

University System of New Hampshire/ConsensusDocs® 410

**STANDARD DESIGN-BUILD AGREEMENT AND GENERAL CONDITIONS
BETWEEN OWNER AND DESIGN-BUILDER (Cost of the Work Plus a Fee with a GMP)**

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ARTICLE 1 AGREEMENT

Contract Number: []

Project ID: []

This Agreement is between |

Owner,
(Name, legal status and address)

[]
[]
[]

and the |

Design-Builder
(Name, legal status and address)

[]
[]
[]

for construction and services in connection with the following

PROJECT:
(Name and address or location)

[]
[]
[]

Design Professional is.



(Name, legal status and address)

[]
[]
[]

The Owner's Designated Representative:
(Name, address and other information)

[]
[]
[]
[]

The Design-Builder's Designated Representative:
(Name, address and other information)

[]
[]
[]
[]

The Design Professional's Designated Representative:
(Name, address and other information)

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[]
[]
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ARTICLE 2 GENERAL PROVISIONS

2.1 PARTIES' RELATIONSHIP Each Party agrees to act on the basis of good faith and fair dealing, and shall take all actions reasonably necessary to perform this Agreement in an economical and timely manner, including consideration of design modifications and alternative materials or equipment that will permit the Work to be constructed within the Guaranteed Maximum Price (GMP) and, if established, by the Dates of Substantial Completion and Final Completion.

2.1.1 Design-Builder represents that it is an independent contractor and that it is familiar with the type of Work it is undertaking.

2.1.2 Neither Design-Builder nor any of its agents or employees shall act on behalf of or in the name of Owner.

2.1.3 In accordance with the specific requirements of the Contract Documents set forth below, the Owner agrees to furnish or approve, in a timely manner, information required by the Design-Builder and to make payments to the Design-Builder.

2.2 ETHICS Each Party shall perform with integrity. Each shall: (a) avoid conflicts of interest; (b) promptly disclose to the other Party any conflicts of interest which may arise. Each Party warrants it has not and shall not pay or receive any contingent fees or gratuities to or from the other Party, including its agents, officers and employees, Design Professional, Subcontractors, Sub-subcontractors, Suppliers, or Others, to secure preferential treatment.]

2.3 DESIGN-PROFESSIONAL Design-Builder shall furnish architectural and engineering services ("Services") by Design-Builder's licensed employees or procure such services from a licensed, independent design professional/s retained by Design-Builder. The person or entity providing architectural and engineering services shall be referred to as Design-Professional. If Design-Professional is an independent design professional, the architectural and engineering services shall be procured pursuant to

a separate agreement between Design-Builder and Design-Professional. All Services provided shall be performed by design professionals licensed in the state of New Hampshire.

2.3.1 The agreements between the Design-Builder and Design-Professional or other design professionals identified in the Agreement, and in any subsequent modifications, shall be in writing. These agreements, including services and financial arrangements with respect to this Project, shall be promptly and fully disclosed to the Owner upon the Owner's written request.

2.3.2 Design-Builder shall furnish or provide the Services necessary to design the Project in accordance with Owner's requirements, as outlined in Owner's Program and other relevant data defining the Project. The Services shall be performed in accordance with the standard of professional skill and care required for a Project of similar size, scope, location, and complexity, during the time in which the Services are provided.

2.3.3 Design-Builder's execution of this Agreement is a representation that the Design-Builder has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Design-Build Documents.

2.4 DEFINITIONS

2.4.1 "Agreement" means this University System of New Hampshire/ConsensusDocs 410 Standard Design-Build Agreement and General Conditions Between Owner and Design-Builder (Cost of the Work Plus a Fee with a GMP), as modified, exhibits, and attachments as listed in ARTICLE 15.

2.4.2 "Business Day" means all Days, except weekends and official federal or state holidays where the Project is located.

2.4.3 A "Change Order" is a written order signed by the Parties after execution of this Agreement, indicating a change in the scope of the Work, Cost of the Work, or Contract Time, including substitutions proposed by Design-Builder and accepted by Owner.

2.4.4 The "Contract Documents" consist of those documents identified in §15.1.

2.4.5 The "Contract Time" is the period between the Date of the Agreement and the total time authorized to achieve Final Completion.

2.4.6 "Cost of the Work" means the costs and discounts specified in ARTICLE 8.

2.4.7 "Date of Commencement" means the date of commencement of the Construction Phase as identified in the notice to proceed.

2.4.8 "Day" means calendar day.

2.4.9 "Design-Builder" is the person or entity identified in ARTICLE 1, and includes Design-Builder's Representative

2.4.10 "Defective Work" is any portion of the Work that does not conform to the requirements of the Contract Documents.

2.4.11 "Final Completion" occurs on the date when Design-Builder's obligations under this Agreement are complete and accepted by Owner and final payment becomes due and payable. This date shall be confirmed by a Certificate of Final Completion signed by the Parties.

2.4.12 "Hazardous Material" is any substance or material identified now or in the future as hazardous under any Laws or any other substance or material which may be considered hazardous or otherwise

subject to statutory or regulatory requirements governing handling, transportation, disposal, or clean-up.

2.4.13 "Interim Directive" is a written order containing changes in the Work directed by the Owner pursuant to §9.2 that is signed by Owner after execution of this Agreement and prior to Substantial Completion of the Work.

2.4.14 "Law" means a federal, state, or local law, ordinance, code, rule, or regulation applicable to the Work with which Design-Builder must comply that is enacted as of the Agreement date.

2.4.15 "Others" means Owner's other: (a) contractors/constructors/design-builders, (b) suppliers, (c) subcontractors, sub-subcontractors, or suppliers of (a) and (b); and others employed directly or indirectly by (a), (b), or (c) or individuals for whose acts any of them may be liable.

2.4.16 "Overhead" means (a) payroll costs, burden, and other reasonable compensation of Design-Builder's employees in Design-Builder's principal and branch offices; and (b) general and administrative expenses of Design-Builder's principal and branch offices.

2.4.17 "Owner" is the person or entity identified in ARTICLE 1, and includes Owner's Representative.

2.4.18 "Owner's Program" is an initial description of Owner's objectives including budgetary and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, site requirements, and any requirements for phased occupancy.

2.4.19 The "Parties" are collectively Owner and Design-Builder.

2.4.20 The "Project," as identified in ARTICLE 1, is the building, facility, or other improvements for which Design-Builder is to perform the Work under this Agreement. It may also include improvements to be undertaken by Owner or Others.

2.4.21 "Schedule of the Work" is the document prepared by Design-Builder that specifies the dates on which Design-Builder plans to begin and complete various parts of the Work, including dates on which information and approvals are required from Owner. |

2.4.22 A "Subcontractor" is a person or entity retained by Design-Builder as an independent contractor to provide the labor, materials, equipment, or services necessary to complete a specific portion of the Work. The term Subcontractor does not include Design-Professional or any separate contractor employed by Owner or any separate contractor's subcontractors. |

2.4.23 "Substantial Completion" of the Work, or of a designated portion, occurs on the date when the Work is sufficiently complete in accordance with the Contract Documents so that Owner may occupy or utilize the Project, or a designated portion, for the use for which it is intended, without unapproved disruption. This date shall be confirmed by a certificate of Substantial Completion signed by the Parties.

2.4.24 "Sub-subcontractor" is a person or entity who has an agreement with a Subcontractor or another Sub-subcontractor or Supplier to perform a portion of the Sub-subcontractor's Work or to supply material or equipment.

2.4.25 A "Supplier" is a person or entity retained by Design-Builder to provide material or equipment for the Work.

2.4.26 "Terrorism" means a violent act, or an act that is dangerous to human life, property, or infrastructure, that is committed by an individual or individuals and that appears to be part of an effort to coerce a civilian population or to influence the policy or affect the conduct of any government by

coercion. Terrorism includes, but is not limited to, any act certified by the United States Secretary of Treasury as an act of terrorism pursuant to the Terrorism Risk Insurance Act, as amended.

2.4.27 The "Work" means the design phase services procured or furnished in accordance with §3.22, the GMP Proposal provided in accordance with §3.3, the Construction Phase services provided in accordance with §3.4, any Additional Services procured or furnished in accordance with §3.21, and other services which are necessary to complete the Project in accordance with and reasonably inferable from the Contract Documents. The Work may refer to the whole Project or only a part of the Project if work is also being performed by Owner or Others.

2.4.28 "Worksite" means the area of the Project location identified in ARTICLE 1 where the Work is to be performed.

ARTICLE 3 DESIGN-BUILDER'S RESPONSIBILITIES

3.1 GENERAL RESPONSIBILITIES

3.1.1 Design-Builder shall be responsible for procuring or furnishing the design, providing all the services identified in Exhibit G and for the construction of the Work consistent with Owner's Program, as such Program may be modified by Owner during the course of the Work. Design-Builder shall use its diligent efforts to perform the Work in an expeditious manner, but does not warrant nor guarantee schedules and estimates other than those that are part of the GMP proposal described in §3.3.1. Design-Builder represents that it is an independent contractor and that it is familiar with the type of Work required by this Agreement.

3.1.2 The Parties may establish a fast-track approach to the design and construction services necessary to complete the Project. Such agreement establishing a fast-track approach and the Project Schedule, shall be included as an exhibit to this Agreement. In the absence of such agreement, the Parties shall proceed in accordance with §3.2 and §3.4 below.

3.1.3 Design-Builder, and Design-Professional, if an independent design professional, and all major Subcontractors shall provide a list of Key Project personnel in the form of Exhibit D. Such personnel shall not be changed without the written approval of Owner, which approval shall not be unreasonably withheld.

3.1.4 Design-Builder must provide stamped drawings and documents by a design-professional licensed in the state of New Hampshire which are consistent with the Project Criteria set forth in the Design-Build Documents, comply with applicable professional practice standards, laws, ordinances, codes, rules and regulations governing the design of the Project, and are in a format consistent with Owner's articulated intended use. Owner and its consultants shall be entitled to rely upon the accuracy of the stamped drawings and documents. Design-Builder to provide all certifications and documentation required by the authorities having jurisdiction.

3.1.5 The Design-Builder shall be entitled to rely on the completeness and accuracy of the information contained in the Project Program, but not that such information complies with applicable laws, regulations and codes, which shall be the obligation of the Design-Builder to determine. If a specific requirement of the Project Program conflicts with applicable laws, regulations and codes, the Design-Builder shall inform the Owner in writing and furnish Work which complies with such laws, regulations and codes. In such case, the Owner shall issue a Change Order to the Design-Builder unless the Design-Builder recognized such non-compliance prior to execution of this Agreement and failed to notify the Owner

3.1.6 Design-Builder shall perform Work only within locations allowed by the Contract Documents, Law, and applicable permits unless otherwise directed by the Owner.

3.1.7 Design-Builder shall not proceed with the development of successive design documents as defined in §3.2.6, §3.2.8 and §3.2.9, until receiving written approval from Owner. Design Professional shall promptly revise without additional compensation.

3.1.8 GREEN BUILDING FACILTATOR If identified in Exhibit G, Design-Builder shall act as the Green Building Facilitator for Project. Owner and Design-Builder shall complete University System of New Hampshire/ConsensusDocs 310 Green Building Addendum (Exhibit I) which, at a minimum, shall address: (a) coordinating and facilitating the achievement of the Elected Green Status (EGS) such as achieving Leadership in Energy and Environmental Design "LEED" certification and identifying the Green Measures necessary to achieve the EGS; (b) identifying, preparing, and submitting necessary documentation for the Elected Green Status; and (c) identifying project participants responsible to complete physical and procedural green measures;

3.1.8.1 The Design-Builder's Design Professional shall make recommendations and incorporate environmentally responsible design approaches in the Drawings, Specifications and other deliverables for the purpose of submitting for obtaining such certification. The Design Professional shall conspicuously identify in the Plans, Specifications and other deliverables, performance required of the Contractor for the purpose of submitting for such certification.

3.2 DESIGN PHASE SERVICES

3.2.1 PRELIMINARY EVALUATION Design-Builder shall review Owner's Program (Exhibit B) to ascertain the requirements of the Project and shall verify such requirements with Owner. Design-Builder's review shall also provide to Owner a preliminary evaluation of the site regarding access, traffic, drainage, parking, building placement, and other considerations affecting the building, the environment, and energy use, as well as information regarding Laws and requirements. Design-Builder shall also propose alternative architectural, civil, structural, mechanical, electrical, and other systems for review by Owner, to determine the most desirable approach based on cost, technology, quality, and speed of delivery. Design-Builder will also review existing test reports but will not undertake any independent testing nor be required to furnish types of information derived from such testing in its Preliminary Evaluation. Based upon its review and verification of Owner's Program and other relevant information, Design-Builder shall provide a Preliminary Evaluation of the Project's feasibility for Owner's acceptance. Design-Builder's Preliminary Evaluation shall specifically identify any deviations from Owner's Program.

3.2.2 SCHEDULE OF THE WORK Design-Builder shall prepare a preliminary Schedule of the Work for Owner's approval at the conclusion of Design-Builder's evaluation of Owner's Program. Design-Builder shall coordinate and integrate the Schedule of the Work with the services and activities of Owner and the requirements of governmental entities. As design proceeds, Design-Builder shall update the Schedule of the Work to indicate proposed activity sequences, durations, critical path and milestone dates for such activities as receipt and approval of pertinent information, issuance of the drawings and specifications, the preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, Owner's occupancy requirements, and estimated date of Substantial Completion of the Project. Owner shall provide written approval of milestone dates established in the Schedule of the Work. The Schedule of the Work shall be updated monthly with the level of detail for each schedule update reflecting the information then available. If an update indicates that a previously approved Schedule of the Work will not be met, Design-Builder shall recommend corrective action to Owner in writing.

3.2.2.1 As part of the Schedule of the Work, the Design-Builder shall prepare and keep current a schedule of submittals required by the Design-Build Documents.

3.2.2.2 The Design-Builder shall perform the Work in general accordance with the most recent scheduled submitted to the Owner.

3.2.3 BASELINE ESTIMATE Design-Builder will update the projected Project sum provided in its proposal for Owner's review and approval when schematic or preliminary design documents have been completed and approved by Owner. This baseline estimate shall be updated and refined periodically with the level of detail for each estimate update reflecting the information then available. If the baseline estimate or any update exceeds Owner's budget, Design-Builder shall make recommendations to Owner and provide cost evaluations of alternative materials and systems.

3.2.4 TRACKING CHANGES It is the Design-Builder's responsibility to track all changes in scope, including decisions, values, and approval dates throughout design and construction.

3.2.5 BUILDING INFORMATION MODELING (BIM) If identified in Exhibit G, the Design-Builder shall coordinate its services with those of its subconsultants to provide a Building Information Model in a form and with such detail as required by the Owner. In addition, at Owner's option, Design-Builder and Owner shall complete University System of New Hampshire/ConsensusDocs 301, Building Information Modeling (BIM) Addendum (Exhibit J).

3.2.6 SCHEMATIC DESIGN DOCUMENTS Design-Builder shall submit for Owner's written approval Schematic Design Documents, based on the agreed upon Preliminary Evaluation. Schematic Design Documents shall include drawings, outline specifications and other conceptual documents illustrating the Project's basic elements, scale, and their relationship to the Worksite. When Design-Builder submits the Schematic Design Documents, Design-Builder shall identify in writing all material changes and deviations that have taken place from Design-Builder's Preliminary Evaluation, preliminary Project Schedule, and estimate. Design-Builder shall update the preliminary Project Schedule and estimate based on the Schematic Design Documents. Two full-sized printed sets of these documents shall be furnished to Owner.

3.2.7 PLANNING PERMITS If required, Design-Builder shall assist the Owner in obtaining all planning permits necessary for the construction of the Project.

3.2.8 DESIGN DEVELOPMENT DOCUMENTS Design-Builder shall submit to the Owner for Owner's satisfaction and written approval, a detailed Design Phase Submission including full Design Development Documents as detailed in Exhibit H, "Design Documentation Requirements", including a final statement of the proposed contract sum, and an updated proposed schedule for completion of the Project based on the approved Schematic Design Documents. The Design Development Documents shall further define the Project, including drawings and outline specifications fixing and describing the Project size and character as to site utilization, and other appropriate elements incorporating the structural, architectural, mechanical, and electrical systems. When Design-Builder submits the Design Development Documents, Design-Builder shall identify in writing all material changes and deviations that have taken place from the Schematic Design Documents. Design-Builder shall update the Project Schedule and estimate based on the Design Development Documents. Two full-sized printed sets of these documents shall be furnished to Owner.

3.2.9 CONSTRUCTION DOCUMENTS If required, Design-Builder shall submit for Owner's written approval Construction Documents based on the approved Design Development Documents. The Construction Documents shall set forth in detail the requirements for construction of the Work, and long-term maintenance and repairs, and shall consist of drawings and specifications based upon Laws enacted at the time of their preparation. When Design-Builder submits the Construction Documents, Design-Builder shall identify in writing all material changes and deviations that have taken place from the Design Development Documents. Construction shall be in accordance with these approved Construction Documents. Two full-sized, printed sets of these documents shall be furnished to Owner prior to commencement of construction. If a GMP has not been established, Design-Builder shall prepare a further update of the Project Schedule and estimate based on the Construction Documents.

3.2.9.1 When a material is specified in the Construction Documents, the Design-Builder may make substitutions only with the consent of the Owner, and if, appropriate, in accordance with a Change Order.

3.2.10 OWNERSHIP OF DOCUMENTS

3.2.10.1 OWNERSHIP OF TANGIBLE DOCUMENTS Owner shall receive ownership of the property rights, except for copyrights, of all documents, drawings, specifications, electronic data, and information ("Documents") prepared, provided, or procured by Design-Builder, its Design-Professional, Subcontractors, or consultants and distributed to Owner for this Project, upon the making of final payment to Design-Builder or, in the event of termination under ARTICLE 12, upon payment for all sums due to Design-Builder pursuant to ARTICLE 12. Owner's acquisition of the copyright shall be subject to Owner's making of all payments required by this Agreement.

3.2.10.2 COPYRIGHT The Parties agree that Owner shall/ shall not obtain ownership of the copyright of all Documents. Owner's acquisition of the copyright for all Documents shall be subject to the making of payments as required by §3.2.10.1 and the payment of the fee reflecting the agreed value of the copyright which is: \$[_____].

If the Parties have not made a selection to transfer copyright interests in the Documents, the copyright shall remain with Design-Builder.

3.2.10.3 USE OF DOCUMENTS IN EVENT OF TERMINATION In the event of a termination of this Agreement pursuant to ARTICLE 12, Owner shall have the right to use, to reproduce, and to make derivative works of the Documents to complete the Project, regardless of whether there has been a transfer of copyright under this section, provided payment has been made pursuant to §3.2.10.

3.2.10.4 OWNER'S USE OF DOCUMENTS AFTER COMPLETION OF PROJECT After completion of the Project, Owner may reuse, reproduce, or make derivative works from the Documents solely for the purposes of maintaining, renovating, remodeling, or expanding the Project at the Worksite. Owner's use of the Documents without Design-Builder's involvement or on other projects is at Owner's sole risk, except for Design-Builder's indemnification obligations, and Owner shall indemnify and hold harmless Design-Builder, its Design-Professional, Subcontractors, and consultants, and the agents, officers, directors, and employees of each of them, from and against any and all claims, damages, losses, costs, and expenses, including reasonable attorneys' fees and costs, arising out of or resulting from such any prohibited use.

3.2.10.5 DESIGN-BUILDER'S USE OF DOCUMENTS Where Design-Builder has transferred its copyright interest in the Documents under §3.2.10, Design-Builder may reuse Documents prepared by it pursuant to this Agreement in its practice, but only in their separate constituent parts and not as a whole.

3.2.10.6 Design-Builder shall obtain from its Design-Professional, Subcontractors, and subconsultants rights and rights of use that correspond to the rights given by Design-Builder to Owner in this Agreement, and Design-Builder shall provide evidence that such rights have been secured.

3.3 GUARANTEED MAXIMUM PRICE (GMP)

3.3.1 GMP PROPOSAL At such time as Owner and Design-Builder jointly agree, Design-Builder shall submit a GMP Proposal in a format acceptable to Owner. The GMP shall be the final baseline estimate approved by Owner, and shall be the sum of the estimated Cost of the Work as defined in ARTICLE 8 and Design-Builder's Fee as defined in ARTICLE 7. The GMP is subject to modification as provided in ARTICLE 9. Design-Builder does not guarantee any specific line item provided as part

of the GMP, but agrees that it will be responsible for paying all costs of completing the Work which exceed the GMP, as adjusted in accordance with this Agreement.

3.3.2 If the Design-Build Documents are not complete at the time the GMP Proposal is submitted to Owner, Design-Builder shall provide in the GMP for further development of the Design-Build Documents consistent with Owner's Program. Such further development does not include changes in scope, unless required by Owner, which shall be incorporated by Change Order.

3.3.3 BASIS OF GUARANTEED MAXIMUM PRICE Design-Builder shall include with the GMP Proposal a written statement of its basis, which shall include:

3.3.3.1 a list of the drawings and specifications, including all addenda, which were used in preparation of the GMP Proposal;

3.3.3.2 a list of allowances and a statement of their basis;

3.3.3.3 a list of the assumptions and clarifications made by Design-Builder in the preparation of the GMP Proposal to supplement the information contained in the drawings and specifications;

3.3.3.4 the Date of Substantial Completion or the Date of Final Completion upon which the proposed GMP is based, and the Schedule of Work upon which the Date of Substantial Completion or the Date of Final Completion is based;

3.3.3.5 a schedule of applicable alternate prices;

3.3.3.6 a schedule of applicable unit prices;

3.3.3.7 a statement of Additional Services included, if any;

3.3.3.8 the time limit for acceptance of the GMP proposal;

3.3.3.9 Design-Builder's contingency as provided in §3.3.8;

3.3.3.10 a statement of any work to be self-performed by Design-Builder including associated labor rates; and

3.3.3.11 all sales, consumer, use and similar taxes for the Work provided by the Design-Builder that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

3.3.4 REVIEW AND ADJUSTMENT TO GMP PROPOSAL Design-Builder shall meet with Owner to review the GMP Proposal. If Owner has any comments relative to the GMP Proposal or finds any inconsistencies or inaccuracies in the information presented, it shall give prompt written notice of such comments or findings to Design-Builder, who shall make appropriate adjustments to the GMP, its basis, or both.

3.3.5 ACCEPTANCE OF GMP PROPOSAL Upon acceptance by Owner of the GMP Proposal, the GMP and its basis shall be set forth in Amendment 1.

3.3.6 FAILURE TO ACCEPT THE GMP PROPOSAL Unless Owner accepts the GMP Proposal in writing on or before the date specified in the GMP Proposal for such acceptance and so notifies Design-Builder, the GMP Proposal shall not be effective. If Owner fails to accept the GMP Proposal, or rejects the GMP Proposal, Owner shall have the right to:

3.3.6.1 request modifications to the GMP Proposal. If such modifications are accepted in writing by Design-Builder, the GMP Proposal shall be deemed accepted in accordance with §3.3.5;

3.3.6.2 direct Design-Builder to proceed on the basis of reimbursement as provided in ARTICLE 7 and ARTICLE 8 without a GMP, in which case all references in this Agreement to the GMP shall not be applicable; or

3.3.6.3 terminate the Agreement for convenience. The Parties may establish a Date of Substantial Completion and a Date of Final Completion.

3.3.7 PRE-GMP WORK Prior to Owner's acceptance of the GMP Proposal, Design-Builder shall not incur any cost to be reimbursed as part of the Cost of the Work, except as provided in this Agreement or as Owner may specifically authorize in writing.

3.3.8 DESIGN-BUILDER'S CONTINGENCY The GMP Proposal will contain, as part of the estimated Cost of the Work, Design-Builder's Contingency, a sum mutually agreed upon and monitored by Design-Builder and Owner to cover costs which are properly reimbursable as a Cost of the Work but are not the basis for a Change Order. Design-Builder's Contingency shall not be used for changes in scope or for any item that would be the basis for an increase in the GMP. Design-Builder's use of its contingency shall be by written approval of the Owner, and Design-Builder shall provide Owner with a monthly accounting of charges against Design-Builder's Contingency, if applicable, with each application for payment.

3.3.9 COST REPORTING Design-Builder shall maintain complete and current records that comply with generally accepted accounting principles and calculate the Cost of Work. Owner shall be afforded access during normal business hours to all Design-Builder's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to this Agreement. Design-Builder shall preserve all such records for a period of three years after the final payment or longer where required by Law.

3.4 CONSTRUCTION PHASE SERVICES

3.4.1 The Construction Phase will commence upon the issuance by Owner of a written notice to proceed with construction. If construction commences prior to execution of Amendment No. 1, Design-Builder shall prepare for Owner's written approval a list of the documents that are applicable to the part of the Work which Owner has authorized, which list shall be included in Owner's written notice to proceed.

3.4.2 Design-Builder shall provide all necessary construction supervision, inspection, construction equipment, labor, materials, tools, and subcontracted items necessary to complete the Work, and shall be solely responsible for and have control over all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work, all of which shall be provided in full accord with the Contract Documents and reasonably inferable from the Contract Documents.

3.4.3 SUBMITTALS

3.4.3.1 Design-Builder shall submit to Owner a submittal log with a proposed submittal schedule, all shop drawings, samples, product data, and similar submittals required by the Contract Documents for review and approval. Submittals shall be submitted in electronic form if required in accordance with §4.8. Design-Builder shall be responsible for the accuracy and conformity of its submittals to the Contract Documents. At no additional cost, Design-Builder shall prepare and deliver its submittals in such time and sequence so as not to delay the performance of the Work or the work of Owner and Others. Design-Builder's submittals shall identify in writing for each submittal all changes, deviations, or substitutions from the requirements of the Contract Documents.

3.4.3.2 The approval of any Design-Builder submittal shall not be deemed to authorize changes, deviations, or substitutions from the requirements of the Contract Documents unless a Change Order or Interim Directive specifically authorizes such deviation, substitution, or change. To the extent a change, deviation, or substitution causes an impact to the Contract Price or Contract Time, such approval shall be memorialized in a Change Order no later than seven Days following approval by Owner. Owner shall not make any change, deviation, or substitution through the submittal process without specifically identifying and authorizing such deviation to Design-Builder. If the Contract Documents do not contain submittal requirements pertaining to the Work, Design-Builder agrees upon request to submit in a timely fashion to Owner for review any shop drawings, samples, product data, manufacturers' literature, or similar submittals as may reasonably be required by Owner.

3.4.3.3 Owner shall be responsible for review and approval of submittals as defined in §4.6.5 with reasonable promptness to avoid causing delay.

3.4.3.4 Design-Builder shall perform all Work strictly in accordance with approved submittals and shall not perform any portions of the Work which require submittal and review of shop drawings, product data, samples or similar submittals until the respective submittal has been approved by the Owner. Approval of shop drawings is not an authorization to perform changed work, unless the procedures of ARTICLE 9 are followed. Approval does not relieve Design-Builder from responsibility for Defective Work resulting from errors or omissions on the approved shop drawings.

3.4.4 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

3.4.4.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Design-Builder or a Contractor, Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

3.4.4.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Design-Builder to illustrate materials or equipment for some portion of the Work.

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

3.4.4.4 Shop Drawings, Product Data, Samples and similar submittals are not Design-Build Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Design-Build Documents the way by which the Design-Builder proposes to conform to the Design-Build Documents.

3.4.4.5 The Design-Builder shall review for compliance with the Design-Build Documents and approve and submit to the Owner only those Shop Drawings, Product Data, Samples and similar submittals required by the Design-Build Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

3.4.4.6 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Design-Builder represents that the Design-Builder has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Design-Build Documents.

3.4.5 COMPLIANCE WITH LAWS Design-Builder shall comply with all Laws at its own costs. Design-Builder shall be liable to Owner for all loss, cost, and expense, attributable to any acts or omissions by Design-Builder, its employees, subcontractors, and agents resulting from the failure to comply with

Laws, including fines, penalties, or corrective measures. However, liability under this subsection shall not apply if notice to Owner was given, and advance approval by appropriate authorities, including Owner, is received.

3.4.5.1 CHANGES IN LAW The GMP, Design-Builder's Fee, and Contract Time shall be equitably adjusted by Change Order pursuant to ARTICLE 9 for additional costs and time resulting from any changes in Laws, including increased taxes, which were enacted after the date of this Agreement, or in the case of the GMP, after the date of an accepted GMP proposal.

3.4.6 Design-Builder is responsible for general oversight of all trades required to obtain permits directly and shall assist Owner in obtaining the building permits and special permits for permanent improvements. Owner shall provide appropriate documentation for all subcontractor permit applications.

3.4.6.1 The Owner shall be responsible for all fees related to the primary building permit.

3.4.6.2 The Design-Builder and/or its subcontractors shall be responsible for all fees related to trade permits.

3.4.7 The Design-Builder shall keep the Owner informed of the progress and quality of the Work; in addition, Design-Builder shall be responsible for scheduling, conducting and recording weekly project meetings. The Owner shall be represented at the project meetings by Owner's representative. The Design-Builder shall be represented by a principal, project manager, general superintendent, or other authorized main office representative, as well as by the Design-Builder's own superintendent. An authorized representative of any Contractor or Subcontractor shall attend such meetings if the representative's presence is requested by the Owner. Such representatives shall be empowered to make binding commitments on all matters to be discussed at such meetings, including costs, payments, Change Orders, time schedules, and manpower. Any notices required under the Contract may be served on such representatives.

3.4.8 Design-Builder shall develop a system of cost reporting for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes in the Work. The reports shall be presented to Owner at mutually agreeable intervals.

3.4.9 Design-Builder shall prepare and submit to Owner either:

- final marked-up as-built drawings, or
- updated electronic data, or
- such documentation as defined by the Parties by attachment to this Agreement, in general documenting how the various elements of the Work were actually constructed or installed.

3.5 WORKSITE CONDITIONS

3.5.1 WORKSITE VISIT Design-builder acknowledges that it has visited, or has had the opportunity to visit, the Worksite to visually inspect the general and local conditions which could affect the Work.

3.5.2 CONCEALED OR UNKNOWN SITE CONDITIONS If a condition encountered at the Worksite is (a) a subsurface or other physical condition materially different from those indicated in the Contract Documents, or (b) an unusual and unknown physical condition materially different from conditions ordinarily encountered and generally recognized as inherent in Work provided for in the Contract Documents, Design-Builder shall stop affected Work after the condition is first observed and give prompt written notice of the condition to Owner and Owner shall investigate and then issue an Interim Directive specifying the extent to which Owner agrees that a concealed or unknown condition exists

and directing how Design-Builder is to proceed. Design-Builder shall not be required to perform any Work relating to the condition without the written mutual agreement of the Parties. Any change in the GMP, estimated Cost of the Work, Design-Builder's Fee, Date of Substantial Completion or Date of Final Completion, and, if appropriate, the Compensation for Preconstruction Services as a result of the condition, including any dispute about its existence or nature shall be determined as provided in ARTICLE 9.

3.5.3 The Owner maintains possession of the premises and any improvements made by the Design-Builder. Under the Contract Documents, the Owner grants the Design-Builder the right to enter and use the premises. Design-Builder shall confine its apparatus, the storage of materials, and the operations of the Design-Builder's workers to limits indicated by law, ordinance, the Contract Documents and permits and/or directions of the Owner and shall not unreasonably encumber the premises with the Design-Builder's materials or equipment.

3.5.4 The Design-Builder shall remove snow or ice within the limits of the Worksite indicated in the Contract Documents that might result in damage or delay.

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

3.6 CUTTING, FITTING AND PATCHING

3.6.1 Design-builder shall perform cutting, fitting, and patching necessary to coordinate the various parts of the Work and to prepare its Work for the work of Owner or Others.

3.6.2 Cutting, patching, or altering the work of Owner or Others shall be done with the prior written approval of Owner. Such approval shall not be unreasonably withheld.

3.7 CLEAN UP

3.7.1 Design-Builder shall regularly remove debris and waste materials at the Worksite resulting from the Work. Prior to discontinuing Work in an area, Design-Builder shall clean the area and remove all rubbish and its construction equipment, tools, machinery, waste, and surplus materials. Design-Builder shall minimize and confine dust and debris resulting from construction activities. At the completion of the Work, Design-Builder shall remove from the Worksite all construction equipment, tools, surplus materials, waste materials, and debris.

3.7.2 If Design-Builder fails to commence compliance with cleanup duties within two Business Days after written notification from Owner of non-compliance, Owner may implement appropriate cleanup measures without further notice and the cost shall be deducted from any amounts due or to become due to Design-builder in the next payment period.

3.7.2.1 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 the Owner shall allocate the cost among those responsible.

3.7.3 Immediately prior to Substantial Completion, the Design-builder shall completely clean the premises. Concrete and ceramic surfaces shall be cleaned and washed. Resilient coverings shall be cleaned, waxed, and buffed. Woodwork shall be dusted and cleaned. Sash, fixtures and equipment

shall be thoroughly cleaned. Stains, spots, dust marks, and smears shall be removed from all surfaces. Hardware and all metal surfaces shall be cleaned and polished. Glass and plastic surfaces shall be thoroughly cleaned by professional window cleaners. All damaged, broken, or scratched glass or plastic shall be replaced by the Design-builder at the Design-builder's expense.

3.8 ACCESS TO WORK Design-builder shall facilitate the access of Owner, its Design Professional, and Others to Work in progress.

3.9 CONSTRUCTION SCHEDULE Design-Builder shall prepare and submit a Schedule of Work for Owner's written approval. This Schedule shall clearly show the critical path of the entire Project, long lead time items, critical material and equipment delivery dates, and indicate the commencement and completion dates of the various stages of the Work, including the dates when information and approvals are required from Owner. The Schedule shall be revised on a monthly basis or as mutually agreed by the Parties.

3.10 CONSTRUCTION PERSONNEL AND SUPERVISION

3.10.1 Design-Builder shall provide competent supervision for the performance of the Work. Before commencing the Work, or when proposing a change in the supervisory personnel, the Design-Builder shall notify Owner in writing of the name and qualifications of its proposed superintendent(s) and project manager, so Owner may review the individual's qualifications. If, for reasonable cause, Owner refuses to approve the individual, or withdraws its approval after giving it, Design-Builder shall name a different superintendent for Owner's review. Any disapproved superintendent shall not perform in that capacity thereafter at the Worksite. The superintendent shall represent the Design-Builder, and communications given to the superintendent shall be as binding as if given to the Design-Builder. The Parties shall use best efforts to confirm communications in writing.

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

3.10.3 Design-Builder shall permit only fit and skilled persons to perform the Work. Design-Builder shall enforce safety procedures, strict discipline and good order among persons performing the Work. If Owner determines that a particular person does not follow safety procedures, or is unfit or unskilled for the assigned work, Design-Builder shall immediately reassign the person on receipt of Owner's written notice to do so.

3.10.4 DESIGN-BUILDER'S REPRESENTATIVE Design-Builder shall designate a person who shall be Design-Builder's representative and shall possess full authority to receive instructions from Owner and to act on those instructions.

3.10.5 The Design-Builder shall coordinate and supervise the work performed by Subcontractors to ensure that the Work is carried out without conflict between trades and so that no trade, at any time, causes delay to the general progress of the Work. The Design-Builder and all Subcontractors always shall afford each trade, any separate contractor, or the Owner, every reasonable opportunity for the installation of their work and the storage of materials, subject to the specific limitations or restrictions of a particular site.

3.11 WORKMANSHIP

3.11.1 The Work shall be executed in accordance with the Contract Documents in a workmanlike manner. All materials used in the Work shall be furnished in sufficient quantities to facilitate the proper and expeditious execution of the Work and shall be new except as otherwise provided in the Contract Documents.

3.11.2 Work for which no explicit quality of standards of materials and/or workmanship is defined in the Contract Documents shall be of good quality for the intended use and consistent with the quality of surrounding work and of the construction of the Project generally.

3.11.3 All manufactured articles, materials and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the manufacturers' written instructions, unless specifically indicated otherwise in the Contract Documents.

3.11.4 Where the Work is to fit with existing conditions or work to be performed by others, the Design-builder shall join the Work fully and completely with such conditions or work, unless otherwise specified.

3.11.5 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.

3.11.6 The Design-builder shall study and compare all Drawings and verify all figures shown thereon before laying out or constructing the Work. The Design-builder shall be responsible for errors in its work and the work of its Subcontractors that might reasonably have been avoided thereby. The Design-builder shall establish and be responsible for the accuracy of all lines, grades, measurements, levels, column lines, wall and partition lines required by the various Subcontractors in laying out their Work and shall protect and preserve all permanent bench and other markers. Checking of the figures or layout by the Design Professional shall not relieve the Design-builder of these responsibilities.

3.12 COOPERATION WITH WORK OF OWNER AND OTHERS

3.12.1 Owner may perform work at the Worksite directly or by Others. Any agreements with Others to perform construction or operations related to the Project shall include provisions pertaining to insurance, indemnification, waiver of subrogation, consequential damages, coordination, interference, cleanup, and safety that are substantively the same as the corresponding provisions of this Agreement.

3.12.2 If Owner elects to perform work at the Worksite directly or by Others, the Parties shall coordinate the activities of all forces at the Worksite and agree upon fair and reasonable schedules and operational procedures for Worksite activities. Owner shall require each separate contractor to cooperate with Design-builder and assist with the coordination of activities and the review of construction schedules and operations. The GMP or the Date of Substantial Completion or the Date of Final Completion may be equitably adjusted in accordance with this Agreement, for changes resulting from the coordination of construction activities, and the Schedule of the Work shall be revised accordingly.

3.12.3 With regard to the work of Owner and Others, Design-builder shall (a) proceed with the Work in a manner that does not hinder, delay, or interfere with the work of Owner or Others or cause the work of Owner or Others to become defective; (b) afford Owner or Others reasonable access for introduction and storage of their materials and equipment and performance of their activities; and (c) coordinate Design-builder's Work with theirs.

3.12.4 Before proceeding with any portion of the Work affected by the construction or operations of Owner or Others, Design-builder shall give Owner prompt, written notification of any defects Design-builder discovers in their work which will prevent the proper execution of the Work. Design-Builder's obligations in this subsection do not create a responsibility for the work of Owner or Others but are for the purpose of facilitating the Work. If Design-builder does not notify Owner of defects interfering with the performance of the Work, Design-builder acknowledges that the work of Owner or Others is not defective and is acceptable for the proper execution of the Work. Following receipt of written notice from Design-builder of defects, Owner shall promptly issue an Interim Directive informing Design-builder what action, if any, Design-builder shall take regarding the defects.

3.13 SAFETY

3.13.1 SAFETY PRECAUTIONS AND PROGRAMS Design-Builder shall have overall responsibility for safety precautions and programs in the performance of the Work. However, such obligation does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with the provisions of Laws.

3.13.2 Design-Builder shall prevent against injury, loss, or damage to persons or property by taking reasonable steps to protect:

3.13.2.1 its employees and other persons at the Worksite;

3.13.2.2 materials, supplies, and equipment stored at onsite or offsite locations for use in performance of the Work whether under the care, custody or control of the Design-Builder or the Design-Builder's Subcontractors or Sub-subcontractors; and

3.13.2.3 the Project and all property located at the Worksite and adjacent to work areas, whether or not said property or structures are part of the Project or involved in the Work.

3.13.3 DESIGN-BUILDER'S SAFETY REPRESENTATIVE Design-Builder shall designate an individual at the Worksite in the employ of Design-Builder who shall act as Design-Builder's designated safety representative with a duty to prevent accidents. Unless otherwise identified by Design-Builder in writing to Owner, the designated safety representative shall be Design-Builder's project superintendent. Design-Builder will report promptly in writing all recordable accidents and injuries occurring at the Worksite to Owner. When Design-Builder is required to file an accident report with a public authority, Design-Builder shall furnish a copy of the report to Owner.

3.13.4 Design-Builder shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury, or loss.

3.13.5 Damage or loss not insured under property insurance that may arise from the performance of the Work, to the extent caused by the actions or inactions or intentionally wrongful acts or omissions of Design-Builder, or anyone for whose acts Design-Builder may be liable, shall be promptly remedied by Design-Builder.

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

3.13.7 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.

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

3.13.9 The Design-builder shall always protect excavations, trenches, buildings, and materials from rainwater, ground water, ice, snow, back-up or leakage of sewers, drains, or other piping, and from

water of any other origin and shall remove promptly any accumulation of water. The Contractor shall provide and operate all pumps, piping, and other equipment necessary to this end.

3.13.10 If Owner deems any part of the Work or Worksite unsafe, Owner, without assuming responsibility for Design-Builder's safety program, may require by Interim Directive Design-Builder to stop performance of the Work or take corrective measures satisfactory to Owner, or both. If Design-Builder does not adopt corrective measures, Owner may perform them and reduce by the costs of the corrective measures the amount of the GMP, or in the absence of a GMP, the Cost of the Work as provided in ARTICLE 8. Design-Builder agrees to make no claim for damages, for an increase in the GMP, compensation for Design Phase services, Design-Builder's Fee, or the Date of Substantial Completion or the Date of Final Completion based on Design-Builder's compliance with Owner's reasonable request.

3.14 EMERGENCIES In any emergency affecting the safety of persons or property, Design-Builder shall act in a reasonable manner to prevent threatened damage, injury, or loss. Any change in the GMP, estimated Cost of the Work, Design-Builder's Fee, the Date of Substantial Completion, or the Date of Final Completion, and if appropriate the compensation for Design Phase services, on account of emergency work shall be determined as provided for in ARTICLE 9.

3.15 HAZARDOUS MATERIALS

3.15.1 Design-Builder shall not be obligated to commence or continue Work until any Hazardous Material discovered at the Worksite has been removed, rendered, or determined to be harmless by Owner as certified by an independent testing laboratory and approved by the appropriate governmental agency.

3.15.2 If, after commencing the Work, Hazardous Material is discovered at the Project, Design-Builder shall be entitled to immediately stop Work in the affected area. Design-Builder shall promptly report the condition to Owner and, if required, the governmental agency with jurisdiction.

3.15.3 Design-Builder shall not resume nor be required to continue any Work affected by any Hazardous Material without written mutual agreement between the Parties after the Hazardous Material has been removed or rendered harmless and only after approval, if necessary, of the governmental agency with jurisdiction.

3.15.4 Owner shall be responsible for retaining an independent testing laboratory to determine the nature of the material encountered and whether it is a Hazardous Material requiring corrective measures or remedial action. Such measures shall be the sole responsibility of Owner and shall be performed in a manner minimizing any adverse effect upon the Work.

3.15.5 If Design-Builder incurs additional costs or is delayed due to the presence or remediation of Hazardous Material discovered at the Worksite, Design-Builder shall be entitled to an equitable adjustment in the GMP, compensation for Design Phase services, Design-Builder's Fee, or the Date of Substantial Completion or the Date of Final Completion.

3.15.6 To the extent not caused by the actions or inactions or intentionally wrongful acts or omissions of Design-Builder, its Subcontractors, Suppliers, and Sub-subcontractors, and the agents, officers, directors, and employees of each of them, Owner shall defend, indemnify, and hold harmless Design-Builder, its Subcontractors, and Sub-subcontractors, and the agents, officers, directors, and employees of each of them, from and against all claims, damages, losses, costs, and expenses, including but not limited to reasonable attorneys' fees, costs, and expenses incurred in connection with any dispute resolution procedure, arising out of or relating to the performance of the Work in any area affected by Hazardous Material.

3.15.7 MATERIALS BROUGHT TO THE SITE

3.15.7.1 Safety Data Sheets (SDS) as required by Law and pertaining to materials or substances used or consumed in the performance of the Work, whether obtained by Design-Builder, Subcontractors, Owner, or Others, shall be maintained at the Project by Design-Builder and made available to Owner and Subcontractors.

3.15.7.2 Design-Builder shall be responsible for the proper handling, application, storage, removal, and disposal of all materials brought to the Worksite by Design-Builder. Upon the issuance of the Certificate of Substantial Completion, Owner shall be responsible for materials and substances brought to the Worksite by Design-Builder if such materials or substances are required by the Contract Documents.

3.15.7.3 To extent not caused by the actions or inactions or intentionally wrongful acts or omissions of Design-Builder, its Subcontractors and Sub-subcontractors, and the agents, officers, directors, and employees of each of them, Design-Builder shall defend, indemnify, and hold harmless Owner, its agents, officers, directors, and employees from and against all claims, damages, losses, costs, and expenses, including but not limited to reasonable attorneys' fees, costs, and expenses incurred in connection with any dispute resolution procedure arising out of or relating to the delivery, handling, application, storage, removal, and disposal of materials and substances brought to the Worksite by Design-Builder.

3.15.7.4 Section 3.15 in its entirety shall survive the completion of the Work or Agreement termination.

3.16 TESTS AND INSPECTIONS

3.16.1 Design-Builder shall schedule all tests, inspections and approvals of the Work required by the Contract Documents or by laws, ordinances, rules, regulations, or orders of public authorities having jurisdiction at an appropriate time so as to not delay the progress of the Work. Design-Builder shall give proper notice to all required Parties of such tests, approvals, and inspections. If feasible, Owner and Others may timely observe the tests at the normal place of testing. Except as provided in §3.16.3, Owner shall bear all expenses associated with tests, inspections, and approvals required by the Contract Documents which, unless otherwise agreed to, shall be conducted by an independent testing laboratory or entity retained by Owner. Unless otherwise required by the Contract Documents, required certificates of testing, approval, or inspection shall be secured by Design-Builder and promptly delivered to Owner.

3.16.2 If Owner or appropriate authorities determine that tests, inspections, or approvals in addition to those required by the Contract Documents will be necessary, Design-Builder shall arrange for the procedures and give timely notice to Owner and Others who may observe the procedures. Costs of the additional tests, inspections, or approvals are at Owner's expense except as provided in the subsection below.

3.16.3 If the procedures described in the two subsections immediately above indicate that portions of the Work fail to comply with the Contract Documents due to the errors or omissions of Design-Builder, Design-Builder shall be responsible for costs of correction and retesting.

3.17 WARRANTY

3.17.1 Design-Builder warrants that all materials and equipment furnished under the Construction Phase of this Agreement will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. Warranties shall commence on the Date of Substantial Completion of the Work or of a designated portion.

3.17.2 To the extent products, equipment, systems, or materials incorporated in the Work are specified and purchased by Owner, they shall be covered exclusively by the warranty of the manufacturer. There are no warranties which extend beyond the description on the face of any such

warranty. To the extent products, equipment, systems, or materials incorporated in the Work are specified by Owner but purchased by Design-Builder and are inconsistent with selection criteria that otherwise would have been followed by Design-Builder, Design-Builder shall assist Owner in pursuing warranty claims. ALL OTHER WARRANTIES EXPRESSED OR IMPLIED INCLUDING THE WARRANTY OF MERCHANTABILITY AND THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED.

3.17.3 Design-Builder shall secure required certificates of inspection, testing, or approval and deliver them to Owner.

3.17.4 Design-Builder shall collect all written warranties and equipment manuals and deliver them to Owner in a format directed by Owner.

3.17.5 With the assistance of Owner's maintenance personnel, Design-Builder shall direct the checkout of utilities and start-up operations and adjusting and balancing of systems and equipment for readiness.

3.18 CORRECTION OF WORK WITHIN ONE YEAR

3.18.1 Before Substantial Completion and within one year after the date of Substantial Completion of the Work or for such longer periods of time as may be set forth with respect to specific warranties required by the Contract Documents, if any Defective Work is found, Owner shall promptly notify Design-Builder in writing. Unless Owner provides written acceptance of the condition, Design-Builder shall promptly correct the Defective Work at its own cost and time and bear the expense of Additional Services required for correction of any Defective Work for which it is responsible. If within the one-year correction period Owner discovers and does not promptly notify Design-Builder or give Design-Builder an opportunity to test or correct Defective Work as reasonably requested by Design-Builder, Owner waives Design-Builder's obligation to correct that Defective Work as well as Owner's right to claim a breach of the warranty with respect to that Defective Work.

3.18.2 With respect to any portion of Work first performed after Substantial Completion, the one-year correction period shall commence when that portion of Work is complete. Correction periods shall not be extended by corrective work performed by Design-Builder.

3.18.3 If Design-Builder fails to correct Defective Work within a reasonable time after receipt of written notice from Owner before final payment, Owner may correct it in accordance with Owner's right to carry out the Work. In such case, an appropriate Change Order shall be issued deducting the cost of correcting the Defective Work from payments then or thereafter due Design-Builder. If payments then or thereafter due Design-Builder are not sufficient to cover such amounts, Design-Builder shall pay the difference to Owner.

3.18.4 Design-Builder's obligations and liability, if any, with respect to any Defective Work discovered after the one-year correction period shall be determined by the Law. If, after the one-year correction period but before the applicable limitation period has expired, Owner discovers any Work which Owner considers Defective Work, Owner shall, unless the Defective Work requires emergency correction, promptly notify Design-Builder and allow Design-Builder an opportunity to correct the Work if Design-Builder elects to do so. If Design-Builder elects to correct the Work, it shall provide written notice of such intent within 14 Days of its receipt of notice from Owner and shall complete the correction of Work within a mutually agreed timeframe. If Design-Builder does not elect to correct the Work, Owner may have the Work corrected by itself or others, and, if Owner intends to seek recovery of those costs from Design-Builder, Owner shall promptly provide Design-Builder with an accounting of actual correction costs.

3.18.5 If Design-Builder's correction or removal of Defective Work causes damage to or destroys other completed or partially completed Work or existing buildings, Design-Builder shall be responsible for the cost of correcting the destroyed or damaged property.

3.18.6 The one-year period for correction of Defective Work does not constitute a limitation period with respect to the enforcement of Design-Builder's other obligations under the Contract Documents.

3.18.7 Before final payment, at Owner's option and with Design-Builder's agreement, Owner may elect to accept Defective Work rather than require its removal and correction. In such case the Contract Price shall be equitably adjusted for any diminution in the value of the Project caused by such Defective Work.

3.19 CONFIDENTIALITY Design-Builder shall treat as confidential and not disclose to third-persons, nor use for its own benefit ("Treat as Confidential"), any of Owner's confidential information, know-how, discoveries, production methods, and the like disclosed to Design-Builder or which Design-Builder may acquire in performing the Work. To the extent necessary to perform the Work, Design-Builder's confidentiality obligations do not apply to disclosures to Subcontractors, Sub-subcontractors, and Suppliers. Owner shall Treat as Confidential information all of Design-Builder's estimating systems and historical and parameter cost data disclosed to Owner in performing the Work. Except for information that Owner obtains through ownership of the copyright, Owner shall treat as confidential information all design systems that may be disclosed to Owner in connection with the performance of this Agreement. Each Party shall specify and mark confidential items as "Confidential." Confidentiality obligations do not supersede compulsion by Law, a governmental agency or authority, an order of a court of competent jurisdiction, or a validly issued subpoena. In such event, a Party shall promptly notify the other Party to permit that Party's legal objection.

3.20 ROYALTIES, PATENTS, AND COPYRIGHTS Design-Builder shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods, or systems selected by Design-Builder and incorporated in the Work. Design-Builder shall defend, indemnify, and hold Owner harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection. Owner agrees to defend, indemnify and hold Design-Builder harmless from any suits or claims of infringement of any patent rights or copyrights arising out of any patented or copyrighted materials, methods, or systems specified by Owner.

3.21 ADDITIONAL SERVICES Design-Builder shall provide or procure the additional services identified in Exhibit G upon the request of Owner. A written agreement between Owner and Design-Builder shall define the extent of such Additional Services before they are performed by Design-Builder. If a GMP has been established for the Work or any portion of the Work, such Additional Services shall be considered a Change in the Work, unless they are specifically included in the statement of the basis of the GMP as set forth in Amendment 1.

ARTICLE 4 OWNER'S RESPONSIBILITIES

4.1 INFORMATION AND SERVICES PROVIDED BY OWNER The Owner shall provide to the Design-Builder all relevant information for the Project, including the Owner's Program, unless the Owner's Program is developed and prepared with the assistance of the Design-Builder as an Additional Service. The Owner shall timely review and approve schedules, estimates, Design Documents and other documents provided under this Agreement. Owner's responsibilities under this article shall be fulfilled with reasonable detail and in a timely manner.

4.2 OWNER'S ELECTION NOT TO PROCEED If, at the end of the Schematic Design or Design Development, Owner elects not to proceed with the Project, the Owner shall have no further obligation to the Design-Builder than the payment of compensation for the design phase services performed up to the time Owner elected not to proceed plus any reimbursable expenses identified in Exhibit E and approved by Owner which Design-Builder may have incurred.

4.3 FINANCIAL INFORMATION Before commencing the Work and thereafter, at the written request of Design-Builder, Owner shall provide Design-Builder evidence of Project financing. Evidence of such

financing shall be a condition precedent to Design-Builder's commencing or continuing the Work. Design-Builder shall be notified before any material change in Project financing.

4.4 WORKSITE INFORMATION To the extent Owner has obtained, or is required in the Contract Documents to obtain, then Owner shall provide the following Worksite information to Design-Builder:

4.4.1 information describing the physical characteristics of the site, including surveys, Worksite evaluations, legal descriptions, data, or drawings depicting existing conditions, subsurface conditions, and environmental studies, reports, and investigations;

4.4.2 tests, inspections, and other reports dealing with environmental matters, Hazardous Material, and other existing conditions, including structural, mechanical, and chemical tests, required by the Contract Documents or by Law;

4.4.3 the limits of Pollution Liability Insurance covering the Worksite held by Owner; and

4.4.4 any other information or services requested in writing by Design-Builder which are required for Design-Builder's performance of the Work and under Owner's control.

4.5 MECHANICS AND CONSTRUCTION LIEN INFORMATION Within 15 Days after receiving Design-Builder's written request, Owner shall provide Design-Builder with the information necessary to give notice of or enforce mechanics lien rights and, where applicable, stop notices. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

4.6 RESPONSIBILITIES DURING DESIGN AND CONSTRUCTION

4.6.1 Owner shall provide Owner's Program at the inception of the Design Phase and shall review and timely approve in writing schedules, estimates, Baseline Estimate, Schematic Design Documents, Design Development Documents, and Construction Documents furnished during the Design Phase, and the GMP Proposal.

4.6.2 The Owner shall review and approve or take other appropriate action upon the Design-Builder's submittals, including but not limited to design and construction documents, required by the Design-Build Documents, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Design-Build Documents. The Owner's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Design-Builder or separate contractors. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents.

4.6.3 Upon review of the design documents, construction documents, or other submittals required by the Design-Build Documents, the Owner shall take one of the following actions:

4.6.3.1 Determine that the documents or submittals are in conformance with the Design-Build Documents and approve them.

4.6.3.2 Determine that the documents or submittals are in conformance with the Design-Build Documents but request changes in the documents or submittals which shall be implemented by a Change in the Work.

4.6.3.3 Determine that the documents or submittals are not in conformity with the Design-Build Documents and reject them.

4.6.3.4 Determine that the documents or submittals are not in conformity with the Design-Build Documents but accept them by implementing a Change in the Work.

4.6.3.5 Determine that the documents or submittals are not in conformity with the Design-Build Documents but accept them and request changes in the documents or submittals which shall be implemented by a Change in the Work.

4.6.4 The Design-Builder shall submit to the Owner for the Owner's approval, pursuant to §4.6.2, any proposed change or deviation to previously approved documents or submittals. The Owner shall review each proposed change or deviation to previously approved documents or submittals which the Design-Builder submits to the Owner for the Owner's approval with reasonable promptness in accordance with §4.6.2 and shall make one of the determinations described in §4.6.3.

4.6.5 The Owner's review and approval of the Design-Builder's documents or submittals shall not relieve the Design-Builder of responsibility for compliance with the Design-Build Documents unless a) the Design-Builder has notified the Owner in writing of the deviation prior to approval by the Owner or, b) the Owner has approved a Change in the Work reflecting any deviations from the requirements of the Design-Build Documents.

4.6.6 Owner shall review the Construction Schedule and timely approve the milestone dates set forth.

4.6.7 The Owner may visit the site to keep informed about the progress and quality of the portion of the Work completed. However, the Owner shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. Visits 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 quantity or quality 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, since these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents.

4.6.8 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, Design-Professional, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

4.6.9 The Owner may reject Work that does not conform to the Design-Build Documents. Whenever the Owner considers it necessary or advisable, the Owner shall have authority to require inspection or testing of the Work in accordance with Section 3.15.2, whether 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 Design-Professional, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

4.6.10 If Owner becomes aware of any error, omission, or failure to meet the requirements of the Contract Documents or any fault or defect in the Work, Owner shall give prompt written notice to Design-Builder. The failure of Owner to give such notice shall not relieve Design-Builder of its obligations to fulfill the requirements of the Contract Documents.

4.6.11 The Owner shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion.

4.6.12 Owner shall have no contractual obligations to Subcontractors, suppliers, or the Design-Professional.

4.6.13 Owner shall provide insurance for the Project as provided in ARTICLE 11.

4.7 TAX EXEMPTION If in accordance with Owner's direction Design-Builder claims an exemption for taxes, Owner shall indemnify and hold Design-Builder harmless for all liability, penalty, interest, fine, tax assessment, attorneys' fees, or other expense or cost incurred by Design-Builder as a result of any action taken by Design-Builder in accordance with Owner's direction.

4.8 ELECTRONIC DOCUMENTS If Owner requires that the Parties exchange documents and data in electronic or digital form, before any such exchange, Owner and Design-Builder shall agree on and follow ConsensusDocs 200.2 or a separate written protocol addendum governing all exchanges, which specifies: (a) the definition of documents and data to be accepted in electronic or digital form or to be transmitted electronically or digitally; (b) management and coordination responsibilities; (c) necessary equipment, software and services; (d) acceptable formats, transmission methods, and verification procedures; (e) methods for maintaining version control; (f) privacy and security requirements; and (g) storage and retrieval requirements. The Parties shall each bear their own costs for the requirements identified in the protocol. In the absence of a written protocol, use of documents and data in electronic or digital form shall be at the sole risk of the recipient.

4.9 OWNER'S REPRESENTATIVE Owner's representative shall be fully acquainted with the Project and have the authority to bind Owner in all matters requiring Owner's approval, authorization, or written notice. If Owner changes its representative or the representative's authority Owner shall notify Design-Builder in writing.

ARTICLE 5 SUBCONTRACTS

5.1 RETAINING SUBCONTRACTORS Design-Builder shall not retain any Subcontractor to whom Owner has a reasonable and timely objection, provided that Owner agrees to compensate Design-Builder for any additional costs incurred by Design-Builder as a result of such objection. Owner may propose subcontractors to be considered by Design-Builder. Design-Builder shall not be required to retain any subcontractor to whom Design-Builder has a reasonable objection, nor shall Design-Builder change a person or entity previously selected if the Owner makes reasonable objection to such substitute.

5.2 MANAGEMENT OF SUBCONTRACTORS Design-Builder shall be responsible for the management of Subcontractors in the performance of their work.

5.3 CONTINGENT ASSIGNMENT OF SUBCONTRACT

5.3.1 If this Agreement is terminated, each subcontract agreement shall be assigned by Design-Builder to Owner, subject to the prior rights of any surety, provided that:

5.3.1.1 this Agreement is terminated by Owner pursuant to §12.2 or §12.2.6; and

5.3.1.2 Owner accepts such assignment, after termination by notifying in writing Design-Builder and Subcontractor or Design-Builder and Supplier and assumes all rights and obligations of Design-Builder pursuant to each subcontract or supply agreement.

5.3.2 If Owner accepts such an assignment, and the Work has been suspended for more than thirty (30) consecutive Days, following termination, if appropriate, Subcontractor's or Supplier's compensation shall be equitably adjusted as a result of the suspension.

5.4 BINDING OF SUBCONTRACTORS AND SUPPLIERS Design-Builder agrees to bind every Subcontractor and Material Supplier (and require every Subcontractor to so bind its subcontractors and significant suppliers) to all the provisions of this Agreement and the Contract Document's applicable provisions to that portion of the Work.

ARTICLE 6 TIME

6.1 DATE OF COMMENCEMENT The Date of Commencement is the date of commencement of the Construction Phase as stated in a notice to proceed,

6.2 SUBSTANTIAL/FINAL COMPLETION Unless the Parties agree otherwise, the Date of Substantial Completion and the Date of Final Completion shall be established in Amendment 1 to this Agreement subject to adjustments as provided for in the Contract Documents. If such dates are not established upon the execution of this Agreement, at such time as a GMP is accepted a Date of Substantial Completion or Date of Final Completion of the Work shall be established in Amendment 1. If a GMP is not established and the Parties desire to establish a Date of Substantial Completion or Date of Final Completion, it shall be set forth in Amendment 1.

6.2.1 The deadlines for Substantial and Final Completion are subject to adjustments as provided for in the Contract Documents.

6.2.2 Time is of the essence with regard to the obligations of the Contract Documents.

6.2.3 Unless instructed by Owner in writing, Design-Builder shall not knowingly commence the Work before the effective date of insurance required to be provided by Design-Builder.

6.3 DELAYS AND EXTENSIONS OF TIME

6.3.1 If Design-Builder is delayed at any time in the commencement or progress of the Work by any cause beyond the control of Design-Builder, Design-Builder shall be entitled to an equitable extension of the Date of Substantial Completion or the Date of Final Completion. Examples of causes beyond the control of Design-Builder include, but are not limited to, the following: (a) acts or omissions of Owner or Others; (b) changes in the Work or the sequencing of the Work ordered by Owner, or arising from decisions of Owner that impact the time of performance of the Work; (c) encountering Hazardous Materials unanticipated by Design-Builder, or concealed or unknown conditions; (d) delay authorized by Owner pending dispute resolution or suspension by Owner under §12.1; (e) transportation delays not reasonably foreseeable; (f) labor disputes not involving Design-Builder; (g) general labor disputes impacting the Project but not specifically related to the Worksite; (h) fire; (i) Terrorism; (j) epidemics and pandemics; (k) adverse governmental actions; (l) unavoidable accidents or circumstances; (m) adverse weather conditions not reasonably anticipated. Design-Builder shall process any requests for equitable extensions of the Date of Substantial Completion or the Date of Final Completion in accordance with the provisions of ARTICLE 9. The Design-builder shall have the burden of demonstrating the impact and shall furnish the Owner the supporting documentation relating thereto as the Owner may reasonably require.

6.3.2 In addition, if Design-Builder incurs additional costs as a result of a delay that is caused by items (a) through (d) immediately above, Design-Builder shall be entitled to an equitable adjustment in the GMP.

6.3.3 Except for any delays noted in §6.3.1 (time parameters for project), if the Project is suspended by the Owner for any reason for more than 30 consecutive days, the Design-Builder shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Design-builder shall be compensated for reasonable expenses incurred in the interruption and resumption of the Design-Builder's services. In addition, if Design-Builder is delayed in the performance of its Services by any act or omission of Owner, or by changes ordered by Owner which are due to causes beyond Design-Builder's control, the Design-Builder's fees for the remaining services and the time schedules shall be equitably adjusted. Design-Builder shall provide prompt written notice to Owner of such delay after Design-Builder Design first recognizes such delay.

6.4 NOTICE OF DELAYS If delays to the Work are encountered for any reason, Design-Builder shall provide written notice to Owner within five Business Days of the cause of such delays after Design-Builder first recognizes the delay. The Parties each agree to take reasonable steps to mitigate the effect of such delays.

6.5 NOTICE OF DELAY CLAIMS If Design-builder requests an equitable extension of the Contract Time or an equitable adjustment in the Contract Price as a result of a delay described in §6.3, Design-builder shall give Owner written notice of the claim in accordance with §9.5. If Design-builder causes delay in the completion of the Work, Owner shall be entitled to recover its additional costs. Owner shall process any such claim against Design-builder in accordance with Article 9.

6.6 LIQUIDATED DAMAGES |

6.6.1 SUBSTANTIAL COMPLETION The Parties agree that this Agreement shall/ shall not provide for the imposition of liquidated damages based on the Date of Substantial Completion.

6.6.1.1 Design-Builder understands that if the Date of Substantial Completion established by Amendment 1, as may be amended by subsequent Change Order, is not attained, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if the Date of Substantial Completion is not attained, Design-Builder shall pay Owner \$[] as liquidated damages and not as a penalty for each Day that Substantial Completion extends beyond the Date of Substantial Completion. The liquidated damages provided herein shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties, and any other damages of whatsoever nature incurred by Owner which are occasioned by any delay in achieving the Date of Substantial Completion. |

6.6.2 FINAL COMPLETION The Parties agree that this Agreement shall/ shall not provide for the imposition of liquidated damages based on the Date of Final Completion.

6.6.3 Design-Builder understands that if the Date of Final Completion established by this Amendment 1 is not attained, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if the Date of Final Completion is not attained, Design-Builder shall pay Owner \$[] as liquidated damages for each Day that Final Completion extends beyond the Date of Final Completion. The liquidated damages provided herein shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties, and any other damages of whatsoever nature incurred by Owner which are occasioned by any delay in achieving the Date of Final Completion.

6.6.4 OTHER LIQUIDATED DAMAGES The Parties may agree upon the imposition of liquidated damages based on other project milestones or performance requirements. Such agreement shall be included as an exhibit to this Agreement.

ARTICLE 7 COMPENSATION AND PAYMENT |

7.1 FEES

7.1.1 Design-Builder's Fee shall be as follows, subject to adjustment as provided in §7.4:

7.1.1.1 Total Fee Stipulated Sum: The amount of \$[] which is comprised of Builder's Fee of \$[] for preconstruction services and \$[] for construction phase overhead and profit, and the Design Professional's Fee of \$[].

7.1.1.2 Design Professional's Fee shall be allocated as follows:

- | | | |
|-----------|-----------------------------------|-----|
| 7.1.1.2.1 | Preconstruction Schematic Design | 20% |
| 7.1.1.2.2 | Preconstruction GMP | 50% |
| 7.1.1.2.3 | Construction | 25% |
| 7.1.1.2.4 | Post Construction Warranty Period | 05% |

7.2 DESIGN PHASE PAYMENTS

7.2.1 To the extent required by Law, the cost of services performed directly by Design-Professional is computed separately and is independent from Design-Builder's compensation for work or services performed directly by Design-Builder; these costs shall be shown as separate items on applications for payment. If any Design-Professional is retained by Design-Builder, the payments to Design-Professional shall be as detailed in a separate agreement between Design-Builder and Design-Professional.

7.2.2 Owner shall pay Design-Builder for services performed during the Design Phase, including preparation of a GMP Proposal, if applicable.

7.2.3 Compensation for Design Phase services, as part of the Work, shall include Design-Builder's Fee, paid in proportion to the services performed, subject to adjustment.

7.2.4 No later than seven Days after receipt of an application for payment, Owner shall give written notice to Design-Builder of Owner's acceptance or rejection, in whole or in part, of such application for payment. Owner shall pay the amount due on a payment application, no later than 22 Days after accepting such application. Owner may deduct amounts previously paid by Owner. If such application is rejected in whole or in part, Owner shall indicate the reasons for its rejection. If the Parties cannot agree on a revised amount, then, within 22 Days after its initial rejection in part of such application, Owner shall pay to Design-Builder the appropriate amount for those items not rejected by Owner for which application for payment is made, less amounts previously paid by Owner. Those items rejected by Owner shall be due and payable when the reasons for the rejection have been removed.

7.2.5 If Owner fails to pay Design-Builder at the time payment of any amount becomes due, then Design-Builder may, at any time thereafter, upon serving written notice that the Work will be stopped within seven Days after receipt of the notice by Owner, and after such seven Day period, stop the Work until payment of the amount owing has been received.

7.3 CONSTRUCTION PHASE PAYMENTS

7.3.1 Owner shall pay Design-Builder for Work performed following the commencement of the Construction Phase on the following basis:

7.3.1.1 the Cost of the Work as allowed in ARTICLE 8; and

7.3.1.2 Design-Builder's Fee paid in proportion to the services performed subject to adjustment.

7.3.2 The compensation to be paid under this section shall be limited to the GMP established in Amendment 1, which may be adjusted under ARTICLE 9.

7.3.3 Payment for Construction Phase services shall be as set forth in ARTICLE 10. If Design Phase services continue to be provided after construction has commenced, Design-Builder shall continue to be compensated as provided in §7.2.1, or as mutually agreed.

7.4 ADJUSTMENT IN DESIGN-BUILDER'S FEE Adjustment in Design-Builder's Fee shall be made as follows:

7.4.1 for changes in the Work as provided in ARTICLE 9, Design-Builder's Fee shall be adjusted as follows:

7.4.1.1 except as provided in §6.3.2, Design-Builder may seek an equitable adjustment in Design-Builder's Fee to compensate Design-Builder for increased expenses not caused by Design-Builder, pursuant to ARTICLE 9; and

7.4.2 if Design-Builder is placed in charge of managing the replacement of an insured or uninsured loss, Design-Builder shall be paid an additional fee in the same proportion that Design-Builder's Fee bears to the estimated Cost of the Work for the replacement.

7.5 PAYMENTS

7.5.1 No later than seven Days after receipt of an application for payment, Owner shall give written notice to Design-Builder of Owner's acceptance or rejection, in whole or in part, of such application for payment. Owner shall pay the amount due on a payment application, no later than 22 Days after accepting such application. Owner may deduct amounts previously paid by Owner. If such application is rejected in whole or in part, Owner shall indicate the reasons for its rejection. If the Parties cannot agree on a revised amount, then, within 22 Days after its initial rejection in part of such application, Owner shall pay to Design-Builder the appropriate amount for those items not rejected by Owner for which application for payment is made, less amounts previously paid by Owner. Those items rejected by Owner shall be due and payable when the reasons for the rejection have been removed.

7.5.2 If Owner fails to pay Design-Builder at the time payment of any amount becomes due, then Design-Builder may, at any time thereafter, upon serving written notice that the Work will be stopped within seven Days after receipt of the notice by Owner, and after such seven Day period, stop the Work until payment of the amount owing has been received.

7.6 GUARANTEED CONTRACT SUM The Design-Builder guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Design-Builder shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.

7.7 One hundred percent of the savings on the Project shall be returned to the Owner.

ARTICLE 8 COST OF THE WORK

8.1 Owner agrees to pay Design-Builder for the Cost of the Work as defined in this article. This payment shall be in addition to Design-Builder's Fee stipulated in §7.1.1. The term Cost of the Work means costs necessarily incurred by the Design-Builder in the proper performance of the Work. Such costs may not be at rates higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in §8.4.

8.2 Where any cost is subject to the Owner's prior approval, the Design-Builder shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

8.3 COST ITEMS FOR DESIGN PHASE SERVICES

8.3.1 Compensation for Design Phase services as provided in §7.2.

8.4 COST ITEMS FOR CONSTRUCTION PHASE SERVICES

8.4.1 Labor Wages directly employed by Design-Builder performing the Work; |

8.4.2 Salaries of Design-Builder's employees when stationed at the field office to the extent necessary to complete the applicable Work, employees engaged on the road expediting the

production or transportation of material and equipment, and supervisory employees from the principal or branch office as mutually agreed by the Parties in writing;

8.4.3 Cost of applicable employee benefits and taxes including but not limited to workers' compensation, unemployment compensation, social security, health, welfare, retirement, and other fringe benefits as required by law, labor agreements, or paid under Design-Builder's standard personnel policy, insofar as such costs are paid to employees of Design-Builder who are included in the Cost of the Work under §8.4.1 and §8.4.2;

8.4.4 Subject to the Owner's prior written approval, reasonable transportation, travel, hotel, and moving expenses of Design-Builder's personnel incurred in connection with the Work;

8.4.5 Cost of all materials, supplies, and equipment incorporated in the Work, including costs of inspection and testing if not provided by Owner, transportation, storage, and handling;

8.4.6 Payments made by Design-Builder to Subcontractors for performed Work;

8.4.7 Fees and expenses for design services procured or furnished by Design-Builder except as provided by the Design-Professional and compensated in §7.1;

8.4.8 Cost, including transportation and maintenance of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workers that are used or consumed in the performance of the Work, less salvage value or residual value; and cost less salvage value on such items used, but not consumed, that remain the property of Design-Builder;

8.4.9 Rental charges of all necessary machinery and equipment, exclusive of hand tools owned by workers, used at the Worksite, whether rented from Design-Builder or others, including installation, repair, and replacement, dismantling, removal, maintenance, transportation, and delivery costs. Rental from unrelated third parties shall be reimbursed at actual cost. Rentals from Design-Builder or its affiliates, subsidiaries, or related parties shall be reimbursed at the prevailing rates in the locality of the Worksite up to eighty-five percent (85%) of the value of the piece of equipment.

8.4.10 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Agreement. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with Owner's prior approval. .

8.4.11 Sales, use, gross receipts, or other taxes, tariffs, or duties related to the Work for which Design-Builder is liable.

8.4.12 Fees and assessments, permits, licenses, tests, and inspections for which the Design-Builder is liable.

8.4.13 Losses, expenses, or damages to the extent not compensated by insurance or otherwise, and the cost of corrective work during the Construction Phase and for a one-year period following the Date of Substantial Completion, provided that such losses, expenses, damages, or corrective work or redesign did not arise from Design-Builder's acts or failures to act.

8.4.14 All costs associated with establishing, equipping, operating, maintaining, and demobilizing the field office.

8.4.15 All water, power, and fuel costs necessary for the Work.

8.4.16 Cost of removal of all non-hazardous substances, debris, and waste materials.

8.4.17 All costs directly incurred in the performance of the Work or in connection with the Project, and not included in Design-Builder's Fee as set forth in ARTICLE 7, which are reasonably inferable from the Contract Documents.

8.5 DISCOUNTS All discounts for prompt payment shall accrue to Owner to the extent such payments are made directly by Owner. To the extent payments are made with funds of Design-Builder, all cash discounts shall accrue to Design-Builder. All trade discounts, rebates, and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the Cost of the Work.

ARTICLE 9 CHANGES IN THE WORK

Changes in the Work which are within the general scope of this Agreement may be accomplished, without invalidating this Agreement, by Change Order and Interim Directive.

9.1 CHANGE ORDER

9.1.1 Design-Builder may request, or Owner may order, changes in the Work within the general scope of the Contract Documents consisting of additions, deletions, the timing or sequencing of the Work or other revisions to the GMP or the estimated cost of the work, compensation for design services, Design-Builder's Fee, or the Date of Substantial Completion or the Date of Final Completion being adjusted accordingly. All such changes in the Work shall be authorized by applicable Change Order, and processed in accordance with this article.

9.1.2 Each adjustment in the GMP or estimated Cost of the Work resulting from a Change Order shall clearly separate the amount attributable to compensation for Design Phase services, other Cost of the Work, and Design-Builder's Fee, with Design-Builder's Fee not to exceed 15% of the change in the Cost of the Work.

9.1.3 The Parties shall negotiate an appropriate adjustment to the GMP or the estimated Cost of the Work, compensation for Design Phase services, Design-Builder's Fee, or the Date of Substantial Completion or the Date of Final Completion in good faith and conclude negotiations as expeditiously as possible. Acceptance of the Change Order and any adjustment in the GMP, the estimated Cost of the Work, compensation for Design Phase services, Design-Builder's Fee, or the Date of Substantial Completion or the Date of Final Completion shall not be unreasonably withheld.

9.1.4 NO OBLIGATION TO PERFORM Design-Builder shall not be obligated to perform changes in the Work that impact the GMP or the estimated Cost of the Work, Design-Builder's fee, Date of Substantial Completion or Date of Final Completion until a Change Order has been executed or Interim Directive has been issued.

9.2 INTERIM DIRECTIVE

9.2.1 Owner may issue an Interim Directive directing a change in the Work before agreeing on an adjustment, if any, in the GMP, estimated Cost of the Work, Design-Builder's Fee, the Date of Substantial Completion, or the Date of Final Completion, and if appropriate, the compensation for Design Phase services or directing Design-Builder to perform Work that Owner believes is not a change. If the Parties disagree that the Interim Directed work is within the scope of the Work, Design-Builder shall perform the disputed Work and furnish Owner with an estimate of the costs to perform the disputed work in accordance with Owner's interpretations.

9.2.2 The Parties shall negotiate expeditiously and in good faith for appropriate adjustments, as applicable, to the GMP, estimated Cost of the Work, Design-Builder's Fee, the Date of Substantial Completion, or the Date of Final Completion, and if appropriate the compensation for Design Phase services, arising out of the Interim Directive. As the directed Work is performed, Design-Builder shall submit its costs for such Work with its application for payment beginning with the next application for payment within 30 Days of the issuance of the Interim Directive. If there is a dispute as to the cost to

Owner, the Parties shall resolve the disputed amount, subject to the requirements of Article 12. Undisputed amounts may be included in applications for payment and shall be paid by Owner in accordance with this Agreement.

9.2.3 When the Parties agree upon the adjustments in the GMP, estimated Cost of the Work, Design-Builder's Fee, the Date of Substantial Completion, or the Date of Final Completion, and if appropriate the compensation for Design Phase services, for a change in the Work directed by an Interim Directives, such agreement shall be the subject of an appropriate Change Order. The Change Order shall include all outstanding Interim Directives on which Owner and Design-Builder have reached agreement on the GMP or the Date of Substantial Completion or Date of Final Completion issued since the last Change Order.

9.3 DETERMINATION OF COST

9.3.1 An increase or decrease in the GMP or estimated Cost of the Work resulting from a change in the Work shall be determined by one or more of the following methods:

9.3.1.1 unit prices set forth in this Agreement or as subsequently agreed;

9.3.1.2 a mutually accepted, itemized lump sum;

9.3.1.3 costs determined as defined in §7.3 and ARTICLE 8 and a mutually acceptable Design-Builder's Fee as determined in §7.4.1; or

9.3.2 If an increase or decrease in GMP or Contract Time cannot be agreed to as set forth in §9.3.1 above, and Owner issues an Interim Directive, the cost of the change in the Work shall be determined by the Cost of the Work expense incurred and savings as defined in ARTICLE 8 realized in the performance of the Work resulting from the change. If there is a net increase in the GMP, Design-Builder's Fee shall be adjusted as set forth in §7.4.1. Design-Builder shall maintain a documented, itemized accounting evidencing the Cost of Work expenses and savings.

9.3.3 If unit prices are indicated in the Contract Documents or are subsequently agreed to by the Parties, but the character or quantity of such unit items as originally contemplated is so different in a proposed Change Order that the original unit prices will cause substantial inequity to Owner or Design-Builder, such unit prices shall be equitably adjusted.

9.3.4 If Owner and Design-Builder disagree as to whether work required by Owner is within the scope of the Work, Design-Builder shall furnish Owner with an estimate of the costs to perform the disputed work in accordance with Owner's interpretations.

9.4 CHANGES NOTICE For any claim for an increase in the GMP, estimated Cost of the Work, Design-Builder's Fee, and the Date of Substantial Completion or the Date of Final Completion, and if appropriate the compensation for Design Phase services, Design-Builder shall give Owner written notice of the claim within seven Business Days after the occurrence giving rise to the claim or seven Business Days after Design-Builder first recognizes the condition giving rise to the claim, whichever is later. Except in an emergency, notice shall be given before proceeding with the Work. Claims for design and estimating costs incurred in connection with possible changes requested by Owner, but which do not proceed, shall be made within 21 Days after the decision is made not to proceed. Thereafter, Design-Builder shall submit written documentation of its claim, including appropriate supporting documentation, within 21 Days after giving notice, unless the Parties mutually agree upon a longer period. Owner shall respond in writing denying or approving Design-Builder's claim no later than 14 Days after receipt of Design-Builder's documentation of claim. Owner's failure to so respond shall be deemed a denial of Design-Builder's claim. Any change in the GMP, estimated Cost of the Work, Design-Builder's Fee, the Date of Substantial Completion, or the Date of Final Completion, and if appropriate the compensation for Design Phase services, resulting from such claim shall be authorized by Change Order.

9.5 INCIDENTAL CHANGES Owner may direct Design-Builder to perform incidental changes in the Work upon concurrence with Design-Builder that such changes do not involve adjustments in the Cost of the Work or Contract Time. Incidental changes shall be consistent with the scope and intent of the Contract Documents. Owner shall initiate an incidental change in the Work by issuing a written order to Design-Builder. Such written notice shall be carried out promptly and is binding on the Parties.

9.5.1 Design-Builder shall record such changes on the Design-Build Documents maintained by Design-Builder

9.6 VALIDATION OF PRICES To facilitate checking quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs, including labor, materials and Subcontracts. In no case will a change involving over \$5,000.00 be approved without such itemization. No claim for delay shall be valid unless such itemization has been submitted in a timely manner.

ARTICLE 10 PAYMENT FOR CONSTRUCTION PHASE SERVICES

10.1 SCHEDULE OF VALUES Before the first Application for Payment, the Design-Builder shall submit to the Owner for approval a schedule of values allocating the Contract Sum to various portions of the Work. This schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. Upon approval by the Owner, this schedule shall be used as the basis for reviewing the Design-Builder's Applications for Payment and shall be revised if later found by the Owner to be inaccurate.

10.2 PROGRESS PAYMENTS

10.2.1 APPLICATIONS After the Construction Phase has commenced, Design-Builder shall submit to Owner a monthly application for payment no later than the first Day of the calendar month for the preceding calendar month. Design-Builder's applications for payment shall be itemized and supported by Design-Builder's schedule of values based on a percentage of completion and shall include any other substantiating data as required by this Agreement. Applications for payment shall be based on the approved scheduled of values submitted by the Design-Builder in accordance with the Contract Documents, include payment requests on account of properly authorized Change Orders or Interim Directives, and be notarized. The Owner will, within seven Business Days of receipt of the Design-Builder's application for payment, notify the Design-Builder its reason, if any, for withholding payment, or Owner shall pay the amount otherwise due on any payment application no later than 22 Days after accepting such application. Owner may deduct from any progress payment amounts that may be retained pursuant to §10.2.5. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Design-Builder's Fee shall be shown as a single separate item. 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 shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

10.2.1.1 Each Application for Payment or periodic estimate requesting payment shall be accompanied by (1) a waiver of liens on account of prior payments from each Subcontractor or (2) a certificate from each Subcontractor stating that the Subcontractor has been paid all amounts due the Subcontractor on the basis of the previous periodic payment to the Design-Builder, or else stating the amount not so paid and the reason for the discrepancy. In the event of any such discrepancy, the Design-Builder shall furnish the Design-Builder's own written explanation to the Owner. Such waiver or certificate shall be in a form acceptable to the Owner.

10.2.1.2 Each application for payment shall be accompanied by a cost report which includes the schedule of values and change order report.

10.2.1.3 Applications for Payment 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 and shall constitute a representation by the Design-Builder to the Owner that the design and construction have progressed to the point indicated, the quality of the Work covered by the application is in accordance with the approved Design Development documents, and the Design-Builder is entitled to payment in the amount requested. 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.

10.2.1.4 Design-Builder warrants that title to all Work, materials, and equipment covered by an application for payment, whether incorporated in the Project or not, will pass to Owner upon receipt of such payment by Design-Builder, and will be free and clear of all liens, claims, security interests, or encumbrances, hereinafter referred to as liens.

10.2.1.5 When reviewing 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 represent that the Owner has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with §10.2.1 or other supporting data; that the Owner has made exhaustive or continuous on-site inspections; or that the Owner has made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

10.2.2 STORED MATERIALS AND EQUIPMENT Unless otherwise provided in the Contract Documents, applications for payment may include materials and equipment not yet incorporated into the Work but delivered to and suitably stored onsite or offsite, when approved by the Owner in writing, including applicable insurance, storage, and costs incurred transporting the materials to an offsite storage facility. Approval of payment applications for stored materials and equipment stored offsite shall be conditioned on submission by Design-Builder of bills of sale and proof of required insurance, or such other procedures satisfactory to Owner to establish the proper valuation of the stored materials and equipment, Owner's title to such materials and equipment, and to otherwise protect Owner's interests therein, including transportation to the worksite.

10.2.3 COMPUTATION OF PROGRESS PAYMENTS Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

10.2.3.1 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 §9.2.2

10.2.3.2 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.

10.2.3.3 Add the Design-Builder's Fee, less retainage of 10%. The Design-Builder's Fee shall be computed upon the Cost of the Work at the rate stated in §7.3 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.

10.2.3.4 Subtract retainage of 10% from that portion of the Work that the Design-Builder self-performs.

10.2.3.5 Subtract the aggregate of previous payments made by the Owner

10.2.3.6 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by §10.2.1 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner.

10.2.3.7 Subtract amounts, if any, for which the Owner has withheld or nullified a Certificate for Payment as provided in §10.3.

10.2.4 LIEN WAIVERS AND LIENS

10.2.4.1 PARTIAL LIEN WAIVERS AND AFFIDAVITS Partial lien waivers and affidavits will be required by Owner as a prerequisite for payment. Design-Builder shall provide a partial lien and claim waiver in the amount of the application for payment and affidavits from its Subcontractors and Suppliers for the completed Work. Such waivers shall be conditional upon payment. In no event shall Design-Builder be required to sign an unconditional waiver of lien or claim, before receiving payment or in an amount in excess of what it has been paid.

10.2.4.2 REMOVING LIENS If Owner has made payments in the time required by this article, Design-Builder shall, within 30 Days after filing, remove any liens filed against the premises or public improvement fund by any party or parties performing labor or services or supplying materials in connection with the Work. If Design-Builder fails to take such action on a lien, Owner may cause the lien to be removed at Design-Builder's expense, including bond costs and reasonable attorneys' fees. This subsection shall not apply if there is a dispute pursuant to Article 13 relating to the subject matter of the lien.

10.2.5 RETAINAGE Until the Work is 50% complete, the Owner will pay 90% of the amount due the Design-Builder on account of each such progress payment. At the time the Work is 50% complete and thereafter, if its manner of completion and progress are satisfactory, the Owner may make any of the remaining progress payments in full, subject to presentation by the Design-Builder of written consent of surety for such reduction in retainage. The initial 10% retainage will continue to be withheld, and the Owner will release such retainage within 30 days after the date of issuance of a Certificate of Final Completion.

10.2.5.1 The full Contract retainage may be reinstated at any time if the manner of completion of the Work and its progress do not remain satisfactory to the Owner, or if the Surety withholds or revokes its consent, or for other good and sufficient reasons;

10.2.5.2 Owner may reduce the amount to be retained at any time

10.2.5.3 Owner may release retainage on that portion of the Work a Subcontractor has completed in whole or in part, and which Owner has accepted. In lieu of retainage, Design-Builder may furnish a retention bond or other security interest acceptable to Owner, to be held by Owner.

10.2.6 PAYMENTS TO DESIGN PROFESSIONAL and SUBCONTRACTORS The Design-Builder shall promptly pay the Design Professional and each Subcontractor upon receipt of payment from the Owner, out of the amount paid to the Design-Builder on account of the Design Professional or such Subcontractor's portion of the Work, the amount to which said Design Professional or Subcontractor is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the Design Professional or such Subcontractor's portion of the Work. By appropriate agreement with the Design Professional and each Subcontractor, the Design-Builder shall require the Design

Professional to make payment to any subconsultants Design Professional may have hired and each Subcontractor to make payments to Sub-subcontractors in a similar manner.

10.2.6.1 The Owner and Design-Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Design-Builder shall execute subcontracts in accordance with those agreements

10.2.6.2 Unless required by law, the Owner shall not have an obligation to pay nor to see the payment of money to the Design Professional or a Subcontractor.

10.3 ADJUSTMENT OF DESIGN-BUILDER'S APPLICATION FOR PAYMENT Owner may adjust or reject an application for payment or nullify a previously approved Design-Builder application for payment, in whole or in part, as may reasonably be necessary to protect Owner from loss or damage based upon the following, to the extent that Design-Builder is responsible under this Agreement:

10.3.1 Design-Builder's repeated failure to perform the Work as required by the Contract Documents;

10.3.2 except as accepted by the insurer providing Builder's Risk or other property insurance covering the project, loss or damage arising out of or relating to this Agreement and caused by Design-Builder to Owner or others to whom Owner may be liable;

10.3.3 Design-Builder's failure to properly pay either Design-Professional, Subcontractors, or Suppliers for labor, materials, equipment, or supplies furnished in connection with the Work, provided that Owner is making payments to Design-Builder in accordance with this Agreement;

10.3.4 Rejected or Defective Work not corrected in a timely fashion;

10.3.5 reasonable evidence of delay in performance of the Work such that the Work will not be completed by the Date of Substantial Completion or the Date of Final Completion, and that the unpaid balance of the GMP is not sufficient to offset any direct damages that may be sustained by Owner as a result of the anticipated delay caused by Design-Builder;

10.3.6 reasonable evidence demonstrating that the unpaid balance of the GMP is insufficient to fund the cost to complete the Work; and

10.3.7 uninsured third-party claims involving Design-Builder or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until Design-Builder furnishes Owner with adequate security in the form of a surety bond, letter of credit, or other collateral or commitment sufficient to discharge such claims if established.

10.3.8 failure to maintain specified record documents relating to the Work; and

10.3.9 damage to the Owner's or another contractor's Work

No later than seven Days after receipt of an application for payment, Owner shall give written notice to Design-Builder, at the time of disapproving or nullifying all or part of an application for payment, stating its specific reasons for such disapproval or nullification, and the remedial actions to be taken by Design-Builder in order to receive payment. When the above reasons for disapproving or nullifying an application for payment are removed, payment will be promptly made for the amount previously withheld.

10.4 ACCEPTANCE OF WORK Neither Owner's payment of progress payments nor its partial or full use or occupancy of the Project constitutes acceptance of Work not complying with the Contract Documents.

10.5 PAYMENT DELAY If for any reason not the fault of Design-Builder, Design-Builder does not receive a progress payment from Owner within seven Days after the time such payment is due, then Design-Builder, upon giving seven Days' written notice to Owner, and without prejudice to and in addition to any other legal remedies, may stop Work until payment of the full amount owing to Design-Builder has been received,. If Design-Builder incurs costs or is delayed resulting from shutdown, delay, and start-up, Design-Builder may seek an equitable adjustment in compensation, time, or both, under ARTICLE 9.

10.6 SUBSTANTIAL COMPLETION

10.6.1 Design-builder shall notify Owner when it considers that the Work or a designated portion is substantially complete and the premises comply with §3.7.3. Owner, with the assistance of the Design-Builder's Design Professional, shall promptly conduct an inspection to determine whether the Work or designated portion can be occupied or used for its intended use by Owner without excessive interference in completing any remaining unfinished Work. .

10.6.1.1 The Design-Builder's notification of substantial completion shall include (1) a list of items to be completed or corrected, and (2) all permits, certificates, and special warranties required by the Contract Documents, endorsed by the Design-Builder and in a form reasonably acceptable to the Owner.

10.6.1.2 If the Owner finds during the review that the Work or designated portion has not reached Substantial Completion, and the Design-Builder's notice and supporting documents are not generally complete or correct, the Owner will promptly compile a list of items to be completed or corrected so Owner may occupy or use the Work or designated portion for its intended use as well as return the submitted documents to the Design-Builder for revision and resubmittal, describing in general the additions or corrections required. Design-Builder shall promptly complete all items on the list.

10.6.1.3 If the Owner finds on a preliminary review of the Design-Builder's resubmittal that the resubmitted notice and supporting documents are still not generally complete and correct, the Design-Builder shall again correct and resubmit them.

10.6.1.4 If the Owner finds during a preliminary review or subsequent review of resubmitted documents that the Design-Builder's notice and supporting documents are substantially complete and correct, the Owner will proceed as stated in §10.6.2.

10.6.2 When Substantial Completion of the Work or a designated portion is achieved, Design-Builder shall prepare a Certificate of Substantial Completion establishing the date of Substantial Completion and the respective responsibilities of each Party for interim items such as security, maintenance, utilities, insurance, and damage to the Work, and fixing the time for completion of all items on the list accompanying the Certificate. In the absence of a clear delineation of responsibilities, Owner shall assume all responsibilities for items such as security, maintenance, utilities, insurance, and damage to the Work. The Certificate of Substantial Completion shall be submitted by Design-Builder to Owner for written acceptance of responsibilities assigned in the Certificate of Substantial Completion.

10.6.3 Unless otherwise provided in the Certificate of Substantial Completion, warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or a designated portion.

10.6.4 Upon Owner's written acceptance of the Certificate of Substantial Completion, Owner shall pay to Design-Builder the remaining retainage held by Owner for the Work described in the Certificate of Substantial Completion less a sum equal to 200% of the estimated cost of completing or correcting remaining items on that part of the Work, as agreed to by the Parties as necessary to achieve Final Completion. Uncompleted items shall be completed by Design-Builder in a mutually agreed upon timeframe. Owner shall pay Design-Builder monthly the amount retained for unfinished items as each item is completed.

10.7 PARTIAL OCCUPANCY OR USE

10.7.1 Owner may use completed or partially completed portions of the Work when (a) the portion of the Work is designated in a Certificate of Substantial Completion, (b) appropriate insurer(s) or sureties consent to the occupancy or use, and (c) appropriate public authorities authorize the occupancy or use. Design-Builder shall not unreasonably withhold consent to partial occupancy or use. Owner shall not unreasonably refuse to accept partial occupancy or use, provided such partial occupancy or use is of value to Owner. 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 Contract Documents. .

10.8 FINAL COMPLETION AND PAYMENT

10.8.1 Upon notification from Design-Builder that the Work is complete and ready for final inspection and acceptance, Owner shall promptly conduct an inspection to determine if the Work has been completed and is acceptable under the Contract Documents.

10.8.2 When Final Completion has been achieved, Design-Builder shall prepare for Owner's written acceptance a final application for payment stating that to the best of Design-Builder's knowledge, and based on Owner's inspections, the Work has reached Final Completion in accordance with the Contract Documents.

10.8.3 Final payment of the balance of the GMP shall be made to Design-Builder no later than 30 Days after Design-Builder has submitted a complete and accurate application for final payment, including submissions required under §10.8.4, and a Certificate of Final Completion has been executed by the Parties.

10.8.3.1 The amount of the final payment shall be calculated as follows:

10.8.3.1.1 Take the sum of the Cost of the Work substantiated by the Design-Builder's final accounting and the Design-Builder's Fee, but not more than the Guaranteed Maximum Price.

10.8.3.1.2 Subtract amounts, if any, for which the Owner withholds, in whole or in part, a final Certificate for Payment as provided in §10.3 or other provisions in the Contract Documents

10.8.3.1.3 Subtract the aggregate of previous payments made by the Owner

10.8.4 Final Payment shall be due on Design-Builder's submission of the following to the Owner:

10.8.4.1 an affidavit declaring any indebtedness connected with the Work, to have been paid, satisfied, or to be paid with the proceeds of final payment, so as not to encumber Owner's property;

10.8.4.2 electronic record drawings (as-built drawings), manuals, copies of warranties, and all other close-out documents required by the Contract Documents;

10.8.4.3 release of any liens, conditioned on final payment being received;

10.8.4.4 consent of any surety;

10.8.4.5 any outstanding known and unreported accidents or injuries experienced by Design-Builder or its Subcontractors at the Worksite ; and

10.8.4.6 a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until prior written notice has been given to the Owner as required in Article 11.

10.8.4.7 If the Design-Builder fails to furnish such releases or waivers as the Owner reasonably requires to satisfy the Owner that there are no outstanding liens, the Owner may require the Design-Builder, as a condition of final payment and at the Design-Builder's expense, to furnish a bond satisfactory to the Owner to indemnify the Owner against such liens.

10.8.5 If, after Substantial Completion of the Work, the Final Completion of a portion of the Work is materially delayed through no fault of Design-Builder, Owner shall pay the balance due for any portion of the Work fully completed and accepted. If the remaining contract balance for Work not fully completed and accepted is less than the retained amount before payment, Design-Builder shall submit to Owner and, if directed, Design Professional the written consent of any surety to payment of the balance due for portions of the Work that are fully completed and accepted. Such payment shall not constitute a waiver of claims, but otherwise shall be governed by this §10.8.

10.8.6 OWNER RESERVATION OF CLAIMS The making of final payment shall constitute a waiver of Claims by the Owner except those arising from:

10.8.6.1 liens, claims, security interests or encumbrances arising out of the Contract and unsettled;

10.8.6.2 failure of the Work to comply with the requirements of the Contract Documents; or

10.8.6.3 terms of warranties required by the Contract Documents

10.8.7 ACCEPTANCE OF FINAL PAYMENT Unless Design-Builder provides written identification of unsettled claims with an application for final payment, its acceptance of final payment constitutes a waiver of all claims by the Design-Builder arising out of or related to the Agreement or the Work.

ARTICLE 11 INDEMNITY, INSURANCE, AND BONDS

11.1 INDEMNITY

11.1.1 To the fullest extent permitted by New Hampshire law, Design-Builder shall indemnify and hold harmless Owner, Owner's officers, directors, members, consultants, agents, and employees and Others as required by the contract (the Indemnitees) from all claims for bodily injury and property damage, other than to the Work itself and other property insured, including reasonable attorneys' fees, costs and expenses, that may arise from the performance of the Work, but only to the extent caused by the actions or inactions or intentionally wrongful acts or omissions of Design-Builder, Subcontractors, Suppliers, Sub-subcontractors or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable..

11.1.2 To the fullest extent permitted by New Hampshire law, Owner shall indemnify and hold harmless Design-Builder, its officers, directors, members, consultants, agents, and employees, Subcontractors, Suppliers or anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable from all claims for bodily injury and property damage, other than property insured, including reasonable attorneys' fees, costs, and expenses, that may arise from the performance of work by Owner or Others, but only to the extent caused by the actions or inactions or intentionally wrongful acts or omissions of Owner or Others..

11.1.3 NO LIMITATION ON LIABILITY The limits and types of insurance set forth in Article 11 are the minimum required amounts and in no way limit the liability of the Design-Builder or subcontractors. In any and all claims against the Indemnitees by any employee of Design-Builder, anyone directly or indirectly employed by Design-Builder, or anyone for whose acts Design-Builder may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Design-Builder under workers' compensation acts, disability benefit acts, or other employment benefit acts

11.2 DESIGN-BUILDER'S LIABILITY INSURANCE

11.2.1 Before commencing the Work and as a condition precedent to payment, Design-Builder shall procure and maintain in force Workers' Compensation Insurance, Employers' Liability Insurance, Business Automobile Liability Insurance, and Commercial General Liability Insurance (CGL). The CGL policy shall include coverage for liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, contractual liability, and broad form property damage. Design-Builder shall maintain completed operations liability insurance for one year after Substantial Completion, or as required by the Contract Documents, whichever is longer. Design-Builder's Employers' Liability, Business Automobile Liability, and CGL policies shall be written with at least the following limits of liability:

11.2.1.1 Employers' Liability Insurance

- (a) \$500,000 bodily injury by accident per accident
- (b) \$500,000 bodily injury by disease policy limit
- (c) \$500,000 bodily injury by disease per employee

11.2.1.2 Business Automobile Liability Insurance per accident \$1,000,000.

11.2.1.3 Commercial General Liability Insurance (must be location and project specific)

- (a) Per occurrence \$1,000,000
- (b) General aggregate \$2,000,000
- (c) Products/completed operations aggregate \$2,000,000
- (d) Personal and advertising injury limit \$1,000,000

11.2.1.4 Excess/Umbrella Liability Insurance

- (a) \$2,000,000 per occurrence
- (b) \$2,000,000 general aggregate
- (c) \$2,000,000 products/completed operations aggregate limit

11.2.2 Employers' Liability, Business Automobile Liability, and CGL coverage required under §11.2.1 may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by Excess or Umbrella Liability policies.

11.2.3 Design-Builder shall maintain in effect all insurance coverage required under §11.2.1 with insurance companies licensed to do business in the state of New Hampshire or on the New Hampshire Insurance Department's approved list of Non-admitted Carriers and with an AM Best rating of at least A-, XIII.. If Design-Builder fails to obtain or maintain any insurance coverage required under this Agreement, Owner may purchase such coverage and charge the expense to Design-Builder, or terminate this Agreement.

11.2.4 To the extent commercially available to Design-Builder from its current insurance company, insurance policies required under §11.2.1 shall contain an endorsement stating that the insurance company will not cancel the policy, or allow it to expire, or change any coverage therein without first mailing by registered mail written notice of such action to the Treasurer of the University System, 5 Chenell Drive, Suite 301, Concord, NH 03301, at least seven days prior to termination for

nonpayment of premium, and at least 30 days prior to termination or change for any other cause. .: Prior to commencing the Work and upon renewal or replacement of the insurance policies, Design-Builder shall furnish Owner with certificates of insurance (Acord 25 Form) until one year after Substantial Completion or longer if required by the Contract Documents. Any certificate found incomplete or not according to form will be rejected as unsatisfactory. Rejected certificates and copies of policies shall be corrected as necessary and resubmitted until approved. In addition, if any insurance policy required under §11.2.1 is not to be immediately replaced without lapse in coverage when it expires, exhausts its limits, or is to be cancelled, Design-Builder shall give Owner prompt written notice upon actual or constructive knowledge of such condition.

11.2.5 The University System of New Hampshire, its trustees, officers, agents, and employees shall be listed as additional insureds on all certificates and policies, except workers' compensation and professional liability. The insurance of the Design-Builder and its Subcontractors (both primary and excess) shall apply on a primary and non-contributory basis to any insurance carried by the additional insureds

11.3 PROPERTY INSURANCE (provided by Owner)

11.3.1 Builders Risk coverage shall insure all parts of the Work comprising new buildings, structures, paths, roadways, utility and landscape structures, utility distribution systems and the like, and all additions to or extensions of existing buildings, structures and systems. If the Contract Work also includes renovation within an existing structure, then this portion of the Work shall also be insured and so described and endorsed to the policy. Renovation coverage shall also insure all parts of existing buildings, structures, paths, roadways, utility and landscape structures, utility distribution systems and the like within or in connection with which the Work is performed on an agreed amount/no coinsurance basis. Coverage shall be written on a "Special Form" basis for the full value of the Insured Structure. The policy or policies shall be in the name of the Owner. The Design-Builder, Subcontractors, Sub-subcontractors and others employed on the premises will be added as loss payee(s) as their interests may appear with respect to all work in place and stored on the site. The Design-Builder shall cover or cause to be covered all Materials off site or while in transit. Where allowable by law, the policy or policies shall stipulate that the insurance company or companies shall have no right of subrogation against any of the insureds for any portion of the Work.

11.3.2 It will be the decision of the Owner in regard to the deductible or any increase in coverage such as Flood or Earthquake, however, the Owner will be responsible for the Direct Physical Damage to the property if insured or not.

11.3.3 The Party that is the primary cause of a Builder's Risk Policy claim shall be responsible for any deductible amounts or coinsurance payments. If no Party is the primary cause of a claim, then the Party obtaining and maintaining the Builder's Risk Policy pursuant to §11.3.1 shall be responsible for the deductible amounts or coinsurance payments.

11.3.4 Where allowable by law, the Parties waive all rights against each other and their respective employees, agents, contractors, subcontractors and sub-subcontractors, and design professionals for damages caused by risks covered by the property insurance except such rights as they may have to the proceeds of the insurance. Design-Builder shall indemnify and hold harmless Owner against any and all liability, claims, demands, damages, losses, and expenses, including attorneys' fees, in connection with or arising out of any damage or alleged damage to any of Owner's existing adjacent property that may arise from the performance of the Work, to the extent caused by the actions or inactions or intentionally wrongful acts or omissions of Design-Builder, Subcontractor, Supplier, Sub-subcontractor, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable.

11.4 RISK OF LOSS The Design-Builder shall be responsible for loss or damage to all personal property brought on the Worksite.

11.5 POLLUTION LIABILITY INSURANCE Design-Builder is/ is not required to maintain pollution liability insurance. Unless indicated affirmatively, the obligation to procure such insurance is not triggered.

11.5.1 If applicable: in the following amounts: \$[_____] per occurrence, and \$[_____] in aggregate shall apply for one year after Final Completion. The policy shall cover Design-Builder's liability during construction, removal, storage, encapsulation, transport and disposal of hazardous waste and contaminated soil, and asbestos abatement. The policy shall include coverage for on-site and off-site bodily injury and loss of damage to, or loss of use of property, directly or indirectly arising out of the discharge, dispersal, release, or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gas, waste materials, or other irritants, contaminants or pollutants into or upon the land, the atmosphere or any water body, whether it be gradual or sudden and accidental. The policy shall not have exclusions for mold or asbestos.

11.6 ADDITIONAL GENERAL LIABILITY COVERAGE Owner shall/ shall not require Design-Builder to purchase and maintain additional liability coverage. If required, Design-Builder shall provide:

11.6.1 OCP. Design-Builder shall provide an Owners' and Contractors' Protective Liability Insurance ("OCP") policy with limits equal to the limits on CGL specified, or limits as otherwise required by Owner.

Any documented additional cost in the form of a surcharge associated with procuring the additional general liability coverage in accordance with this subsection shall be paid by Owner directly or the costs may be reimbursed by Owner to Design-Builder and by increasing the GMP to correspond to the actual cost required to purchase and maintain the coverage. Prior to commencement of the Work, Design-Builder shall provide either a copy of the OCP policy, or a certificate and endorsement evidencing that Owner has been named as an additional insured, as applicable. The insurance of the Design-Builder shall be primary and non-contributory to any insurance available to the Additional Insureds

11.7 PROFESSIONAL LIABILITY INSURANCE Design-Builder shall obtain, either itself or through Design Professional, professional liability insurance for claims arising from the negligent performance of professional services under this Agreement, which shall be:

X Project Specific Coverage written for not less than \$1,000,000 per claim and \$2,000,000 in the aggregate for projects valued at, or less than, \$10,000,000 and \$3,000,000 per claim and \$3,000,000 in the aggregate for projects valued at more than \$10,000,000. The Professional Liability Insurance shall include prior acts coverage sufficient to cover all services rendered by the Design-Professional; the Design-Professional shall be responsible for any deductible associated with the Professional Liability Insurance. This coverage shall be continued in effect for eight year(s) after the Date of Substantial Completion.

11.7.1 Professional Liability Insurance shall be provided by an insurance company licensed to do business in the State of New Hampshire or on the New Hampshire Insurance Department's approved List of Non-Admitted Carriers and with an AM Best rating of at least A-, XIII.

11.7.2 Subconsultants retained by Design-Builder or Design-Builder's Design-Professional for this Project shall maintain Professional Liability Insurance at the same levels and with the same requirements as that maintained by the Design-Professional.

11.8 BONDING Performance and Payment Bonds are/ are not required of Design-Builder. The surety company providing these bonds shall be licensed to do business in the State of New Hampshire and listed on the Federal Register for the Department of the Treasury as an approved surety company.. Owner's acceptance shall not be withheld without reasonable cause. The penal sum of the bonds shall each be 100% of the GMP. Design-Builder shall endeavor to keep its surety advised of changes

potentially impacting the GMP and Contract Time, though Design-Builder shall require that its surety waives any requirement to be notified of any alteration or extension of time.

11.8.1 Any increase in the GMP Price that exceeds 10% in the aggregate shall require a rider to the Bonds increasing penal sums accordingly. Up to such 10% amount, the penal sum of the bond shall remain equal to 100% of the GMP or as otherwise provided in §11.8. Design-Builder shall endeavor to keep its surety advised of changes within the scope of the initial Agreement potentially impacting the GMP or the Dates of Substantial Completion or Final Completion, though Design-Builder shall require that its surety waives any requirement to be notified of any alteration or extension of time.

ARTICLE 12 SUSPENSION, NOTICE TO CURE, AND TERMINATION

12.1 SUSPENSION BY OWNER FOR CONVENIENCE

12.1.1 OWNER SUSPENSION Should Owner order Design-Builder in writing to suspend, delay, or interrupt the performance of the Work for the convenience of Owner and not due to any act or omission of Design-Builder or any person or entity for whose acts or omissions Design-Builder may be liable, then Design-Builder shall immediately suspend, delay, or interrupt that portion of the Work for the time period ordered by Owner.

12.1.2 Any action taken by Owner that is permitted by any other provision of the Contract Documents and that results in a suspension of part or all of the Work does not constitute a suspension of Work under this section.

12.2 TERMINATION BY OWNER FOR CONVENIENCE

12.2.1 Upon Design-Builder's receipt of written notice from Owner, Owner may, without cause, terminate this Agreement. Design-Builder shall immediately stop the Work, follow Owner's instructions regarding shutdown and termination procedures, and strive to minimize any further costs.

12.2.2 If Owner terminates this Agreement for convenience, Design-Builder shall be paid (a) for the Work performed to date including Overhead and profit; and (b) for all demobilization costs and costs incurred resulting from termination, but not including Overhead or profit on Work not performed.

12.2.3 If Owner terminates this Agreement, Design-Builder shall:

12.2.3.1 execute and deliver to Owner all papers and take all action required to assign, transfer, and vest in Owner the rights of Design-Builder to all materials, supplies, and equipment for which payment has been or will be made in accordance with the Contract Documents and all subcontracts, orders, and commitments which have been made in accordance with the Contract Documents;

12.2.3.2 exert reasonable effort to reduce to a minimum Owner's liability for subcontracts, orders, and commitments that have not been fulfilled at the time of the termination;

12.2.3.3 cancel any subcontracts, orders, and commitments as Owner directs; and

12.2.3.4 sell at prices approved by Owner any materials, supplies, and equipment as Owner directs, with all proceeds paid or credited to Owner.

12.3 TERMINATION BY OWNER FOR CAUSE The Owner may terminate the contract if the Design-Builder:

12.3.1 refuses or fails to supply enough properly skilled workers or proper materials;

12.3.2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Design-Builder and the Subcontractors;

12.3.3 disregards laws, ordinances, rules, or regulations or orders of a public authority having jurisdiction; or

12.3.4 is otherwise in material breach of a provision of the Contract Documents.

12.3.5 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:

12.3.5.1 take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;

12.3.5.2 accept assignment of subcontracts pursuant to §5.4; and

12.3.5.3 finish the Work by whatever reasonable method the Owner may deem expedient. Upon 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.

12.3.6 When the Owner terminates the Agreement for one of the reasons stated in §12.3.1 through §12.3.4, the Owner shall be entitled to collect from the Design-Builder all direct, indirect, and consequential damages suffered by the Owner on account of the Design-Builder's default, including without limitation additional services and expenses of the Design Professional and attorney's fees and expenses made necessary thereby. The Owner shall be entitled to hold all amounts due the Design-Builder at the date of termination until all the Owner's damages have been established, and to apply such amounts to such damages. In no case shall the Design-Builder be entitled to receive further payment until the Work is finished.

12.3.7 If Design-Builder files a petition under the Bankruptcy Code, this Agreement shall be governed by the applicable provisions of the Bankruptcy Code.

12.4 DESIGN-BUILDER'S RIGHT TO TERMINATE

12.4.1 Seven Days after Owner's receipt of written notice from Design-Builder, Design-Builder may terminate this Agreement if the Work has been stopped for a 30-Day period through no fault of Design-Builder for any of the following reasons:

12.4.1.1 Under court order or order of other governmental authorities having jurisdiction;

12.4.1.2 as a result of the declaration of a national emergency or other governmental act during which, through no fault of Design-Builder, materials are not available, or

12.4.1.3 suspension by Owner for convenience pursuant to §12.1.

12.4.2 In addition, upon seven Days' written notice to Owner and an opportunity to cure within three Days, Design-Builder may terminate this Agreement if Owner:

12.4.2.1 Assigns this Agreement over Design-Builder's reasonable objection, or

12.4.2.2 fails to pay Design-Builder in accordance with this Agreement and Design-Builder has stopped work in compliance with §10.5, or

12.4.2.3 otherwise materially breaches this Agreement.

12.4.3 Upon termination by Design-Builder in accordance with this section, Design-Builder shall be entitled to recover from Owner payment for all Work executed and for any proven loss, cost, or expense in connection with the Work, including demobilization costs.

12.5 OBLIGATIONS ARISING BEFORE TERMINATION Even after termination, the provisions of this Agreement still apply to any Work performed, payments made, events occurring, costs charged or incurred, or obligations arising before the termination date.

ARTICLE 13 DISPUTE MITIGATION AND RESOLUTION

13.1 WORK CONTINUANCE AND PAYMENT Unless otherwise agreed in writing, Design-Builder shall continue the Work and maintain the approved schedules during any dispute mitigation or resolution proceedings. If Design-Builder continues to perform, Owner shall continue to make payments in accordance with the Agreement.

13.2 DIRECT DISCUSSIONS If the Parties cannot reach resolution on a matter relating to or arising out of this Agreement, the Parties shall endeavor to reach resolution through good faith direct discussions between the Parties' representatives, who shall possess the necessary authority to resolve such matter and who will record the date of first discussions. If the Parties' representatives are not able to resolve such matter within five Business Days from the date of first discussion, the Parties' representatives shall immediately inform senior executives of the Parties in writing that a resolution could not be reached. Upon receipt of such notice, the senior executives of the Parties shall meet within five Business Days to endeavor to reach resolution. If the dispute remains unresolved after 15 Days from the date of first discussion, the Parties shall submit such matter to the dispute mitigation and dispute resolution procedures selected below.

13.3 If direct discussions pursuant to §13.3 do not result in resolution of the matter, the Parties shall endeavor to resolve the matter by mediation through the current Construction Industry Mediation Rules of the American Arbitration Association (AAA), or the Parties may mutually agree to select another set of mediation rules. The Parties shall mutually agree upon the mediator and the mediation process. The mediation shall be convened within 30 Business Days of the matter first being discussed and shall conclude within 45 Business Days of the matter first being discussed. Either Party may terminate the mediation at any time after the first session by written notice to the non-terminating Party and mediator. The costs of the mediation shall be shared equally by the Parties.

13.4 BINDING DISPUTE RESOLUTION If the matter is unresolved after submission of the matter to mediation, the Parties shall submit the matter to litigation in either the state or federal court having jurisdiction of the matter in the location of the Project. THE PARTIES EXPRESSLY AGREE TO WAIVE ALL RIGHTS TO A JURY TRIAL FOR ANY CLAIM ARISING OUT OF OR RELATED TO THE AGREEMENT, PROJECT, OR WORK.

13.5 COSTS The Parties shall pay their own costs and attorneys' fees of any binding dispute resolution procedures unless otherwise determined by the adjudicator.

13.6 MULTIPARTY PROCEEDING All Parties necessary to resolve a matter agree to be parties to the same dispute resolution proceeding, if possible. Appropriate provisions shall be included in all other contracts relating to the Work to provide for the joinder or consolidation of such dispute resolution proceedings.

13.7 LIEN RIGHTS. Nothing in this article shall limit any rights or remedies not expressly waived by Design-Builder which Design-Builder may have under lien laws.

ARTICLE 14 MISCELLANEOUS PROVISIONS

14.1 EXTENT OF AGREEMENT Except as expressly provided, this Agreement is for the exclusive benefit of the Parties, and not for the benefit of any third party. This Agreement represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations, or agreements, either written or oral.

14.2 ASSIGNMENT Except as to the assignment of proceeds, neither Party shall assign its interest in this Agreement without the written consent of the other Party. The terms and conditions of this Agreement shall be binding upon both Parties, their partners, successors, assigns, and legal representatives. Neither Party shall assign the Agreement without written consent of the other except that Owner may assign the Agreement to a wholly-owned subsidiary of Owner when Owner has fully indemnified Design-Builder or to an institutional lender providing construction financing for the Project as long as the assignment is no less favorable to Design-Builder than this Agreement. In the event of such assignment, Design-Builder shall execute any consent reasonably required. In such event, the wholly owned subsidiary or lender shall assume Owner's rights and obligations under the Contract Documents. If either Party attempts to make such an assignment, that Party shall nevertheless remain legally responsible for all obligations under the Agreement, unless otherwise agreed by the other Party.

14.3 GOVERNING LAW The Agreement shall be governed by the laws of the State of New Hampshire.

14.4 SEVERABILITY The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

14.5 NOTICE Unless changed in writing, a Party's address indicated in Article 1 shall be used when delivering notice to a physical address. Except for Agreement termination and as otherwise specified in the Contract Documents, notice is effective upon transmission by any effective means, including U.S. postal service and overnight delivery service.

14.6 NO WAIVER OF PERFORMANCE The failure of either Party to insist, in any one or more instances, on the performance of any of the terms, covenants, or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition, or right with respect to further performance.

14.7 TITLES The titles given to the articles and sections are for ease of reference only and shall not be relied upon or cited for any other purpose.

14.8 OWNER'S RIGHT TO AUDIT.

14.8.1 Design-Builder shall grant the Owner and its designated representative the right to audit, during the performance of the Work and for a period of three years after Final Payment, all books, records, correspondence and notes maintained by the Design-Builder and any of its Subcontractors with respect to Services performed under this Agreement. A similar provision shall be incorporated by Design-Builder in all subcontracts entered into in connection with this Agreement.

14.8.2 Owner shall provide the Design-Builder 30 days prior written notice of its intent to audit Design-Builder's or any Subcontractor's records. Design-Builder shall have the opportunity to audit itself prior to the proposed audit by Owner.

14.8.2.1 Should any overcharge to Owner be found by Design-Builder's audit, Design-Builder shall pay Owner an amount equal to the amount overcharged (including any part of the Design-Builder fee based on such overcharge).

14.8.2.2 If Owner's audit reveals that the amounts charged to Owner by Design-Builder exceeded the actual amounts to which Design-Builder was entitled for Work, then Design-

Builder shall pay Owner an amount equal to the amount overcharged (including any part of the Design-Builder Fee based on such overcharge).

14.8.2.3 If the Owner's audit reveals that the Design-Builder is entitled to additional sums, Owner shall promptly reimburse Design-Builder for the amount due (not exceeding the Guaranteed Maximum Price).

14.8.3 During such inspections and audits, Owner shall have the right, at its expense, to take extracts and make copies of Design-Builder's records as it deems necessary to support its accounting report. Owner agrees to keep confidential all information and copies obtained pursuant to this section other than with respect to required disclosures in connection with disputes between the parties or as otherwise required by law, court order or governmental process.

14.8.4 The exercise by Owner, at any time of the right to audit Design-Builder's or any Subcontractor's records and accounts, or the acceptance by Owner of any audit statement or the receipt and/or deposit of payments by Owner or Design-Builder, or any payment tendered by or on behalf of Design-Builder or Owner shall be without prejudice to any duties, rights or remedies of Owner, Design-Builder or any Subcontractor.

14.9 EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION Design-Builder shall abide by all applicable federal, state, and local laws respecting non-discrimination in employment and non-segregation of facilities, including the requirements set out at 41 CFR §§ 60-1.4, 60-300.5(a), and 60-741.5(a), which equal opportunity clauses are hereby incorporated by reference. The latter two regulations prohibit discrimination against qualified protected veterans and qualified individuals based on disability. These regulations also require affirmative action by covered vendors to employ and advance in employment qualified protected veterans and qualified individuals with disabilities. Additionally, Design-Builder will not discharge or in any other manner discriminate against employees or applicants because they have inquired about, discussed, or disclosed their own pay or the pay of another employee or applicant.

ARTICLE 15 CONTRACT DOCUMENTS

15.1 CONTRACT DOCUMENTS The Contract Documents are as follows:

- (a) This Agreement.
- (b) Owner provided information pursuant to §3.15.4 and other Owner information identified as intended to be a contract document.
- (c) The Schematic Design Documents upon Owner approval pursuant to §3.2.5.
- (d) The Design Development Documents upon Owner approval pursuant to §3.2.7.
- (e) The Construction Documents upon Owner approval under §3.2.8.
- (f) Change Orders, Interim Directives, and amendments issued in accordance with this Agreement.
- (g) Other:
- (h) Owner-issued request for proposal:
- (i) Design-Builder's response to RFP, dated [____], [____] pages.

The following exhibits are a part of this Agreement:

- (j) Exhibit A: Project Schedule, dated [____], [____] pages.
- (k) Exhibit B: Basis of Design/Owner's Program including Project and Worksite information, other relevant data defining the Project and any required documentation evidencing any necessary approvals, site plan review, rezoning, easements and assessments, fees, and charges required for the construction, use, occupancy, or renovation of permanent structures.
- (l) Exhibit C: Labor Relations, if applicable
- (m) Exhibit D: Key Project Personnel, dated [____], [____] pages.
- (n) Exhibit E: Reimbursable Expenses N/A or (dated [____], [____] pages)
- (o) Exhibit F: Schedule of Worksite visits, dated [____], [____] pages.

- (p) Exhibit G: Services, dated [____], [____] pages.
- (q) Exhibit H: Design Documentation Requirements (Revised Edition – June 2020, 3 pages
- (r) Exhibit I: Green Building Addendum, if applicable
- (s) Exhibit J: Building Information Modeling (BIM) Addendum, if applicable
- (t) Exhibit K: Labor Rate Schedule, dated [____], [____] pages.
- (u) Exhibit L: Equipment Rental Rate Schedule, dated [____], [____] pages.

15.2 ORDER OF PRECEDENCE In case of any inconsistency, conflict or ambiguity among the Contract Documents, the documents shall govern in the following order: (a) Change Orders and written amendments to this Agreement, including Amendment 1; (b) this Agreement; (c) design documents approved by Owner pursuant to §§3.2.6, 3.2.8 and 3.2.9 in order of the most recently approved; (d) information furnished by Owner pursuant to §3.15.4 or designated as a Contract Document in §15.1; (e) other documents listed in this Agreement. Except as otherwise provided, among categories of documents having the same order of precedence, the term or provision that is strictest shall control. Where figures are given, they shall be preferred to scaled dimensions. Unless otherwise specifically defined in this Agreement, any terms that have well-known technical or trade meanings shall be interpreted in accordance with their well-known meanings

DRAFT

This Agreement will become effective when all parties have signed it. The date of this Agreement will be the date this Agreement is signed by the last party to sign it (as indicated by the date associated with that party's signature.)

Each party is signing the Agreement on the date stated under the party's signature.

FOR THE UNIVERSITY SYSTEM
OF NEW HAMPSHIRE

OWNER
«Name
Title
Campus»

Date:

DESIGN-BUILDER
«Name
Title
Company»

Date:

OWNER
«Name
Title
Campus»

Date:

OWNER
Catherine A. Provencher
Vice Chancellor for Financial Affairs &
Treasurer
University System of New Hampshire»

Date:

END OF DOCUMENT.

|

AMENDMENT NO. 1
to
University System of New Hampshire/CONSENSUSDOCS® 410
STANDARD DESIGN-BUILD AGREEMENT AND GENERAL CONDITIONS
BETWEEN OWNER AND DESIGN-BUILDER

**(Where the Basis of Payment is the Cost of the Work Plus a Fee with a
Guaranteed Maximum Price)**

Contract Number: [] Project ID: []

Guaranteed Maximum Price Amendment

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

[]
[]
[]

THE OWNER:
(Name, legal status and address)

[]
[]
[]

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

[]
[]
[]

Pursuant to Section 3.3 of the Agreement, the Owner and the Design-Builder hereby amend the Agreement to establish a Guaranteed Maximum Price (GMP) for the Work.

ARTICLE 1 GUARANTEED MAXIMUM PRICE

The Design-Builder's Guaranteed Maximum Price (GMP) for the Work, including the Cost of the Work as defined in Article 8 and the Design-Builder's Fee as set forth in Section 7.1, is \$[]. As agreed by the Owner and Design-Builder, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed. The Design-Builder shall provide an itemized statement of the Guaranteed Maximum Price.

The GMP is for the performance of the Work in accordance with the documents listed below, which are part of the Agreement.

- Exhibit 1 - Itemized statement of the Guaranteed Maximum Price
- Exhibit 2 - Drawings and Specifications, including Addenda, if any, dated [], [] pages.
- Exhibit 3 - Allowance Items, dated [], [] pages.
- Exhibit 4 - Assumptions and Clarifications, dated [], [] pages.
- Exhibit 5 - Schedule of Work, dated [], [] pages.



- Exhibit 6 - Alternate Prices, dated [] [] pages.
Exhibit 7 - Unit Prices, dated [], [] pages.
Exhibit 8 - Additional Services included, dated [], [] pages.

ARTICLE 2 DATE OF SUBSTANTIAL COMPLETION

The Date of Substantial Completion of the Work is [].

ARTICLE 3 DATE OF FINAL COMPLETION

The Date of Final Completion of the Work is: [] or within [] days after the Date of Substantial Completion, subject to adjustments as provided for in the Contract Documents.

DRAFT



This Amendment will become effective when all parties have signed it. The date of this Amendment will be the date this Amendment is signed by the last party to sign it (as indicated by the date associated with that party's signature.)

FOR THE UNIVERSITY SYSTEM
OF NEW HAMPSHIRE

OWNER
«Name
Title
Campus»

Date:

DESIGN-BUILDER
«Name
Title
Company»

Date:

OWNER
«Name
Title
Campus»

Date:

OWNER
Catherine A. Provencher
Vice Chancellor for Financial Affairs &
Treasurer
University System of New Hampshire»

Date:

END OF DOCUMENT. |



University System of New Hampshire/ConsensusDocs® 410

STANDARD DESIGN-BUILD AGREEMENT AND GENERAL CONDITIONS BETWEEN OWNER AND DESIGN-BUILDER

Exhibit G
Services

SCOPE OF SERVICES

<p>The Design-Builder shall procure or provide the Basic Services and Additional Services as identified by a checked box. Any Additional Service which is selected has been accepted by the Owner. All Basic Services shall be included in the Design-Builder's fee. Additional Services shall be quoted as lump sum fees, will not be included in the Design-Builder's basic fee, and will be paid as described in §3.21 of the USNH/ConsensusDocs 410. All Additional Services, regardless of classification, shall include all reimbursable expenses which must conform to the reimbursable expenses identified in Exhibit G.</p>		
Service	Basic	Additional/Fee
Boundary survey	<input type="checkbox"/>	<input type="checkbox"/> \$[_____]
Topographic/location survey	<input type="checkbox"/>	<input type="checkbox"/> \$[_____]
Geotechnical services	<input type="checkbox"/>	<input type="checkbox"/> \$[_____]
Study of historical, cultural, or archeological features or related efforts	<input type="checkbox"/>	<input type="checkbox"/> \$[_____]
Analysis of alternative sites and formation of site selection recommendation	<input type="checkbox"/>	<input type="checkbox"/> \$[_____]
Preparation of environmental assessments or reviews	<input type="checkbox"/>	<input type="checkbox"/> \$[_____]
Program development	<input type="checkbox"/>	<input type="checkbox"/> \$[_____]
Feasibility study and preliminary cost estimate preparation	<input type="checkbox"/>	<input type="checkbox"/> \$[_____]
Schematic Design documents	<input type="checkbox"/>	<input type="checkbox"/> \$[_____]
Design Development documents	<input type="checkbox"/>	<input type="checkbox"/> \$[_____]
Construction documents	<input type="checkbox"/>	<input type="checkbox"/> \$[_____]
Construction administration (includes any bidding or negotiation assistance required)	<input type="checkbox"/>	<input type="checkbox"/> \$[_____]
Final completion and warranty period support	<input type="checkbox"/>	<input type="checkbox"/> \$[_____]
Preparing studies, reports, and investigations required for submission to AHJs or others having jurisdiction over the Project	<input type="checkbox"/>	<input type="checkbox"/> \$[_____]
Preparing measured drawings of existing conditions	<input type="checkbox"/>	<input type="checkbox"/> \$[_____]
Aerial photographs	<input type="checkbox"/>	<input type="checkbox"/> \$[_____]
Artistic renderings, models, and mockups of the Project or any part of the Project	<input type="checkbox"/>	<input type="checkbox"/> \$[_____]
Inventories of existing furniture, fixtures, furnishings, and equipment which might be under consideration for incorporation into the Project	<input type="checkbox"/>	<input type="checkbox"/> \$[_____]
Interior design and related services, including procurement (developing bid specifications; providing support negotiations, if necessary), and placement of furniture (layouts), furnishings, artwork, and decorations	<input type="checkbox"/>	<input type="checkbox"/> \$[_____]
Review of existing facilities surveys	<input type="checkbox"/>	<input type="checkbox"/> \$[_____]
Green Building Facilitator	<input type="checkbox"/>	<input type="checkbox"/> \$[_____]
Building Information Modeling (BIM)	<input type="checkbox"/>	<input type="checkbox"/> \$[_____]
Cost estimating	<input type="checkbox"/>	<input type="checkbox"/> \$[_____]

Commissioning support	<input type="checkbox"/>	<input type="checkbox"/>	\$[_____]
Electronic Record Drawings (a.k.a. "As-Builts")	<input type="checkbox"/>	<input type="checkbox"/>	\$[_____]
Services for tenant or rental spaces or any designated swing space	<input type="checkbox"/>	<input type="checkbox"/>	\$[_____]
Expert witness unless Design Professional is a party to the proceeding	<input type="checkbox"/>	<input type="checkbox"/>	\$[_____]
Design, coordination, management, expediting, and other services supporting the procurement of materials to be obtained or work to be performed by Owner	<input type="checkbox"/>	<input type="checkbox"/>	\$[_____]
Landscape Architect	<input type="checkbox"/>	<input type="checkbox"/>	\$[_____]
A/V Consultant	<input type="checkbox"/>	<input type="checkbox"/>	\$[_____]
Lighting Consultant	<input type="checkbox"/>	<input type="checkbox"/>	\$[_____]
Permitting Consultant	<input type="checkbox"/>	<input type="checkbox"/>	\$[_____]
Security Consultant	<input type="checkbox"/>	<input type="checkbox"/>	\$[_____]
Telecommunications/Data Consultant	<input type="checkbox"/>	<input type="checkbox"/>	\$[_____]
Acoustical Engineer (including but not limited to interior walls and interior and exterior mechanical impact)	<input type="checkbox"/>	<input type="checkbox"/>	\$[_____]
Civil Engineer	<input type="checkbox"/>	<input type="checkbox"/>	\$[_____]
Electrical Engineer	<input type="checkbox"/>	<input type="checkbox"/>	\$[_____]
Fire Protection Engineer	<input type="checkbox"/>	<input type="checkbox"/>	\$[_____]
Mechanical Engineer	<input type="checkbox"/>	<input type="checkbox"/>	\$[_____]
Structural Engineer	<input type="checkbox"/>	<input type="checkbox"/>	\$[_____]
Other Services necessary for completion of the Project and agreed to by Owner and Design Professional listed below:	<input type="checkbox"/>	<input type="checkbox"/>	\$[_____]

1. SCHEMATIC DESIGN DOCUMENTATION REQUIREMENTS

The following documentation, as appropriate to the scope of the overall design, shall be provided at the end of Schematic Design (SD) for campus review and approval. These requirements apply to all design contracts regardless of the form of construction procurement. The submission must be approved prior to proceeding with Design Development Documents.

- 1.1 **Floor Plans and Elevations** – Provide preliminary graphic materials as required to describe the proposed design of the entire building in three dimensions. These materials will typically include architectural plans of all floor levels showing arrangement, area and use of all rooms, internal horizontal and vertical circulation arrangement, provisions for compliance with ADA and life safety codes, location of mechanical, electrical, telecommunications, building maintenance and other service spaces; air intake and exhaust locations; typical layouts of furniture and equipment within key spaces; provisions for future expansion; typical schematic layouts of principal mechanical, electrical and structural systems; exterior elevations of all sides; and useful building sections.
- 1.2 **Site Plans** – Provide preliminary graphic materials to describe in general the proposed development of the entire project site, including vehicular and pedestrian circulation; parking; snow storage; fire equipment access; buildings including entrance points for general public, deliveries, and persons with disabilities; locations for transformer and generator, existing and proposed site structures and significant natural features; wetlands, storm water management; new and existing overhead and underground utilities; existing and proposed grades; views; sun and wind orientation; vegetation; and relationship of all elements of the project to the natural and built context.
- 1.3 **Comparison of Design to Space Program** – Provide a tabular comparison of all programmed and designed areas and provide notes where significant differences occur.
- 1.4 **Preliminary Building Systems, Environmental, and Life Cycle Cost Analyses** – Provide written analysis of comparative cost and performance of alternative building envelope, structural, mechanical, electrical, and life safety systems considered, including determination and evaluation of required loads, impacts on existing building, utility, and environmental systems, and reasons for selection of recommended systems. Provide a preliminary energy model for the building and provide a LEED checklist to illustrate how the design would achieve at least LEED Silver using the most current LEED version.
- 1.5 **Preliminary Code and Regulations Review** – Provide written analysis of the applicable codes and regulations, including aspects that fundamentally influence the design approach and possible points of conflict or uncertainty.
- 1.6 **Outline Specifications** - Narrative description of and performance criteria for all principal construction materials and systems proposed for the project, including exterior and interior building materials and finishes; structural system; plumbing and piping systems and fixtures; HVAC systems including major equipment items and control systems; lighting concept and fixture types; electrical power and telecommunications systems; and other significant building or site components.
- 1.7 **Construction Cost Estimate** – Provide cost estimates based on quantities and criteria established by the SD documentation required by §§1.1 - 1.6. Indicate all assumptions, as well as probable cost impacts of unique project conditions or components.
- 1.8 **Revisions** - Provide revisions reasonably identified by the Owner for approval prior to beginning Design Development, consistent with the terms of the applicable USNH Design Professional Contract or USNH Design-Build Contract.

2. DESIGN DEVELOPMENT DOCUMENTATION REQUIREMENTS

The following documentation, as appropriate to the scope of the overall design, shall be provided at the end of Design Development (DD) for campus review and approval. These requirements apply to all design contracts regardless of the form of construction procurement.

2.1 **Summary:** The goal of the DD phase is to identify and make every design decision necessary to complete the project. The extent of decision making must include all research, evaluation, and life-cycle analysis within each engineering discipline, which may necessitate a more extensive effort than is industry standard for DD. The design team must incorporate all of the Owner's construction standards or identify proposed alternatives or deviations for Owner consideration. The design team should track and compile all notes, calculations, or other materials that have been prepared or obtained to answer Owner questions about the design intent. It is anticipated that study models for both exterior and interior will be developed throughout DD to show options and alternatives for decision making.

The DD submission may be described as an incomplete Construction Documents set that clearly communicates the full scope of all materials, building components and systems, but doesn't illustrate the full construction detailing necessary for complete Construction Documents. The submission will be reviewed for compliance to program and the approved Schematic Design submission, as well as adherence to decisions and directions given during the DD phase, and to the Owner's construction standards. In addition, the submission will be critiqued for conflicts, concerns, coordination issues, and opportunities for improvement. The submission must be approved prior to proceeding with Construction Documents.

2.2 **Content:** The minimum acceptable submission content will vary with the nature of the project and will require discussions between the design team and the Owner's design manager to determine what will be required. Likewise, a judgment call needs to be made by the design manager as to whether the intent of the submission has been achieved by the design team. In general, though, each discipline shall provide a group of documents that fully describe the design intent of all aspects and components under their responsibility. A complete DD submission will be coordinated between all disciplines and contain the following:

Minimum Design Development Submission Requirements

2.2.1 **Drawings of the Building** – Provide fully developed graphic materials including the elements described herein for the entire proposed building or buildings, typically including floor plans and reflected ceiling plans of all levels and elevations of all exterior wall surfaces at a scale not smaller than 1/8" = 1'0", showing keyed wall, door, and window types, stairs, ramps, elevators, utility rooms, closets, and plumbing fixtures; roof plan(s); building sections at a scale not less than 1/4" = 1'0" and enlarged wall sections that are all keyed on elevations and floor plans; typical interior elevations; furniture and equipment layouts of all typical and unique spaces sufficient to illustrate their functional suitability; preliminary schedules for all finishes, doors, windows, and wall types; structural foundation plan, floor framing plans and framing sections showing main member sizes; plumbing and piping plans with header diagrams; HVAC plans with preliminary calculations, single line duct layout, preliminary equipment list and locations, and control diagram showing sequence of operation; fire protection plans with riser diagram and single line piping and head layout; lighting plans with preliminary fixture schedule and switching layout and light level calculations; electrical power plans with panel schedule and locations, equipment sizes and layouts, riser diagram and load estimate; fire alarm drawings showing zones, device locations and riser diagram; and telecommunications plans with conduit and cable tray layouts, riser diagrams and locations of voice and data outlets. Room numbers in accordance with campus standards,

column lines, scale and north arrow should be shown on plans for all disciplines. Provide demolition plans as appropriate.

- 2.2.2 **Drawings of the Site** – Provide fully developed graphic materials describing the entire proposed development of the site, typically including separate dimensioned site circulation, snow storage, grading, storm water management, lighting and planting plans, and typical details or manufacturers' cuts of site lighting fixtures, signage, furnishings and structures. Provide plans for all forms of utility work and standard details. Indicate extent and details of all demolition. Provide a preliminary construction zone and fencing plan.
- 2.2.3 **Refined Comparison of Design to Space Program** – Provide an update of the SD tabular comparison of all room areas as programmed, as adjusted during DD.
- 2.2.4 **Room Numbering** - All room numbers shown on DD plans, schedules and other documents shall be established in collaboration with the Owner and shall reflect Owner's standard guidelines therefor. It is essential that room numbers be adjusted as further plan changes are made to ensure that they remain consistent with the standard guidelines.
- 2.2.5 **Refined Building Systems, Environmental, and Life Cycle Cost Analyses** - Fully developed written analysis of the initial and life cycle costs, performance characteristics, energy modeling, and operating/maintenance requirements of proposed structural, mechanical, electrical, electronic and other technical systems, including their impact on existing utilities.
- 2.2.6 **Draft specifications and manufacturers' data sheets** for all principal construction materials, equipment, fixtures and systems proposed for the project, including exterior and interior building materials and finishes, structural system, plumbing and piping systems, HVAC systems including control systems, lighting, electrical power and telecommunications systems, and other significant building or site components.
- 2.2.7 **Cost estimates** for construction shall be based on quantities and criteria established by the Design Development documentation required herein and provided in CSI format. Provide a breakdown of cost estimates for various alternates as agreed to with the Owner. If appropriate, provide a cost estimate for furnishings for spaces mutually identified with the Owner.
- 2.2.8 **Comprehensive Code and Regulations Review** – Provide a detailed description of code and regulatory requirements for the project. This should be included as a sheet at the beginning of the set of plans issued for AHJ review.
- 2.2.9 **Standards for content** –Include on every page of every document the Owner's project number. Ensure that all abbreviations and symbols used on any drawing are included in lists that identify them, and avoid including on such lists any abbreviations or symbols not used. All drawings should include a graphic scale, so they can be interpreted regardless of how they are printed or used. All finish materials need to be keyed on site plans and architectural floor plans.

3. **CONSTRUCTION DOCUMENTS DOCUMENTATION REQUIREMENTS** The following documentation shall be provided as a complete set of documents for Owner's review, use, and construction. These requirements apply to all design contracts regardless of the form of construction procurement.

- 3.1 Complete and fully coordinated final working drawings and specifications prepared and checked in accordance with the Quality Control Program required by §3.1.8 of the University System of New Hampshire/ConsensusDocs CD240 that fully describe all parts of the Work.

END OF EXHIBIT H