

CITY OF LOVES PARK, ILLINOIS
REQUEST FOR PROPOSAL / REQUEST FOR QUALIFICATIONS
Design-Build Services
2026 Municipal Improvement Projects
Issued Pursuant to 65 ILCS 5/39.2 — Illinois Municipal Design-Build Authorization Act

Project Owner: City of Loves Park, Illinois
Owner's Representative: Shannon Messinger, Public Works Director
Mailing Address: 100 Heart Blvd, Loves Park, IL 61111
Technical Contact (RFI): Michael Purol, P.E. | mpurol@hutchisoneng.com
Proposal Due Date: June 25, 2026 — 3:00 p.m. CDT (No late submissions accepted)
RFI Deadline: June 15, 2026 — 5:00 p.m. CDT
Date Issued: June 2, 2026

IMPORTANT: The City reserves the right, in its sole discretion, to award any, all, or none Projects described herein. Each Project is independently scoped, independently funded, and independently awarded. Respondents may submit a proposal for one, two, or all three Projects.

SECTION 1 — INTRODUCTION AND BACKGROUND

The City of Loves Park, Illinois ("City") issues this Request for Proposal and Request for Qualifications ("RFP/RFQ") for Design-Build ("DB") services in connection with five (5) distinct municipal improvement projects (each a "Project," collectively the "Projects"). This solicitation is issued pursuant to the Illinois Municipal Design-Build Authorization Act, 65 ILCS 5/39.2.

The City intends to select one or more qualified Design-Build Entities ("DB Entity") to deliver the Projects on a Cost-plus basis with a Guaranteed Maximum Price ("GMP"). The City expressly reserves the right, in its sole discretion, to commission any, all, or none of the Projects, in any combination, as funding conditions warrant. Each Project will be memorialized by a separate written agreement executed upon the City's election to proceed with that Project.

Prospective respondents should note that the City views the relationship with its selected DB Entity as a collaborative partnership. The City expects the DB Entity to provide pre-construction services, design stewardship, subcontractor selection, and construction delivery — all subject to the cost certainty of a GMP — and to act in the best interests of the City throughout the engagement.

1.1 Enabling Authority

This procurement is conducted as a single-phase, simultaneous evaluation process as permitted under 65 ILCS 5/39.2. Notwithstanding the two-component submittal structure described herein, Phase 1 (Qualifications) and Phase 2 (Technical and Fee) submittals are due simultaneously on the Proposal Due Date. Phase 1 submittals will be evaluated and scored first; the three (3) highest-scoring respondents will then have their Phase 2 submittals scored.

1.2 Owner Contact Information

- Owner: City of Loves Park, Illinois
- Owner's Representative: Robert J. Burden, City Clerk
- Address: 100 Heart Blvd, Loves Park, IL 61111
- Technical / RFI Contact: Michael Purol, P.E. — mpurol@hutchisoneng.com

All questions and requests for information (RFIs) must be submitted in writing to Michael Purol, P.E. at the email address above no later than June 15, at 5:00 p.m. CDT. No oral inquiries will be entertained. Responses to all timely RFIs will be issued as written addenda distributed to all registered prospective respondents.

SECTION 2 — PROJECT DESCRIPTIONS

This RFP/RFQ encompasses five (5) separate and distinct Projects, each independently scoped, independently funded, and independently awarded. The summary table below identifies each Project. Full programmatic requirements for each Project are set forth in corresponding Attachments A through E.

Project	Description	Budget	Funding Source
A	Fire Station #2 Interior Improvements and Addition	\$1,000,000.00	\$750,000 State / \$250,000 Local
B	Water Department Interior Improvements	\$250,000.00	\$250,000 Local
C	City Hall Interior Toilet Room and Break Room Improvements	\$200,000.00	\$200,000 Local
D	City Hall Partial Remodel for Police Department		
E	Filter Plant Demolition		

All Projects are located within the municipal limits of Loves Park, Illinois. All Projects are subject to the applicable building codes identified in Section 5.1. Municipal building permit fees are waived for all Projects; however, municipal building inspections are required.

2.1 Project A — Fire Station #2 Interior Improvements and Addition

Location: Fire Station #2, Loves Park, Illinois

Approved Budget: \$1,000,000.00 (State Funding: \$750,000 / Local Funds: \$250,000)

This Project involves interior improvements and a building addition to Fire Station #2. The DB Entity shall design and construct improvements in accordance with the Program Requirements detailed in Attachment A. Given that State funding comprises a substantial portion of the Project budget, the DB Entity shall comply with all applicable State funding conditions, reporting requirements, and procurement restrictions, as identified by the City prior to contract execution.

Special Considerations for Project A:

- The facility is an active fire station. Work must be coordinated to maintain continuous fire department operations. The DB Entity shall prepare and submit, for the City's approval, a Phasing and Sequencing Plan ensuring no disruption to emergency response capabilities.
- Pre-construction coordination with the Fire Department Chief or designee is required prior to any work commencement.
- State funding compliance, including any prevailing wage or reporting obligations specific to the State grant, shall be identified and incorporated into the GMP and contract. Respondents should note that Davis-Bacon Act requirements may apply; the City will confirm prior to contract execution.

2.2 Project B — Water Department Interior Improvements

Location: Water Distribution Office, Loves Park, Illinois

Approved Budget: \$250,000.00 (Local Funds)

This Project involves interior improvements to the Water Distribution Office. The DB Entity shall design and construct improvements in accordance with the Program Requirements detailed in Attachment B. The facility is an active municipal operations center; coordination with the Water Department to maintain continuous operations during construction is required.

Special Considerations for Project B:

- This Project is locally funded and is not contingent upon State appropriations.
- Access to secure areas shall be coordinated in advance with the Public Works Director.

2.3 Project C — City Hall Interior Toilet Room and Break Room Improvements

Location: City Hall, Loves Park, Illinois

Approved Budget: \$200,000.00 (Local Funds)

This Project involves interior improvements to toilet room(s) and the break room at City Hall. The DB Entity shall design and construct improvements in accordance with the Program Requirements detailed in Attachment C. Work must be phased to maintain public access to City Hall and to minimize disruption to daily municipal operations.

Special Considerations for Project C:

- This Project is locally funded and is not contingent upon State appropriations.
- Compliance with the 2018 Illinois Accessibility Code is of particular importance given the public-facing nature of the toilet room facilities.
- The DB Entity shall coordinate with the City Administrator regarding after-hours access and work sequencing to minimize disruption to the public and City staff.

2.4 Project D — City Hall Partial Remodel for Police Department

Location: City Hall, Loves Park, Illinois

Approved Budget: \$0 (Local Funds)

This Project involves the remodel of approximately 28,000 square feet of space currently occupied by the Regional Office of Education. See aerial outline of approximate building area and photo log, Attachment D. Work must be phased to maintain public access to City Hall and to minimize disruption to daily municipal operations.

Special Considerations for Project D:

- This Project is locally funded and is not contingent upon State appropriations.
- Compliance with the 2018 Illinois Accessibility Code is of particular importance given the public-facing nature of the toilet room facilities.
- The DB Entity shall coordinate with the City Administrator regarding after-hours access and work sequencing to minimize disruption to the public and City staff.

2.5 Project E — Filter Plant Demolition

Location: Water Treatment Filter Plant, Loves Park, Illinois

Approved Budget: \$0 (Local Funds)

This Project involves the complete demolition of the building and the clearing of debris, backfilling of foundations, grading for drainage, and conduct soil remediation as required. See attached original drawings, Attachment E.

Special Considerations for Project E:

- This Project is locally funded and is not contingent upon State appropriations.
- Any special requirements as identified by the City's Water Department.
- Following applicable laws concerning disposal of demolition debris.

SECTION 3 — PROCUREMENT SCHEDULE

The following schedule governs this procurement. The City reserves the right to modify this schedule at its sole discretion by written addendum distributed to all registered respondents.

Milestone	Date
Publish Notice of Intent (NOI)	April 27, 2026
Publish Request for Proposal (RFP)	June 2, 2026
Final Date for RFI Submissions	June 15, 2026 (5:00 p.m. CDT)
Final Date to Submit Proposal	June 25, 2026 (3:00 p.m. CDT)
Phase 1 Evaluation and Shortlisting	June 30, 2026
Phase 2 Evaluation and Selection	July 14, 2026
Contract Negotiations	July 28, 2026
Design Development Begins	August 15, 2026
Permit Submittal Deadline	October 1, 2026
Construction Substantial Completion	TBD (per Project)
Construction Closeout	TBD (per Project)

SECTION 4 — SELECTION PROCESS

The selection process is conducted in two simultaneous evaluation components (Phase 1 and Phase 2), consistent with the single-phase procurement process authorized under 65 ILCS 5/39.2. Both Phase 1 and Phase 2 submittals are due simultaneously on the Proposal Due Date. Phase 1 submittals will be evaluated and scored; the three (3) highest-scoring respondents will then have their Phase 2 submittals evaluated and scored.

4.1 Phase 1 — Qualifications and Prequalification (80 Points)

Phase 1 evaluates the DB Entity's organizational qualifications, relevant experience, personnel, and financial capacity. The Phase 1 submittal shall include all of the following, organized in the order set forth below.

4.1.1 DB Entity Profile and Organizational Information

- Full legal name, principal office address, and all office locations relevant to this Project
- Legal structure (corporation, LLC, partnership, joint venture, etc.), state of formation, and year established
- Ownership structure and identification of any parent, affiliate, or subsidiary entities
- Description of the proposed DB Entity structure, including identification of the lead design professional and lead construction entity
- Organizational chart identifying key personnel proposed for this engagement

4.1.2 Key Personnel

Identify and provide resumes for each of the following personnel who would be assigned to the Project(s):

- Project Manager (DB Entity lead — construction)
- Lead Architect / Design Professional of Record
- Construction Site Superintendent (per Project, if different)
- Pre-Construction Services Manager / Estimator
- Any other key personnel, including MEP engineers of record

For each key personnel member, provide: (a) years of experience in role; (b) relevant project history; (c) anticipated percentage of time committed to this Project; and (d) a commitment to remain assigned for the duration of the Project. Personnel substitutions after award are subject to City prior written approval.

4.1.3 Similar Project Experience

Provide a minimum of three (3) comparable project references demonstrating the DB Entity's experience with projects of similar scope, size, and complexity. For each reference project, provide:

- Project name, owner, and location
- Brief description of scope, including type of facility and nature of improvements
- Original contract value and final contract value (explain any variance)
- Original substantial completion date and actual substantial completion date (explain any variance)
- Identity of any subcontractors listed in the Phase 2 submittal that also worked on the reference project
- Owner contact information (name, title, phone, and email) for verification purposes

4.1.4 Client References

Provide a minimum of three (3) client references who have worked with the DB Entity within the past five (5) years and have knowledge of the DB Entity's ability to successfully deliver projects of similar character. For each reference, provide:

- Name, title, and organization or affiliation

- Mailing address, current telephone number, and email address
- Brief description of the DB Entity's role on the referenced engagement

The City reserves the right to contact additional references beyond those provided.

4.1.5 Financial Capacity and Bonding

- Provide a current letter from a licensed surety confirming the DB Entity's aggregate bonding capacity and single-project bonding limit
- Confirm ability to provide a Bid Bond equal to ten percent (10%) of the proposed GMP for each Project for which the respondent is competing
- Confirm ability to provide Performance and Payment Bonds equal to one hundred percent (100%) of the final construction cost for each applicable Project
- Confirm compliance with all applicable Illinois public bonding requirements

4.1.6 Business Enterprise Utilization Plan

Describe the DB Entity's plan to comply with the Business Enterprise for Minorities, Women, and Persons with Disabilities Act utilization goals pursuant to Section 2-105 of the Illinois Human Rights Act, including:

- The DB Entity's internal policy regarding MWDBE utilization
- Good-faith efforts taken on comparable past projects to meet applicable utilization goals
- Proposed utilization goals for each Project and identification of any specific MWDBE subcontractors or suppliers, if known at time of submission

4.2 Phase 1 Scoring

Evaluation Criterion	Max Points	Weight
Experience and qualifications of key personnel	20	25%
Experience with similar project type and scope	10	12.5%
Financial capability (bonding capacity)	5	6.25%
Timeliness of past performance (schedule adherence)	5	6.25%
Demonstrated ability to meet budget and timing elements	10	12.5%
Quality of client references	15	18.75%
Commitment to assign identified personnel for project duration	10	12.5%
MWDBE good-faith utilization plan	5	6.25%
TOTAL	80	

4.3 Phase 2 — Technical Proposal and Fee Submittal (110 Points)

Phase 2 evaluates the DB Entity's technical approach, design concepts, project schedule, and — critically — its complete fee and cost structure. The Phase 2 submittal shall be organized and clearly labeled to correspond with each subsection below. Where a respondent is competing for multiple Projects, Phase 2 information shall be separately organized and clearly delineated for each Project.

4.3.1 Technical Approach and Design Concepts

The Phase 2 submittal shall include the following for each Project for which the respondent competes:

- Conceptual design drawings, including at minimum: (a) floor plan; (b) detail or narrative of proposed wall section(s); (c) details or narrative of proposed mechanical systems; and (d) details or narrative of proposed structural systems
- A written narrative describing the DB Entity's design approach, material selections, and how the proposed design meets the City's programmatic requirements as set forth in the Attachment corresponding to that Project
- Identification of any design alternatives, value engineering opportunities, or innovative approaches that could reduce cost, improve quality, or accelerate schedule without compromising program requirements
- Description of the DB Entity's quality assurance and quality control (QA/QC) process during both design and construction phases
- **The above Technical Approach and Design Concepts of this Section 4.3.1 are only required for Projects presently funded, which are Project A, Project B, and the first bathroom renovation of Project C (as shown on Attachment C's Exhibit C (Pg. 25)). All submissions for the other projects only currently require Budgets and narratives of proposed work.**

4.3.2 Project Schedule

Provide a detailed preliminary project schedule for each Project, including at minimum:

- Estimated design start and completion milestones
- Permit submittal date and anticipated permit issuance date
- Identification of long-lead items and early procurement strategy
- Construction start date
- Substantial completion date
- Final closeout and punchlist completion date

4.3.3 Proposed Subcontractors

Identify major subcontractors proposed for each Project (including at minimum mechanical, electrical, and plumbing). For each proposed subcontractor, provide:

- Legal name, address, and contact information
- Scope of work assigned
- MWDBE status, if applicable
- Prior experience working with the DB Entity

The City acknowledges that subcontractors may be subject to change prior to GMP establishment; however, substitution of any major subcontractor after selection requires prior written approval by the City.

4.3.4 Self-Performed Work

To the extent the DB Entity intends to self-perform any portion of the construction work, the Phase 2 submittal shall:

- Identify each scope of work the DB Entity proposes to self-perform
- Provide the applicable hourly labor rate(s) for each trade or craft classification to be self-performed (see Fee Schedule in Section 4.4)
- Provide a Not-to-Exceed ("NTE") budget for all self-performed work in the aggregate

- Certify that the self-performed work NTE budget will not be exceeded without prior written authorization from the City

The City reserves the right to independently verify the reasonableness of proposed rates against prevailing wage schedules and market comparables.

4.4 Fee and Cost Structure — Required Disclosures

Transparency and comparability of fee and cost proposals is a primary objective of this solicitation. Each respondent shall complete and submit the Fee Schedule set forth below for each Project for which it competes. Fee Schedule submissions must be separately tabbed and clearly identified by Project. Incomplete or non-conforming fee disclosures will be deemed non-responsive and may result in disqualification.

The City intends to negotiate a Guaranteed Maximum Price (GMP) contract. The GMP will be established based on design development documents at a stage mutually agreed upon by the City and the selected DB Entity. The fee components disclosed in the Fee Schedule will form the contractual basis upon which the GMP is built and reconciled.

4.4.1 Fee Schedule — Required Components

Respondents shall complete the following Fee Schedule for each Project separately. All amounts shall be stated as a fixed dollar amount or as a percentage of Cost of the Work, as specified. Ranges are not acceptable; state a single definitive value for each line item.

Fee / Cost Component	Description / Basis	Proposed Amount or %
DB Entity Fee (Profit and Overhead)	Fixed percentage of Cost of the Work (excluding DB Entity Fee)	_____ %
General Conditions – Fixed Lump Sum	Itemized lump sum for the full project duration	\$ _____
Hourly Rate – General Conditions Labor	Hourly rate for DB Entity's own personnel performing general conditions scope	\$ _____/hr
Hourly Rate – Self-Performed Work	Hourly rate for each trade/craft classification for self-performed construction work (by trade; attach schedule)	\$ _____/hr (by trade)
Not-to-Exceed Budget – Self-Performed Work	Maximum aggregate cost for all self-performed construction work	\$ _____
Material and Equipment Mark-Up	Percentage applied to direct material/equipment costs (excluding subcontractor costs)	_____ %
Subcontractor Mark-Up	Percentage applied to subcontractor invoices beyond subcontractor's own cost	_____ %
Pre-Construction Services Fee	Lump sum for design coordination, estimating, and pre-construction management	\$ _____
Allowance for Reimbursables	Travel, printing, permit coordination, testing, and other documented reimbursable costs	\$ _____
Contingency (DB Entity Controlled)	Percentage or lump sum; subject to GMP reconciliation and Owner prior written approval for use	_____ % or \$ _____

4.4.2 Definition of Cost of the Work

For purposes of this RFP/RFQ and any resulting contract, "Cost of the Work" means all direct costs necessarily incurred and paid by the DB Entity in the proper performance of the Work, including:

- Wages and salaries of construction workers directly employed on the Project site
- Costs of materials and equipment incorporated into the Work
- Costs of subcontracts, including any subcontractor markup applied by the DB Entity (as disclosed in the Fee Schedule)
- Costs of general conditions scope (as separately itemized per Section 4.4.3)
- Costs of insurance and bonding attributable to the Work (excluding DB Entity corporate-level overhead)
- Costs of permits, fees, and required inspections, except as waived by the City

"Cost of the Work" expressly *excludes*: DB Entity Fee (profit and overhead); pre-construction services fees; DB Entity home-office overhead not allocable to the Project; and any items designated as the DB Entity's responsibility without reimbursement under the contract.

4.4.3 General Conditions Itemization

In addition to the Fee Schedule, each respondent shall provide a separate itemized breakdown of General Conditions costs for each Project. The itemization shall identify each line item (e.g., project management staff, superintendent, temporary facilities, site signage, safety equipment, small tools, site utilities, cleaning, dumpsters, project closeout) with a corresponding dollar amount and, where applicable, the duration and unit rate. The sum of all itemized General Conditions shall equal the General Conditions Fixed Lump Sum stated in the Fee Schedule.

4.4.4 Hourly Rate Schedule

Each respondent shall provide a complete schedule of hourly billing rates for: (a) all DB Entity personnel whose time may be charged to General Conditions; and (b) all craft and trade classifications for any self-performed construction work. Hourly rates shall be inclusive of wages, payroll burden, and any overhead markup, but shall exclude DB Entity Fee, which is captured separately. These rates are binding for the term of the contract for any work authorized on an hourly basis.

4.5 Phase 2 Scoring

Evaluation Criterion	Max Points	Weight
Compliance with project objectives and program requirements (Corresponding to Attachments A-E)	10	9.1%
Compliance with RFP/RFQ requirements and completeness of submittal	10	9.1%
Quality of materials and products proposed	5	4.5%
Quality of design parameters and technical approach	5	4.5%
Design concepts and innovation	20	18.2%
Innovation in meeting scope and performance criteria	10	9.1%
Constructability and delivery methodology	20	18.2%
Total Project Cost (GMP competitiveness across all fee components)	20	18.2%
Time of Completion (proposed schedule)	5	4.5%
Cost Transparency (completeness and clarity of Fee Schedule)	5	4.5%

Evaluation Criterion	Max Points	Weight
TOTAL	110	

Note on Price Scoring: The lowest conforming total proposed cost for each Project will receive the maximum allocated points. Other conforming proposals will be scored on a proportional basis relative to the lowest conforming cost proposal.

SECTION 5 — MATERIAL CONTRACT REQUIREMENTS

The following provisions reflect material terms that will be incorporated into any Design-Build Agreement executed pursuant to this RFP/RFQ. Respondents should carefully review these requirements prior to submission.

5.1 Applicable Building Codes

The DB Entity shall design and construct all work in compliance with the following codes and standards (editions to be verified with the City prior to commencement of design):

- 2021 ICC Series of Codes, with local amendments
- Illinois Energy Conservation Code, with amendments
- NFPA 70, National Electrical Code, 2020 Edition, with amendments
- 2014 State of Illinois Plumbing Code and 2021 International Plumbing Code, Chapter 11, with amendments
- NFPA 101, Life Safety Code, 2021 Edition, with amendments
- 2018 Illinois Accessibility Code

5.2 Contract Form

The Design-Build Agreement will be based upon the AIA Document A141, Standard Form of Agreement Between Owner and Design-Builder (2024 Edition), as modified by the City. A draft of the modified A141 is attached as Attachment F. Respondents are encouraged to review Attachment F prior to submission and to raise any material objections through the RFI process. Failure to raise objections prior to the RFI deadline may be construed as acceptance of the contract terms as presented.

5.3 Guaranteed Maximum Price (GMP) Structure

The selected DB Entity will be required to establish a GMP for each commissioned Project. The GMP shall be developed collaboratively during the pre-construction phase and executed by written amendment upon the City's approval. Key GMP provisions include:

- The GMP shall be the maximum amount payable to the DB Entity for the Cost of the Work plus the DB Entity Fee. Savings below the GMP shall be shared in a manner to be negotiated and specified in the contract.
- The GMP shall include a DB Entity-controlled contingency, the amount and usage conditions of which shall be negotiated and subject to City prior written approval for any expenditure.
- Any costs in excess of the GMP are the DB Entity's sole responsibility, unless caused by Owner-directed changes, unforeseen conditions as defined in the contract, or other Owner-risk events as identified in the contract.
- The GMP shall be established on an open-book basis. The City and its representatives shall have the right to audit all cost records, subcontract agreements, invoices, and supporting documentation related to the Cost of the Work.
- The DB Entity shall provide a schedule of values and monthly pay applications in a format approved by the City, supported by lien waivers and subcontractor certifications.

5.4 Bonding Requirements

- Bid Bond: 10% of the proposed GMP for each Project, submitted with the proposal
- Performance Bond: 100% of the final contract (GMP) amount — required upon contract execution
- Payment Bond: 100% of the final contract (GMP) amount — required upon contract execution
- All bonds shall be issued by a surety licensed to do business in the State of Illinois and rated not less than A- / Class VIII by AM Best
- All bonds shall comply with the Illinois Public Construction Bond Act, 30 ILCS 550/0.01 et seq.

5.5 Insurance Requirements

Prior to commencing any work, the DB Entity shall procure and maintain the following insurance coverages at its sole cost and expense:

Coverage Type	Required Limit
Builders Risk	100% of final construction cost
Commercial General Liability – Per Occurrence	\$1,000,000
Commercial General Liability – Aggregate	\$1,000,000
Personal Property Per Occurrence	\$500,000
Personal Property Aggregate	\$1,000,000
Comprehensive Auto Liability – Per Occurrence	\$1,000,000
Workers' Compensation	Statutory Limits
Employers' Liability – Per Occurrence	\$500,000
Employers' Liability – Disease Policy	\$500,000
Employers' Liability – Disease Per Employee	\$500,000
Umbrella / Excess (if primary limits not met)	\$1,000,000 per occurrence; same aggregate as underlying coverages

Additional Requirements:

- The City of Loves Park, Illinois and all assigned subcontractors shall be named as additional insureds on all policies, by endorsement.
- All policies shall provide thirty (30) days' prior written notice to the City of cancellation or material change.
- Certificates of insurance evidencing all required coverages shall be delivered to the City prior to contract execution and renewed annually throughout the term of the contract.
- If any required primary coverage limit is not independently met, an umbrella or excess liability policy of not less than \$1,000,000 per occurrence and with the same aggregate limits as the underlying policies is acceptable.

5.6 Prevailing Wages

All work performed on these Projects is subject to the Illinois Prevailing Wage Act, 820 ILCS 130/0.01 et seq. The DB Entity and all subcontractors shall pay all workers employed on the Project not less than the prevailing rate of wages as determined by the Illinois Department of Labor for Winnebago County, Illinois. The DB Entity shall post the prevailing wage rates in a conspicuous place on the Project site and shall comply with all related record-keeping and reporting obligations. Project A may be subject to additional Davis-Bacon Act requirements depending on the conditions of the applicable State grant; the DB Entity shall make appropriate inquiry and comply accordingly.

5.7 Negotiable Contract Terms

The following terms are subject to negotiation and will be addressed during contract negotiations with the selected DB Entity. Respondents may raise their positions on these items during the RFI process or in their Phase 2 submissions:

- GMP contingency: amount, conditions for use, and shared-savings arrangement upon Project completion
- Liquidated damages: rate per calendar day of delay beyond the agreed substantial completion date

- Retainage: standard rate of ten percent (10%) reducible to five percent (5%) upon fifty percent (50%) completion, subject to satisfactory performance
- Substantial completion and final completion definitions, punchlist process, and certificate issuance procedures
- Change order process: required documentation, applicable markups (referencing the Fee Schedule), and deadlines for Owner response
- Owner-directed suspension and termination rights (for convenience and for cause)
- Warranty obligations: minimum one (1) year correction period following substantial completion, with extended periods for specified systems or equipment
- Dispute resolution: negotiation, mediation, and venue for litigation (Winnebago County, Illinois)
- Limitation of liability provisions, consequential damages waiver, and indemnification obligations

SECTION 6 — SUBMISSION REQUIREMENTS

6.1 Phase 1 Submittal Format

- Maximum fifteen (15) single-sided 8.5" x 11" pages (excluding cover page, dividers, and required exhibits)
- Minimum 11-point font size throughout
- Organized in the order set forth in Section 4.1

6.2 Phase 2 Submittal Format

- No specific page limit, but the submittal shall be concise and well-organized
- Where competing for multiple Projects, Phase 2 information shall be separately tabbed and clearly delineated by Project (A, B, C, D, E)
- All Fee Schedules (Section 4.4.1), General Conditions itemizations (Section 4.4.3), and Hourly Rate Schedules (Section 4.4.4) shall be submitted as separate, tabbed exhibits clearly identified by Project
- Minimum 11-point font size throughout

6.3 Delivery Instructions

- Submittals are due on June 23, 2026, before 3:00 p.m. CDT. No late submissions will be accepted or considered under any circumstances.
- Submittals shall be delivered in a sealed envelope or box, clearly marked: "City of Loves Park — Design Build 2026 Proposal — [Respondent Name]" together with the date of submittal.
- Eight (8) hard copies and one (1) digital copy in PDF format on a USB flash drive shall be delivered to:

Robert J. Burden, City Clerk
City of Loves Park, Illinois
100 Heart Blvd, Loves Park, IL 61111

- Hand-delivery or courier delivery is recommended. The City assumes no responsibility for submissions lost or delayed in transit. Late submissions will not be opened or considered.

6.4 RFI Procedure

- All questions shall be submitted in writing to Michael Purol, P.E. at mpurol@hutchisoneng.com no later than June 15, 2026, at 5:00 p.m. CDT
- No oral inquiries will be entertained. Responses to timely RFIs will be issued by written addendum distributed to all registered respondents
- Respondents are responsible for checking for and incorporating all addenda prior to submission. Failure to acknowledge and account for any addendum may result in disqualification

6.5 Completeness; Non-Conforming Submittals

A submission that fails to include any required element identified in this RFP/RFQ — including, without limitation, the Phase 1 qualifications materials, Phase 2 technical materials, the completed Fee Schedule, General Conditions itemization, Hourly Rate Schedule, Bid Bond, and evidence of bonding capacity — may be deemed non-responsive and disqualified from further consideration at the City's sole discretion.

SECTION 7 — CITY'S RIGHTS AND GENERAL CONDITIONS

1. **Right to Reject.** The City reserves the right, in its sole discretion, to reject any or all proposals, to waive any informality or irregularity in any proposal, and to accept the proposal deemed most advantageous to the City. The City is not obligated to select the lowest-cost proposal.
2. **No Award Obligation.** The City is not obligated to award any contract as a result of this RFP/RFQ. Issuance of this RFP/RFQ does not constitute a commitment by the City to proceed with any Project.
3. **Independent Award per Project.** The City expressly reserves the right to award any combination of Projects A-E) to the same or to different DB Entities. A respondent's failure to be awarded one Project shall not affect its eligibility for award of another Project.
4. **Costs of Preparation.** All costs incurred by respondents in preparing and submitting proposals are the sole responsibility of the respondent. The City shall not reimburse any costs of proposal preparation.
5. **Confidentiality.** Proposals will be held in confidence to the extent permitted by the Illinois Freedom of Information Act (FOIA), 5 ILCS 140/1 et seq. Respondents should not assume that any portion of their proposal is exempt from public disclosure without independently consulting with legal counsel.
6. **Ex Parte Communications.** From the date of issuance of this RFP/RFQ until the City provides written notice of selection, respondents and their representatives shall not contact any City official, elected official, or evaluation committee member regarding this procurement other than through the designated RFI process. Violation of this provision may result in disqualification.
7. **Addenda.** The City reserves the right to issue addenda modifying or clarifying this RFP/RFQ at any time prior to the Proposal Due Date. Respondents are responsible for checking for all addenda.
8. **Protest Procedure.** Any respondent that believes the procurement process is not being conducted in accordance with applicable law or this RFP/RFQ may submit a written protest to the City Clerk. Protests must be filed within five (5) business days of the action being protested. Failure to timely protest constitutes a waiver of all objections.
9. **Compliance with Law.** The selected DB Entity shall comply with all applicable federal, State, and local laws, ordinances, regulations, and orders, including without limitation: Illinois Human Rights Act, Illinois Prevailing Wage Act, Illinois Public Construction Bond Act, Americans with Disabilities Act, and all applicable environmental laws.
10. **Ethics Certification.** By submitting a proposal, each respondent certifies that it has not offered, promised, or provided any gift, gratuity, or consideration of any kind to any City official or employee in connection with this solicitation.

SECTION 8 — ATTACHMENTS AND EXHIBITS

For all Attachments (A-E), see referenced existing floor plans and notes. Room Names and Numbers are provided for discussion purposes only of any a particular scope of work. Design Build Contractors are responsible for verifying existing plans before design work begins.

The following documents are incorporated into and made a part of this RFP/RFQ:

- Attachment A — Fire Station #2 Interior Improvements and Addition
- Attachment B — Water Department Interior Improvements
- Attachment C — City Hall Interior Toilet Rooms and Break Room Improvements
- Attachment D — City Hall – Partial Remodel for Police Department
- Attachment E — Filter Plant Demolition
- Exhibit A — AIA Document A141-2024 (As Modified by the City)
- Exhibit B — Fee Schedule form to be completed by Respondent

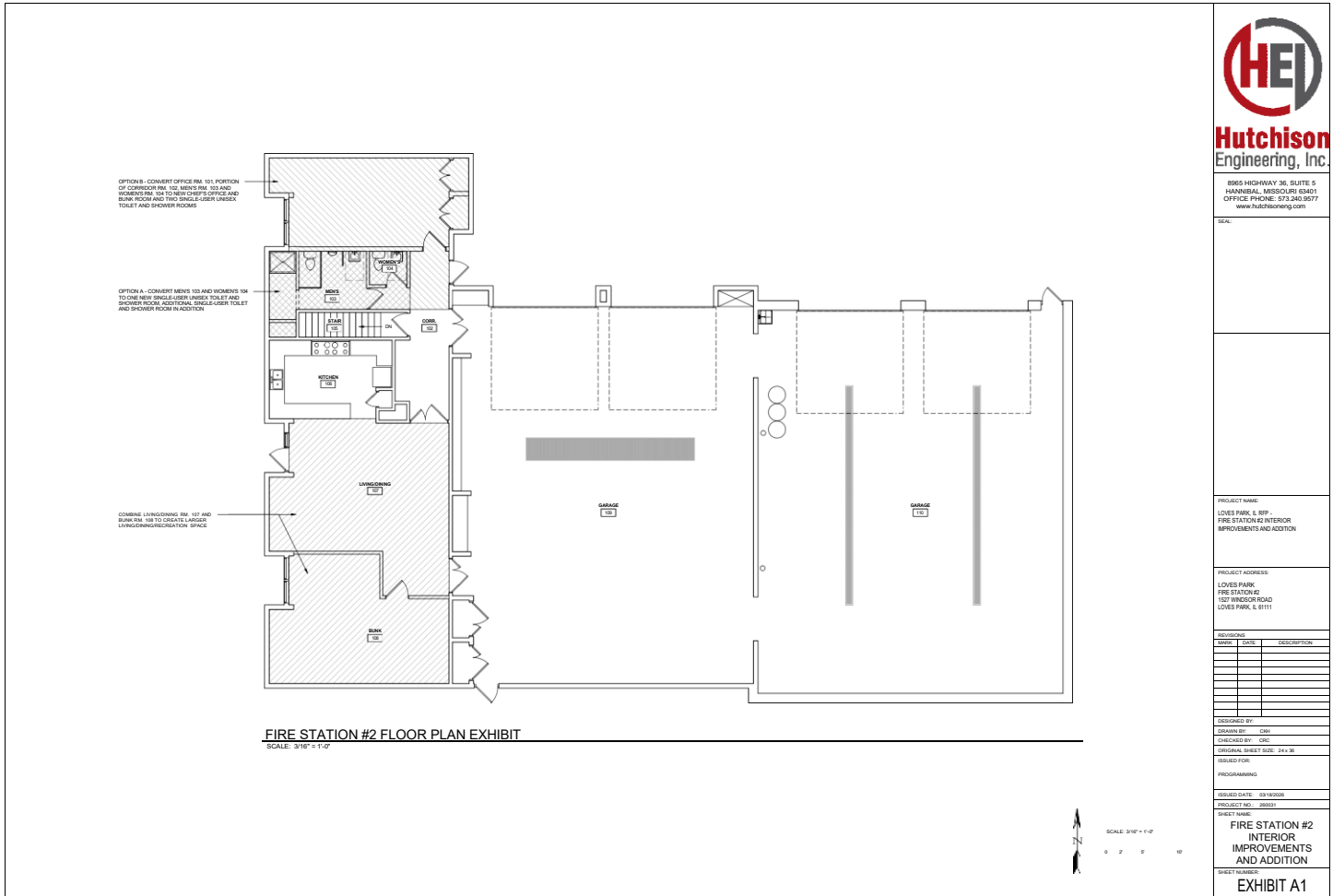
ATTACHMENT A — FIRE STATION #2 INTERIOR IMPROVEMENTS AND ADDITION

The Program for Fire Station #2 Interior Improvements and Addition may include, but is not limited to, Attachment A and the following:

- Interior Improvements:
 - Office Rm. 101, Convert to Office and Bunk Room for Fire Chief.
 - Corridor Rm. 102, finish improvements only.
 - Men’s Toilet and Shower Rm. 103 and Women’s Toilet Rm. 104 – Option A, Convert to one new single-user unisex toilet and shower room, Option B, Convert to two new single-user unisex toilet and shower rooms, using a portion of Office Rm. 101.
 - Stair Rm. 105, no work planned this contract.
 - Kitchen Rm. 106, finish improvements only.
 - Living/Dining Rm. 107 and Bunk Rm. 108, remove wall between the rooms to create larger living/dining/recreation space.
 - Garage Rm. 109, no work planned this contract. New door to exterior will be required if existing door is blocked by addition.
 - Garage Rm. 110, no work planned this contract.
- Addition:
 - Provide at least seven (7) bunk rooms, minimum size 8’-0” x 12’-0”.
 - Option A, Provide one single user unisex Toilet and Shower Room.
 - Option B, alternate bid to provide one single-user unisex Toilet and Shower Room.
 - Provide minimum 20’-0”x20’-0” exterior paved area. Addition and/or Living/Dining/Recreation renovated space to open onto exterior area. Garage may open onto exterior paved area.
- Site Work:
 - Bunk Room Addition will most likely be located to the south, and this will encroach on the existing south parking lot. Design Build Contractor to construct eight (8) additional parking places.
- Miscellaneous Information:
 - Construction phasing to be scheduled between Design Build Contractor and Owner. Facility must be able to remain in operation during construction activities.
 - Exterior Finishes to match existing, two-tone 8x8 CMU.
 - Interior Finishes are as follows:
 - New Luxury Vinyl Tile (LVT) throughout.
 - New Rubber (or Vinyl) Cove Base (RCB/VCB) throughout.
 - Paint on existing walls in office/bunk room, single-user unisex toilet and shower room, living/dining/recreation room, and where renovation requires new wall paint corner to corner.
 - Ceramic porcelain tile in toilet/shower rooms minimum at wet walls
 - New lay-in acoustic ceiling tile throughout. Existing grid, including existing lighting and ceiling fixtures, can remain in areas that are not reconfigured, or if ceiling works with reconfiguration of rooms.
 - All new countertops and window sills to be plastic laminate.
 - Doors, Frames, and Hardware:
 - All new exterior doors and frames to be Level 3 – Extra Heavy Duty Commercial Opening
 - All new interior doors to be solid-core wood, prefinished to match existing.
 - All new frames to be hollow metal, paint finish.
 - All new hardware to be grade 1.

- Windows:
 - Each new bunk room in addition to be provided with an operable transom window, nominal 18” tall x 36” wide. Windows to be aluminum frame, insulated glazing.
- At a minimum, all sleeping rooms and rooms within R-2 occupancy area to be protected with an automatic sprinkler system per 2021 IBC.
- Design Building Contractor to review if a drinking fountain is required.
- Design Build Contractor to review if a janitor sink is required.
- All furniture is selected and provided by Owner.

**FIRE STATION #2
FLOOR PLAN**



8665 HIGHWAY 36, SUITE 5
HANNIBAL, MISSOURI 63403
OFFICE PHONE: 573.265.9277
www.hutchisoneng.com

PROJECT NAME:
LOVES PARK, L RFP -
FIRE STATION #2 INTERIOR
IMPROVEMENTS AND ADDITION

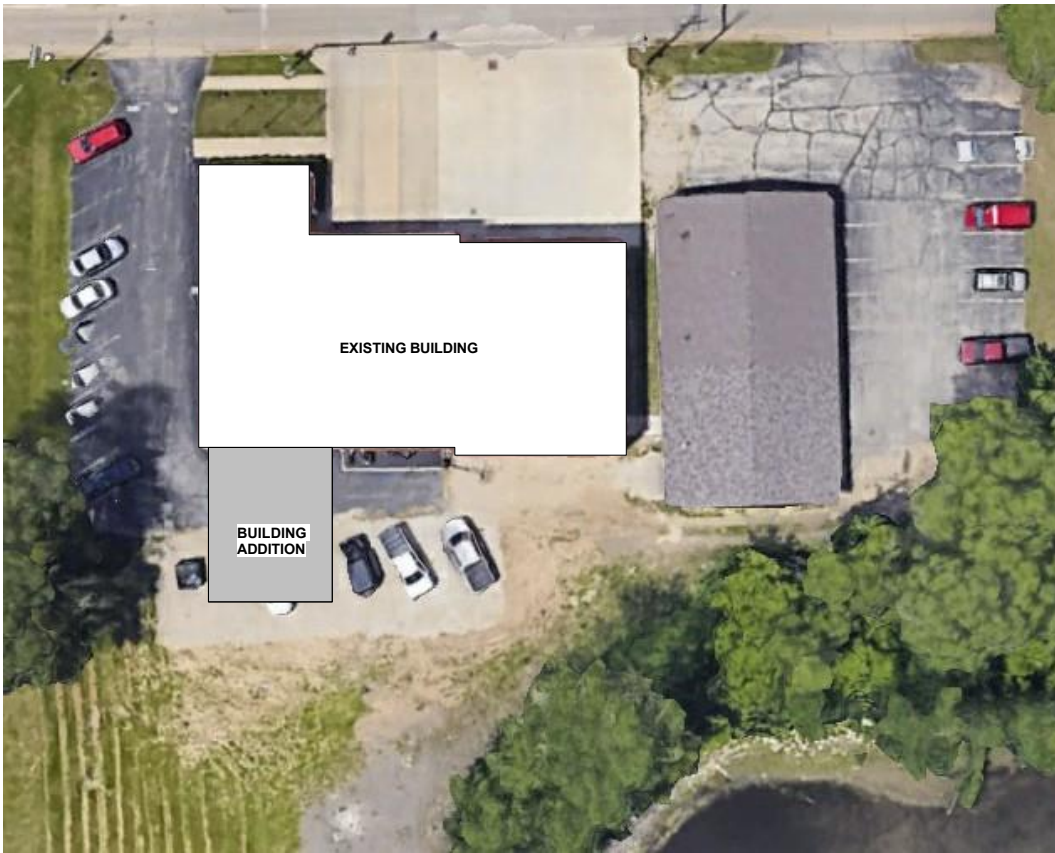
PROJECT ADDRESS:
LOVES PARK
FIRE STATION #2
1827 WINDSOR ROAD
LOVES PARK, L 61111

NO.	DATE	DESCRIPTION

DESIGNED BY: CHS
DRAWN BY: CHS
CHECKED BY: CRG
ORIGINAL SHEET NO.: 241.26
ISSUED FOR:
PROGRAMMING

DESIGNED DATE: 09/16/2020
PROJECT NO.: 202011
SHEET NAME:
**FIRE STATION #2
INTERIOR
IMPROVEMENTS
AND ADDITION**
SHEET NUMBER:
EXHIBIT A1

FIRE STATION #2
AERIAL IMAGE



FIRE STATION #2 AERIAL EXHIBIT
NOT TO SCALE



Hutchison
Engineering, Inc.

8802 HIGHWAY 96, SUITE 1
HANNIBAL, MISSOURI 63401
OFFICE PHONE: 573.240.9577
www.hutchisoneng.com

S&L:

PROJECT NAME:
LOVES PARK & RP-
FIRE STATION #2 INTERIOR
IMPROVEMENTS AND ADDITION

PROJECT ADDRESS:
LOVES PARK
FIRE STATION #2
107 WINDSOR ROAD
LOVES PARK, MO 63411

REVISION	DATE	DESCRIPTION

DESIGNED BY: OSM

DRAWN BY: OSM

CHECKED BY: OSM

ORIGINAL SHEET SIZE: 24 x 36

ISSUED FOR:
PROGRAMMING

ISSUED DATE: 01/16/2008

PROJECT NO.: 20001

SHEET NAME:
FIRE STATION #2
INTERIOR
IMPROVEMENTS
AND ADDITION

SHEET NUMBER:
EXHIBIT A2



ATTACHMENT B — WATER DEPARTMENT INTERIOR IMPROVEMENTS

The Program for Water Distribution Office Interior Improvements may include, but is not limited to, Attachment B and the following.

- Exterior Improvements:
 - Remove existing exterior doors, frames, and hardware and replace with new Hollow Metal Doors, Hollow Metal Frames, and new Hardware.
 - Doors and Frames to be Level 3 – Extra Heavy Duty Commercial Door Opening
 - Hardware to be Grade 1
 - Remove existing steel window units and replace with new aluminum operable windows.
 - Provide internal slim shades for window units.
 - Alternate bid to remove and replace aluminum windows in front office.
- Alternate bid to remove and replace transaction window in front office. Interior Improvements:
 - Rm. 101, Convert to new Breakroom.
 - Construct new interior stud furring walls over existing interior finish
 - Provide kitchenette with single well sink, microwave, refrigerator, and casework
 - Provide electrical power for new equipment, including TV connection
 - Rm. 102, Divide open area into Open Office and Private Office. Add a closet for IT equipment. Remove door to exterior.
 - Office Rm. 103, finish improvements only.
 - Front Office Rm. 104, finish improvements, work is for alternate bid only.
 - Corridor Rm. 105, finish improvements only.
 - Toilet 106 and Toilet 107, no work this contract
- Miscellaneous Information:
 - Construction phasing to be scheduled between Design Build Contractor and Owner. Facility must be able to remain in operation during construction activities.
 - Exterior Finishes, if patched, to match existing brick.
 - Interior Finishes are as follows:
 - New Luxury Vinyl Tile (LVT), in all areas except break room.
 - Resinous epoxy floor in new breakroom over existing concrete
 - New Rubber (or Vinyl) Cove Base (RCB/VCB) throughout.
 - Paint existing walls, unless otherwise noted.
 - New lay-in acoustic ceiling tile in modified areas only and in new breakroom Existing grid, including existing lighting and ceiling fixtures, can remain in areas that are not reconfigured, or if ceiling works with reconfiguration of rooms.
 - All new countertops and window sills to be plastic laminate.
 - Interior Doors, Frames, and Hardware:
 - All new doors to be solid-core wood, prefinished to match existing.
 - All new frames to be hollow metal, paint finish.
 - All new hardware to be grade 1
 - All furniture is selected and provided by Owner.

ATTACHMENT C — CITY HALL INTERIOR TOILET ROOMS AND BREAKROOM IMPROVEMENT

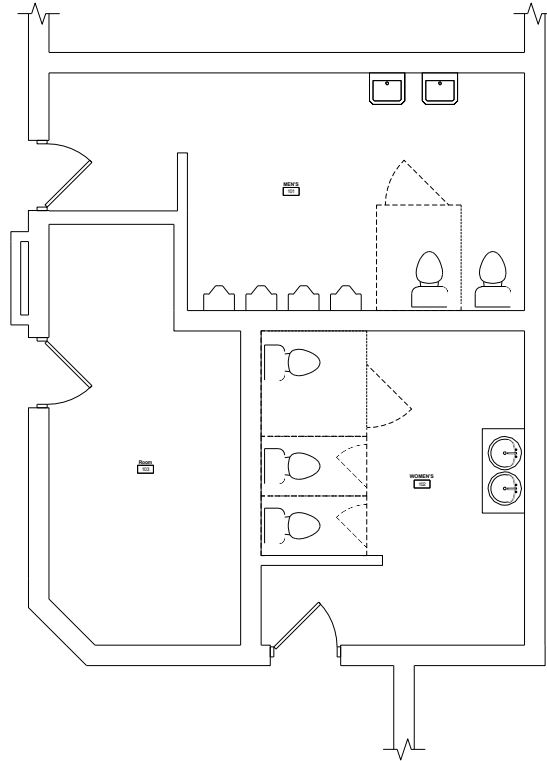
The Program for the City Hall East Toilet Rooms Renovation may include, but is not limited to, Attachment C and the following:

- Men's Rm. 101 and Women's Rm. 102, renovate toilet rooms to provide accessible toilet rooms with new plumbing fixtures.
 - Demolition items in Men's Rm. 101 and Women's Rm. 102:
 - Remove portion of existing concrete floor slab as required for new plumbing trench
 - Remove all existing plumbing fixtures and prepare for new fixtures.
 - Remove all existing toilet accessories and prepare for new.
 - Remove all existing toilet partition walls and prepare for new.
 - All interior finishes to be replaced, remove as required and prepare for new.
 - Remove existing door, frame, and hardware and prepare for new.
 - Renovation items in Men's Rm. 101 and Women's Rm. 102:
 - Review feasibility of adding flush valve fixtures in lieu of tank type.
 - New water closets and urinals to be wall hung
 - Lavatories to be integral to solid surface countertop
 - Interior plumbing walls to be lined with metal stud framing prepared to receive wall hung plumbing fixtures
 - Line existing interior walls and new stud framing with 5/8" gypsum board.
 - Toilet partitions to be floor mounted, overhead braced with privacy protections including at a minimum ship lap edges and continuous hinge
 - Urinal screens to be wall hung with floor mount post
 - Provide all new toilet accessories, unless otherwise noted. Owner to provide soap dispensers and paper towel dispensers for contractor to install
- Miscellaneous Information:
 - Construction phasing to be scheduled between Design Build Contractor and Owner. Rooms and areas around East Toilet Room project will remain in full operation.
 - Interior Finishes are as follows:
 - New ceramic porcelain tile floor – raise existing floor drains as required.
 - New ceramic porcelain tile on walls, minimum perimeter cove base and at wet walls – extend existing wall mounted fixtures as required.
 - Paint walls above tile finish.
 - New lay-in acoustic ceiling tile in new grid – provide new LED light fixtures.
 - Interior Doors, Frames, and Hardware:
 - All new doors to be solid-core wood, prefinished to match existing.
 - All new frames to be hollow metal, paint finish.
 - All new hardware to be grade 1.
 - All furniture is selected and provided by Owner.

The Program for the City Hall Administration, North, South, and Mayor's Toilet Rooms Renovations may include, but is not limited to, Attachment C and the following:

- Remove portion of existing concrete floor slab as required for new plumbing trench
- Remove all existing plumbing fixtures and prepare for new wall hung fixtures except in unisex toilet rooms provide floor mounted water closets. All lavatories to be integral to solid surface countertops.
- Remove all existing toilet accessories and prepare for new.
- Remove all existing toilet partitions and prepare for new.
- New interior finishes to include porcelain ceramic floor tile, porcelain ceramic wall base, porcelain ceramic wall tile at wet walls and paint on remaining walls.
- Repair and refinish existing doors and frames in place, hardware to remain.
- Renovate Administration Breakroom (Rm. 107) by removing kitchenette peninsula to convert to break/conference room, increase usable space, and improve existing finishes. New kitchenette to include single well sink, residential style refrigerator/freezer with ice maker, and drawer microwave. New carpet tile flooring and paint all walls.
- Renovate South Break area (Rm. 115) for new solid surface countertop with single well, sink, full height refrigerator, 8” trash hole with stainless steel finish ring in countertop, and paint break area island walls. Provide new GFCI outlets.
- Miscellaneous Information:
 - Construction phasing to be scheduled between Design Build Contractor and Owner. Rooms and areas around project areas will remain in full operation.
 - New lay-in acoustic ceiling tile in new grid – provide new LED light fixtures.
 - All furniture is selected and provided by Owner.

CITY HALL EAST TOILET ROOMS



CITY HALL EAST TOILET ROOMS FLOOR PLAN EXHIBIT
SCALE: 1/2" = 1'-0"



**Hutchison
Engineering, Inc.**
8865 HIGHWAY 36, SUITE 5
HANNIBAL, MISSOURI 63401
OFFICE PHONE: 573.240.9577
www.hutchisoneng.com

SCALE:

PROJECT NAME:
LOVES PARK, IL 899 -
CITY HALL TOILET ROOMS RENOVATION

PROJECT ADDRESS:
LOVES PARK CITY HALL
100 HEART BLVD
LOVES PARK, IL 61111

NO.	DATE	DESCRIPTION

DESIGNED BY:

DRAWN BY: **CRJ**

CHECKED BY: **CRJ**

ORIGINAL SHEET SIZE: 24 x 36

REVISIONS:

PROGRAMMING

ISSUED DATE: 08/18/2025

PROJECT NO: 260201

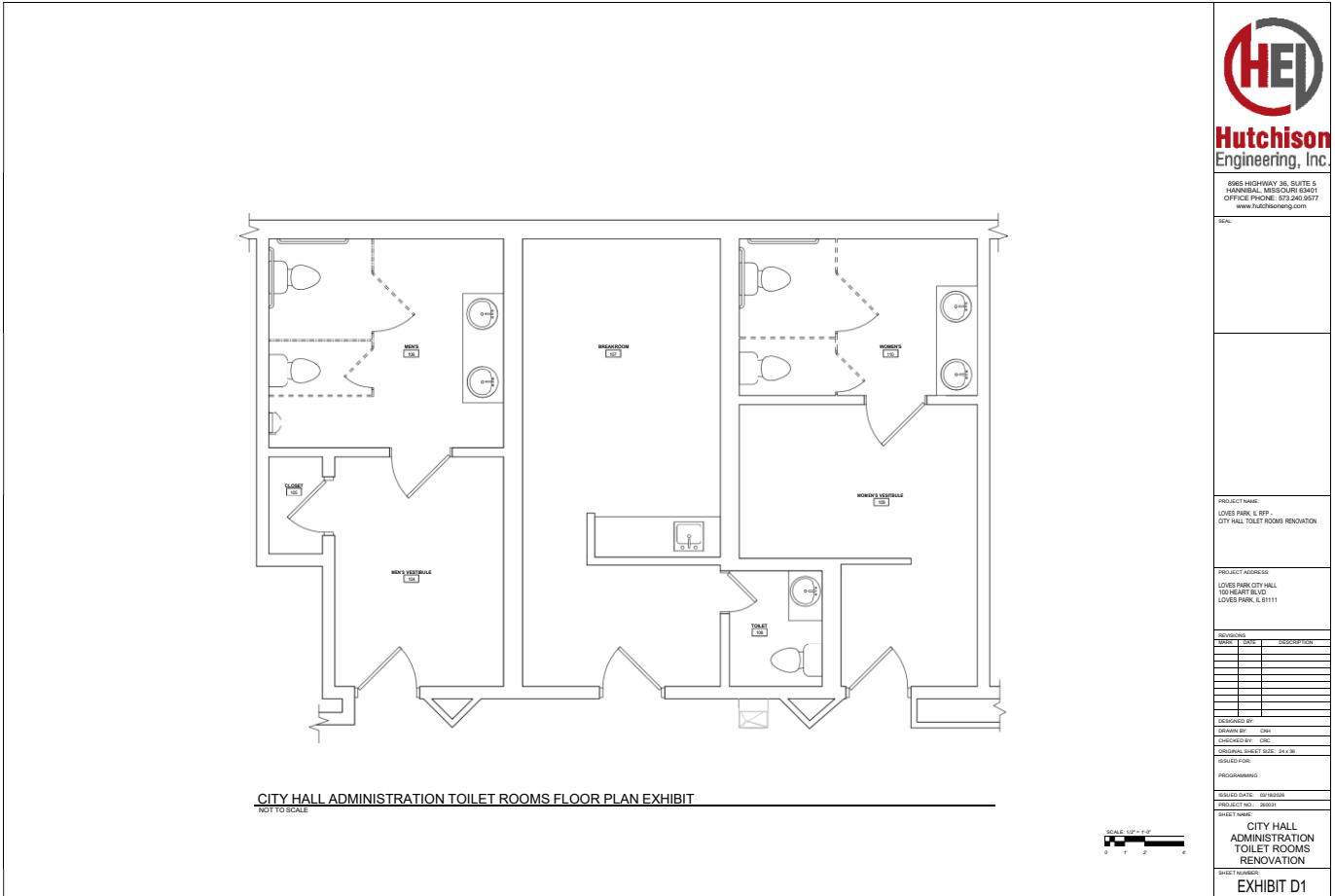
SHEET NAME:

**CITY HALL EAST
TOILET ROOMS
RENOVATION**

SHEET NUMBER:

EXHIBIT C

CITY HALL ADMINISTRATION TOILET ROOMS



8065 HIGHWAY 26, SUITE 5
HANBRAN, MISSOURI 63421
OFFICE PHONE: 636.346.5227
www.hutchisoneng.com

PROJECT NAME
LOVES PARK, IL BPP
CITY HALL TOILET ROOMS RENOVATION

PROJECT ADDRESS
LOVES PARK CITY HALL
101 HEART BLVD
LOVES PARK, IL 61111

REVISION	DATE	DESCRIPTION

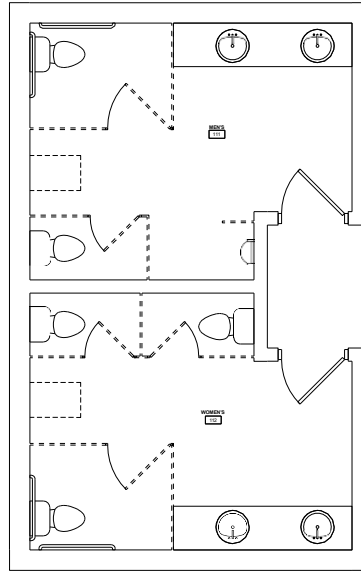
DESIGNED BY
DRAWN BY: CHS
CHECKED BY: JCS
ORIGINAL SHEET NO.: 214.16

PROGRAMMED BY
PROJECT NO.: 191911

SHEET NAME
CITY HALL
ADMINISTRATION
TOILET ROOMS
RENOVATION
SHEET NUMBER
EXHIBIT D1



CITY HALL NORTH TOILET ROOMS



CITY HALL NORTH TOILET ROOMS FLOOR PLAN EXHIBIT
SCALE: 1/2" = 1'-0"



Hutchison
Engineering, Inc.

8005 HIGHWAY 36, SUITE 0
HANNIBAL, MISSOURI 63401
OFFICE PHONE: 573.260.0877
www.hutchisoneng.com

SCALE:

PROJECT NAME:
LOVES PARK, IL RFP
CITY HALL TOILET ROOMS RENOVATION

PROJECT ADDRESS:
LOVES PARK CITY HALL
100 HEART BLVD
LOVES PARK, IL 61111

REVISIONS		
NO.	DATE	DESCRIPTION

DESIGNED BY:
DRAWN BY: CMH
CHECKED BY: GRC
ORIGINAL SHEET SIZE: 24 x 36

ISSUED FOR:
PROGRAMMING

ISSUED DATE: 03/18/2025
PROJECT NO: 36003

SHEET NAME:

CITY HALL NORTH
TOILET ROOMS
RENOVATION

SHEET NUMBER:
EXHIBIT D2

CITY HALL
MAYOR'S OFFICE TOILET ROOM



8065 HIGHWAY 36, SUITE 5
HANNIBAL, MISSOURI 63401
OFFICE PHONE: 573.260.9577
www.hutchisoneng.com

SEAL:

PROJECT NAME:
LOVES PARK, IL RFP
CITY HALL TOILET ROOMS RENOVATION

PROJECT ADDRESS:
LOVES PARK CITY HALL
50 HEART BLVD
LOVES PARK, IL 61111

REVISIONS

NO.	DATE	DESCRIPTION

DESIGNED BY:

DRAWN BY: OMI

CHECKED BY: OMI

ORIGINAL SHEET SIZE: 24 x 36

ISSUED FOR:

PROGRAMMING

ISSUED DATE: 09/16/2025

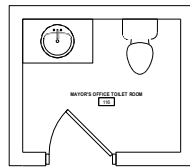
PROJECT NO: 25001

SHEET NAME:

CITY HALL MAYOR'S
OFFICE TOILET
ROOM
RENOVATION

SHEET NUMBER:

EXHIBIT D4



CITY HALL MAYOR'S OFFICE TOILET ROOM FLOOR PLAN EXHIBIT
SCALE: 1/2" = 1'-0"

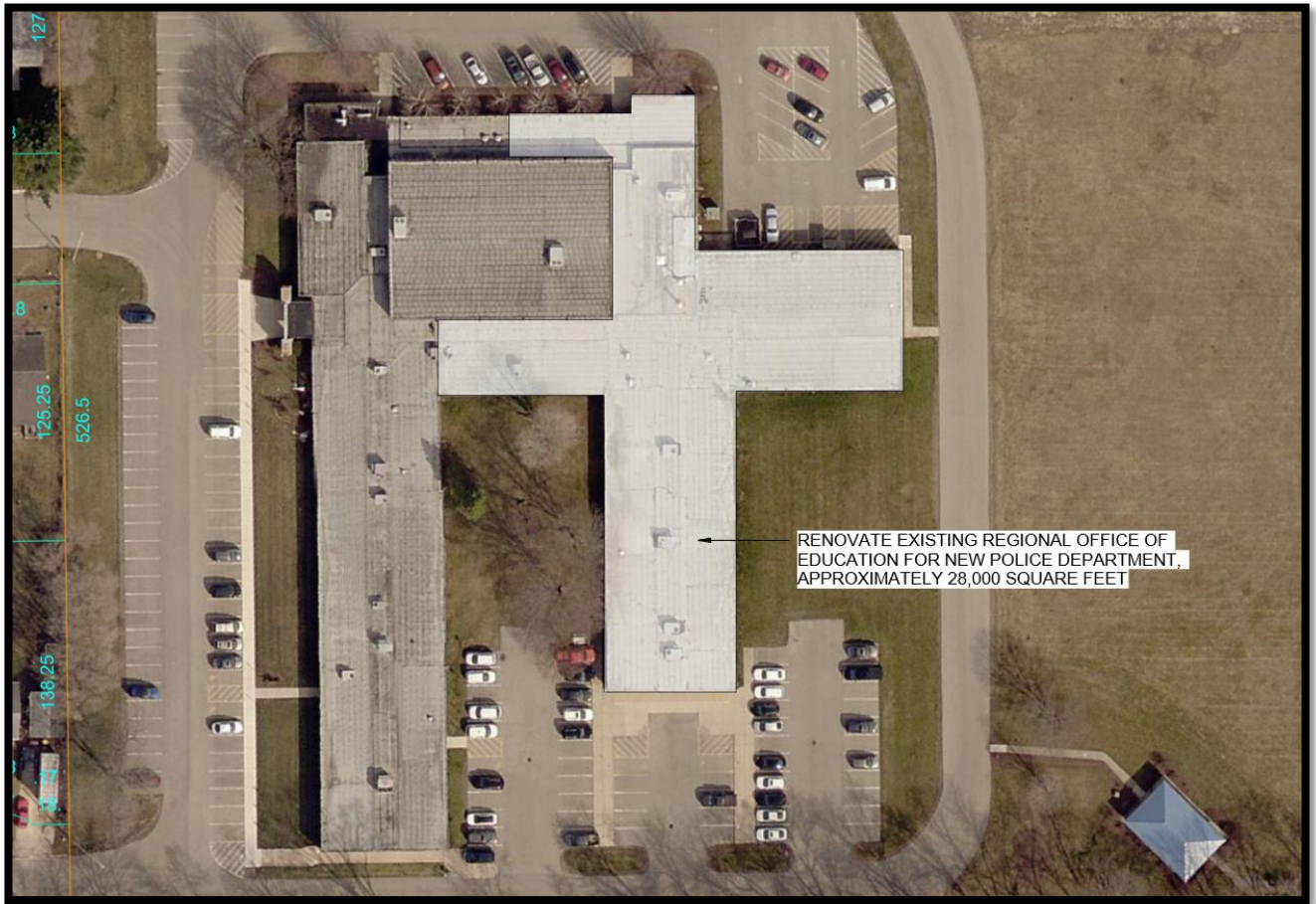


ATTACHMENT D — CITY HALL PARTIAL REMODEL FOR POLICE DEPARTMENT

The Program for the City Hall Partial Remodel for Police Department involves the remodel of approximately 28,000 square feet of space currently occupied by the Regional Office of Education. See aerial outline of approximate building area and photo log, Attachment D.

- Renovate two existing locker rooms as required to meet current accessibility code. Remove all existing plumbing fixtures and prepare for new wall hung fixtures. All lavatories to be integral to solid surface countertops. Remove all existing toilet accessories and prepare for new. Remove all existing toilet partitions and prepare for new. New interior finishes to include porcelain ceramic floor tile, porcelain ceramic wall base, porcelain ceramic wall tile at wet walls and paint on remaining walls.
- Any/All new interior walls to be metal stud with gypsum board.
- Paint all new and existing walls, up to three colors.
- Ceiling and flooring modifications as required for new walls and renovated office spaces.
- Existing ceiling and flooring finishes in unmodified rooms to remain in place.
- Provide new exterior and interior signage.
- Mechanical/HVAC updates for new rooms and spaces only.
- Electrical power updates at new walls only.
- Electrical lighting updates for new rooms and spaces only.

CITY HALL
REMODEL FOR POLICE DEPARTMENT



ADDITIONAL POLICE DEPARTMENT REMODEL PHOTOS



Photo 1 – Corridor



Photo 2 – Locker Room



Photo 3 – Locker Room



Photo 5 – Women's Locker Room



Photo 4 – Men's Locker Room

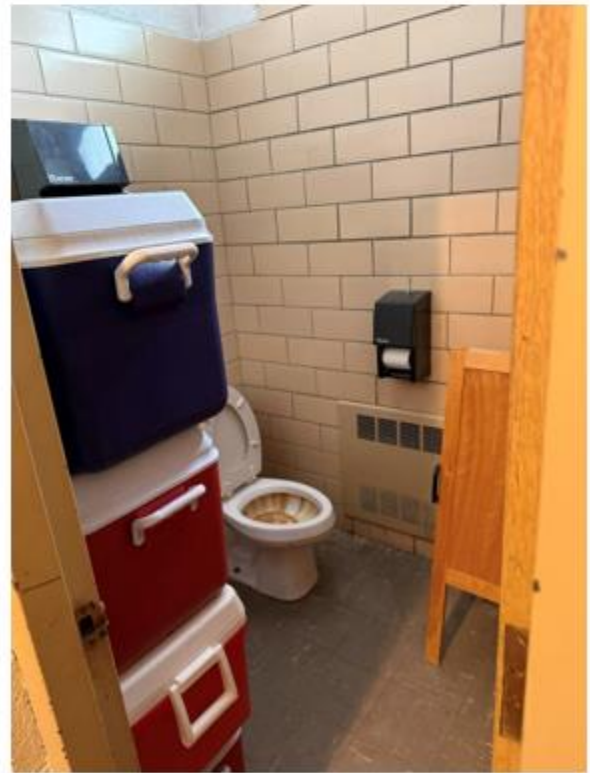


Photo 6 – Women's Locker Room



Photo 7 – Locker Room



Photo 8 – Shower Area



Photo 9 – Shower Area

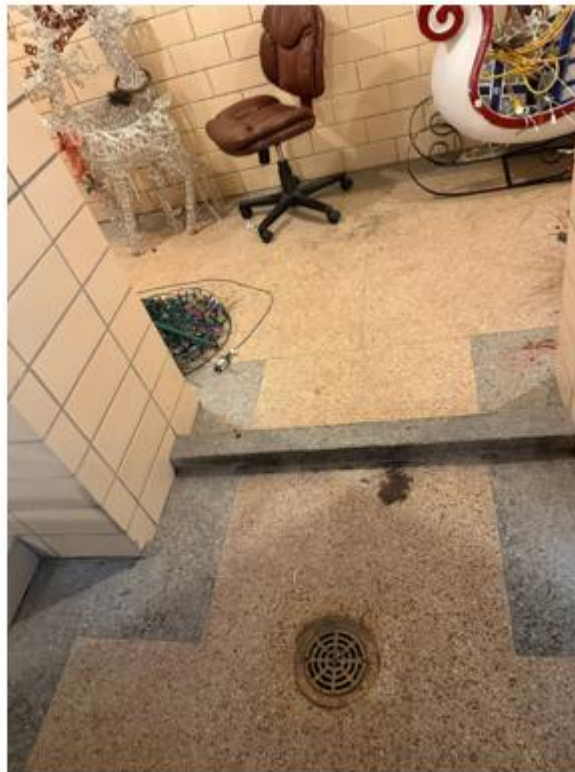


Photo 10 – Typical Shower Curb



Photo 11 – Door Opening

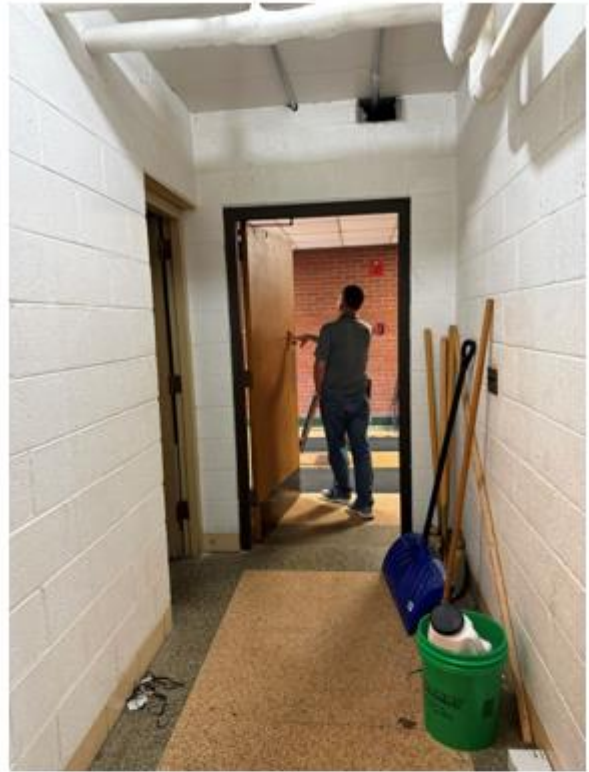


Photo 13 – Corridor



Photo 12 – Door Opening

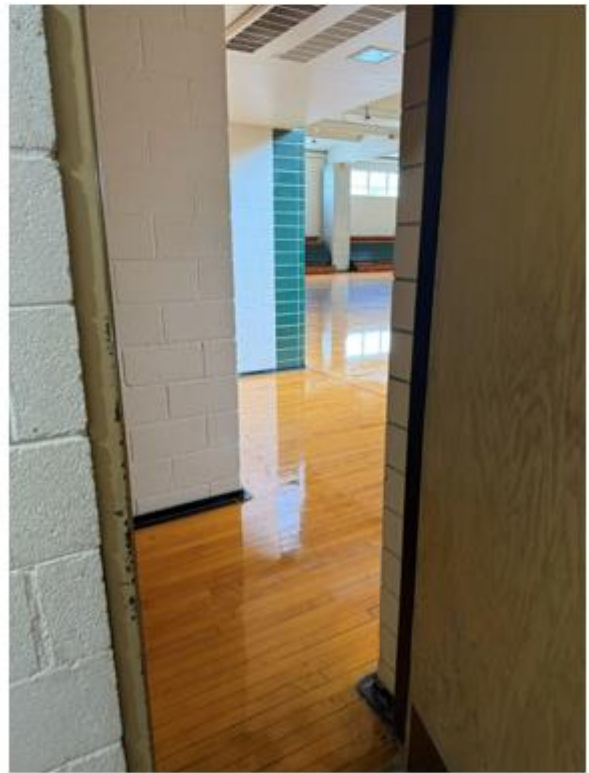


Photo 14 – Opening to Gym



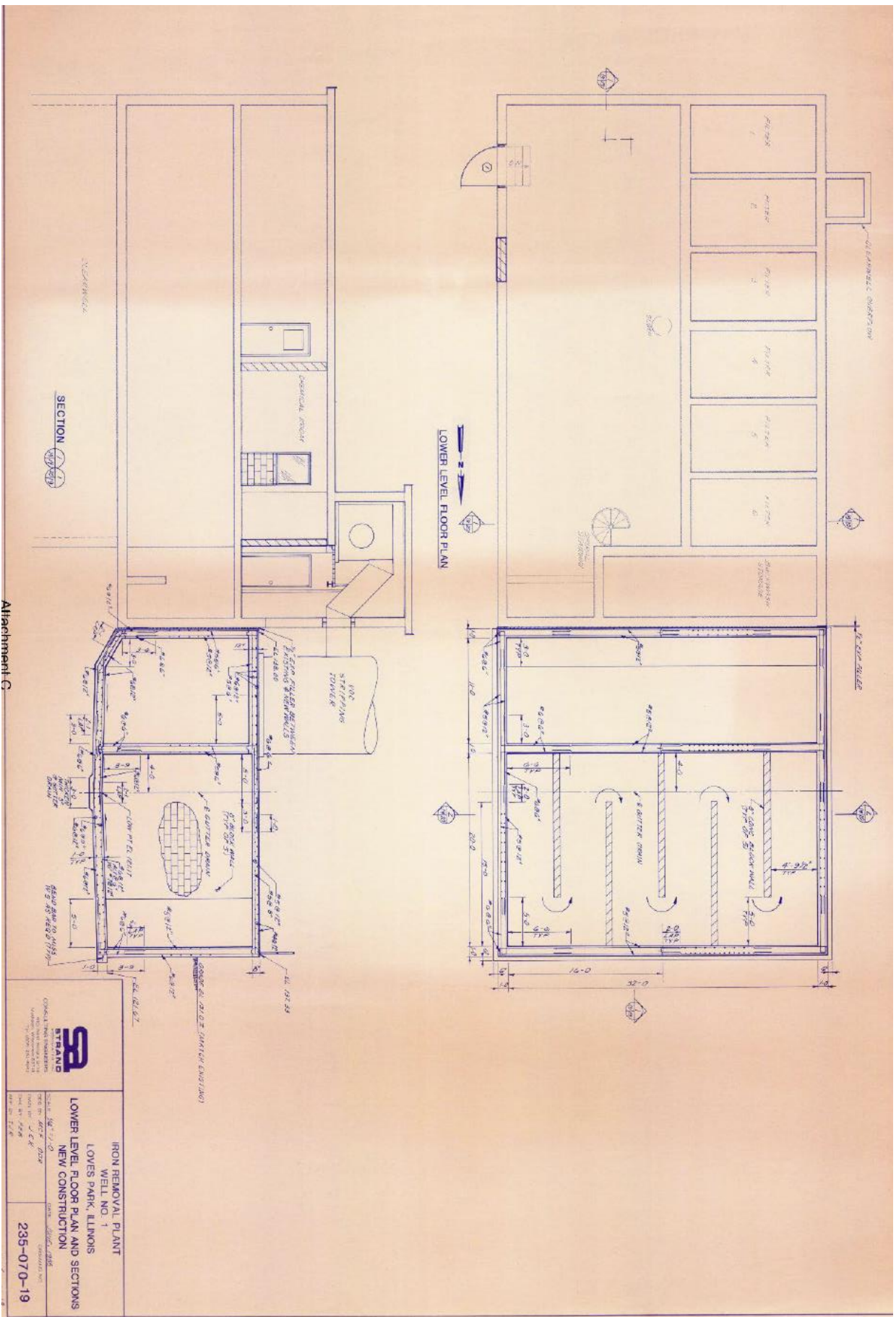
Photo 15 – Corridor leading to locker rooms

ATTACHMENT E — FILTER PLANT DEMOLITION

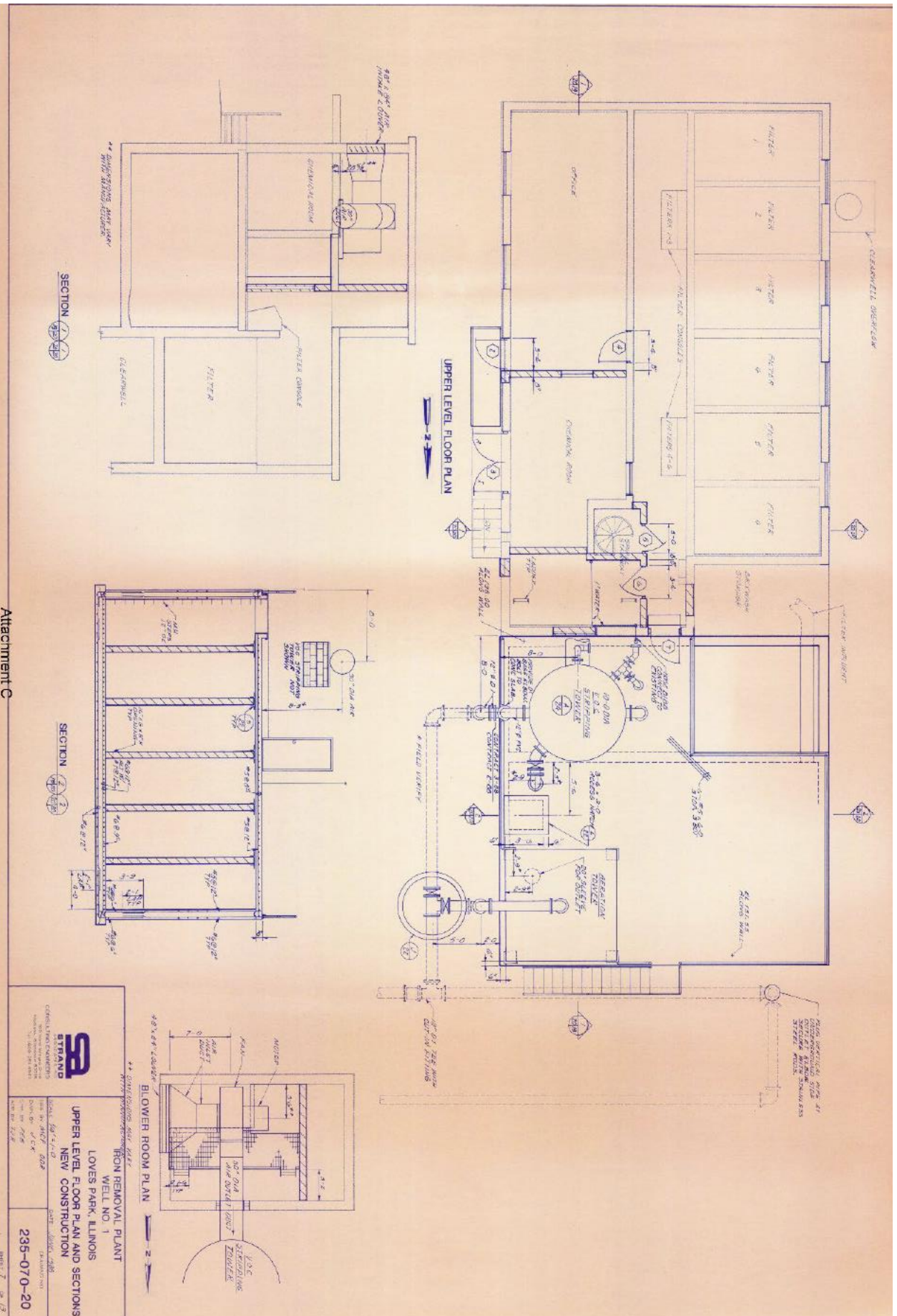
The program for the filter plant demolition calls for the complete demolition of the building and the clearing of debris, backfilling of foundations, grading for drainage, and conduct soil remediation as required. See attached original drawings

FILTER PLANT DEMOLITION
ORIGINAL SCHEMATICS





Attachment C

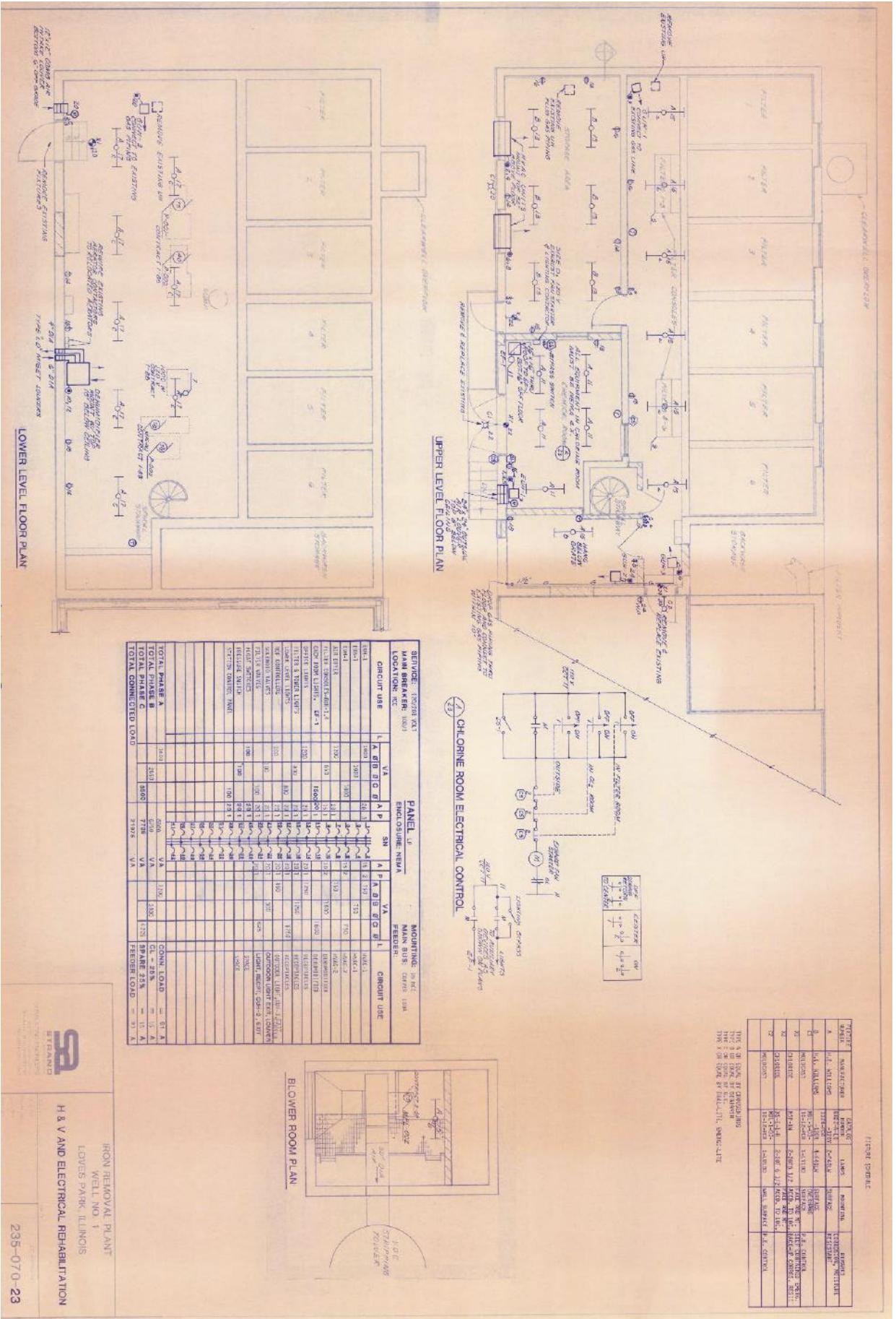


Attachment C

SA STRANCO
 CIVIL/MECHANICAL CONTRACTORS
 1000 W. 10TH ST. SUITE 100
 ROCKFORD, IL 61102
 TEL: 815-398-1100
 FAX: 815-398-1101
 WWW.SA-STRANCO.COM

UPPER LEVEL FLOOR PLAN AND SECTIONS
 NEW CONSTRUCTION
 LOVES PARK, ILLINOIS
 WELL NO. 1
 DATE: 08/01/2025
 DRAWN BY: VCK
 CHECKED BY: JCB
 SCALE: AS SHOWN

235-070-20



ITEM #	DESCRIPTION	DATE	ISSUE	REVISION	BY	CHKD
1	ISSUED FOR PERMIT	11/09/2024	1			
2	FOR CONSTRUCTION	11/09/2024	2			
3	FOR CONSTRUCTION	11/09/2024	3			
4	FOR CONSTRUCTION	11/09/2024	4			
5	FOR CONSTRUCTION	11/09/2024	5			
6	FOR CONSTRUCTION	11/09/2024	6			
7	FOR CONSTRUCTION	11/09/2024	7			
8	FOR CONSTRUCTION	11/09/2024	8			
9	FOR CONSTRUCTION	11/09/2024	9			
10	FOR CONSTRUCTION	11/09/2024	10			

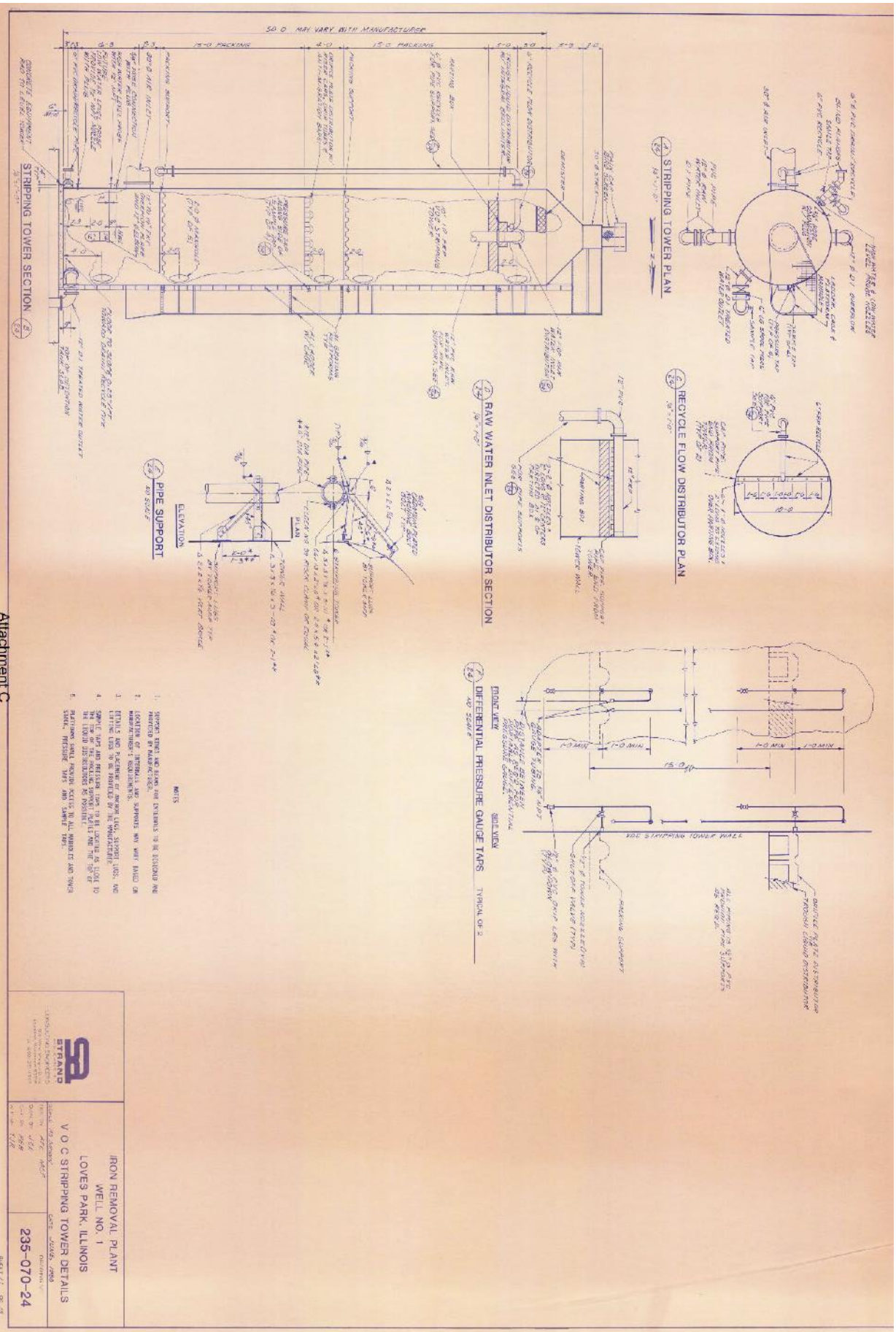
CIRCUIT USE	VA			AMP			SERIAL NO.			MOUNTING IN R.F.		
	A	B	C	A	B	C	A	B	C	A	B	C
MAIN BREAKER (100A)	1000	1000	1000	3.6	3.6	3.6	100	100	100	100	100	100
CHLORINE ROOM	1000	1000	1000	3.6	3.6	3.6	100	100	100	100	100	100
BLOWER ROOM	1000	1000	1000	3.6	3.6	3.6	100	100	100	100	100	100
...
TOTAL PHASE A	2400	2400	2400	7.2	7.2	7.2	200	200	200	200	200	200
TOTAL PHASE B	2400	2400	2400	7.2	7.2	7.2	200	200	200	200	200	200
TOTAL PHASE C	2400	2400	2400	7.2	7.2	7.2	200	200	200	200	200	200
TOTAL CONNECTED LOAD	7200	7200	7200	21.6	21.6	21.6	600	600	600	600	600	600

SA STRONG

IRON REMOVAL PLANT
WELL NO. 1
LOVES PARK, ILLINOIS

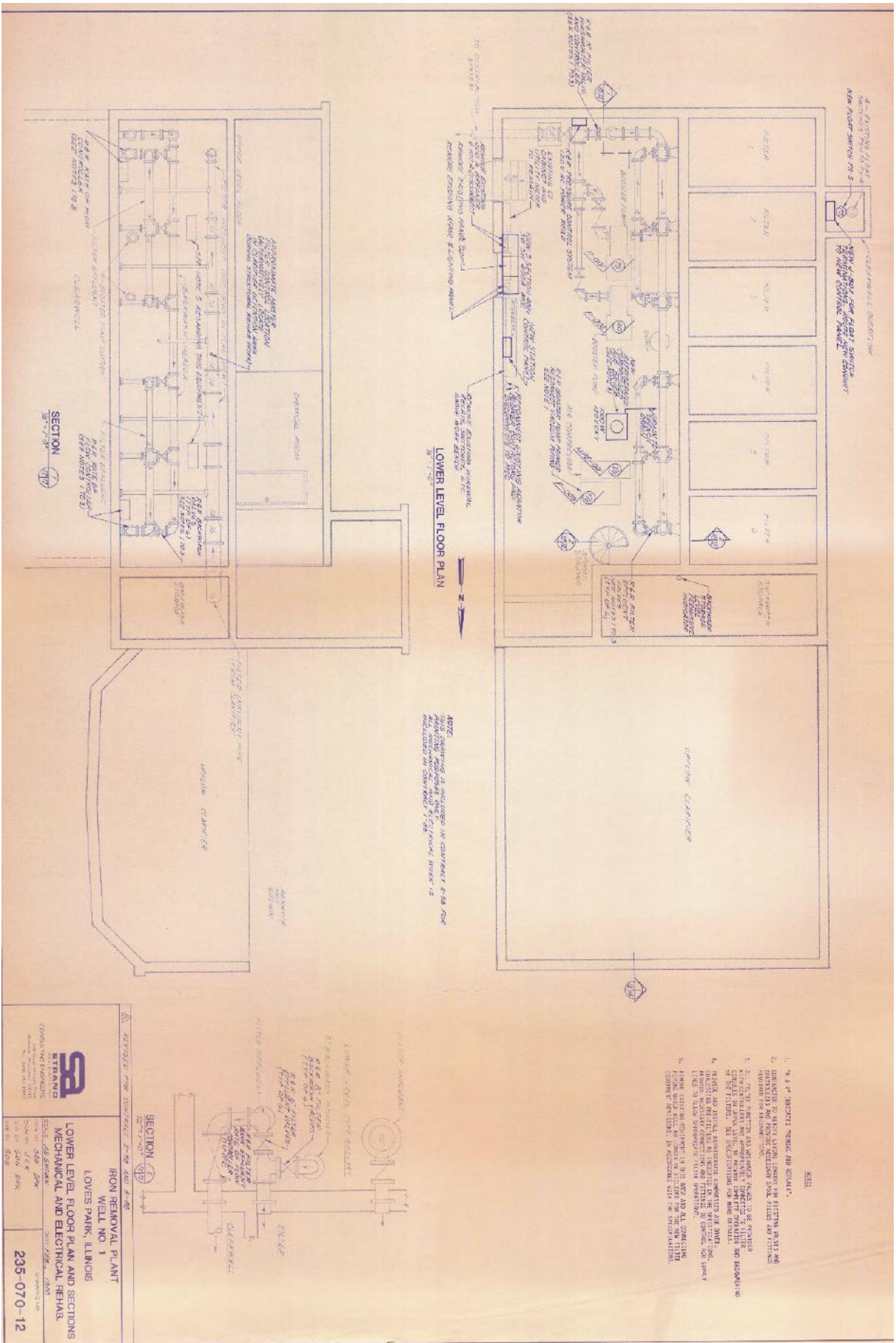
H & V AND ELECTRICAL REHABILITATION

235-070-23



Attachment C

<p>STRAND CONSULTING ENGINEERS 1000 W. WASHINGTON ST. CHICAGO, IL 60607-1000</p>	<p>DESIGN BY: V O C DATE: 05/25/2024</p>
	<p>PROJECT NO: 235-070-24</p>
<p>IRON REMOVAL PLANT WELL NO. 1 LOVES PARK, ILLINOIS</p>	



SA STRAND
 CONSULTING ENGINEERS
 1001 W. 10th Street
 Loves Park, IL 60441
 Phone: 815.466.2200
 Fax: 815.466.2201
 Email: info@sastrand.com

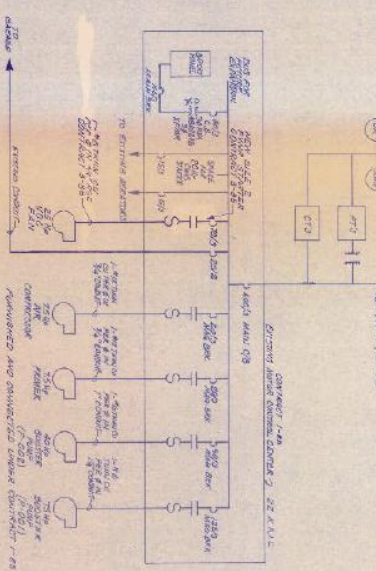
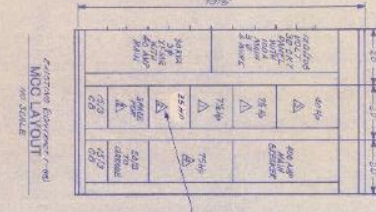
IRON REMOVAL PLANT
 WELLS NO. 1
 LOVES PARK, ILLINOIS
 MECHANICAL AND ELECTRICAL REHAB.

SCALE: AS SHOWN
 DRAWN BY: J.E.K.
 CHECKED BY: J.E.K.
 DATE: 09/15/2025
 SHEET NO. 0509

235-070-12

MOTOR AND MOTOR CONTROL CENTER SCHEDULE

EQUIPMENT AND MOTOR TYPE	EQUIPMENT LOCATION	MOTOR INFORMATION	MOTOR SPEEDS AND DIMENSIONS	MOTOR CONTROLS	MOTOR WINDINGS	MOTOR PROTECTION	MOTOR IDENTIFICATION	MOTOR NOTES
2000 HP FAN NO. 1	FAN ROOM	75 HP	1800 RPM	3 PHASE	480V	4000 KVA	4000 KVA	PROVIDE AND INSTALL ALL NECESSARY PULSES FOR PROTECTION
40 HP COMPRESSOR NO. 1	COMPRESSOR ROOM	40 HP	1800 RPM	3 PHASE	480V	4000 KVA	4000 KVA	PROVIDE AND INSTALL ALL NECESSARY PULSES FOR PROTECTION
7.5 HP COMPRESSOR NO. 2	COMPRESSOR ROOM	7.5 HP	1800 RPM	3 PHASE	480V	4000 KVA	4000 KVA	PROVIDE AND INSTALL ALL NECESSARY PULSES FOR PROTECTION
20 HP FAN	FAN ROOM	20 HP	1800 RPM	3 PHASE	480V	4000 KVA	4000 KVA	PROVIDE AND INSTALL ALL NECESSARY PULSES FOR PROTECTION



Attachment C

CONTRACT SPECIFICATIONS FOR MOTOR AND MOTOR CONTROL CENTER

MANUFACTURER: 1. KVA, 2. 2000 HP, 3. 40 HP, 4. 7.5 HP, 5. 20 HP, 6. 40 HP, 7. 7.5 HP, 8. 20 HP, 9. 40 HP, 10. 7.5 HP, 11. 20 HP, 12. 40 HP, 13. 7.5 HP, 14. 20 HP, 15. 40 HP, 16. 7.5 HP, 17. 20 HP, 18. 40 HP, 19. 7.5 HP, 20. 20 HP, 21. 40 HP, 22. 7.5 HP, 23. 20 HP, 24. 40 HP, 25. 7.5 HP, 26. 20 HP, 27. 40 HP, 28. 7.5 HP, 29. 20 HP, 30. 40 HP, 31. 7.5 HP, 32. 20 HP, 33. 40 HP, 34. 7.5 HP, 35. 20 HP, 36. 40 HP, 37. 7.5 HP, 38. 20 HP, 39. 40 HP, 40. 7.5 HP, 41. 20 HP, 42. 40 HP, 43. 7.5 HP, 44. 20 HP, 45. 40 HP, 46. 7.5 HP, 47. 20 HP, 48. 40 HP, 49. 7.5 HP, 50. 20 HP, 51. 40 HP, 52. 7.5 HP, 53. 20 HP, 54. 40 HP, 55. 7.5 HP, 56. 20 HP, 57. 40 HP, 58. 7.5 HP, 59. 20 HP, 60. 40 HP, 61. 7.5 HP, 62. 20 HP, 63. 40 HP, 64. 7.5 HP, 65. 20 HP, 66. 40 HP, 67. 7.5 HP, 68. 20 HP, 69. 40 HP, 70. 7.5 HP, 71. 20 HP, 72. 40 HP, 73. 7.5 HP, 74. 20 HP, 75. 40 HP, 76. 7.5 HP, 77. 20 HP, 78. 40 HP, 79. 7.5 HP, 80. 20 HP, 81. 40 HP, 82. 7.5 HP, 83. 20 HP, 84. 40 HP, 85. 7.5 HP, 86. 20 HP, 87. 40 HP, 88. 7.5 HP, 89. 20 HP, 90. 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EXHIBIT A
AIA CONTRACT

AIA[®] Document A141[®] – 2014

Standard Form of Agreement Between Owner and Design-Builder

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

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

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

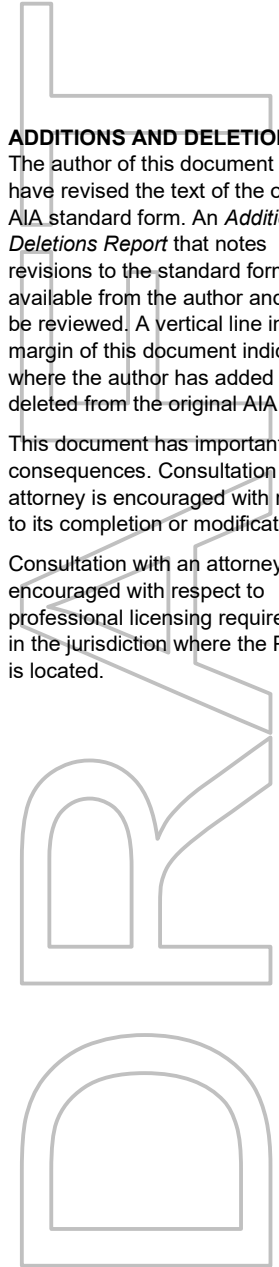
for the following Project:
(Name, location and detailed description)

The Owner and Design-Builder agree as follows.

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

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

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



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- 2 COMPENSATION AND PROGRESS PAYMENTS**
- 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT**
- 4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT**
- 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT**
- 6 CHANGES IN THE WORK**
- 7 OWNER’S RESPONSIBILITIES**
- 8 TIME**
- 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION**
- 10 PROTECTION OF PERSONS AND PROPERTY**
- 11 UNCOVERING AND CORRECTION OF WORK**
- 12 COPYRIGHTS AND LICENSES**
- 13 TERMINATION OR SUSPENSION**
- 14 CLAIMS AND DISPUTE RESOLUTION**
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- A DESIGN-BUILD AMENDMENT**
- B INSURANCE AND BONDS**
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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Owner’s Criteria

This Agreement is based on the Owner’s Criteria set forth in this Section 1.1.

Owner and Design-Builder recognize that Owner does not warrant the plans and specifications of the design documents provided by Owner and Design-Builder shall be responsible for evaluating the constructability of any plans, specifications or other design documents provided by Owner or Owner’s Consultants.

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



§ 1.1.1 The Owner’s program for the Project:

The suggested disclaimer set out as to Section 1.1 above is also applicable to the Owner’s Program discussed in Section 1.1.1

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



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

In performing its services under the Contract, the Design-Builder shall comply with all applicable federal, state and local standards, codes, statutes, laws, regulations, ordinances and all other legal requirements, including without limitation all construction, supervision and safety requirements (“Applicable Laws”). The Standard of Care for Design Services provided by Design-Builder shall be the degree of care and skill used by members of the architectural/ engineering profession performing design services for projects of comparable scale and complexity in the United States. The Standard of Care for Construction Services provided by the Design-Builder shall be the degree of care and skill used by members of the construction profession performing construction services for projects of comparable scale and complexity in the United States. Design-Builder’s obligations under this section shall survive the completion of the Design Builder Design and Construction Services and the termination of this Contract.

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



§ 1.1.3 The Project’s physical characteristics:

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



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

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



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

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



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


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





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


- .1 Design phase milestone dates:


.2 Submission of Design-Builder Proposal:


.3 Phased completion dates:


.4 Substantial Completion date:


.5 Other milestone dates:


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


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

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


.1 Architect


.2 Consultants


.3 Contractors


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

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


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

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

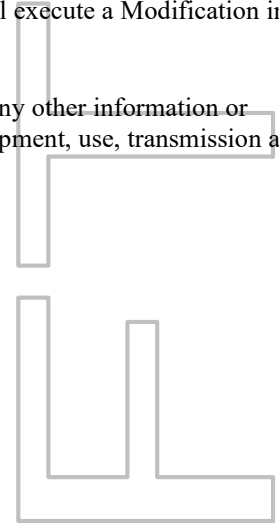
§ 1.1.11 If there is a change in the Owner’s Criteria, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 1.1.12 If the Design-Builder and Contractor intend to transmit Instruments of Service or any other information or documentation in digital form. Owner and Design-Builder shall use the protocol for development, use, transmission and exchange transmission directed by the Owner.

§ 1.2 Project Team

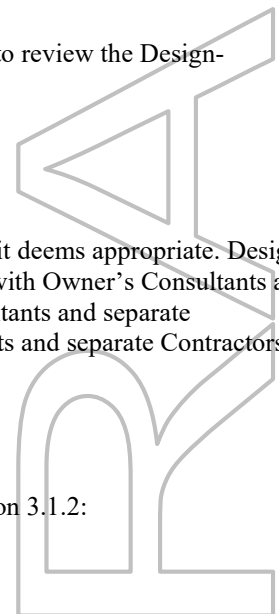
§ 1.2.1 The Owner identifies the following representative in accordance with Section 7.1.1:
(List name, address and other information.)

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

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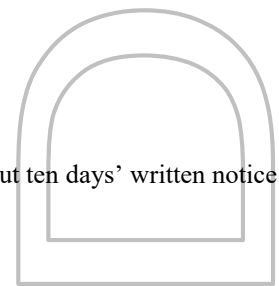


§ 1.2.3 The Owner reserves the right to retain those consultants and separate contractors as it deems appropriate. Design-Builder agrees to be responsible to cooperate with, to be responsible to, and to coordinate with Owner’s Consultants and separate Contractors. In the event of disputes between Design-Builder and Owner’s Consultants and separate Contractors, Design-Builder agrees its sole remedy shall be against the Owner’s Consultants and separate Contractors and not the Owner.

One light blue rectangular box for input.

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

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

§ 1.3 Binding Dispute Resolution

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

(Check the appropriate box.) (If the parties do not select a method of binding dispute resolution, then the method of binding dispute resolution shall be by arbitration in accordance with Section 14.4).

)

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

§ 1.4 Definitions

§ 1.4.1 Design-Build Documents. The Design-Build Documents consist of this Agreement between Owner and Design-Builder and its attached Exhibits (hereinafter, the “Agreement”); other documents listed and incorporated herein by reference in this Agreement; and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, including the Design-Build Amendment, (2) a Change Order, or (3) a Change Directive. All Modifications must be in writing and signed by Owner or Owner’s authorized representative. The Contract cannot be modified verbally or by conduct of the Parties.

§ 1.4.2 The Contract. The Design-Build Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a written Modification signed by the Owner or its authorized representative. The Design-Build Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Design-Builder. The Contract cannot be amended or modified verbally or by conduct of the Parties. All negotiations, discussions, representations, and offers prior to the execution of the Contract are merged into the Contract.

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

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

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

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

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

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

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

required by the relevant jurisdiction, the Consultant shall be lawfully licensed to provide the required professional services.

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

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

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

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

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

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

ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS

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

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

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

The total amount of compensation for the Work performed prior to the execution of the Design-Build Amendment shall be \$ _____ (“PreDesign Build Amendment Sum”). In addition to the other required items, each of Design-Builder’s invoices shall be accompanied by the following, all in form and substance satisfactory to the Owner and in compliance with applicable statutes of the state of _____:

- (1) A current sworn statement from the Design-Builder setting forth all Architects, Consultants, Contractors, Subcontractors, and material suppliers with whom the Design-Builder has contracted or subcontracted, the amount of each contract or subcontract, the amount requested for any contractor, subcontractor, or material supplier in the invoices, and the amount to be paid by the Design-Builder from such progress payment to Architects, Consultants, Contractors, Subcontractors, and material suppliers, together with a current duly executed waiver of mechanics’ and material suppliers’ liens from the Design-Builder establishing receipt of payment for satisfaction of the payments requested by the Design-Builder in the current invoice. In its sole discretion, the Owner shall be entitled to pay directly any or all of the Design-Builder’s Consultants, Contractors, Subcontractors and material suppliers, and, where appropriate, Lower tier Subcontractors, and charge those payments against the PreDesign Build Amendment Sum. In the event the amounts paid by Owner to Design-Builder’s Architects, Consultants, Contractors, Subcontractors, and material suppliers, and, where appropriate, Lower tier Subcontractors, exceed the amounts remaining due under the Design-Build Contract to Design-Builder then Owner shall be entitled to collect from Design-Builder those amounts.
- (2) Commencing with the second invoice submitted by the Design-Builder, duly executed so-called “after-the-fact” waivers of designers’, mechanics’ and material suppliers’ liens from all Architects, Consultants, Contractors, Subcontractors, material suppliers, and, lower-tier subcontractors, acknowledging receipt of payment or satisfaction of payment of all amounts requested on behalf of

such entities and disbursed prior to submittal by the Design-Builder of the current invoice, plus sworn statements from all Architects, Consultants, Contractors, Subcontractors, and material suppliers, and where appropriate, lower tier subcontractors, covering all amounts described in this Section.

- (3) Such other information, documentation, and materials as the Owner, the Owner's Consultants, the Owner's lender, or the title insurer may require.
- (4) If at any time there shall be evidence of a lien or claim of lien for which, if established, the Owner might become liable, and that is for Work within the scope of this Design Build Contract, or if the Design-Builder shall incur any liability to the Owner, or the Owner shall have any claim or demand against the Design-Builder of any kind or for any reason, whether reduced to judgment or award, the Owner shall have the right to retain out of any payment due, or to become due under the Contract, or any other agreement between the Owner and the Design-Builder, an amount sufficient to indemnify the Owner against any lien or claim, or to fully satisfy such liability, claim, or demand. The Owner shall also be entitled to charge against or deduct from any such payment all costs of defense or collection with respect thereto, including reasonable attorneys' fees and expenses. Should any claim or lien develop after all payments are made hereunder, the Design-Builder shall refund to the Owner within ten (10) days of demand therefor all monies that the Owner shall be compelled to pay in discharging or satisfying such claims or liens and all costs, including reasonable attorneys' fees incurred in collecting said monies from the Design-Builder. Owner shall have the right in its sole judgment to satisfy a claim or a claim of lien or file a bond to discharge a claim of lien or other claim and to deduct all amounts paid to satisfy or discharge a claim of lien or other claim plus Owner's attorneys' fees and expenses from any amounts remaining due under the Design-Build Contract to Design-Builder or to collect from Design-Builder those amounts to the extent those amounts exceed the amount remaining in the Design Work Sum.
- (5) No progress payments made under the Contract shall be conclusive evidence of the performance of the Contract either in whole or in part, and no such payment shall be construed to be acceptance of defective work or improper materials.

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

§ 2.1.2.1 Payments are due and payable within 40 days of the presentation of Design-Builder's invoice and the satisfaction of the other requirements for performance of Work and the information to be provided as a condition of payment of progress payments as set forth in the Contract.

§ 2.1.2.2 Records of expenses and services performed by or for Design-Builder shall be available to the Owner at mutually convenient times for the period of two years following completion of the Design-Builder's Work or termination of the Contract.

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

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

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

§ 3.1 General

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

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

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

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

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

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

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

§ 3.1.6 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals. The services of the Design-Builder's Architect and the Design-Builder's other Consultants are performed in the interest of, and for the benefit of, the Design-Builder and the Owner. The Design-Builder's Architects, Consultants, Contractors, Subcontractors and material suppliers shall not be deemed beneficiaries of this Agreement or of the Contract in any way.

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

§ 3.1.8 Progress Reports

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

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

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

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

§ 3.1.9 Design-Builder's Schedules

§ 3.1.9.1 The Design-Builder, promptly after execution of this Agreement, shall prepare and submit for the Owner's information a schedule for the Work. The schedule, including the time required for design and construction, shall not exceed time limits current under the Design-Build Documents, shall be revised on a monthly basis to reflect the then-current conditions and anticipated progress based on those conditions at the time of revision, and the revised schedules shall be submitted to the Owner with each of Design-Builder's invoices or Applications for Payment, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. All schedules for the Project shall employ critical path method ("CPM") scheduling. Submission of an updated CPM schedule with each invoice and Application for Payment shall be a mandatory condition precedent for the payment by the Owner to the Design-Builder pursuant to an invoice or Application for Payment. The Owner shall not be obligated to make payment on any invoice or Application for

Payment that fails to include an updated CPM schedule reflecting the then-current conditions on the Project and the anticipated progress of work based on those conditions. All requests for Change Orders, Modifications, or additional compensation from the Design-Builder affecting the Contract Time or Contract Sum shall include a fragment showing the specific effect of the change, modification or differing site condition on the critical path schedule.

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

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

§ 3.1.11 Design-Builder's Submittals

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

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

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

§ 3.1.11.3 The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require Submittals until the Project Architect and the Design-Builder's team have approved the respective Submittal. The Owner is not responsible for any errors or omissions in those documents and is reviewing those documents solely for its own benefit.

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

by the approval of Project Architect and the Design-Builder's team of the Submittals.

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

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

§ 3.1.13 Royalties, Patents and Copyrights

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

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

§ 3.1.14 Indemnification

§ 3.1.14.1 To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, including the Owner's agents and employees, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.1.14.

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

§ 3.1.15 Contingent Assignment of Agreements

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

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

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

§ 3.1.15.2 Upon such assignment, if the Work has been suspended for more than 30 days, the compensation under the assigned agreement shall be equitably adjusted for increases in cost resulting from the suspension.

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

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

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

§ 4.1 General

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

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

§ 4.2 Evaluation of the Owner's Criteria

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

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

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

(List additional information, if any, to be included in the Design-Builder's written report.)

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

§ 4.3 Preliminary Design

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

- .1 Confirmation of the allocations of program functions;

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

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

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

§ 4.4 Design-Builder's Proposal

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

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

§ 4.4.2 Submission of the Design-Builder's Proposal shall constitute a representation by the Design-Builder that it has visited the site and become familiar with local conditions under which the Work is to be completed, all subsurface site conditions for the Work, and all applicable federal, state and local statutes, laws, regulations, ordinances, and orders. Design-Builder agrees it will be responsible for all such site conditions, site and subsurface conditions, statutes, laws, regulations, ordinances and orders it becomes aware of or should have become aware of.

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

ARTICLE 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 5.1 Construction Documents

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

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

§ 5.2 Construction

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

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

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

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

§ 5.3 Labor and Materials

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

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

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

§ 5.4 Taxes

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

§ 5.5 Permits, Fees, Notices and Compliance with Laws

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

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

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

proceed as provided in Article 14.

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

§ 5.6 Allowances

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

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

- .1 allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 the Design-Builder's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts, shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 5.6.2.1 and (2) changes in Design-Builder's costs under Section 5.6.2.2.

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

§ 5.7 Key Personnel, Contractors and Suppliers

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

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

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

§ 5.7.3.1 If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection. If the rejected person or entity was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference,

if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute person or entity's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Design-Builder has acted promptly and responsively in submitting names as required.

§ 5.8 Documents and Submittals at the Site

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

§ 5.9 Use of Site

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

§ 5.10 Cutting and Patching

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

§ 5.11 Cleaning Up

§ 5.11.1 The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. If the Owner believes the Design-Builder has not complied with the previous sentence and directs the Design-Builder to remove waste materials or rubbish, the Design-Builder shall remove waste materials and rubbish from the site during the Design-Builder's Work on the Project within one day of direction from the Owner to do so.

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

§ 5.12 Access to Work

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

§ 5.13 Construction by Owner or by Separate Contractors

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

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

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

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

schedules to be used by the Design-Builder, separate contractors and the Owner until subsequently revised.

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

§ 5.14 Mutual Responsibility

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

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

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

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

§ 5.15 Owner's Right to Clean Up

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

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 General

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

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

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

§ 6.2 Change Orders

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

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build

- Amendment, the adjustment in the Design-Builder's compensation; and
- .3 The extent of the adjustment, if any, in the Contract Time.

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

§ 6.3 Change Directives

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

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

§6.3.3 The value of the Work to be changed, added, or omitted shall be determined by the lump-sum or unit prices, if any, stipulated for such work in the Design-Build Documents. If no prices are stipulated, the value shall be determined by whichever of the following methods or combination of them the Owner, in its sole discretion, may elect.

1. By adding or deducting a lump sum or an amount determined by a unit price agreed upon between the parties;
2. By adding (a) the actual net cost to the Design-Builder of labor in accordance with the established rates, including required union benefits, premiums the Design-Builder is required to pay for workers' compensation and liability insurance, and payroll taxes on such labor; (b) the actual cost to the Design-Builder of materials and equipment and such other direct costs as may be approved by the Owner, less all savings, discounts, rebates, and credits; (c) an allowance of [____ percent (____%)] for overhead on items (a) and (b) above; and (d) an allowance of [____ percent (____%)] for profit on items (a), (b), and (c) above; or
3. Costs to be determined in a manner agreed upon by the parties.

§6.3.3.1 In the case of omitted Work, the Owner shall have the right to withhold from payments due or become due to the Design-Builder an amount that, in the Owner's opinion, is equal to 150% of the value of such Work until such time as its value is determined by agreement or pursuant to the Disputes provisions of this Agreement.

§ 6.3.4 (Intentionally Omitted)

§ 6.3.5 Upon receipt of a Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved.

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

§ 6.3.7 If the Design-Builder does not respond within 5 days of its receipt of the Change Directive or disagrees with the method for adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the method for adjustment in the Design-Builder's compensation, the Owner shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the

Agreement, a reasonable amount. In such case, and also under Section 6.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section 6.3.7 shall be limited to the following:

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

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

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

ARTICLE 7 OWNER'S RESPONSIBILITIES

§ 7.1 General

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

§ 7.1.2 The Owner shall render decisions in a timely manner. The Owner shall furnish to the Design-Builder within five (5) days after issuance of the notice to proceed information necessary to allow the Design-Builder to file any notice of commencement or other document required under applicable lien or bond laws for the protection of the property, including but not limited to the correct name of the owner, a description of the property reasonably specific to clearly identify the property, the name of any person or entity other than the Owner who may have an ownership interest in the property, and any lender for the construction of the Project.

§ 7.2 Information and Services Required of the Owner

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

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

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

§ 7.2.4 The Owner shall cooperate with the Design-Builder in securing building and other permits, licenses and inspections. Unless otherwise specified in the Design-Build Documents, the Design-Builder shall be responsible for securing all building and other permits, licenses and inspections.

§ 7.2.5 The services, information, surveys and reports required to be provided by the Owner under this Agreement, shall be furnished at the Owner's expense, and the Design-Builder shall not be entitled to rely on the accuracy or completeness thereof unless specifically provided elsewhere in the Design-Build Documents.

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

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

§ 7.2.8 The Owner shall be permitted to communicate through the Design-Builder or directly with other persons or entities employed or retained by the Design-Builder as the Owner deems appropriate. Such communications shall not be deemed to create any contractual relationship between Owner and such other persons or entities.

§ 7.2.9 The Design-Builder shall furnish the services of geotechnical engineers or other consultants at the Design-Builder's expense. The Design-Builder shall coordinate all geotechnical services with the Owner who shall have the right to approve the date(s) and location(s) of all geotechnical tests.

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

§ 7.3 Submittals

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

§ 7.3.2 Upon review of the Submittals required by the Design-Build Documents, the Owner shall notify the Design-Builder of any non-conformance with the Design-Build Documents the Owner discovers and recognizes as not conforming with the Design-Build Documents.

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

responsibilities under the Design-Build Documents.

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

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

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

§ 7.8 Owner's Right to Stop Work

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

§ 7.9 Owner's Right to Carry Out the Work

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

ARTICLE 8 TIME

§ 8.1 Progress and Completion

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

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

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

§ 8.2 Delays and Extensions of Time

§ 8.2.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a consultant or separate contractor employed by the Owner; or by changes ordered in the Work by the Owner; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's control; or by delay authorized by the Owner pending mediation and binding dispute resolution or by other causes that the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine. The Design-Builder further acknowledges and agrees that adjustments in the Contract Time will be permitted for a delay only to the extent such delay adversely affects the critical path of the Project, and is not caused, or could not have been anticipated, by the Design-Builder, could not be limited or avoided by the Design-Builder's timely notice to the Owner of the delay, and is of a duration not less

than one (1) day.

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

§ 8.2.3 Notwithstanding anything to the contrary in the Design-Build Documents, an extension in the Contract Time, to the extent permitted under Section 8.3.1 shall be the sole remedy of the Design-Builder for any (1) delay in the commencement, prosecution, or completion of the Work; (2) hindrance or obstruction in the performance of the Work; (3) loss of productivity or acceleration; or (4) other similar claims (collectively referred to in this Section 8.2.3 as Delays) whether or not such Delays are foreseeable, unless a Delay is caused by the Owner's intentional or active interference with the Design-Builder's performance of the Work, and only to the extent such acts continue after the Design-Builder furnishes the Owner with notice of such interference. In no event shall the Design-Builder be entitled to any compensation or recovery of any damages in connection with any Delay, including, without limitation, consequential damages, lost opportunity costs, impact damages, acceleration costs, or other similar remuneration. The Owner's exercise of any of its rights or remedies under the Design-Build Documents (including, without limitation, ordering changes in the Work, or directing suspension, rescheduling, or correction of the Work), regardless of the extent or frequency of the Owner's exercise of such rights or remedies, shall not be construed as intentional or active interference with the Design-Builder's performance of the Work.

§ 8.2.4 If the Design-Builder submits a schedule or progress report indicating, or otherwise expresses an intention to achieve, completion of the Work prior to any completion date required by the Design-Build Documents or expiration of the Contract Time, not be liable to the Design-Builder for any failure of the Design-Builder to so complete the Work regardless of the cause of or reason for the Design-Builder's failure to do so.

ARTICLE 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION

§ 9.1 Contract Sum

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

§ 9.2 Schedule of Values

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

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work. The application shall be notarized, if required, and supported by data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from the Architect, Consultants, Contractors, and material suppliers, and shall reflect retainage if provided for in the Design-Build Documents. The Application for Payment shall include all documentation required by this Agreement.

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

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

§ 9.3.2 Unless otherwise provided in the Design-Build Documents, payments shall be made for services provided as well as materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be

conditioned upon compliance by the Design-Builder with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

Contractor shall also comply with the following specific requirements:

1. The aggregate cost of materials stored off-site shall not exceed [_____ dollars (\$_____)] at any time without written approval of the Owner.
2. Title to such materials shall be vested in the Owner, as evidenced by documentation satisfactory in form and substance to the Owner and the Owner's Construction Lender, including, without limitation, recorded financing statements, UCC filings, and UCC searches.
3. With each Application for Payment, the Design-Builder shall submit to the Owner a written list identifying each location where materials are stored off the Project site and the value of materials at each location. The Design-Builder shall procure insurance satisfactory to the Owner for materials stored off the Project site in an amount not less than their total value.
4. Design-Builder shall obtain the consent of any surety to the extent required by Owner prior to payment for any materials stored off the Project site.
5. Representatives of the Owner and the Lender shall have the right to make inspections of the storage areas at any time.
6. Such materials shall be protected from diversion, destruction, theft, and damage to the satisfaction of the Owner and the Lender, specifically marked for use on the Project, and segregated from other materials at the storage facility.

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

The Design Builder also agrees and warrants to the following:

1. The Design-Builder further expressly undertakes to defend the Owner, at the Design-Builder's sole expense, against any actions, lawsuits, or proceedings brought against the Owner as a result of liens filed against the Project, the Work, the site of any of the Work, the Project site and any improvements on it, payments from the Design-Builder, or any portion of the property of any of the Owner (referred to collectively as liens in this Section 9.3.3). The Design-Builder agrees to indemnify and hold the Owner harmless against any such liens or claims of lien and agrees to pay any judgment or lien resulting from any such actions, lawsuits, or proceedings.
2. The Owner shall release any payments withheld due to a lien or claim of lien if the Design-Builder obtains security acceptable to the Owner or a lien bond that is (1) issued by a surety acceptable to the Owner; (2) in form and substance satisfactory to the Owner; and (3) in an amount not less than one hundred fifty percent (150%) of such lien claim. By posting a lien bond or other acceptable security, however, Design-Builder shall not be relieved of any responsibilities or obligations under this Section 9.3.3, including, without limitation, the duty to defend and indemnify the Owner. The cost of any premiums incurred in connection with such bonds and security shall be the Design-Builder's responsibility and shall not be part of, or cause any adjustment to, the Contract Sum.
3. To the extent permitted by law, the Design-Builder agrees to waive any right it may have to assert a mechanic's or other lien against the Project site or any improvements on it, including, without limitation, the Work itself. Furthermore, the Design-Builder will cause a similar provision, waiving any right to a mechanic's or other lien against the property, to be included in all of its subcontracts, any subsubcontracts, and all contracts with material suppliers to the extent permitted by law. Upon execution of the Agreement, the Design-Builder shall also execute the waiver of lien attached to the Agreement and made a part of it as

Exhibit _____ to the extent permitted by law.

4. Notwithstanding the foregoing, the Owner reserves the right to settle any disputed mechanic's or material supplier's lien claim by payments to the lien claimant or by such other means as the Owner, in the Owner's sole discretion, determines is the most economical or advantageous method of settling the dispute. The Design-Builder shall promptly reimburse the Owner, upon demand, for any payments so made

§ 9.4 Certificates for Payment

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

§ 9.5 Decisions to Withhold Certification

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

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

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

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

§ 9.6 Progress Payments

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

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

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

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

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

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

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

§9.6.8 Notwithstanding anything in the Agreement to the contrary, the Owner may elect, in the Owner's sole discretion, to make any payment due the Design-Builder to Architects, Consultants, Contractors, Subcontractors or suppliers of any tier jointly payable to the Design-Builder, Consultants, Contractors, and/or Subcontractors or directly to Architects, Consultants, Contractors, Subcontractors or suppliers. The Design-Builder and such Architects, Consultants, Contractors, Subcontractors and suppliers shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. Any such joint payment shall constitute payment to the Design-Builder, in the full amount of the joint payment, as if such joint payment were made to the Design-Builder alone. In no event shall any joint payment be construed to create any contract between the Owner and any Architect, Contractor, Consultant, Subcontractor or suppliers of the Design-Builder of any tier, obligations for the Owner to such Architects, Consultants, Contractors, Subcontractors or suppliers, or any rights in such Architects, Consultants, Contractors, Subcontractors or suppliers against the Owner.

§9.6.9 When If the Owner is entitled to reimbursement or payment from the Design-Builder under or pursuant to the Design-Build Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Design-Build Documents to the contrary, if the Design-Builder fails to promptly make any payment due the Owner, or the Owner incurs any costs and expenses to cure any default of the Design-Builder or to correct defective Work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Design-Builder from the Owner, or issue a written notice to the Design-Builder reducing the Contract Sum by an amount equal to that which the Owner is entitled. Also, if Owner and Design-Builder have entered into contracts for separate projects, Owner may deduct the amount owed by Design-Builder on this Project from any amounts due Design-Builder from Owner on other projects.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion is the date certified by the Owner in accordance with this

Section 9.8.

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

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

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

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

§ 9.8.6 The Certificate of Substantial Completion shall be submitted by the Design-Builder to the Owner for written acceptance of responsibilities assigned to it in the Certificate. Upon the Owner's acceptance, and consent of surety, as required by the Owner in its discretion, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents.

§ 9.9 Partial Occupancy or Use

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

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

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

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Design-Builder's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection. When the Owner

finds the Work acceptable under the Design-Build Documents and the Contract fully performed, the Owner will, subject to Section 9.10.2, promptly issue a final Certificate for Payment.

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

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

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

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

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

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

§ 10.2 Safety of Persons and Property

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

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Design-Builder or the Architect, Consultants, or Contractors, or other person or entity providing services or work for the Design-Builder; and

- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, or structures and utilities not designated for removal, relocation or replacement in the course of construction.

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

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

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods, are necessary for execution of the Work, the Design-Builder shall exercise utmost care, and carry on such activities under supervision of properly qualified personnel. When use or storage of explosives or other hazardous materials or equipment or unusual construction methods are necessary, the Design-Builder shall give the Owner at least 30 days advance notice.

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

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

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

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

§10.2.9 When all or a portion of the Work is suspended for any reason, the Design-Builder shall securely fasten down all coverings, secure all utilities and equipment, and otherwise fully protect the Work and Project property from injury by any cause.

§10.2.10 The Design-Builder shall within 6 hours of each occurrence report by telephone and in writing to the Owner all occurrences arising out of or in connection with the Work that causes death, personal injury, or property damage, giving full details and observations of any witnesses.

§ 10.3 Hazardous Materials

§ 10.3.1 The Design-Builder is responsible for compliance with any requirements included in the Design-Build Documents regarding hazardous materials. If the Design-Builder encounters a hazardous material or substance not

addressed in the Design-Build Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing and promptly report such conditions to the appropriate authorities as required by applicable laws, statutes, rules, codes, lawful orders, regulations, and ordinances within the time required by the applicable authorities, laws, statutes, rules, codes, lawful orders, regulations, and ordinances.

§ 10.3.2 Upon receipt of the Design-Builder's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Design-Build Documents, the Owner shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Design-Builder shall promptly reply to the Owner within five (5) days of receipt of the information from the Owner in writing stating whether or not the Design-Builder has reasonable objection to the persons or entities proposed by the Owner and the grounds for any objection. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Design-Builder. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Design-Builder's reasonable additional costs of shut-down, delay and start-up. The term "rendered harmless" shall be interpreted to mean that levels of asbestos polychlorinated biphenyls, and other hazardous materials, are less than any applicable exposure standards set forth in OSHA regulations. In no event, however, shall the Owner have any responsibility for any substance or material that is brought to the Project site by the Design-Builder, any Subcontractor, any material supplier, or any entity for whom any of them is responsible. The Design-Builder agrees not to use any fill or other materials to be incorporated into the Work that are hazardous, toxic, or made up of any items that are hazardous or toxic.

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

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

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

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

§ 10.4 Emergencies

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

ARTICLE 11 UNCOVERING AND CORRECTION OF WORK

§ 11.1 Uncovering of Work

At the Owner's sole discretion, the Owner may request to examine a portion of the Work that the Design-Builder has

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

§ 11.2 Correction of Work

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

§ 11.2.2 After Substantial Completion

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

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

§ 11.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section 11.2 except that the warranty for any work requiring repair or correction within the first year shall be extended for another year from the date the repair or correction is completed.

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

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

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

§ 11.3 Acceptance of Nonconforming Work

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

ARTICLE 12 COPYRIGHTS AND LICENSES

§12.1 All drawings, specifications, and other documents, including those in electronic form prepared by the Design-Builder, its Architects, or its Consultants and those prepared by and furnished by the Design-Builder, are Instruments of Service. All such drawings, specifications, and other instruments of service, documents including those in electronic form prepared by the Design-Builder, or its Architects, or its Consultants and those prepared by and furnished by the Design-Builder shall be deemed the property of the Owner when provided to the Owner and the Owner shall be deemed to hold the copyright to those drawings, specifications, and other Instruments of Service, including those in electronic form prepared by the Design-Builder or its Architects or its Consultants and/or furnished by the Design-Builder. The Design-Builder will include in any contracts and subcontracts in which it enters regarding design (including drawings, specifications, and other Instruments of Service, including those in electronic form) a provision that the copyrights for all such other Instruments of Service, shall be the property of the Owner and the Owner shall hold the copyrights to all such design documents. The Owner may use these documents in any manner that it deems appropriate. In the event the Design-Build Contract is terminated for any reason, the Owner shall be liable to the Design-Builder and its Architects and its Consultants only for the value of the actual time spent by the Design-Builder, its Architect and its Consultants in preparing the drawings, specifications, and other instruments of service, for which the Owner has not already paid to Design-Builder.

ARTICLE 13 TERMINATION OR SUSPENSION

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

§ 13.1.1 If the Owner fails to make payments to the Design-Builder for Work prior to execution of the Design-Build Amendment in accordance with this Agreement, through no fault of the Design-Builder, and for reasons solely in the control of the Owner, such failure shall be considered a cause for termination or, at the Design-Builder's option, cause for suspension of performance of services under this Agreement. If the Design-Builder elects to suspend the Work, the Design-Builder shall give ten days' written notice to the Owner before suspending the Work. In the event of a suspension of the Work for reasons described in the first sentence of this section, the Design-Builder shall have no liability to the Owner for delay or damage caused by the suspension of the Work. Before resuming the Work, the Design-Builder shall be paid any sums properly due prior to suspension. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.2 If the Owner improperly suspends the Project in breach of the Design-Build Documents, the Design-Builder shall be compensated for the Work performed prior to notice of such suspension. When the Project is resumed, the Design-Builder shall be compensated for expenses incurred in the interruption and resumption of the Design-Builder's Work but only if the Design-Builder can demonstrate it had no other project at which to perform its services. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

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

§ 13.1.4 The Owner may terminate this Agreement upon not less than seven days' written notice should the Design-Builder fail substantially to perform in accordance with the terms of this Agreement through no fault of the Owner.

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

§ 13.1.6 In the event of termination not the fault of the Design-Builder, the Design-Builder shall be compensated only the actual costs incurred by the Design-Builder and approved by the Owner for Work performed prior to termination, together with Reimbursable Expenses already incurred and approved by the Owner. In no event shall the Design-Builder be entitled to any additional compensation under this section 13.1.6 for which the Design-Builder is not otherwise compensated. In no event shall the Design-Builder's compensation under this Section 13.1.6 be greater than the compensation set forth in Section 2.1.

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

§ 13.2.1 Termination by the Design-Builder

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

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped.

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

§ 13.2.1.3 If one of the reasons described in Section 13.2.1.1 or 13.2.1.2 exists, the Design-Builder may, upon ten days' written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit. In no event shall the Design-Builder be entitled to any additional compensation under this Section 13.2.1.3.

§ 13.2.1.4 If the Work is stopped for a period of 120 consecutive days or if repeated suspensions, delays, or interruptions by the Owner as described in Section 13.2.3 constitute in the aggregate the lesser of an amount equal to the Contract time or 180 days in any one (1)-year period. 60 consecutive days through no act or fault of the Design-Builder or any other persons or entities performing portions of the Work under contract with the Design-Builder because the Owner has repeatedly failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon seven additional days' written notice to the Owner, terminate the Contract and recover from the Owner as provided in Section 13.2.1.3.

§ 13.2.2 Termination by the Owner For Cause

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

- .1 fails to submit the Proposal by the date required by this Agreement, or if no date is indicated, within a reasonable time consistent with the date of Substantial Completion;
- .2 repeatedly refuses or fails to supply an Architect, or enough properly skilled Consultants, Contractors, or workers or proper materials;
- .3 fails to make payment to the Architect, Consultants, or Contractors for services, materials or labor in accordance with their respective agreements with the Design-Builder;
- .4 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .5 breaches any warranty made by the Design-Builder under or pursuant to the Design-Build Documents.
- .6 fails to furnish the Owner with assurances satisfactory to the Owner evidencing the Design-Builder's ability to complete the Work in compliance with all the requirements of the Design-Build Documents.
- .7 fails after commencement of the work to proceed continuously with the construction and completion of the Work for more than ten (10) days, except as permitted under the Design-Build Documents.

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

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

- .4 Immediately transfer to the Owner all materials, supplies, Work in progress, appliances, facilities, machinery, and tools acquired by the Design-Builder in connection with the performance of the Contract, and take such action as may be necessary or as the Owner may direct for protection and preservation of the work relating to this Design-Build Documents; and
- .5 Deliver all plans, drawings, specifications, and other necessary information and Instruments.

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

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

§ 13.2.3 Suspension by the Owner for Convenience

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

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

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

§ 13.2.4 Termination by the Owner for Convenience

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

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

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and,
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Project agreements, including agreements with the Architect, Consultants, Contractors, and purchase orders, and enter into no further Project agreements and purchase orders.
- .4 immediately transfer to the Owner all materials, supplies, Work in progress, appliances, facilities, machinery, and tools acquired by the Design-Builder in connection with the performance of the Contract, and take such action as may be necessary or as the Owner may direct for protection and preservation of the work relating to this Design-Build Documents Contract; and
- .5 deliver all plans, drawings, specifications, and other necessary information and Instruments of Service to the Owner.

§ 13.2.4.3 If the Owner terminates the Design-Build Contract for the Owner's convenience, the following shall be the Design-Builder's exclusive remedies:

1. Reimbursement of all actual expenditures and costs incurred and approved in writing by the Owner as having been made or incurred in performing the Work;
2. Reimbursement of expenditures made and costs incurred and approved in writing by the Owner in settling or discharging outstanding commitments entered into by the Design-Builder in performing the Contract; and
3. Payment of profit, to the extent Design-Builder can demonstrate that it would have made a profit, of an amount equal to the estimated profit on the entire Contract at the time of termination multiplied by the percentage of actual completion of the Work. In no event shall the Design-Builder be entitled to anticipated fees or profits on work not required to be performed.

§13.2.4.4 All obligations of the Design-Builder under the Design-Build Contract with respect to completed Work, including but not limited to all warranties, guarantees, and indemnities, shall apply to all Work completed or substantially completed by the Design-Builder prior to a convenience termination by the Owner. Notwithstanding the above, any convenience termination by the Owner or payments to the Design-Builder shall be without prejudice to any claims or legal remedies that the Owner may have against the Design-Builder for any cause.

§13.2.4.5 Upon determination that a termination of this Design-Build Contract other than a termination for convenience under this Article was wrongful or improper for any reason, such termination shall automatically be deemed converted to a convenience termination under this Article, and the Design-Builder's remedy for such wrongful termination shall be limited to the recoveries specified under Section 13.2.4.3 of this Article.

ARTICLE 14 CLAIMS AND DISPUTE RESOLUTION

§ 14.1 Claims

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

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

§ 14.1.3 Notice of Claims

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

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

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

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

§ 14.1.6 Claims for Additional Time

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

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

§ 14.1.7 Claims for Consequential Damages

Design-Builder waives Claims against Owner for consequential damages arising out of or relating to the Design-Build

Contract. This waiver includes damages asserted by the Design-Builder for principal office expenses including the compensation of personnel stationed there, home office overhead, for losses of financing, business and reputation, and for loss of profit

§ 14.2 Initial Decision

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

§ 14.2.2 Procedure

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

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

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

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

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

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

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

§ 14.2.7 In the event of a Claim against the Design-Builder, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Design-Builder's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy. At the Owner's option, the surety shall be a party with the Design-Builder to all mediations and dispute resolution procedures. The Design-Builder agrees to notify its surety that it is a party to the claims procedures set out in Sections 14.2.6, 14.3 and 14.4 of this Agreement and to obtain surety's agreement to those procedures. Design-Builder also agrees to incorporate the Contract into the performance bond provided by the Design-Builder.

§ 14.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines unless the party seeking to assert the lien claim has previously waived or released its lien rights and/or lien claims.

§ 14.3 Mediation

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

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

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

§ 14.4 Arbitration

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

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

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

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

§ 14.4.4 Consolidation or Joinder

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

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

§ 14.4.4.3 The Owner and Design-Builder grant to any person or entity made a party to an arbitration conducted under

this Section 14.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Design-Builder under this Agreement.

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Governing Law

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

§ 15.2 Successors and Assigns

§ 15.2.1 The Owner and Design-Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Design-Build Documents and the Contract. The Design-Builder shall not assign the Design-Build Documents or Contract or its obligations thereunder without written consent of the Owner. If the Design-Builder attempts to make such an assignment with or without Owner's consent, the Design-Builder shall nevertheless remain legally responsible to the Owner for all of its obligations under the Contract.

§ 15.2.2 The Owner may, without consent of the Design-Builder, assign the Contract and its obligations thereunder as the Owner deems appropriate in its sole discretion. The Design-Builder shall execute all consents reasonably required to facilitate such Assignment.

§ 15.2.3 If the Owner requests that the Design-Builder, its Architects, Consultants, Contractors, Subcontractors or Suppliers to execute certificates, other than those required by Section 3.1.10, the Owner shall submit the proposed language of such certificates for review at least 5 days prior to the requested dates of execution. If the Owner requests the Design-Builder, its Architects, Consultants, Contractors Subcontractors or Suppliers to execute consents reasonably required to facilitate assignment, the Design-Builder, its Architects, Consultants, Contractors, Subcontractors and Suppliers execute all such certificates and consents that are consistent with this Agreement, provided the proposed certificates and consents are submitted to them for review at least 5 days prior to execution. The Design-Builder, its Architects, Consultants, Contractors Subcontractors and Suppliers shall not be required to execute certificates that would require knowledge, services or responsibilities beyond the scope of their service.

§ 15.3 Written Notice

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

§ 15.4 Rights and Remedies

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

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

§ 15.5 Tests and Inspections

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

laws or regulations prohibit the Owner from delegating their cost to the Design-Builder.

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

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

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

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

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

§ 15.6 Confidential Information

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

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

§ 15.7 Capitalization

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

§ 15.8 Interpretation

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

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

ARTICLE 16 SCOPE OF THE AGREEMENT

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

- .1 AIA Document A141™-2014, Standard Form of Agreement Between Owner and Design-Builder
- .2 AIA Document A141™-2014, Exhibit A, Design-Build Amendment, if executed
- .3 AIA Document A141™-2014, Exhibit B, Insurance and Bonds
- .4 AIA Document A141™-2014, Exhibit C, Sustainable Projects, if completed
- .5 AIA Document E202™-2022, BIM Exhibit for Sharing Models with Project Participants, Where Model

Versions May Not be Enumerated as a Contract Document, if completed, or the following:

[Redacted]

.6 Other:

[Redacted]

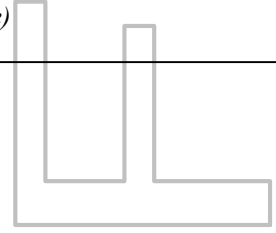
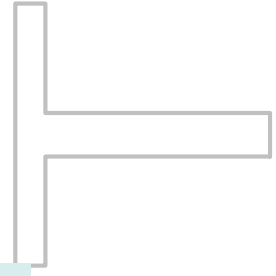
This Agreement entered into as of the day and year first written above.

OWNER *(Signature)*

(Printed name and title)

DESIGN-BUILDER *(Signature)*

(Printed name and title)



AIA® Document A141® – 2014 Exhibit A

Design-Build Amendment

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

for the following PROJECT:

(Name and location or address)

THE OWNER:

(Name, legal status and address)

THE DESIGN-BUILDER:

(Name, legal status and address)

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

TABLE OF ARTICLES

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

ARTICLE A.1 CONTRACT SUM

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

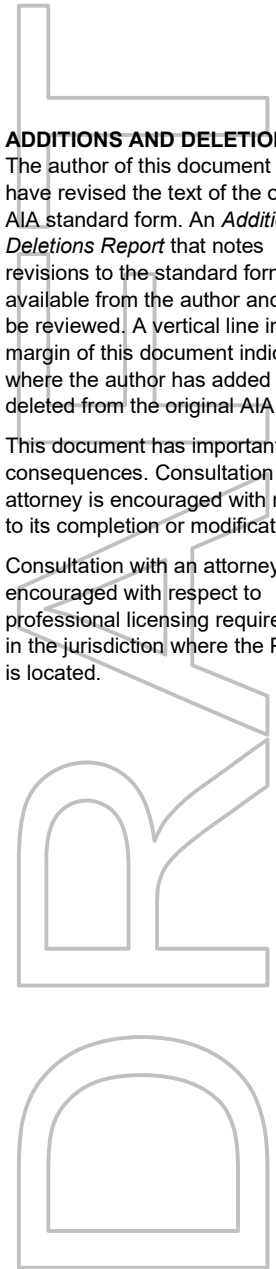
(Check the appropriate box.)

[] Stipulated Sum, in accordance with Section A.1.2 below

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

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

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



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

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

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

§ A.1.2 Stipulated Sum

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

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

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

§ A.1.2.3 Unit prices, if any:

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

Item

Units and Limitations

Price per Unit (\$0.00)

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

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

§ A.1.3.2 The Design-Builder's Fee:

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

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

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

§ A.1.4.2 The Design-Builder's Fee:

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

§ A.1.4.3 Guaranteed Maximum Price

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

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

§ A.1.4.3.2 Itemized Statement of the Guaranteed Maximum Price

Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances,

contingencies, alternates, the Design-Builder's Fee, and other items that comprise the Guaranteed Maximum Price.
(Provide information below or reference an attachment.)

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

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

§ A.1.4.3.4 The Stipulated Sum includes an estimated amount of \$_____ for unit prices for the following described items:

Item	Units and Limitations	Price per Unit (\$0.00)
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§ A.1.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

§ A.1.5 Payments

§ A.1.5.1 **Progress Payments** Prior to the submission of any Applications for Payment, the Design-Builder shall submit for owner's approval a schedule of values with respective quantities. The schedule of values shall allocate the contract amount among the various portions of the Design-Builder's work and be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. Based upon Applications for Payment submitted to the Owner by the Design-Builder, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

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

§ A.1.5.1.3 Provided that an Application for Payment is received not later than the _____ day of the month, the Owner shall make payment of the certified amount to the Design-Builder not later than the _____ day of the _____ month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than _____ (_____) days after the Owner receives the Application for Payment.

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

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

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

Design-Builder's Applications for Payment.

In addition to the other required items, each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner and in compliance with applicable statutes of the state of Illinois:

- A. A current sworn statement from the Design-Builder setting forth all Architects, Consultants, Contractors, Subcontractors, and material suppliers with whom the Design-Builder has contracted or subcontracted, the amount of each contract or subcontract, the amount requested for any contractor, subcontractor, or material supplier in the Application for Payment, and the amount to be paid by the Design-Builder from such progress payment to Architects, Consultants, Contractors, Subcontractors, and material suppliers, together with a current duly executed waiver of mechanics' and material suppliers' liens from the Design-Builder establishing receipt of payment for satisfaction of the payments requested by the Design-Builder in the current Application for Payment. In its sole discretion, the Owner shall be entitled to pay directly any or all of the Design-Builder's Architects, Consultants, Contractors, Subcontractors and material suppliers and charge those payments against the Contract Sum. In the event the amounts paid by Owner to Design-Builder's Architects, Consultants, Contractors, Subcontractors, and material suppliers exceed the amounts remaining due under the Design-Build Contract to Design-Builder then Owner shall be entitled to collect from Design-Builder those amounts.
- B. Commencing with the second Application for Payment submitted by a Contractor, duly executed so-called "after the-fact" waivers of mechanics' and material suppliers' liens from all Architects, Consultants, Contractors, Subcontractors, material suppliers, and, when appropriate, lower tier subcontractors and material suppliers, acknowledging receipt of payment or satisfaction of payment of all amounts requested on behalf of such entities and disbursed prior to submittal by the Design-Builder of the current Application for Payment, plus sworn statements from all Architects, Consultants, Contractors, Subcontractors, material suppliers, and where appropriate, lower tier subcontractors and material suppliers, covering all amounts described in this Section A.1.5.1.4.
- C. Such other information, documentation, and materials as the Owner, the Owner's Consultants, the Owner's lender, or the title insurer may require.
- D. Such other information, documentation, and materials as are required elsewhere in the Contract to be submitted with Applications for Payment.
- E. If at any time there shall be evidence of a lien or claim of lien that is for Work within the scope of this Design-Build Contract, or if the Design-Builder shall incur any liability to the Owner, or the Owner shall have any claim or demand against the Design-Builder of any kind or for any reason, whether reduced to judgment or award, the Owner shall have the right to retain out of any payment due, or to become due under this Agreement, or any other agreement between the Owner and the Design-Builder, an amount sufficient to indemnify the Owner against any lien or claim, or to fully satisfy such liability, claim, or demand. The Owner shall also be entitled to charge against or deduct from any such payment all costs of defense or collection with respect thereto, including reasonable attorneys' fees and expenses. Should any claim or lien develop after all payments are made hereunder, the Design-Builder shall refund to the Owner within ten (10) days of demand therefor all monies that the Owner shall be compelled to pay in discharging or satisfying such claims or liens and all costs, including reasonable attorneys' fees incurred in collecting said monies from the Design-Builder. Owner shall have the right in its sole judgment to satisfy or file a bond to discharge a claim of lien or other claim and to deduct all amounts paid to satisfy or discharge a claim of lien or other claim plus Owner's attorneys' fees and expenses from any amounts remaining due under the Design-Build Contract to Design-Builder or to collect from Design-Builder those amounts to the extent those amounts exceed the amount remaining in the Contract Sum.
- F. No progress payments made to Design-Builder under this Agreement shall be conclusive evidence of the performance of this Agreement either in whole or in part, and no such payment shall be construed to be acceptance of defective work or improper materials.

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

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

§ A.1.5.1.78 Except as hereinafter provided, the Owner shall have the option, but not the obligation, to reduce the retainage requirements of this Agreement or release any portion of retainage prior to the date specified in the Design-Build Documents. Any reduction or release of retainage, or portion thereof, however, shall not be a waiver of (1) any of the Owner's rights to retainage in connection with other payments to the Design-Builder or (2) any other right or remedy that the Owner has under the Design-Build Documents, at law or in equity.

§ A.1.5.2 Progress Payments—Stipulated Sum

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement.
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Design-Builder's Fee, less retainage of [] percent ([] %). The Design-Builder's Fee shall be computed upon the Cost of the Work at the rate stated in Section A.1.4.2 or, if the Design-Builder's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of [] percent ([] %) from that portion of the Work that the Design-Builder

- self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section A.1.5.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Owner has withheld or nullified a payment as provided in Section 9.5 of the Agreement.

§ A.1.5.4.3 The Owner and Design-Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on agreements with the Architect, Consultants, and Contractors; and the Design-Builder shall execute agreements in accordance with those terms. If the Owner and Design-Builder cannot agree on the procedures and percentage of retainage under this Section, then the Owner shall determine those procedures and percentage of retainage

§ A.1.5.5 Final Payment

§ A.1.5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder not later than 30 days after the Design-Builder has fully performed the Contract and the requirements of Section 9.10 of the Agreement have been satisfied, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment. Final payment is further subject to the Owner's prior receipt from the Design-Builder of all as-built drawings, certifications, maintenance manuals, operating instructions, written guarantees, warranties, and bonds related to the Work, and assignments of all guarantees and warranties from contractors, subcontractors, vendors, suppliers, or manufacturers, all as required by the Design-Build Documents. Receipt of those documents is a condition precedent to payment to the Design-Builder by the Owner.

§ A.1.5.5.2 If the Contract Sum is based on the Cost of the Work, the Owner's auditors will review and report in writing on the Design-Builder's final accounting within 60 days after the Design-Builder delivers the final accounting to the Owner. Based upon the Cost of the Work the Owner's auditors report to be substantiated by the Design-Builder's final accounting, and provided the other conditions of Section 9.10 of the Agreement have been met, the Owner will, within seven days after receipt of the written report of the Owner's auditors, either issue a final Certificate for Payment, or notify the Design-Builder in writing of the reasons for withholding a certificate as provided in Section 9.5.1 of the Agreement.

ARTICLE A.2 CONTRACT TIME

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

§ A.2.2 The Design-Builder shall achieve Substantial Completion of the Work not later than () days from the date of this Amendment, or as follows:
(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

The Design-Builder shall achieve Substantial Completion of the Work not later than () days from the date of this Amendment, or by the following date . In addition, the Design Builder shall meet the following milestone dates:

Portion of Work

Substantial Completion Date

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

ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

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

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

Document	Title	Date	Pages
[REDACTED]			

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

Section	Title	Date	Pages
[REDACTED]			

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

Number	Title	Date
[REDACTED]		

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

Title	Date	Pages
[REDACTED]		

Other identifying information:

[REDACTED]

§ A.3.1.4.A All other documents referenced in and incorporated into the Contract and the Design-Build Documents.

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

- .1 Allowances
- [REDACTED]
- .2 Contingencies

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

[Redacted]

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

[Redacted]

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

[Redacted]

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

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

(Identify name, title and contact information.)

.1 Superintendent

[Redacted]

.2 Project Manager

[Redacted]

.3 Others

[Redacted]

§ A.4.2 The Design-Builder shall retain the following Consultants, Contractors and suppliers, identified below:

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

[Redacted]

§ A.4.3 The Design-Builder shall not remove or replace its superintendent, project manager, Consultants, Contractors or suppliers without owner's prior approval other than in the event of the death or incapacitation of an individual superintendent project manager, Consultant, Contractor or supplier.

ARTICLE A.5 COST OF THE WORK

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

§ A.5.1.1 Labor Costs

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

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

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

Person Included	Status (full-time/part-time)	Rate (\$0.00)	Rate (unit of time)
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§ A.5.1.1.3 Wages and salaries of the Design-Builder's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ A.5.1.1.4 Costs paid or incurred by the Design-Builder for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Section A.5.1.1.

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

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

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

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

§ A.5.1.3.2 Costs of materials described in the preceding Section A.5.1.3.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Design-Builder. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

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

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

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

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

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

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

§ A.5.1.5 Miscellaneous Costs

§ A.5.1.5.1 Premiums for that portion of insurance and bonds required by the Design-Build Documents that can be directly attributed to the Contract. With the Owner's prior approval self-insurance for either full or partial amounts of the coverages required by the Design-Build Documents.

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

§ A.5.1.5.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Design-Builder is required by the Design-Build Documents to pay.

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

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

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

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

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

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

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

§ A.5.1.6 Other Costs and Emergencies

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

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

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

§ A.5.1.7 Related Party Transactions

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

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

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

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

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

§ A.5.3 Discounts, Rebates, and Refunds

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

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

§ A.5.4 Other Agreements

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

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

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

§ A.5.5 Accounting Records

The Design-Builder shall keep full and detailed records and accounts related to the cost of the Work and exercise such

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

§ A.5.6 Relationship of the Parties

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

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

OWNER *(Signature)*

(Printed name and title)

DESIGN-BUILDER *(Signature)*

(Printed name and title)



EXHIBIT B — FEE SCHEDULE FORM (TO BE COMPLETED BY RESPONDENT)

Instructions: Complete one (1) Fee Schedule for each Project (A through E) for which you are submitting. Label each clearly (e.g., "Fee Schedule — Project A"). All values are binding as proposed and will be incorporated into the Design-Build Agreement and GMP amendment. Do not provide ranges; state a single definitive value for each line item. If a line item is not applicable, state "N/A" and provide a brief written explanation.

Respondent Name: _____

Project(s) for Which This Fee Schedule Applies: A: B: C: D: E:

Fee / Cost Component	Basis and Description	Respondent's Proposed Amount or %
1. DB Entity Fee	Fixed percentage of Cost of the Work. This fee represents all profit and home-office overhead of the DB Entity.	_____ %
2. General Conditions — Fixed Lump Sum	Total lump sum for all general conditions costs for the full project duration. Attach itemized breakdown per Section 4.4.3.	\$ _____
3. Hourly Rate — General Conditions Personnel	Hourly rate for DB Entity's own employees performing general conditions scope. Attach Hourly Rate Schedule per Section 4.4.4 identifying each classification.	\$ _____ /hr
4. Hourly Rate — Self-Performed Work (by Trade)	Hourly rate, inclusive of wages and payroll burden, for each trade and craft classification performing direct construction work. Attach Hourly Rate Schedule. Must include NTE commitment per Item 5.	See attached Hourly Rate Schedule
5. Not-to-Exceed Budget — Self-Performed Work	Maximum aggregate cost of all self-performed construction work. DB Entity certifies this amount will not be exceeded without prior written Owner authorization.	\$ _____
6. Material and Equipment Mark-Up	Percentage applied to the DB Entity's direct costs for materials and equipment (not subcontractor costs).	_____ %
7. Subcontractor Mark-Up	Percentage added to each subcontractor's invoice above the subcontractor's own cost.	_____ %
8. Pre-Construction Services Fee	Lump sum for design coordination, constructability review, estimating, and pre-construction management through GMP establishment.	\$ _____
9. Allowance for Reimbursables	Budget for documented reimbursable costs (travel, printing, permit coordination, testing, inspections, and similar). Subject to audit; unexpended amounts returned to Owner.	\$ _____
10. DB Entity Contingency	Percentage of Cost of the Work or fixed dollar amount. Use requires Owner prior written approval. Unused contingency returned to Owner at GMP reconciliation.	_____ % or \$ _____

Respondent Certification: The undersigned authorized representative certifies that all information provided in this Fee Schedule is accurate, complete, and binding, and that the respondent has read and understands this RFP/RFQ in its entirety.

Authorized Signature: _____ Date: _____

Printed Name and Title: _____

Entity Name: _____

