to the Site by Design-Builder or by anyone for whom Design-Builder is responsible, or to a Hazardous Environmental Condition created by Design-Builder or by anyone for whom Design-Builder is responsible. Nothing in this Paragraph 5.06.H shall obligate Design-Builder to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

## **ARTICLE 6 – BONDS AND INSURANCE**

### **6.01 *Performance, Payment, and Other Bonds***

- A. Design-Builder shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of Design-Builder's obligations under the Contract. These bonds shall remain in effect until one

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year after the date when final payment becomes due, or until completion of the correction period specified in Paragraph 14.08, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other specific provisions of the Contract. Design-Builder shall also furnish such other bonds as are required by the Supplementary Conditions or other specific provisions of the Contract.

- B. All bonds shall be in the form prescribed by the Contract except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in Circular 570 (as amended and supplemented) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual’s authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.
- C. Design-Builder shall obtain the required bonds from surety companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds in the required amounts.
- D. If the surety on a bond furnished by Design-Builder is declared bankrupt or becomes insolvent, or its right to do business is terminated in any state or jurisdiction where any part of the Project is located, or the surety ceases to meet the requirements above, then Design-Builder shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the bond and surety requirements above.
- E. If Design-Builder has failed to obtain a required bond, Owner may exclude the Design-Builder from the Site and exercise Owner’s termination rights under Article 15.
- F. Upon request to either Owner or Design-Builder from any Construction Subcontractor, Project Design Professional, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, the recipient of the request shall provide a copy of the payment bond to such person or entity.

#### 6.02 *Insurance—General Provisions*

- A. Owner and Design-Builder shall obtain and maintain insurance as required in this Article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Design-Builder shall be obtained from insurance companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. All insurance required by the Contract to be purchased and maintained by Design-Builder shall be primary and without contribution by insurance maintained by Owner.
- D. Alternative forms of insurance coverage, including but not limited to self-insurance and “Occupational Accident and Excess Employer’s Indemnity Policies,” are not sufficient to

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meet the insurance requirements of this Contract, unless expressly permitted in the Supplementary Conditions.

- E. Design-Builder shall require (a) its Construction Subcontractors and Engineer (and any other Project Design Professional that is an independent individual or entity) to purchase and maintain commercial general liability, automobile liability, workers' compensation, employer's liability, professional liability (as applicable), and umbrella or excess liability insurance, and (b) its Construction Subcontractors to purchase and maintain contractor's pollution liability insurance. All such required insurance shall meet the same requirements for the applicable category of insurance established in this Contract for Design-Builder, unless otherwise indicated in the Supplementary Conditions.
- F. Design-Builder shall deliver to Owner, with copies to each additional insured (as identified in this Article, in the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Design-Builder has obtained and is maintaining the policies, coverages, and endorsements required by the Contract. Upon request by Owner or any other insured, Design-Builder shall also furnish other evidence of such required insurance, including but not limited to copies of policies and endorsements, documentation of applicable self-insured retentions (if permitted) and deductibles, and evidence of insurance required to be purchased and maintained by Design-Builder's Construction Subcontractors, Engineer, and any other Project Design Professional that is an independent individual or entity. Design-Builder may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.
- G. Owner shall deliver to Design-Builder, with copies to each additional insured (as identified in this Article, the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Owner has obtained and is maintaining the policies, coverages, and endorsements required of Owner by the Contract (if any). Upon request by Design-Builder or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Owner may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.
- H. Failure of Owner or Design-Builder to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Design-Builder to identify a deficiency in compliance from the evidence provided, shall not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- I. If either party does not purchase or maintain all of the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
- J. If Design-Builder has failed to obtain and maintain required insurance, Owner may exclude the Design-Builder from the Site, impose an appropriate set-off against payment, and exercise Owner's termination rights under Article 15.

- K. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price shall be adjusted accordingly.
- L. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Design-Builder or Design-Builder's interests.
- M. The insurance and insurance limits required herein shall not be deemed as a limitation on Design-Builder's liability under the indemnities granted to Owner and other individuals and entities in the Contract.

#### 6.03 *Design-Builder's Insurance*

- A. *Workers' Compensation and Employer's Liability:* Design-Builder shall purchase and maintain workers' compensation and employer's liability insurance with limits of not less than \$500,000 each accident or illness for:
  - 1. Claims under workers' compensation, disability benefits, and other similar employee benefit acts.
  - 2. United States Longshoreman and Harbor Workers' Compensation Act and Jones Act coverage (if applicable).
  - 3. Claims for damages because of bodily injury, occupational sickness or disease, or death of Design-Builder's employees (by stop-gap endorsement in monopolist worker's compensation states).
  - 4. Foreign voluntary worker compensation (if applicable).
- B. *Commercial General Liability—Claims Covered:* Design-Builder shall purchase and maintain commercial general liability insurance with limits of not less than \$5,000,000 per occurrence and \$10,000,000 in the aggregate, covering all operations by or on behalf of Design-Builder, on an occurrence basis, against:
  - 1. Claims for damages because of bodily injury, sickness or disease, or death of any person other than Design-Builder's employees.
  - 2. Claims for damages insured by reasonably available personal injury liability coverage.
  - 3. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.
- C. *Commercial General Liability—Form and Content:* Design-Builder's commercial liability policy shall be written on a 1996 (or later) ISO commercial general liability form (occurrence form) and include the following coverages and endorsements:
  - 1. Products and completed operations coverage:
    - a. Such insurance shall be maintained for three years after final payment.
    - b. Design-Builder shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.

2. Blanket contractual liability coverage, to the extent permitted by law, including but not limited to coverage of Design-Builder's contractual indemnity obligations in Paragraph 7.19.
  3. Broad form property damage coverage.
  4. Severability of interests and no insured-versus-insured or cross-liability exclusions.
  5. Underground, explosion, and collapse coverage.
  6. Personal injury coverage.
  7. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together). If Design-Builder demonstrates to Owner that the specified ISO endorsements are not commercially available, then Design-Builder may satisfy this requirement by providing equivalent endorsements.
  8. For design professional additional insureds, ISO Endorsement CG 20 32 07 04, "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent.
- D. *Commercial General Liability—Excluded Content:* The commercial general liability insurance policy, including its coverages, endorsements, and incorporated provisions, shall not include any of the following:
1. Any modification of the standard definition of "insured contract."
  2. Any exclusion for water intrusion or water damage.
  3. Any provisions resulting in the erosion of insurance limits by defense costs.
  4. Any exclusion of coverage relating to earth movement.
  5. Any exclusion for the insured's vicarious liability, strict liability, or statutory liability.
  6. Any limitation or exclusion based on the nature of Design-Builder's work.
  7. Any professional liability exclusion broader in effect than ISO form CG 22 79 07 98.
- E. *Automobile liability:* Design-Builder shall purchase and maintain automobile liability insurance against claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy shall be written on an occurrence basis. The coverage limits for automobile liability insurance shall not be less than \$1,000,000 per occurrence, combined single limit, for bodily injury and property damage.
- F. *Umbrella or excess liability:* Design-Builder shall purchase and maintain umbrella or excess liability insurance written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in the paragraphs above. Subject to industry-standard exclusions, the coverage afforded shall be procured on a "follow the form" basis as to each and every one of the underlying policies. Design-Builder may meet the combined limits of insurance (underlying policy plus applicable umbrella or excess) specified for employer's liability, commercial general liability, and automobile liability through the primary policies alone, or through combinations of the primary insurance

policies and an umbrella or excess liability policy that follows the form of the underlying policy, as specified herein.

- G. *Contractor's pollution liability insurance:* Design-Builder shall purchase and maintain a policy covering third-party injury and property damage claims, including clean-up costs, as a result of pollution conditions arising from Design-Builder's operations and completed operations. This insurance shall be maintained for no less than three years after final completion.
- H. *Additional insureds:* The Design-Builder's commercial general liability, automobile liability, umbrella or excess, and pollution liability policies shall include and list as additional insureds Owner and any individuals or entities identified as required additional insureds in the Supplementary Conditions; include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds; and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby (including as applicable those arising from both ongoing and completed operations) on a non-contributory basis. Design-Builder shall obtain all necessary endorsements to support these requirements. The City of Providence, Providence Water Supply Board, and Providence Water shall be named as additional insured as described herein.
- I. *Professional liability insurance:*
  - 1. Design-Builder shall be responsible for purchasing and maintaining professional liability insurance with limits of not less than \$3,000,000 per occurrence and aggregate. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which Design-Builder is legally liable.
  - 2. If in the performance of this Contract any Design Professional Services, or other professional engineering or similar services, are to be performed by an independent design professional, under direct contract to Design-Builder or at any lower contractual tier, then Design-Builder shall be responsible for assuring that such independent design professional purchases and maintains professional liability insurance. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which the independent design professional is legally liable.
  - 3. If a Construction Subcontractor at any tier will provide or furnish design, engineering, or other similar professional services under this Contract, as the result of a delegation of professional design responsibilities or otherwise, then Design-Builder shall assure that such Construction Subcontractor purchases and maintains applicable professional liability insurance. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which the insured party is legally liable.
  - 4. Any professional liability insurance required under this Contract shall be maintained throughout the duration of the Contract and for a minimum of three years after Substantial Completion. For each claims-made professional liability policy furnished and maintained to satisfy the requirements of this Paragraph 6.03.I, the retroactive date on the policy shall pre-date the commencement of furnishing services on the Project.



- J. *General provisions:* The policies of insurance required by this Paragraph 6.03 shall:
1. Include at least the specific coverages provided in this Article. In no case shall the coverage limits stated herein for Commercial General Liability, Automobile Liability, and professional liability be less than the total Contract Price. If the total Contract Price exceeds any stated limit, the limit shall be adjusted to the satisfaction of the Owner to the next highest \$1,000,000 exceeding the total Contract Price.
  2. Be written for not less than the limits of coverage provided in this Article and in the Supplementary Conditions, or required by Laws or Regulations, whichever is greater.
  3. Contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least 30 days' prior written notice has been given to Owner by Design-Builder and each insured under the policy.
  4. Remain in effect at least until final payment and Design-Builder's departure from the Site (and longer if expressly required elsewhere in this Contract), and at all times thereafter when Design-Builder may be correcting, removing, or replacing defective Construction as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract Documents.
  5. Provide applicable protection from claims that may arise out of or result from the performance of the Work, whether such performance is by Design-Builder, a Project Design Professional, any Construction Subcontractor or Supplier, or anyone directly or indirectly retained by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable.
  6. If any insurance policy or certificate are not satisfactory to the Owner, the Design-Builder shall secure other policies in form and amounts and with companies satisfactory to the Owner. The Design-Builder shall not cause policies to be cancelled or permit them to lapse, and all insurance policies shall contain a clause to the effect that the policy shall not be subject to cancellation or a reduction in the required limits of liability or amounts of insurance until notice has been sent to Owner not less than 30 days prior to when cancellation of or change in insurance will take effect. Such notice to Owner shall contain true transcripts from the policy, authenticated by the proper officer of the insurer evidencing in particular those insured, the extent of the insurance, the location and operations to which the insurance applies, the expiration date and the above mentioned notice of cancellation clause.

6.04 *Owner's Liability Insurance*

- A. In addition to the liability insurance required to be provided by Design-Builder, the Owner, at Owner's option and expense, may purchase and maintain Owner's own liability insurance to protect Owner against claims which may arise with respect to the Project.
- B. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Design-Builder, and Design-Builder cannot rely upon Owner's liability policies for any of Design-Builder's obligations to the Owner or third parties.

## 6.05 *Property Insurance*

- A. *Builder's Risk*: Unless otherwise provided in the Supplementary Conditions, Design-Builder shall purchase and maintain builder's risk insurance upon the Construction on a completed value basis, in the amount of the full insurable replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:
1. Include the Owner and Design-Builder as named insureds, and all Construction Subcontractors, and any individuals or entities required by the Supplementary Conditions to be insured under such builder's risk policy, as insureds or named insureds. For purposes of the remainder of this Paragraph 6.05, Paragraphs 6.06 and 6.07, and any corresponding Supplementary Conditions, the parties required to be insured shall collectively be referred to as "insureds."
  2. Be written on a builder's risk "all risk" policy form that shall at least include insurance for physical loss or damage to the Construction, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire; lightning; windstorm; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; flood; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; water damage (other than that caused by flood); and such other perils or causes of loss as may be specifically required by the Supplementary Conditions. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; or flood, are not commercially available under builder's risk policies, by endorsement or otherwise, such insurance may be provided through other insurance policies acceptable to Owner and Design-Builder.
  3. Cover, as insured property, at least the following: (a) the Construction (including but not limited to all buildings, structures, foundations, excavations, underground property, pilings, underground pipes, flues, drains, wiring, cables, and the like) and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into the Construction, including Owner-furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent Construction but which are intended to provide working access to the Site, or to the Construction, or which are intended to provide temporary support for the Construction, including scaffolding, form work, fences, shoring, lighting, cribbing, falsework, and temporary structures.
  4. Cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects).
  5. Extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site (but not including property stored at the premises of a manufacturer or Supplier).
  6. Extend to cover damage or loss to insured property while in transit.

7. Allow for partial occupation or use of the Construction by Owner, such that those portions of the Construction that are not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
  8. Provide for the waiver of claims and waiver of the insurer's subrogation rights, as set forth in Paragraph 6.06.
  9. Provide primary coverage for all losses and damages caused by the perils or causes of loss covered.
  10. Not include a co-insurance clause.
  11. Include an exception for ensuing losses from physical damage or loss with respect to any defective workmanship, design, or materials exclusions.
  12. Include performance/hot testing and start-up.
  13. Be maintained in effect, subject to the provisions herein regarding Substantial Completion and partial occupancy or use of the Construction by Owner, until the Construction is complete.
- B. *Notice of Cancellation or Change:* All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 6.05 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 10 days' prior written notice has been given to the purchasing policyholder. Within 3 days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured.
- C. *Deductibles:* The purchaser of any required builder's risk or property insurance shall pay for costs not covered because of the application of a policy deductible.
- D. *Partial Occupancy or Use by Owner:* If Owner will occupy or use a portion or portions of the Construction prior to Substantial Completion of all the Work as provided in Paragraph 14.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Design-Builder) will provide notice of such occupancy or use to the builder's risk insurer. The builder's risk insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy; rather, those portions of the Construction that are occupied or used by Owner may come off the builder's risk policy, while those portions of the Construction not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
- E. *Additional Insurance:* If Design-Builder elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.05, it may do so at Design-Builder's expense.
- F. *Insurance of Other Property:* If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, such as tools, construction equipment, or other personal property owned by Design-Builder, a Construction Subcontractor, or an employee of Design-Builder or a Construction Subcontractor, then the entity or individual owning such property item will be responsible for deciding whether to insure it, and if so in what amount.

- G. *Loss of Use and Delay in Start-up*: Unless otherwise expressly stated elsewhere in this Contract, the Owner is responsible, at its option, for purchase and maintenance of insurance to protect Owner against the loss of use or delays in start-up caused by property damage.

6.06 *Waiver of Rights*

- A. All policies purchased in accordance with Paragraph 6.05, expressly including the builder's risk policy, shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insureds thereunder, or against any Project Design Professional or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors. Owner and Design-Builder waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Construction; and, in addition, waive all such rights against the Project Design Professionals, their consultants, all Construction Subcontractors, all individuals or entities identified in the Supplementary Conditions as insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Design-Builder as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. Owner waives all rights against Design-Builder, the Project Design Professionals, and the Construction Subcontractors, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for:
1. Loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Construction caused by, arising out of, or resulting from fire (unless the fire is a result of Design-Builder's negligence) or other perils whether or not insured by Owner; and
  2. Loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire (unless the fire is a result of Design-Builder's negligence) or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial occupancy or use pursuant to Paragraph 14.04, after Substantial Completion pursuant to Paragraph 14.03, or after final payment pursuant to Paragraph 14.06.
- C. Any insurance policy maintained by Owner covering any loss, damage, or consequential loss referred to in Paragraph 6.06.B shall contain provisions to the effect that the insured is allowed to waive the insurer's rights of subrogation against Design-Builder, Project Design Professionals, Construction Subcontractors, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, in a written contract executed prior to the loss, damage, or consequential loss.
- D. Design-Builder shall be responsible for assuring that each Construction Subcontract contains provisions whereby the Construction Subcontractor waives all rights against Owner, Design-Builder, all individuals or entities identified in the Supplementary Conditions as insureds, the

Project Design Professionals, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by builder's risk insurance and any other property insurance applicable to the Project.

6.07 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of property insurance required by Paragraph 6.05 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.
- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.05 shall maintain such funds in a segregated account, and distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.
- C. If no other special agreement is reached, the damaged Construction shall be repaired or replaced, the money so received applied on account thereof, and the Construction and the cost thereof covered by Change Order, if needed.

**ARTICLE 7 – DESIGN-BUILDER'S RESPONSIBILITIES**

7.01 *Design Professional Services*

- A. Design-Builder shall provide the Design Professional Services needed to successfully perform and complete the Work required under this Contract.
- B. *Standard of Care:* The standard of care for all Design Professional Services performed or furnished by Design-Builder under this Contract will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality.

7.02 *Construction*

- A. Design-Builder shall perform and furnish the Construction pursuant to the Contract Documents, the Construction Drawings, and the Construction Specifications, as duly modified.
- B. Design-Builder shall keep Owner advised as to the progress of the Construction.

7.03 *Supervision and Superintendence of Construction*

- A. Design-Builder shall supervise, inspect, and direct the Construction competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to provide the Construction in accordance with the Contract Documents. Design-

Builder shall be solely responsible for the means, methods, techniques, sequences, and procedures of Construction.

- B. At all times during the progress of Construction, the Design-Builder shall assign a competent resident superintendent who shall not be replaced without written notice to Owner except under extraordinary circumstances.

#### 7.04 *Labor; Working Hours*

- A. Design-Builder shall provide competent, suitably qualified personnel to perform the Work as required by the Contract Documents. Design-Builder shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise indicated in the Contract Documents, and in the absence of any Laws or Regulations to the contrary, Design-Builder may only perform the Construction from 7:30 AM to 5:00 PM Monday through Friday and may not perform Construction on Saturdays, Sundays, or legal holidays, unless Owner has provided written authorization.

#### 7.05 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Design-Builder shall furnish or cause to be furnished and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.
- B. All materials and equipment incorporated into the Work shall be as specified by Owner or in the Construction Drawings or Construction Specifications, and unless specified otherwise shall be new and of good quality. All warranties and guarantees specifically called for by the Contract Documents shall expressly run to the benefit of Owner. If required by Owner, Design-Builder shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise provided in the Contract Documents.

#### 7.06 *"Or Equals" and Substitutions*

- A. If an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, then during the preparation of the proposed Construction Drawings and Construction Specifications, the Design-Builder may request that Owner authorize the use of other items of material or equipment, or items from other proposed suppliers, by including the proposed items in the proposed Construction Drawings or Construction Specifications, with required notice to Owner that the Submittal contains a variation from the Contract Documents. Owner in its sole discretion may approve the use of the item if Owner determines that the item is functionally equal to that named and sufficiently similar so that no change in related Work will be required, taking into consideration whether the item:

1. Is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
  2. Will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
  3. Has a proven record of performance and availability of responsive service; and
  4. Is not objectionable.
- B. *Effect of Owner's Determination:* Neither approval nor denial of an "or-equal" request shall result in any change in Contract Price. The denial of an "or-equal" request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents.
- C. *Substitutes:* During the preparation of the proposed Construction Drawings and Construction Specifications, the Design-Builder may propose a substitute to an item of material or equipment that is required to be furnished by the Contract Documents. Any such proposal shall be made in a transmittal to Owner that is separate from and independent of any Design Submittals. The proposal shall describe the advantages, disadvantages, and changes in Contract Price or Contract Time associated with the proposed substitute. Approval of the proposed substitute shall be at Owner's sole discretion. If approved, the substitute item shall be incorporated in the Construction Drawings and Construction Specifications.
- D. *Design Professional Review:* Before Design-Builder transmits its proposal to Owner, the Project Design Professional that designed the portion of the Work affected by the proposed "or equal" or substitute shall review and approve the proposal.
- E. *Construction Drawings and Construction Specifications:* "Or equal" or substitute proposals with respect to items of material or equipment that are required in the Construction Drawings and Construction Specifications shall be considered proposed modifications of the Construction Drawings and Construction Specifications, and shall be governed by the provisions of Paragraph 8.02.H.

7.07 *Concerning Project Design Professionals, Construction Subcontractors, Suppliers, and Others*

- A. Design-Builder may retain Project Design Professionals, Construction Subcontractors, and Suppliers for the performance of parts of the Work. Such Project Design Professionals, Construction Subcontractors, and Suppliers must be acceptable to Owner.
- B. Design-Builder shall retain specific Project Design Professionals, Construction Subcontractors, Suppliers, or other individuals or entities for the performance of designated parts of the Work if required to do so by the Contract Documents (including but not limited to the Proposal Amendment) as of the Effective Date.
- C. Prior to entry into any binding Design Agreement, Construction Subcontract, or purchase order, Design-Builder shall submit to Owner the identity of the proposed Project Design Professional, Construction Subcontractor, or Supplier (unless Owner has already deemed such proposed contractual party acceptable, during the bidding process or otherwise). Such proposed contractual party shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection prior to execution of the Contract.

- D. Owner may require the replacement of any Project Design Professional, Construction Subcontractor, Supplier, or other entity retained by Design-Builder to perform any part of the Work solely on the basis of substantive, reasonable objection after due investigation. Design-Builder shall submit an acceptable replacement for the rejected Project Design Professional, Construction Subcontractor, Supplier, or other entity.
- E. If Owner requires the replacement of any Project Design Professional, Construction Subcontractor, Supplier, or other entity retained by Design-Builder to perform any part of the Work, Design-Builder will not be entitled to an adjustment in Contract Price or Contract Times, or both, with respect to the replacement.
- F. No acceptance by Owner of Engineer or of any Project Design Professional, Construction Subcontractor, Supplier, or other entity, whether initially or as a replacement, shall constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.
- G. Design-Builder shall be fully responsible to Owner for all acts and omissions of the Project Design Professionals, Construction Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work, just as Design-Builder is responsible for Design-Builder's own acts and omissions.
- H. Design-Builder shall be solely responsible for scheduling and coordinating the services and work of the Project Design Professionals, Construction Subcontractors, Suppliers, and all other individuals or entities performing or furnishing any of the Work.
- I. Design-Builder shall restrict all Project Design Professionals, Construction Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work from communicating directly with Owner, except in case of an emergency or a matter involving public health, safety, or welfare, or as otherwise expressly allowed herein.
- J. Owner may furnish to any Project Design Professional, Construction Subcontractor, or Supplier, to the extent practicable, information about amounts paid to Design-Builder on account of Work performed for Design-Builder by the requesting party.
- K. Nothing in the Contract Documents:
  - 1. Shall create for the benefit of any Project Design Professional, Construction Subcontractor, Supplier, or other third-party individual or entity any contractual relationship between Owner and such third-party individual or entity; nor
  - 2. Shall create any obligation on the part of Owner to pay or to see to the payment of any money due any Project Design Professional, Construction Subcontractor, Supplier, or other third-party individual or entity except as may otherwise be required by Laws and Regulations.

7.08 *Patent Fees and Royalties*

- A. Design-Builder shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Conceptual Documents or other Contract Documents for use in the performance of the Construction,



and if to the actual knowledge of Owner its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, then Owner has disclosed the existence of such rights to Design-Builder in the Conceptual Documents or other Contract Documents.

- B. To the fullest extent permitted by Laws or Regulations, Design-Builder shall indemnify and hold harmless Owner and Owner's Consultant(s), and the officers, directors, partners, employees or agents, and other consultants of each and any of them from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or resulting from any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the specification or incorporation in the Work of any invention, design, process, product or device, except those required by the Contract Documents.
- C. To the fullest extent permitted by Laws or Regulations, Owner shall indemnify and hold harmless Design-Builder and its officers, directors, members, partners, employees or agents, Project Design Professionals, Construction Subcontractors, and Suppliers from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or resulting from any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device required by the Contract Documents, but not identified by Owner as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.

#### 7.09 *Permits and Utility Charges*

- A. The Contract Documents allocate responsibility for obtaining and paying for specified permits, licenses, certificates of occupancy, and approvals of governmental authorities having jurisdiction over the Work. Each party shall assist the other, when necessary, in obtaining such permits, licenses, certificates, and approvals.
- B. Design-Builder shall pay all charges of utility owners for temporary service to the Work. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work, and for capital costs related thereto.

#### 7.10 *Taxes*

- A. Design-Builder shall pay all sales, consumer, use, and other similar taxes required to be paid by Design-Builder in accordance with the Laws or Regulations of the place of the Project which are applicable during the performance of the Work. The Request for Proposals and Contract Documents indicate any tax exemptions of the Owner.

#### 7.11 *Laws and Regulations*

- A. Design-Builder shall give all notices required by and comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, Owner shall not be responsible for monitoring Design-Builder's compliance with any Laws or Regulations.

- B. If Design-Builder performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Design-Builder shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work.
- C. Changes in Laws or Regulations that occur after the date on which the Design-Builder committed to the Contract Price (whether by negotiation or making an offer or proposal) and affect the cost or time of performance shall be the subject of an equitable change in Contract Price or Contract Times.

#### 7.12 *Record Documents*

- A. Design-Builder shall maintain the Record Documents in good order, in a safe place at the Site. Design-Builder shall annotate the Record Documents to show all changes and clarifications made (whether in the field or otherwise) during performance of Construction. The Record Documents, as annotated, will be available to Owner for reference. Upon completion of the Construction, Design-Builder shall deliver the Record Documents, as annotated, to Owner.
- B. After receipt and review of the Record Documents from Design-Builder upon completion of Construction, the Owner may comment on any possible inaccuracies. After Owner and Design-Builder collaboratively address any such comments, the Record Documents shall be deemed to be Record Drawings and Record Specifications.
- C. The Record Drawings and Record Specifications are Contract Documents, and are binding upon Design-Builder with respect to its obligations to comply with the Contract Documents, including but not limited to correction period responsibilities and warranty obligations.

#### 7.13 *Safety and Protection*

- A. Design-Builder shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Construction Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Design-Builder shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
  - 1. All persons on the Site or who may be affected by the Work;
  - 2. All the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
  - 3. Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and Underground Facilities not designated for removal, relocation, or replacement in the course of Construction.
  - 4. The Site itself, including the protection of all existing conditions and facilities.
- B. Design-Builder shall comply with applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Design-Builder shall notify Owner; the owners of adjacent property, Underground Facilities,

and other utilities; and other contractors and utility owners performing work at or adjacent to the Site, when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.

- C. Design-Builder shall comply with the applicable requirements of Owner's safety programs, if any. These General Conditions and the Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
- D. Design-Builder shall inform Owner of the specific requirements of Design-Builder's safety program with which Owner and its employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 7.13.A.2 or 7.13.A.3 caused, directly or indirectly, in whole or in part, by Design-Builder, any Construction Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Design-Builder.
- F. Design-Builder's duties and responsibilities for safety and for protection of the Construction shall continue until such time as all the Work is completed, Owner has issued a notice to Design-Builder in accordance with Paragraph 14.06.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion), and Design-Builder has left the Site.
- G. Design-Builder's duties and responsibilities for safety and protection shall resume whenever Design-Builder or any Construction Subcontractor, Supplier, or other representative returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

#### 7.14 *Safety Representative*

- A. Design-Builder shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

#### 7.15 *Hazard Communication Programs*

- A. Design-Builder shall be responsible for coordinating any exchange of safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

#### 7.16 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Design-Builder is obligated to act to prevent threatened damage, injury or loss. Design-Builder shall give Owner prompt written notice if Design-Builder believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If a change in the Contract Documents is required because of the action taken by Design-Builder in response to such an emergency, a Work Change Directive or Change Order will be issued.

7.17 *Post-Construction Phase*

A. Design-Builder shall:

1. Provide assistance in connection with the start-up and testing of any equipment or system.
2. Assist Owner in training staff to operate and maintain the Work.

7.18 *Design-Builder's General Warranty and Guarantee*

A. Design-Builder warrants and guarantees to Owner that Design-Builder will perform and complete the Construction as required by the Contract Documents, and that all Construction will be in accordance with the Contract Documents, the Construction Drawings, and the Construction Specifications (as duly modified in accordance with the Contract), and will not be defective.

B. Design-Builder's warranty and guarantee hereunder excludes defects or damage caused by:

1. Abuse, modification or improper maintenance or operation by persons other than Design-Builder, Construction Subcontractors, or Suppliers or any other individual for whom Design-Builder is responsible; or
2. Normal wear and tear under normal usage.

C. None of the following will constitute an acceptance by Owner of Work that is not in accordance with the Contract Documents or a release of Design-Builder's obligation to perform the Work in accordance with the Contract Documents, unless expressly stated otherwise in writing:

1. Observations by Owner;
2. The making of any progress or final payment;
3. The issuance of a certificate of Substantial Completion;
4. Use or occupancy of the Work or any part thereof by Owner;
5. Any review and approval of a Submittal;
6. Any inspection, test, or approval by others; or
7. Any correction of defective Construction by Owner.

7.19 *Indemnification*

A. To the fullest extent permitted by Laws and Regulations, Design-Builder shall indemnify and hold harmless Owner, Owner's Consultant(s), and their officers, directors, members, partners, employees, agents, consultants, and subcontractors, from losses, damages, and judgments (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising from third-party claims or actions relating to or resulting from the performance or furnishing of the Work, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of

Design-Builder, a Project Design Professional, any Construction Subcontractor, any Supplier, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors.

- B. In any and all claims or actions against Owner, Owner's Consultant, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, by any employee (or the survivor or personal representative of such employee) of Design-Builder, a Project Design Professional, any Construction Subcontractor, any Supplier, any individual or entity directly or indirectly employed or retained by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.19.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Design-Builder, a Project Design Professional, or any Construction Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- C. The indemnification obligations of Design-Builder under Paragraph 7.19.A shall not extend to the liability of Owner's Consultant, other consultants or design professionals of Owner, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, designs, or specifications.

## **ARTICLE 8 – SUBMITTALS**

### **8.01 *Design-Builder's Preparation of Submittals***

- A. Design Submittals shall be prepared by Project Design Professionals, on behalf of Design-Builder.
- B. The appropriate Project Design Professional shall review and approve each Submittal (including but not limited to all Design Submittals), other than those Submittals not involving technical or engineering matters, before Design-Builder's transmittal of such Submittal to Owner. Such review and approval shall account for the following, as appropriate:
  - 1. That any items covered by such Submittal will, after installation or incorporation in the Construction, comply with the information and requirements in the Contract Documents and the Construction Drawings and Construction Specifications, as duly modified, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents, Construction Drawings, and Construction Specifications, as duly modified.
  - 2. That if the Submittal includes any proposed modification of the Contract Documents, Construction Drawings, or Construction Specifications, or any proposed variation from the requirements of such documents, such proposed modification or variation is acceptable based on the standards of the engineering profession (or other applicable design profession), and if implemented will be supported by signing or sealing by a licensed design professional, as necessary.
- C. Before Design-Builder's transmittal of a Submittal to Owner, the Design-Builder shall, as applicable:

1. Review and coordinate the Submittal with other Submittals and with the requirements of the Work, the Contract Documents, the Construction Drawings, and the Construction Specifications, as duly modified;
  2. Determine and verify all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal, and confirm that the Submittal is complete with respect to all related data included in the Submittal;
  3. Determine and verify the suitability of proposed materials and equipment with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation; and
  4. Determine and verify all information relative to Design-Builder's responsibilities for the means, methods, techniques, sequences, and procedures of construction, and for safety precautions and programs incident thereto.
- D. Design-Builder shall give Owner specific written notice of any proposed modification of the Contract Documents, Construction Drawings, or Construction Specifications, and any variations that a Submittal may have from the requirements of the Contract Documents, Construction Drawings, and Construction Specifications, as duly modified. This notice shall be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Submittal in drawing form, by a specific notation made on the drawing itself.
- E. Each Submittal shall bear a stamp or specific written certification by Design-Builder that it has satisfied its obligations under the Contract Documents with respect to preparation of the Submittal, and that Design-Builder approves the Submittal.
- F. All Submittals must be acceptable based on compliance with form and content requirements of the Contract Documents. Design-Builder shall submit Design Submittals for Owner's review and approval. Other Submittals shall not require express approval, except as indicated in the Supplementary Conditions or elsewhere in the Contract Documents.

#### 8.02 *Owner's Review of Submittals*

- A. Owner will review all Submittals, and may comment on any Submittal. Any response to a Submittal by Owner shall be in accordance with the schedule of required Submittals accepted by Owner as required by Paragraph 2.07, and the provisions of the Contract Documents.
- B. For those Submittals requiring Owner's review and approval, Owner's response will be in writing and will indicate either that Owner approves the Submittal or rejects the Submittal. Owner may also include comments regarding the approved or rejected Submittal. For those Submittals that do not require approval, the Submittal shall be deemed acceptable to Owner unless Owner responds with a timely objection or adverse comment.
- C. Unless a specific provision of the Contract Documents expressly provides otherwise, Owner's review of a Submittal will be to determine if the Submittal complies with and is consistent with the Contract Documents. If Owner concludes that a Submittal requiring approval complies with and is consistent with the Contract Documents, the Owner shall approve such Submittal.

- D. Owner's approval, rejection, or acceptance of a Submittal will not extend to the means, methods, techniques, sequences, or procedures of Construction, or to safety precautions or programs incident thereto.
- E. Owner's review, comments, approval, rejection, or acceptance of Submittals shall not relieve Design-Builder from responsibility for (1) performance of the Work in accordance with the Contract Documents, (2) the scheduling and progress of the Work, (3) the means, methods, sequences, techniques, and procedures of Construction, and safety precautions and programs incident thereto, or (4) any variation from the requirements of the Contract Documents, unless Design-Builder has in a separate written communication at the time of submission called Owner's attention to each such variation, and Owner has given written approval of each such variation; nor shall Owner's review, comments, approval, rejection, or acceptance of a Submittal impose any such responsibility on Owner.
- F. Construction tasks and expenditures by Design-Builder prior to Owner's review and approval or acceptance of any Submittal will be at the sole risk of Design-Builder.
- G. In reviewing, approving, rejecting, accepting, or commenting on any Design Submittal, Owner does not assume responsibility for the design, for any deficiencies in the Design Submittal or in the Design Professional Services by which they were prepared, or for constructability, cost, or schedule problems that may arise in connection with the Design Submittal.
- H. The parties acknowledge that Design-Builder's design responsibilities continue after commencement of Construction. During the course of Construction, the Design-Builder may propose modifications to the Construction Drawings and Construction Specifications. Owner shall approve such proposed modifications if (1) they comply with and are consistent with the Contract Documents, (2) Design-Builder has demonstrated that the modification is minor in character, or will not be detrimental to the quality and function of the Work, (3) the appropriate Project Design Professional has reviewed and approved the proposed modification with respect to any technical or engineering matters, and (4) Owner has not relied on the previously-approved Construction Drawings and Construction Specifications, such that the proposed modification would be detrimental to the Owner's interests. At its option, Owner may also approve more substantial or divergent proposed modifications, provided that the appropriate Project Design Professional has reviewed and approved the proposed modification with respect to any technical or engineering matters.

## **ARTICLE 9 – OTHER CONSTRUCTION**

### **9.01 *Other Work***

- A. In addition to and apart from the Work to be performed and furnished by Design-Builder under the Contract Documents, the Owner may perform other construction work at or adjacent to the Site during the course of the Project. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Design-Builder written notice

thereof prior to starting any such other work. If Owner has advance information regarding the start of any third-party utility work at or adjacent to the Site, Owner shall provide such information to Design-Builder.

- C. Design-Builder shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and to Owner, if Owner is performing other work with Owner's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work. Design-Builder shall do all cutting, fitting, and patching of the Construction that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Design-Builder shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Design-Builder may cut or alter others' work with the written consent of Owner and the others whose work will be affected.
- D. If the proper execution or results of any part of the Construction depends upon work performed by others under this Article 9, Design-Builder shall inspect such other work and promptly report to Owner in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of the Construction. Design-Builder's failure to so report will constitute an acceptance of such other work as fit and proper for integration with the Construction, except for latent defects and deficiencies in such other work.

#### 9.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Design-Builder prior to the start of any such other work:
  - 1. The identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
  - 2. An itemization of the specific matters to be covered by such authority and responsibility; and
  - 3. The extent of such authority and responsibilities.
- B. If the Supplementary Conditions do not identify the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors, Owner shall have sole authority and responsibility for such coordination.

#### 9.03 *Legal Relationships*

- A. If, in the course of performing other work for Owner at or adjacent to the Site, the Owner's employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, causes damage to the Construction or to the property of Design-Builder or the Construction Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Construction, through actions or inaction, then Design-Builder shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. The entitlement to, and extent of, any such equitable adjustment



shall take into account information (if any) regarding such other work that was provided to Design-Builder in the Contract Documents, and any provisions in Laws or Regulations concerning utility action or inaction, or related remedies. When applicable, any such equitable adjustment in Contract Price shall be conditioned on Design-Builder assigning to Owner all Design-Builder's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Design-Builder's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Design-Builder's ability to complete the Work within the Contract Times.

- B. Design-Builder shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site. If Design-Builder fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due to Design-Builder, and assign to such other contractor or utility owner the Owner's contractual rights against Design-Builder with respect to the breach of the obligations set forth in this paragraph.
- C. When Owner is performing other work at or adjacent to the Site with Owner's employees, Design-Builder shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Design-Builder's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due to Design-Builder.
- D. If Design-Builder damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Design-Builder's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Design-Builder's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Design-Builder or Owner, then Design-Builder shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and its officers, directors, members, partners, employees, agents, consultants and subcontractors from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

## **ARTICLE 10 – OWNER'S RESPONSIBILITIES**

### **10.01 *General***

- A. Owner shall do the following in a timely manner so as not to delay the services of Design-Builder:
  - 1. If requested in writing by Design-Builder, furnish reasonable evidence satisfactory to Design-Builder that sufficient funds are available and committed for the entire cost of

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the Project. Unless such reasonable evidence is furnished, Design-Builder is not required to commence or continue any Work, or may, if such evidence is not presented within a reasonable time, stop Work upon 15 days' notice to the Owner;

2. Make payments to Design-Builder promptly when they are due, as provided in Paragraph 14.01 and 14.06;
  3. Furnish the Site as set forth in Paragraph 5.01; arrange for safe access to and make all provisions for Design-Builder to enter upon public and private property as may reasonably be required for Design-Builder to perform Work under the Contract.
  4. Furnish to Design-Builder, as required for performance of the Work, the following (if available), all of which Design-Builder may use and rely upon in performing services under this Agreement:
    - a. Environmental assessment and impact statements;
    - b. Property, boundary, easement, right-of-way, and other special engineering surveys or data;
    - c. Property descriptions;
    - d. Zoning, deed, and other land use restrictions;
    - e. Utility and topographic mapping and surveys;
    - f. Explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at the Site; any information or data known to Owner concerning underground facilities at the Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; with appropriate professional interpretation of such information or data;
    - g. Any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site;
    - h. Engineering surveys to establish reference points which in Owner's judgment are necessary to enable Design-Builder to proceed with the Work;
    - i. Assistance to Design-Builder in filing documents required to obtain necessary permits, licenses, and approvals of governmental authorities having jurisdiction over the Project; and
    - j. Permits, licenses, and approvals of government authorities that the Contract Documents expressly require Owner to obtain.
  5. Provide information known to Owner relating to the presence of materials and substances at the Site that could create a Hazardous Environmental Condition.
- B. If an obligation ascribed to Owner in Paragraph 10.01.A is expressly assigned to Design-Builder, in the description of the Work or elsewhere in the Contract Documents, then such express assignment to Design-Builder shall supersede the provision in Paragraph 10.01.A.

- C. Recognizing and acknowledging that Design-Builder's services and expertise do not include the following services, Owner shall furnish or obtain, as required for the Project:
  - a. Accounting, bond and financial advisory (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.
  - b. Legal services with regard to issues pertaining to the Project as Owner requires, or Design-Builder reasonably requests.
  - c. Such auditing services as Owner requires to review cost submittals or ascertain how or for what purpose Design-Builder has used the money paid.
- D. Examine all studies, reports, alternate solutions, sketches, drawings, specifications, proposals, Submittals (including Design Submittals), and other documents presented by Design-Builder (including obtaining advice of an attorney, insurance counselor, and other consultants as Owner deems appropriate with respect to such examination), and if a decision is required with respect to any such document, render such decision in writing pursuant to any specific schedule, or if no specific schedule pertains, within a reasonable time after receipt of the document.

#### 10.02 *Insurance*

- A. Owner's responsibilities with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.

#### 10.03 *Limitations on Owner's Responsibilities*

- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Design-Builder's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Design-Builder to comply with Laws or Regulations applicable to the furnishing or performance of the Work. Owner will not be responsible for Design-Builder's failure to perform the Work in accordance with the Contract Documents.

#### 10.04 *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility with respect to undisclosed Hazardous Environmental Conditions uncovered or revealed at the Site is set forth in Paragraph 5.06.

#### 10.05 *Owner's Site Representative*

- A. Owner may furnish an Owner's Site Representative to observe the performance of Construction. The duties, responsibilities and limitations of authority of any such Owner's Site Representative and assistants will be as provided in these General Conditions or Supplementary Conditions.

#### 10.06 *Owner's Consultants and Managers*

- A. Owner's Consultant(s), if any, are identified in the Agreement.

- B. Owner shall advise Design-Builder of the identity and scope of services of any other independent consultants or managers retained by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, constructability review, program management, project management, or contract administration.
- C. Neither Owner's Consultant(s), Owner's Site Representative, nor any other consultant or manager retained by Owner, has any duties, responsibilities, or authorities with respect to Design-Builder, unless expressly provided in this Contract. Owner's Consultant and such other consultants and managers shall not supervise, direct, or have control or authority over, nor be responsible for, Design-Builder's means, methods, techniques, sequences, or procedures of construction or the safety precautions and programs incident thereto, or for any failure of Design-Builder to comply with Laws or Regulations applicable to the furnishing or performance of the Work; and will not be responsible for Design-Builder's failure to perform the Work in accordance with the Contract Documents.

#### 10.07 *Safety Programs*

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Design-Builder's safety programs of which Owner has been informed pursuant to Paragraph 7.13.D.
- B. Owner shall inform Design-Builder of any specific requirements of safety or security programs that are applicable to Design-Builder while at the Site.

#### 10.08 *Permits and Approvals*

- A. For any permits or approvals not required of the Design-Builder as part of the scope of services for the Work of this Project, Owner shall obtain reviews, approvals, certificates, and permits from governmental authorities having jurisdiction over the Project as indicated in the Contract Documents.

### **ARTICLE 11 – AMENDING THE CONTRACT DOCUMENTS; CHANGES IN THE WORK**

#### 11.01 *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended or supplemented by a Change Order or a Work Change Directive.
  - 1. *Change Orders*: If an amendment or supplement to the Contract Documents includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order. A Change Order also may be used to establish amendments and supplements of the Contract Documents that do not affect the Contract Price or Contract Times.
  - 2. *Work Change Directives*: The Work modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order. When a Work Change Directive is issued, the parties will promptly meet to attempt to negotiate the Work Change Directive's effect, if any, on the Contract Times and Contract Price. The effect, if any, on Contract Times and Contract Price, together with the Work Change Directive's addition, deletion, or revision to the Work, will be set forth in a subsequently issued Change Order.

- B. Either Owner or Design-Builder may propose or request a Change Order. With respect to certain events, this Contract may indicate specific times in which such requests or proposals must be submitted to the other party. With respect to all other events, the request or proposal shall be submitted to the other party within 30 days of the event giving rise to the request or proposal.

11.02 *Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, and notwithstanding any other provision of the Contract, Owner may, at any time or from time to time, order or authorize additions, deletions, or revisions in the Work within the general scope of the Contract. Such changes may be accomplished by a Change Order, if Owner and Design-Builder have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Design-Builder shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work shall be performed under the applicable conditions of the Contract Documents. Nothing in this paragraph shall obligate Design-Builder to undertake work that Design-Builder reasonably concludes cannot be performed in a manner consistent with Design-Builder's safety or professional obligations under the Contract Documents or Laws and Regulations.

11.03 *Unauthorized Changes in the Work*

- A. Design-Builder shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any Work performed that is not required by the Contract Documents, as duly amended, except in the case of an emergency as provided in Paragraph 7.16, or in the case of uncovering Construction as provided in Paragraph 13.03.A.3.

11.04 *Changes Involving the Design*

- A. To the extent a change, whether proposed by Design-Builder or Owner, ordered by Owner, or set forth in a proposed Change Order or in a Work Change Directive, involves the design (as set forth in the Construction Drawings, Construction Specifications, or otherwise) or other engineering or technical matters, such changes must be reviewed and approved by the applicable Project Design Professional. The review and approval may occur at the time the change occurs, or as part of Design-Builder's provision of Professional Design Services in response to the change.

11.05 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Claim regarding an adjustment in the Contract Price shall be presented by written notice to the other party in accordance with Paragraph 16.01.
- B. If the Contract Price is based on Cost of the Work, then the provisions in the Agreement regarding Cost of the Work and changes in the Design-Builder's fee, Contract Price, Guaranteed Maximum Price, and Guaranteed Maximum Fee, apply.

- C. The value of any Work covered by a Change Order or of any adjustment in the Contract Price will be determined as follows:
1. Where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 12.02); or
  2. Where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.05.D); or
  3. Where the Work involved is not covered by unit prices contained in the Contract Documents, and agreement to a lump sum is not reached under Paragraph 11.05.C.2, then on the basis of time and materials (T&M) (determined by the agreed upon rates as provided in the Proposal and Agreement); or
  4. Where the Work involved is not covered by unit prices contained in the Contract Documents, and agreement to a lump sum is not reached under Paragraph 11.05.C.2, and time and materials are not utilized in Paragraph 11.05.C.3, then on the basis of the Cost of the Work for price adjustments (determined as provided in the Cost of the Work provisions in the Agreement, if applicable, or in Paragraph 12.01), plus a Design-Builder's Fee for overhead and profit (determined as provided in Paragraph 11.05.D).
- D. *Design-Builder's Fee:* The Design-Builder's fee for overhead and profit on Change Orders shall be determined as follows:
1. A mutually negotiated and acceptable fixed percentage/fee.
  2. If a fixed percentage/fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
    - a. For costs incurred under Paragraphs 12.01.B.1.a. and 12.01.B.2, the Design-Builder's fee shall be 15 percent;
    - b. For costs incurred under Paragraphs 12.01.B.4, 12.01.B.5, and 12.01.B.6, the Design-Builder's fee shall be 5 percent;
    - c. With respect to Construction Subcontracts, where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of this Contract is that the Design-Builder's fee shall be based on: (1) a fee of 15 percent of the costs incurred under Paragraph 12.01 by the subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Design-Builder itself, and to any Construction Subcontractors of a tier higher than that of the Construction Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Construction Subcontractor; provided, however, that for any such subcontracted work the maximum total fee to be paid by Owner shall be no greater than 27 percent of the costs incurred by the Construction Subcontractor that actually performs the Work;
    - d. With respect to Design Agreements, the Engineer or other invoicing Project Design Professional under a Design Agreement may add a fee of 5 percent to an invoice

from a lower tier design entity , and Design-Builder may add a fee of 5 percent to an invoice from Engineer or other invoicing Project Design Professional; Owner shall not be responsible for any other mark-up at any tier (other than those incorporated in a factor, multiplier, hourly rate, or stipulated sum from the entity performing the subject Design Professional Services);

- e. No fee will be payable on the basis of costs itemized in Paragraphs 12.01.B.3, 12.01.B.7 or 12.01.C;
- f. The amount of credit to be allowed by Design-Builder to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Design-Builder's fee by an amount computed on the basis of the net change in accordance with Paragraphs 11.05.D.2.a through 11.05.D.2.e., inclusive.
- g. When both additions and credits are involved in any one change, the adjustment in Design-Builder's fee shall be computed on the basis of the net change in accordance with Paragraphs 11.05.D.2.a through 11.05.D.2.e., inclusive.

#### 11.06 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Claim regarding an adjustment of the Contract Times shall be presented by written notice to the other party pursuant to Paragraph 16.01.
- B. Design-Builder's entitlement to an adjustment of the Contract Times under this Contract is conditioned on such adjustment being essential to Design-Builder's ability to complete the Work within the Contract Times.

#### 11.07 *Execution of Change Orders*

- A. Owner and Design-Builder shall execute appropriate Change Orders covering:
  - 1. Changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
  - 2. Changes in Contract Price resulting from an Owner set-off, unless Design-Builder has duly contested such set-off;
  - 3. Changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.02, (b) required because of Owner's correction of defective Work under Paragraph 13.05 or Owner's acceptance of defective Work under Paragraph 13.07, or (c) agreed to by the parties (all subject to the need for review and approval by the applicable Project Design Professional pursuant to Paragraph 11.04); and
  - 4. Changes in the Contract Price or Contract Times, or other changes, which embody the substance of any final and binding results under Article 16.
- B. If Owner or Design-Builder refuses to execute a Change Order that is required to be executed under the terms of this Paragraph 11.07, it shall be deemed to be of full force and effect, as if fully executed.

11.08 *Notice to Sureties*

- A. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be Design-Builder's responsibility. The amount of each applicable Bond will be adjusted to reflect the effect of any such change.

**ARTICLE 12 – COST OF THE WORK ADJUSTMENTS; UNIT PRICE WORK**

12.01 *Cost of the Work*

- A. *Costs of the Work Adjustment:* When the price of Work covered by a Change Order or an adjustment in Contract Price is to be determined on the basis of Cost of the Work, the Cost of the Work adjustment means the sum of all costs necessarily incurred and paid by Design-Builder in the proper performance of the specific portion of the Work. The costs to be reimbursed to Design-Builder will be only those additional or incremental costs required because of the change of the Work or because of the event giving rise to the adjustment. If the Agreement contains Cost of the Work provisions, such provisions shall govern in determining the Cost of the Work for Change Order or adjustment purposes. If the Agreement does not contain Cost of the Work provisions, then the provisions in Paragraph 12.01 shall apply.
- B. *Costs Included:* The Cost of the Work adjustment does not include any of the costs itemized in Paragraph 12.01.C, and shall include only the following items with respect to the subject Work:
  - 1. Payroll costs for employees in the direct employ of Design-Builder in the performance of the subject Work, under schedules of job classifications agreed upon by Owner and Design-Builder in advance of such performance.
    - a. Such employees shall include without limitation superintendents, foremen, and other personnel employed full-time at the Site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the subject Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation, and holiday pay applicable thereto. The expenses of performing the subject Work outside the hours or days permitted by this Contract shall be included in the above to the extent such performance of Work is authorized by Owner.
    - b. Such employees shall also include engineers, engineering technicians, architects, and others providing Design Professional Services as employees of Design-Builder. For purposes of this Paragraph 12.01.B.1.b, Design-Builder shall be entitled to payment for such employees an amount equal to salary costs times a factor, as designated in the Agreement, for services in the performance of the subject Work.
  - 2. Cost of all materials and equipment furnished and incorporated in the subject Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Design-Builder



unless Owner deposits funds with Design-Builder with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Design-Builder shall make provisions so that they may be obtained.

3. Cost of permits obtained by Design-Builder.
4. Payments made by Design-Builder to Construction Subcontractors for subject Work performed or furnished by such Construction Subcontractors. If any subcontract provides that the Construction Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Construction Subcontractor's Cost of the Work and fee shall be determined in the same manner as Design-Builder's Cost of the Work and fee.
5. Payments made by Design-Builder for Design Professional Services provided or furnished with respect to the subject Work under a Design Agreement.
6. Costs of special consultants (not including Project Design Professionals), including but not limited to testing laboratories, attorneys, and accountants, retained for services specifically related to the subject Work.
7. Supplemental costs including the following items:
  - a. The proportion of necessary transportation, travel, and subsistence expenses of Design-Builder's employees incurred in discharge of duties connected with the Work.
  - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the Site and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed that remain the property of Design-Builder.
  - c. Rentals of all construction or engineering equipment and machinery, and their parts, whether rented from Design-Builder or from others in accordance with rental agreements approved by Owner, and the costs of transportation, loading, unloading, installation, dismantling and removal of such equipment, machinery, and parts. All such costs shall be in accordance with the terms of such rental agreements. The rental of any such equipment, machinery, or parts shall cease when its use is no longer necessary for the Work.
  - d. Sales, consumer, use, and other similar taxes related to the subject Work, and for which Design-Builder is liable, imposed by Laws or Regulations. The Contract Documents and Request for Proposals state any Owner tax exemptions, if applicable.
  - e. Deposits lost for causes other than negligence of Design-Builder, any Construction Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
  - f. Losses, damages, and related expenses caused by damage to the subject Work not compensated by insurance or otherwise, sustained by Design-Builder in connection

with the furnishing and performance of the Work provided they have resulted from causes other than the negligence of Design-Builder, any Construction Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Design-Builder's fee.

- g. The cost of utilities, fuel, and sanitary facilities at the Site, as applicable to the subject Work.
- h. Minor expenses such as long distance telephone calls, telephone service at the Site, express and courier services, and similar petty cash items in connection with the Work.
- i. Cost of premiums for all Bonds and insurance Design-Builder is required by the Contract Documents to purchase and maintain.

C. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:

- 1. Payroll costs and other compensation of Design-Builder's officers, executives, principals (of partnerships and sole proprietorships), general managers, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Design-Builder whether at the Site or in Design-Builder's principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 12.01.B.1, all of which are to be considered administrative costs covered by the Design-Builder's fee.
- 2. Expenses of Design-Builder's principal and branch offices other than Design-Builder's office at the Site.
- 3. Any part of Design-Builder's capital expenses, including interest on Design-Builder's capital employed for the subject Work and charges against Design-Builder for delinquent payments.
- 4. Costs due to the negligence of Design-Builder, any Construction Subcontractor, Engineer or other Project Design Professionals, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
- 5. Other overhead or general expense costs of any kind, and the costs of any item not specifically and expressly included in Paragraph 12.01.B.

D. *Design-Builder's Fee:* When the value of the Work covered by a Change Order is determined on the basis of Cost of the Work, Design-Builder's fee shall be determined as set forth in Paragraph 11.05.D.

E. *Documentation:* Whenever the cost of any Work is to be determined pursuant to Paragraph 12.01.B and 12.01.C, Design-Builder will establish and maintain cost records in accordance

with generally accepted accounting practices and submit in a form acceptable to Owner an itemized cost breakdown together with supporting data.

#### 12.02 *Unit Price Work*

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all of Unit Price Work an amount equal to the sum of the established unit prices for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Design-Builder will be made by Owner.
- B. If Design-Builder's compensation is based on Cost of the Work, this Contract will not include compensation under unit prices unless expressly stated otherwise.
- C. Each unit price will be deemed to include an amount considered by Design-Builder to be adequate to cover Design-Builder's overhead and profit for each separately identified item.
- D. Design-Builder or Owner may seek an adjustment in the Contract Price if:
  - 1. The quantity of any item of Unit Price Work performed by Design-Builder differs materially and significantly from the estimated quantity of such item indicated in the Agreement;
  - 2. Such an adjustment would not duplicate, and is coordinated with, any other related adjustments of Contract Price; and
  - 3. Design-Builder has incurred additional expense, or less expense, as a result of the variation in quantity.

### **ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE CONSTRUCTION**

#### 13.01 *Access to Construction*

- A. Owner, Owner's Consultant, Owner's Site Representative, and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Construction at reasonable times for their observation, inspecting, and testing. Design-Builder shall provide them proper and safe conditions for such access and advise them of Design-Builder's Site safety procedures and programs so that they may comply therewith as applicable.

#### 13.02 *Tests, Inspections, and Approvals*

- A. Design-Builder shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
  - 1. By the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
  - 2. By Laws and Regulations, unless the Contract Documents or Laws and Regulations expressly allocate responsibility for a specific inspection or test to Owner;

3. To attain Owner's acceptance of materials or equipment to be incorporated in the Construction;
  4. By manufacturers of equipment furnished under the Contract Documents;
  5. To meet the requirements of the Construction Drawings and Construction Specifications;
  6. For testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Construction; and
  7. For acceptance of materials, mix designs, or equipment submitted for approval prior to Design-Builder's purchase thereof for incorporation in the Construction.
- B. Owner shall be responsible for arranging, obtaining, and paying for all inspections and tests expressly required by the Contract Documents by the Owner or Laws and Regulations to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Construction shall be governed by the provisions of Paragraph 13.03.
  - C. All inspections and tests shall be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Design-Builder.
  - D. If the Contract Documents require the Construction (or part thereof) to be approved by Owner or another designated individual or entity, then Design-Builder shall assume full responsibility for arranging and obtaining such approvals.
  - E. Design-Builder shall give Owner reasonable notice of the planned schedule for all required inspections, tests, and approvals.
  - F. Design-Builder shall give Owner timely notice of readiness of the Construction (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
  - G. Each party shall provide the other with copies of any certificates of inspection or approval obtained with respect to tests and inspections.
  - H. Both parties may rely on the results of inspections and tests, performed pursuant to this paragraph and the governing provisions of the Contract Documents, Laws and Regulations, and the Construction Drawings and Construction Specifications.
  - I. If any Construction (or the construction work of others) that is required to be inspected, tested, or approved is covered by Design-Builder without written concurrence of Owner, then Contractor shall, if requested by Owner, uncover such Construction for observation. Such uncovering shall be at Design-Builder's expense unless Design-Builder has given Owner timely notice of Design-Builder's intention to cover the same and Owner has not acted with reasonable promptness in response to such notice.

### 13.03 *Uncovering Construction*

- A. If Owner considers it necessary or advisable that covered Construction be observed by Owner or inspected or tested by others, then Design-Builder, at Owner's request, shall uncover, expose or otherwise make available for observation, inspection, or testing, as Owner may require, that portion of the Construction in question, furnishing all necessary labor, material, and equipment.

1. If the Construction had been covered contrary to the written request of Owner or a requirement of the Contract Documents, then uncovering it for Owner's observation and re-covering it shall be at Design-Builder's expense, regardless of whether it is defective.
2. If it is found that the covered Construction is defective, Design-Builder shall pay all costs and damages caused by or resulting from such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement, re-covering, or reconstruction (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, all court or arbitration or other dispute resolution costs, and all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price.
3. If the covered Construction is not found to be defective, Design-Builder shall be allowed an increase in the Contract Price or an extension of the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, re-covering, and reconstruction, subject to the provisions of Paragraph 13.03.A.1.

#### 13.04 *Defective Construction*

- A. It is Design-Builder's obligation to assure that the Construction is not defective.
- B. Owner shall give Design-Builder prompt written notice of all defective Construction of which Owner has actual knowledge. Owner may reject, accept, or correct defective Construction.
- C. Promptly after receipt of written notice of defective Construction, unless Owner expressly indicates that it will accept the defective Construction, Design-Builder shall correct all such defective Construction, whether or not fabricated, installed, or completed; or, if Owner has rejected the defective Construction, remove it from the Project and replace it with Construction that is not defective.
- D. When correcting defective Construction, Design-Builder shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Construction.

#### 13.05 *Owner May Correct Defective Construction*

- A. If Design-Builder fails within a reasonable time after written notice from Owner to correct defective Construction or to remove and replace rejected Construction, or if Design-Builder fails to perform the Construction in accordance with the Contract Documents, or if Design-Builder fails to comply with any other provision of the Contract Documents, Owner may, after 7 days' written notice to Design-Builder, correct and remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 13.05 Owner shall proceed expeditiously. In connection with such corrective and remedial action, Owner may exclude Design-Builder from all or part of the Site, take possession of all or part of the Construction, and suspend Design-Builder's services related thereto, and incorporate in the Construction all materials and equipment stored at the Site or for which Owner has paid Design-Builder but which are stored elsewhere. Design-Builder shall allow Owner, Owner's Consultant, Owner's Site Representative, and Owner's other representatives, agents, employees, and contractors, access to the Site to enable Owner to exercise the rights and remedies under this paragraph.

### 13.06 *Costs*

- A. Design-Builder shall bear all costs arising out of or relating to the correction, removal, or replacement of defective Construction, including but not limited to repair of adjacent Work or property; delay costs and impacts; fees and charges of engineers, architects, attorneys, and other professionals; and all court, arbitration, or other dispute resolution costs.
- B. All costs, losses, and damages (included but not limited to fees and charges of engineers, architects, attorneys and other professionals, all court or arbitration or other dispute resolution costs, and all costs of repair or replacement of work of others) incurred or sustained by Owner in exercising its rights and remedies arising from defective Construction under this Article will be charged against Design-Builder, by set-off against payment or otherwise.
- C. Design-Builder shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to defective Construction.

### 13.07 *Owner's Acceptance of Defective Construction*

- A. If, instead of requiring correction or removal and replacement of defective Construction, Owner prefers to accept it, Owner may do so. If such acceptance is proposed prior to final payment, it shall be subject to confirmation by the applicable Project Design Professional that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety. Design-Builder shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Construction. If any such acceptance occurs prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents, and Owner shall be entitled to an appropriate decrease in the Contract Price reflecting the diminished value of the Construction so accepted.

### 13.08 *Owner May Stop Construction*

- A. If Construction is defective, or Design-Builder fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform Construction in such a way that the completed Construction will conform to the Contract Documents, Owner may order Design-Builder to stop Construction or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop Construction will not give rise to any duty on the part of Owner to exercise this right for the benefit of Design-Builder or any other party.

## **ARTICLE 14 – PAYMENTS TO DESIGN-BUILDER; COMPLETION**

### 14.01 *Progress Payments*

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Paragraph 2.04 will serve as the basis for progress payments. In no case shall any Application for Payment exceed the value of the Contract Price or the value of any issued Purchase Order(s). Progress payments on account of Unit Price Work will be based on the number of units completed.

- B. *Application for Progress Payment:* On or about the date established in the Agreement for submission of each application for progress payment (but not more often than once a month), Design-Builder shall submit to Owner for review an Application for Payment filled out and signed by Design-Builder covering the Work completed as of the date indicated on the Application and accompanied by supporting documentation as required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect Owner's interest therein, all of which will be satisfactory to Owner.
- C. *Payment of Obligations:*
1. Beginning with the second Application for Payment, each Application shall include an affidavit of Design-Builder stating that all previous progress payments received on account of the Work have been applied on account to discharge Design-Builder's legitimate obligations associated with prior Applications for Payment.
  2. If Design-Builder contends that it has withheld payment of underlying obligations for good cause, then Design-Builder shall inform Owner of the identity of the entity from which Design-Builder has withheld payment, the amount of the withholding, and the reason for the withholding.
- D. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.
- E. *Review of Applications:*
1. Owner will, within 14 days of receipt of each Application for Payment, either indicate in writing its acceptance of the Application and state that the Application is being processed for payment, or return the Application to Design-Builder indicating in writing its reasons for refusing to accept the Application.
- F. Not more than 60 days after accepting such Application the amount will become due and when due will be paid by Owner to Design-Builder.
1. If Owner should fail to pay Design-Builder at the time the payment of any amount becomes due, then Design-Builder may, at any time thereafter, upon serving written notice that he will stop the Work within 7 days after receipt of the notice by Owner, and after such 7-day period, stop the Work until payment of the amount owing has been received. Written notice shall be deemed to have been duly served if sent by certified mail to the last known business address of Owner.
  2. No Progress Payment nor any partial or entire use or occupancy of the Project by Owner shall constitute an acceptance of any Work not in accordance with the Contract Documents.

G. *Reduction in or Refusal to Make Payment:*

1. Owner may impose a set-off against the whole or any part of any such payment, or nullify any previous payment because of subsequently discovered evidence or the results of subsequent inspections or tests, to the extent that is reasonably necessary to protect Owner from loss because:
  - a. Claims have been made against Owner on account of Design-Builder's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages on account of Design-Builder's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from breach of warranty, workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;
  - b. Design-Builder has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
  - c. Design-Builder has failed to provide and maintain required bonds or insurance;
  - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Design-Builder is responsible;
  - e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
  - f. The Construction is defective, requiring correction or replacement;
  - g. Owner has been required to correct defective Construction in accordance with Paragraph 13.05, or has accepted defective Construction pursuant to Paragraph 13.07;
  - h. The Contract Price has been reduced by Change Orders;
  - i. An event that would constitute a default by Design-Builder and therefore justify a termination for cause has occurred;
  - j. Liquidated damages, special damages, or performance damages have accrued under the Contract Documents as a result of Design-Builder's failure to achieve Milestones, Substantial Completion, final completion of the Work, or performance requirements, as applicable;
  - k. Liens have been filed in connection with the Work, except where Design-Builder has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such liens; or
  - l. There are other items entitling Owner to a set off against the amount recommended.
2. If Owner imposes any set-off against payment, Owner will give Design-Builder immediate written notice stating the reasons for such action and the specific amount of the reduction, and promptly pay Design-Builder any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Design-Builder the amount so



withheld, or any adjustment thereto agreed to by Owner and Design-Builder, if Design-Builder remedies the reasons for such action. The reduction imposed shall be binding on Design-Builder unless it duly presents a written notice of Claim contesting the reduction.

#### 14.02 *Design-Builder's Warranty of Title*

- A. Design-Builder warrants and guarantees that title to all Construction, materials, and equipment covered by any Application for Payment, whether already incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

#### 14.03 *Substantial Completion*

- A. When Design-Builder considers the Work ready for its intended use Design-Builder shall notify Owner in writing that the Work is substantially complete (except for items specifically listed by Design-Builder as incomplete) and request that Owner issue a certificate of Substantial Completion. Promptly thereafter, Owner and Design-Builder shall make an inspection of the Work to determine the status of completion. If Owner does not consider the Work substantially complete, Owner will notify Design-Builder in writing giving the reasons therefor.
- B. If Owner considers the Work substantially complete:
  - 1. Owner and Design-Builder will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Design-Builder agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.
  - 2. Owner will prepare and deliver to Design-Builder a certificate of Substantial Completion which shall fix the date of Substantial Completion. Owner shall attach to the certificate a punch list of items to be completed or corrected before final payment.
- C. After Substantial Completion the Design-Builder shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Design-Builder may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
- D. Owner shall have the right to exclude Design-Builder from the Site after the date of Substantial Completion subject to allowing Design-Builder reasonable access to remove its property and complete or correct items on the punch list.

#### 14.04 *Partial Use or Occupancy*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Construction which (1) has specifically been identified in the Contract Documents, or (2) Owner and Design-Builder agree constitute a separately functioning and usable part of the Construction that can be used by Owner for its intended purpose without significant interference with Design-Builder's performance of the remainder of the Construction, subject to the following:

1. Owner at any time may request Design-Builder in writing to permit Owner to use or occupy any such part of the Construction that Owner believes to be ready for its intended use and substantially complete. If Design-Builder agrees that such part of the Work is substantially complete, Design-Builder and Owner will follow the procedures of Paragraph 14.03 for that part of the Construction.
2. Design-Builder at any time may notify Owner in writing that Design-Builder considers any such part of the Work ready for its intended use and substantially complete and request Owner to issue a certificate of Substantial Completion for that part of the Work.
3. Within a reasonable time after either such request, Owner and Design-Builder shall make an inspection of that part of the Work to determine its status of completion. If Owner does not consider that part of the Work to be substantially complete, Owner will notify Design-Builder in writing giving the reasons therefor. If Owner considers that part of the Work to be substantially complete, the provisions of Paragraph 14.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
4. No use or occupancy of part of the Construction will be accomplished prior to compliance with the requirements of Paragraph 6.05 regarding property insurance.

#### 14.05 *Final Inspection*

- A. Upon written notice from Design-Builder that the entire Work or an agreed portion thereof is complete, Owner will make a final inspection with Design-Builder and will notify Design-Builder in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Design-Builder shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

#### 14.06 *Final Payment*

##### A. *Application for Payment:*

1. After Design-Builder has completed all such corrections to the satisfaction of Owner and delivered in accordance with the Contract Documents all reports, maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance, certificates of inspection, and Record Documents, Design-Builder may make application for final payment following the procedure for progress payments.
2. The final Application for Payment shall be accompanied (unless previously delivered) by:
  - a. All documentation called for in the Contract Documents;
  - b. Consent of the surety, if any, to final payment;
  - c. Satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment;
  - d. A list of all disputes that Design-Builder believes are unsettled; and
  - e. Complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.

3. In lieu of such releases or waivers of Liens specified in Paragraph 14.06.A.2, and as approved by Owner, Design-Builder may furnish receipts or releases in full and an affidavit of Design-Builder that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed, and (b) all payrolls, material and equipment bills and other indebtedness connected with the Work for which Owner might in any way be responsible, or which in any way might result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Project Design Professional, Construction Subcontractor, or Supplier fails to furnish such a release or receipt in full, Design-Builder may furnish a Bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.
- B. *Final Payment and Acceptance:* If Owner is satisfied that the Work has been completed and Design-Builder's other obligations under the Contract Documents have been fulfilled, Owner will, within 30 days after receipt of the final Application for Payment, give written notice to Design-Builder that the Work is acceptable. Otherwise, Owner will return the Application to Design-Builder, indicating in writing the reasons for refusing to process final payment, in which case Design-Builder shall make the necessary corrections and resubmit the Application.
- C. *Completion of Work:* The Work is complete (subject to surviving obligations) when it is ready for final payment.
- D. *Payment Becomes Due:* The amount will become due and will be paid by Owner to Design-Builder 60 days after the presentation to Owner of the acceptable Application and accompanying documentation, in appropriate form and substance and with Owner's notice of acceptability.

#### 14.07 *Waiver of Claims*

- A. The making of final payment will not constitute a waiver by Owner of claims or rights against Design-Builder. Owner expressly reserves claims and rights arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.05, from Design-Builder's failure to comply with the Contract Documents or the terms of any special guarantees specified therein, from unresolved disputes or Claims presented by Owner, or from Design-Builder's continuing obligations under the Contract.
- B. The acceptance of final payment by Design-Builder will constitute a waiver by Design-Builder of all claims and rights against Owner other than those pending matters that have been duly submitted to dispute resolution under the provisions of Article 16.

#### 14.08 *Correction Period*

- A. If within one year after the date of Substantial Completion of the entire Work or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Construction is found to be defective, Design-Builder shall promptly, without cost to Owner and in accordance with Owner's written instructions, (1) correct such defective Construction, or, if it has been rejected by Owner, remove it from the Site and replace it with Construction that is not defective, and (2) satisfactorily correct or remove and replace any damage to other Construction or the work

of others resulting therefrom. If Design-Builder does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Construction corrected or the rejected Construction removed and replaced, and all costs, losses, and damages caused by or resulting from such removal and replacement (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, all court or arbitration or other dispute resolution costs, and all costs of repair or replacement of work of others) will be paid by Design-Builder.

- B. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Conceptual Documents.
- C. Where defective Construction (and damage to other Construction resulting therefrom) has been corrected, or removed or replaced, under this Paragraph 14.08, the correction period hereunder with respect to such Construction will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

## **ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION**

### **15.01 *Owner May Suspend Work***

- A. At any time and without cause, Owner may suspend the Work or any portion thereof by notice in writing to Design-Builder, which will fix the date on which Work will be resumed. Design-Builder shall resume the Work on the date so fixed. Design-Builder may request for Owner's consideration an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension.

### **15.02 *Owner May Terminate for Cause***

- A. The occurrence of any one or more of the following events justifies termination for cause:
  - 1. Design-Builder's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the progress schedule as duly adjusted).
  - 2. Design-Builder's disregard of Laws or Regulations of any public body having jurisdiction.
  - 3. Design-Builder's violation in any substantial way of provisions of the Contract Documents.
- B. If one or more of the events identified in Paragraph 15.02.A occurs, Owner may, after giving Design-Builder (and the surety, if any) 7 days' written notice, terminate the services of Design-Builder, take possession of any completed Design Submittals prepared by or for Design-Builder (subject to the limited license and indemnification provisions of Paragraph 3.04), exclude Design-Builder from the Site, take possession of the Work, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Design-Builder but which are stored elsewhere, and finish the Work as Owner may deem expedient. In such case Design-Builder shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all costs,

losses and damages sustained by Owner arising out of or resulting from completing the Work (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) such excess will be paid to Design-Builder. If such costs, losses and damages exceed such unpaid balance, Design-Builder shall pay the difference to Owner. Such costs, losses and damages incurred by Owner will be incorporated in a Change Order. When exercising any rights or remedies under this paragraph Owner shall not be required to obtain the lowest price for the Work performed.

- C. Notwithstanding Paragraph 15.02.B, Design-Builder's services will not be terminated if Design-Builder begins, within 7 days of receipt of notice of intent to terminate, to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.
- D. Where Design-Builder's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Design-Builder then existing or which may thereafter accrue. Any retention or payment of moneys due Design-Builder by Owner will not release Design-Builder from liability.

#### 15.03 *Owner May Terminate for Convenience*

- A. Upon 7 days' written notice to Design-Builder, Owner may, without cause and without prejudice to any other right or remedy of Owner, elect to terminate the Contract. In such case, Design-Builder shall be paid (without duplication of any items) for:
  - 1. Completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
  - 2. Expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
  - 3. Amounts paid in settlement of terminated contracts with Project Design Professionals, Construction Subcontractors, Suppliers and others (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs incurred in connection with such terminated contracts); and
  - 4. Reasonable expenses directly attributable to termination.
- B. Design-Builder shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

#### 15.04 *Design-Builder May Stop Work or Terminate*

- A. If, through no act or fault of Design-Builder, the Work is suspended for a period of more than 90 days by Owner or under an order of court or other public authority, Owner fails to act on any Application for Payment within 30 days after it is submitted, or Owner fails for 60 days to pay Design-Builder any sum finally determined to be due, then Design-Builder may, upon 7 days' written notice to Owner, and provided Owner does not remedy such

suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.A. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Owner has failed for 60 days to pay Design-Builder any sum finally determined to be due, Design-Builder may upon 7 days' written notice to Owner stop the Work until payment is made of all such amounts due Design-Builder, including interest thereon. The provisions of this paragraph are not intended to preclude Design-Builder from obtaining an increase in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Design-Builder's stopping Work as permitted by this paragraph.

## **ARTICLE 16 – DISPUTES**

### **16.01 *Methods and Procedures***

- A. *Notice of Claim:* If Owner and Design-Builder are not in agreement regarding a proposed or requested Change Order, other proposed adjustment of Contract Price or Contract Times, a Work Change Directive issued by Owner, or any other relief proposed or requested under the Contract, then either party may provide written notice of a Claim to the other party. Such notice of Claim shall be given within 90 days of: the proposal or request for a Change Order; such other proposed adjustment of Contract Price or Contract Times; the issuance of the Work Change Directive; or the proposal or request for other relief under the Contract. The notice of Claim shall be given within the 90 days regardless of whether the other party has responded to such proposal, request, or issuance, and regardless of whether discussions or negotiations are in progress; provided, however, that the parties may extend the time to give such notice of Claim by mutual written agreement. The notice of Claim shall include a statement of position, specification of the remedy sought, and supporting documentation.
- B. *Response:* Within 30 days of the date of notice of Claim, the receiving party shall respond with a written statement of position and any supporting documentation.
- C. *Direct Negotiations:* Owner and Design-Builder agree to directly negotiate all Claims between them in good faith for a period of 60 days from the date of notice of Claim.
- D. *Mediation:* If direct negotiations are unsuccessful in resolving a Claim, then Owner and Design-Builder shall submit the unsettled Claim to mediation by a mutually agreeable mediator or mediation service. Owner and Design-Builder agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days.
  - 1. The fees and expenses, including filing fees, of the mediator and any mediation service shall be shared equally by Owner and Design-Builder.
  - 2. The mediation shall be held in the locality where the Project is located, unless another location is mutually agreed upon by the parties.
  - 3. A settlement (if any) resulting from such mediation will be specifically enforceable under the prevailing law, by any court having jurisdiction.
  - 4. Participation in the mediation process in good faith is a condition precedent to commencing final or binding dispute resolution.

- E. If mediation is unsuccessful in resolving a Claim, then within 120 days of the completion of the mediation (1) the parties may mutually agree to a binding dispute resolution process of their choice, or (2) the claimant may give notice to the other that the claimant will seek to have the dispute resolved by a binding dispute resolution method established in this Contract, or if no such method has been established, by a court of competent jurisdiction. Failure by claimant to give such notice in a timely manner shall result in a waiver of the Claim.
- F. It is understood by Design-Builder that any claim resolution as a result of this Article 16 will require the final approval of the City of Providence and City of Providence Board of Contract and Supply before any agreement can be finalized and executed.

## **ARTICLE 17 – MISCELLANEOUS**

### **17.01 *Giving Notice***

- A. Whenever any provision of the Contract Documents requires the giving of written notice to the other party to this Contract, it will be deemed to have been validly given if delivered to the Authorized Representative of the other party:
  - 1. In person, by a commercial courier service or otherwise; or
  - 2. By registered or certified mail, postage prepaid; or
  - 3. By e-mail, with the words “Formal Notice” or similar in the e-mail’s subject line.

### **17.02 *Computation of Times***

- A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

### **17.03 *Cumulative Remedies***

- A. Unless expressly stated otherwise in this Contract, the duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, or waiver of, any rights and remedies available to any or all of them which are otherwise imposed or available by:
  - 1. Laws or Regulations; or
  - 2. Any special warranty or guarantee; or
  - 3. Other provisions of the Contract.
- B. The provisions of Paragraph 17.03.A will be as effective as if repeated specifically in the Contract in connection with each particular duty, obligation, right and remedy to which they apply.

### **17.04 *Limitation of Damages***

- A. With respect to this Contract and any and all Claims and other matters at issue, Owner shall not be liable to Design-Builder for any claims, costs, losses, or damages (including but not

limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Design-Builder on or in connection with any other project or anticipated project.

17.05 *No Waiver*

- A. A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Contract.

17.06 *Survival of Obligations*

- A. All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion and acceptance of the Work and termination or completion of the Contract.
- B. In the event that any provision of the Contract Agreement is found to be invalid or unenforceable, all remaining provisions of the Contract Agreement shall remain binding and in full force.

17.07 *Controlling Law*

- A. The Contract Documents will be construed in accordance with the law of the place of the Project.

17.08 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

17.09 *Conflict of Interest*

- A. Design-Builder shall promptly inform Owner of any contract, agreement, or arrangement that Design-Builder may have or enter into during the performance of the Work of the Project and Contract Agreement that may conflict with Owner's interests. Design-Builder shall take all necessary measures to prevent actual or perceived conflicts of interest.
- B. Design-Builder shall promptly inform the Owner of any pre-existing or gained financial interest it may have in any property that is part of or is affected by the Work of the Project.

17.10 *Wage Rates and Payroll Requirements*

- A. Design-Builder shall comply with any and all applicable minimum wage rates in accordance with State or Rhode Island General Laws, Chapter 37 and shall be responsible for obtaining copies of the latest wage rates. No additional compensation will be considered by Owner for failure of the Design-Builder to comply with minimum wage rates.
- B. Design-Builder shall regularly submit to Owner, but no less frequently than monthly with Applications for Payment, certified payrolls for all applicable employees performing Work on the Project. Certified payrolls shall be submitted on "Statement of Compliance" forms or other such forms as prescribed and provided by the State of Rhode Island Department of Labor and Training.



17.11 *Minority and Women Business Enterprise Program and Requirements*

- A. Design-Builder shall comply with all requirements of the City of Providence Minority and Women-Owned Business (MBE/WBE) Program.
- B. Design-Builder shall also provide any and all additional information that may be required in accordance with all applicable federal, state, and local laws and regulations.

17.12 *Other*

- A. The Design-Builder is and shall be an independent Project Team and the Design-Builder and its employees are not employees of the Owner. The Design-Builder shall be solely responsible for, and shall save Owner harmless from, all matters relating to payment of Design-Builder's employees, including those of Design-Builder, Project Design Professionals, engineers, consultants, and subcontractors, including compliance with social security requirements, federal and state tax withholding, and all other regulations governing employer-employee relations.
- B. Nothing contained in the Contract Documents nor any act of the Owner or Design-Builder shall be deemed or construed to create any third-party beneficiary or principal and agent association or relationship involving the Owner. Design-Builder has no authority to take any action or execute any documents on behalf of the Owner except as otherwise authorized by the Contract Documents.
- C. Neither the Owner nor the Design-Builder may assign any rights or interests in the Contract without the express written consent of the other.
- D. Unless expressly provided in the Contract Documents, nothing in the Contract Documents shall be construed to create or impose any duty owed by the Owner or Design-Builder to any other party not a signatory to the Contract.
- E. Unless expressly provided in the Contract Documents, all duties and responsibilities undertaken as part of the Contract will be for the sole and exclusive benefit of the Owner and Design-Builder and not for that of any other party.