

TOWN OF EAST HAMPTON

Conversion of Town Owned Facilities to Natural Gas

REQUEST FOR PROPOSALS

RFP#2015-042915



East Hampton, CT Town Building & Schools

The Town of East Hampton will be accepting proposals from qualified firms and individuals interested in contracting to convert the boilers in town and school buildings to natural gas. Interested individuals and firms should request the proposal instructions and details from the Town Manager, 20 East High Street, East Hampton, CT 06424, or via the Town's website at:

http://www.easthamptonct.gov/Pages/EastHamptonCT_Finance/index

Responses to the Proposal must be submitted to the Town Manager no later than May 20, 2015 at 2:00 PM. LATE PROPOSALS WILL NOT BE CONSIDERED.

Michael Maniscalco
Town Manager

Date

April 29, 2015

RFP#2015-042915

I. INTRODUCTION

In 2014 the Town of East Hampton entered into service contracts for natural gas with Connecticut Natural Gas. Through signing these service agreements the Town not only will save money on heating costs at all of its Town Facilities it will also enable a 9 mile natural gas pipeline expansion.

In accordance with CT Public Act 11-80, Town of East Hampton located at 20 E. High Street, East Hampton, CT (hereinafter the "Town"), requests responses from qualified Energy Services Companies and/ or Contractors ("ESCOs and/or Contract ") (hereinafter the ESCO, or the "Respondent"), for the provision of facilities improvement at the Town of East Hampton & Schools. Said buildings include: Middle School, Memorial School, Center School, BOE Central Office, Library/Community Center, Town Hall/Police, Fire Department, Fire Department #2, and Public Works.

II. BACKGROUND INFORMATION

The Town of East Hampton is a classic New England community operating under a Town Meeting style with a Town Manager-Council form of government. Over the past 40 years the Town population has grown driving the town from just under 6,000 people in 1960 to just fewer than 13,000 in the 2010 census.

III. PROJECT SCOPE

For this RFP, the Town is interested in contracting to convert the boilers in town and school buildings to natural gas. This includes a detailed walk-through, installation, and improvement/modification of existing and new equipment.

The Town's primary goal is to convert the boilers in town and school buildings to gas and reduce energy consumption associated with the heating, ventilation, and air conditioning (HVAC) systems.

Services are also requested for training and preventive maintenance and operation of the new equipment, as well as for other services or measures which may not reduce consumption per se, but are aimed at cost savings such as fuel switching, rate changes.

Interested vendors may enhance their proposals through suggested participation in any local utility programs. Additional information concerning these programs may be obtained from the utilities.

The Town will award all of the work found within the scope to one contractor.

The annual energy use for:

| Facility | Annual Oil Usage (Gal) | Price per Gal | Oil Cost |
|--------------------------|-------------------------------|-----------------------|-----------------|
| | Revised - JMJ | | |
| High School | 62,229 | \$3.06 | \$190,421 |
| Memorial School | 23,772 | \$3.06 | \$72,742 |
| Center School | 19,236 | \$3.06 | \$58,862 |
| BOE Central Office | 1,246 | \$3.06 | \$ 3,813 |
| Library/Community Center | 6,768 | \$3.06 | \$20,710 |
| Town Hall/Police | 1,518 | \$3.06 | \$ 4,645 |
| Fire Department CO 1 | 2,644 | \$3.06 | \$8,091 |
| Fire Department CO 2 | 1,290 | \$3.06 | \$3,947 |
| Water Control Facility | 8,412 | \$3.06 | \$25,741 |
| Public Works | 2,143 | \$3.06 | \$6,558 |
| | | Total Oil Cost | 395,529 |

IV. MINIMUM QUALIFICATIONS

- Have conducted a commercial level Boiler conversions and changes from oil to natural gas for similar sized organization or municipality;
- Work group must have relevant certificates, licenses and/or experience in Commercial HVAC and/or ESCO services.
- All bidders should complete AIA Document A305-1986 Contractor’s Qualification Statement, attached hereto.

V. TERMS AND CONDITIONS

The selected firm or individual will be expected to commence services on or about June 5, 2015 subject to contract execution. The Town of East Hampton reserves the right to cancel this proposal process at any time should any of the following conditions exist:

- Funds are not appropriated to allow continuance of this contract;
- The Town, through changes in its requirements or method of operation, no longer has a need for this service;

- The Town is not satisfied with the level of services provided under the contract or the firm fails to comply with any terms and conditions outlined in the contract.

VI. PROJECT PERIOD

It is the intent to complete all school buildings by August 24, 2015 and all other Town Facilities shall be completed by November 24, 2015.

VII. TERMINATION

Either party may terminate any agreement entered into pursuant to this RFP in accordance with the terms and conditions of the form Agreement attached hereto. If the Town terminates any agreement, the Town shall pay only for that work performed and for all expenses incurred prior to the effective date of termination, and shall not have any liability for any work performed or expenses incurred after such date, any demobilization costs or any lost profits or overhead costs incurred by the contract as further set forth in the terms of the Agreement.

VIII. FREEDOM OF INFORMATION

The Town will not be liable for any costs incurred in the preparation of the response to this Request for Qualification. All proposal submissions and materials shall become the property of the Town and will not be returned. Respondents to this RFQ are hereby notified that all proposals submitted and information contained therein and attached thereto shall be subject to disclosure under the Freedom of Information Act.

VIII. SUBMISSION OF PROPOSAL

By submitting a proposal, you represent that you have thoroughly examined and become familiar with the scope of services outlined in this RFP and all of the terms and conditions of the attached Agreement, including any exhibits, and that you are capable of performing the work to achieve the Town's objectives and entering into the Agreement, including any exhibits, attached hereto.

GENERAL INFORMATION

For further information about this RFP, please contact (via e-mail only):

mmaniscalco@easthamptonct.gov

No other East Hampton Town employee, elected official, or evaluation committee member should be contacted concerning this RFP during the proposal process. Failure to comply with this requirement may result in disqualification.

Pre-Response Meeting

A mandatory pre-response meeting will be held on May 4, 2015 at 9am at starting at 20 E. High St. East Hampton. If a firm attended the initial pre-response meeting, they are exempt from this meeting.

Due Date:

Proposals must be received at the below address on or before May 20th at 2:00 pm

Town Hall
20 E. High Street
East Hampton, CT 06424

Proposals received later than the time and date specified will not be considered

PROPOSED PROJECT SCHEDULE

The following schedule is the proposed schedule, and may change during the project.

| ACTIVITY | DATE |
|---|----------------|
| RFP Phase | |
| Issue RFP | April 29, 2015 |
| Mandatory Pre-response meeting | May 4, 2015 |
| Written inquiries accepted by prospective | May 6, 2015 |
| Proposals Due | May 20, 2015 |
| Selection of Finalists | May 26, 2015 |
| Possible Interviews | June 3, 2015 |
| Selection and Award | June 5, 2015 |

Submit Proposal

Prepare Seven (7) responses."

- Clearly mark one proposal as "ORIGINAL".
- Proposals must be in the following format:
 - A. Table of Contents to include clear identification of the material provided by section and number.
 - B. A letter of transmittal indicating the firm's interest in providing the service and any other information that would assist the Town in making a selection. This letter must be signed by a person legally authorized to bind the firm to a contract. This letter also must affirm that the firm or their representative has made themselves knowledgeable of those matters and conditions in the Town which would influence this Proposal.
 - C. Name and telephone number of person(s) to be contacted for further information or clarification.
 - D. Include a list of municipal client references (cities or towns) for which services similar to those outlined herein have been provided within the past five (5) years or are currently being provided. This list shall include the following information:

- a. Name of the city/town;
- b. Timeframe for service;
- c. Type of Service being provided;
- d. Name, address, and telephone number of the principal contact of the city/town;

The Town reserves the right to contact these organizations regarding the services performed by the firm.

- E. A detailed narrative regarding how you will address the project scope in Section X. sub sections 1 and 2 below in "Profile & Approach to Project"
- F. A detailed proposal, broken out by work to be done at each facility, regarding the costs and expenses involved for the provision of services including hourly rates of personnel providing these services, discounts, invoiced expenses, caps, other costs involved and an overall not to exceed total project cost. Please also detail any administrative costs that the firm/individual will bill the Town. For example: copier, computer research, postage, messenger, long distance phone calls. Respondent may also include any alternative cost solutions they want the Town to consider.
- G. A concluding statement as to why the respondent is best qualified to meet the needs of the Town, including any other information relative to this proposal;
- H. Signed Non-Collusion Statement, attached hereto.
- I. A statement, signed by the firm principal, that the Firm has read, understands and agrees with the terms of form Agreement.

Delivery

Hand-deliver or mail to:

Town of East Hampton
 20 E. High Street
 East Hampton, CT 06424
 Attention: Mike Maniscalco, Town Manager
 RFP 2015-042915

X. PROFILE & APPROACH TO PROJECT

SECTION 1

- Please number and re-state each subheading AND question, followed by your response.
- Answer all questions or state "N/A" if not applicable.
- Number all pages.

1. Qualifications & Capability

A. General Firm Information

- (1) Structure of Firm (corporation, partnership, sole proprietorship, joint venture).

- (2) Year Firm Established. Number of years your firm has been in business under its present business name.
- (3) Other Firm Names. Indicate all other names by which your organization has been known and the length of time known by each name.
- (4) Parent Company. If applicable, state name, address, and tax identification number.

B. Experience of Firm

- (1) Years in Energy Business. State the number of years your firm has been involved in the energy-efficiency related business. State the number of years your firm has offered performance-contracting services.
- (2) Number and Value of Contracts. Indicate the number and associated dollar value of energy savings performance contracts actually implemented by your firm, each year for the past five (5) years. Indicate both as a percentage and dollar amount your record of meeting guaranteed savings and total of payments made to cover savings shortfalls.
- (3) Full-Time Personnel. Indicate the number of full-time personnel employed by your firm in the local office from which the project will be managed.
- (4) Energy Accreditations. State any accreditation with National Association of Energy Services Companies (NAESCO).

C. Financial Information

- (1) Financial Statement. Attach your firm's most recent financial statement for each of the last three (3) years.
- (2) Statement of Financial Conditions. Attach the most recent annual Statements of Financial Conditions, including balance sheet, income statement and statement of cash flows, dated within the past twelve (12) months. Provide the name, address, and telephone number of firm(s) that prepared the Financial Statements.
- (3) Accounting Firm Information. If these financial documents were not produced in-house, indicate the name, address and phone number of the firm(s) that prepared these financial statements.
- (4) Provision of Insurance. Provide a summary of the limits provided by your firm's insurance policies.
- (5) Bonding Capacity. Provide a summary of your firm's total bonding capacity, and your current available bonding capacity.

SECTION 2

1. Experience And Expertise (limit to six (6) pages)

A. Project History

Briefly describe three (3) performance contracts or energy related projects that your firm has managed within the last five (5) years.

Projects where your firm acted as a subcontractor must be clearly identified

Include the following information on each project:

Project Identification: Name of project Town, type of project (hospital, k-12 school, university, office building, etc.), location (city, state).

Project Size: Number of buildings, total contract amount and the total project capital cost.

List of Improvements: Type of retrofits and operational improvements related to energy, water and other cost savings.

Projected Annual Savings: State the projected annual energy, water and O&M savings (Therms, kWh, kW, Gallons, etc.).

Actual Annual Savings: State the actual annual energy, water and O&M savings (Therms, kWh, kW, Gallons, etc.).

Contract Terms: Type of contract (shared-savings, lease purchase, guaranteed savings), contract term, and financing arrangement.

Source of Funds: Source of funds used for the project. If applicable, describe your firm's role in securing funds.

a. Personnel Information

- (1) Qualifications and Experience. Describe the number and quality of staff you currently have to conduct technical analysis, engineering design, construction management, construction, training and post-contract monitoring.
- (2) Areas of Expertise. List all areas of expertise related to potential energy and water improvements in facilities. Also describe the professional and skilled trades that your firm customarily performs with employees.
- (3) Union Affiliation. Describe any affiliation your firm maintains with local trade unions.
- (4) Subcontractors. Describe the nature of work generally conducted by subcontractors.

b. Student Enrichment Programs (STEM)

- (1) Student Involvement. Describe any programs your firm has implemented in the past that provide opportunities for student involvement in your firm's previous projects. Also describe any student enrichment programs your firm may provide as a part of this project.

B. Technical Approach (limit to five (5) pages)

a. Audit

- (1) Technical Site Analysis. Describe your general approach to auditing a facility.

b. Design/Construction

- (1) Engineering Design. Describe your firm's approach to the technical design of this project.

c. Engineering Analysis

- (1) Baseline Calculation Methodology. Describe in detail the methodology your firm normally uses to compute baseline of energy and water use as well as performance.
- (2) Adjustment to Baseline Methodology. Describe the method(s) used to adjust the energy, water and O&M baseline due to such factors as weather and facility use changes. Describe factors that would necessitate adjustment.
- (3) Savings Calculations. List all procedures, formulas and methodologies including special metering or equipment, which your firm will use to calculate energy, water and O&M savings.
- (4) Cost Savings Guarantee Calculations. Describe your firm's procedures and schedule for measuring financial performance of projects. Describe how the guarantee provisions work in the event that project results vary from projections.

d. Site Analysis

- (1) Please provide pricing on the following based on Mandatory Prebid Meeting and Site Visit. Pricing is to be within 5% of final price. No change orders will be considered that are greater than that amount for the final scope of work.

FC-1 TOWN HALL

The town hall is currently served by a Peerless Cast Iron boiler with multiple heating zones, each with its own cartridge style circulator.

The scope of work for this building is to include:

1. Demo existing boiler, oil piping and all ancillary devices including oil tanks
2. Install new natural gas condensing boiler Viessmann Vitodens or equal. Size of boiler to be done by licensed contractor.
3. Venting and combustion air, utilizing the existing chimney as a chase for the new venting.
4. Condensate drain to include neutralizer and piping as required.
5. Utilize the packaged boiler controls to achieve Outside Air reset strategy to maximize the boiler efficiencies.
6. Insulation of all new and existing HW piping not currently insulated within the mechanical room shall be included
7. Balancing of new boiler
8. Contractor to carry cost for gas piping from a location within 80' of the boiler room.

9. Controls for this project to include PXC controls to monitor HW entering & leaving temps, boiler & HW pump status. Controls include new front end server and software for central control and monitoring capabilities for all controls added as part of these projects.
10. Stamped drawings by a licensed engineer.
11. Combustion Pre/post readings must be taken and documented

Note:

- Electrical disconnect and reconnect is acceptable, however it is the Contractors responsibility to evaluate the existing system, if reconnection from existing panel is to code, contractor must include all cost to meet current code requirements
- In general the Contractor is responsible to providing a complete turnkey system, if existing pump's or ancillary devices not identified in the above are not functional Contractor must include cost to repair or replace.

FC-2 PUBLIC WORKS BUILDING

The Public Works Building is served by two “split systems” and an oil fired domestic hot water heater. The split systems consist of upright oil furnaces, duct coils, and condensing units.

The scope of work for this building is to include:

1. Demo two split systems and the existing hot water heater. The split systems are older and utilize R-22. .
2. Install two (2) upright Carrier or equal gas fired condensing furnaces with
 - a. Dx coils
 - b. Condensing units
 - c. New refrigerant lines
 - d. Programmable thermostat's
3. Condensing furnaces are a direct vent appliance, new CPVC venting lines to be included
4. Condensate drain to include neutralizer and piping as required.
5. One (1) instantaneous style domestic hot water heater similar to a Rinnai.
6. Insulation of all new and existing ductwork and piping not currently insulated within the mechanical room shall be included
7. Balancing of new furnaces and system shall be included
8. Gas piping from a location within 40' of the boiler room.
9. Stand alone control
10. Stamped drawings by a licensed engineer.
11. Combustion Pre/post readings must be taken and documented

Note:

- Electrical disconnect and reconnect is acceptable, however it is the Contractors responsibility to evaluate the existing system, if reconnection from existing panel is to code, contractor must include all cost to meet current code requirements
- In general the Contractor is responsible to providing a complete turnkey system, if existing ancillary devices not identified in the above are not functional Contractor must include cost to repair or replace.

FC-4 FIRE STATION COMPANY 1

This fire station is currently served by one (1) HB Smith #25 Boiler that is currently out of production. Currently, the face of the boiler is 3'5" from the exterior wall, which limits the options for burners with limited clearances.

The scope of work for this building is to include:

1. Demo of one (1) existing oil fired burner
2. Demo existing oil piping and all ancillary devices including oil tanks
3. Clean existing boiler and chimney
4. Install one (1) Reillo gas burner, lo-hi controls or equivalent
5. Existing vent stack must we evaluated and lined as required by inspector
6. An allotment for 80' of schedule 40 BI gas piping, painted, from a meter location to the boiler.
7. Insulation of existing exposed piping within the mechanical room shall be included
8. Combustion Pre/post readings must be taken and documented

FC-5 LIBRARY.

The library utilizes two (2) Burnham V9-06 boilers to provide heat for the building. These boilers are located in a 2nd floor mechanical room that utilizes a day tank for oil delivery to the burners. The two boilers are vented up through the roof utilizing a double wall, all fuel chimney. The boilers are installed so that the face of the boiler is approximately 40" from the wall, leaving very little clearance.

1. Demo and dispose of two (2) oil burners and all ancillary devices including oil tanks
2. Furnish and install two (2) Fully modulating boilers of a minimum of 92% efficiency. Size of boiler to be done by licensed contractor. Furnish and install an allotment of 100' of sch 40 bi gas piping.
3. Insulation of all new and existing HW piping not currently insulated within the mechanical room shall be included
4. Balancing of new boilers
5. Furnish and install PXC controls for upgrade of existing DDC controllers located in the boiler room.
6. Demo one (1) existing day tank.
7. Combustion Pre/post readings must be taken and documented

Note:

- Electrical disconnect and reconnect is acceptable, however it is the Contractors responsibility to evaluate the existing system, if reconnection from existing panel is to code, contractor must include all cost to meet current code requirements
- In general the Contractor is responsible to providing a complete turnkey system, if existing pump's or ancillary devices not identified in the above are not functional Contractor must include cost to repair or replace.

FC-6 MIDDLE SCHOOL.

The Middle School, which is approximately 82,000 sq ft, utilizes two (2) WM1488 boilers to provide hot water to the building. The domestic hot water tanks in this room were not functioning.

1. Demo two (2) powerflame burners and dispose of
2. Demo one duplex set of oil transfer pumps and all ancillary devices including oil tanks
3. Furnish and install two (2) Reillo burners or equivalent, equipped with linkageless combustion controls.
4. Insulation of all new and existing HW piping not currently insulated within the mechanical room shall be included
5. Existing vent stack must be evaluated and lined as required by inspector
6. An allotment of 80' of 4" welded gas line, brought to each new burner.
7. DDC controls to include:
 - a. Main circulator pumps
 - b. Outdoor air reset strategy
 - c. Boiler staging.
8. Burner startup.
9. Stamped drawings by a licensed engineer.
10. Combustion Pre/post readings must be taken and documented

ALTERNATE #1

Contractor to furnish and install one (1) Aerco 2,000 mbh Benchmark boiler with associated gas piping, piping modifications, separate direct vent flue and combustion air, and integration with new ddc controls . All demo and installation as describe previously shall be included in the alternate. 1 Oil fire boiler to remain as back-up

Please note: this alternate will utilize a 90-93% efficient condensing boiler, with 20 stages of control to maximize the energy savings options available with gas.

ALTERNATE #2

The Middle School utilizes two (2) WM1488 boilers to provide hot water to the building. The domestic hot water tanks in this room were not functioning, and it is Contractors responsibility to bring DHW system to full functionality. Repair or replacement scope must be included in detail.

FC-7 MEMORIAL SCHOOL.

At Memorial School the building is provided heat by means of two (2) Weil-Mclain 88 series boilers, 1994 vintage. The domestic hot water needs for this building are met by means of a large ASME vessel, or two (2) smaller, Non-ASME electric hot water tanks.

Contractors scope of work for this building is:

1. Demo the two (2) existing Webster oil fired burners, associated oil piping and transfer pumps, and tanks
2. Furnish and install two (2) Reillo or equivalent modulating gas burners with Linkageless combustion controls.
3. Existing vent stage must be evaluated and lined as required by inspector
4. Insulation of all new and existing HW piping not currently insulated within the mechanical room shall be included. DDC controls to :
 - a. Control existing building pumps
 - b. Controls for existing DHW Valves
 - c. Staging burners
 - d. OA reset control
5. An allotment of 120' of 4" welded gas piping, brought to each new appliance.
6. Combustion Pre/post readings must be taken and documented

Note:

- o Electrical disconnect and reconnect is acceptable, however it is the Contractors responsibility to evaluate the existing system, if reconnection from existing panel is to code, contractor must include all cost to meet current code requirements
- o In general the Contractor is responsible to providing a complete turnkey system, if existing pump's or ancillary devices not identified in the above are not functional Contractor must include cost to repair or replace.

FC-8 CENTER SCHOOL.

Center School is an older building that utilizes steam to serve a variety of systems within the building. The Steam boiler is a single 16 section 450 Mills steam boiler. The domestic hot water needs are served by an oil fired single tank dhw heater.

Additional features of this boiler room are a newer (to be re-used) feed water tank, a simplex condensate receiver (Hoffman) that is at the end of its useful life and a steam to water heat exchanger assembly with pumps, that is to remain unchanged.

It is important to note that due to the age of the boiler and building we are assuming that hazardous materials are present, and that the Town of East Hampton shall contract directly with an abatement company to address this prior to our work commencing. There are two items that also need to be addressed as a portion of any work in this building:

1. Inadequate combustion air.
2. The large exterior chimney of the building must be lined.

Currently, the building has no working ventilation systems. When the school addresses the ventilation and possible conversion to hot water, the proposed new boilers will need to be converted from steam to water, and possibly a 3rd appliance added.

Contractors Scope of work for the Center School boiler room is:

1. Demo of existing burner
2. Remove 2 oil fired hot water heater
3. Remove steam to hot water heat exchanger
4. Install two (2) Riello or equivalent lo-hi-lo burners for steam boilers.
5. Install 80 gallon indirect storage tank
6. Size and install a gas modulating boiler for hot water loop and domestic water and controls as needed by design.
7. Insulation of all new and existing HW piping not currently insulated within the mechanical room shall be included. Concrete pads for new steam boilers.
8. New Liner for the existing chimney.
9. An allotment of 140' of 4" welded gas piping along outside of building.
10. Plans prepared by a licensed engineer.
11. Three (3) independent combustion air fans for the boiler room.
12. DDC controls for HW system
13. Combustion Pre/post readings must be taken and documented

Note:

- o Electrical disconnect and reconnect is acceptable, however it is the Contractors responsibility to evaluate the existing system, if reconnection from existing panel is to code, contractor must include all cost to meet current code requirements
- o In general the Contractor is responsible to providing a complete turnkey system, if existing pump's or ancillary devices not identified in the above are not functional Contractor must include cost to repair or replace.

FC-9 BOARD OF EDUCATION CENTRAL OFFICE.

The BOE office is heated by a single, residential sized Burnham Boiler. Currently the system is vented into a chimney that may or may not be lined for its entire length.

We recommend removing the existing Burnham Boiler and installing a new 93% efficient condensing boiler with 3 stages of control, similar to the Viesman Vitodens 100-W.

This scope of work includes:

1. Demo of one existing boiler and all ancillary devices including oil tanks
2. Install one (1) Viesman Vitodens or equivalent boiler Size of boiler to be done by licensed contractor.

3. Direct venting of the appliance
4. Insulation of all new and existing HW piping not currently insulated within the mechanical room shall be included
5. Reconnection of the hydronic piping.
6. An allotment of 80' of gas piping.
7. Stamped drawings for construction.
8. Combustion Pre/post readings must be taken and documented

Note:

- Electrical disconnect and reconnect is acceptable, however it is the Contractors responsibility to evaluate the existing system, if reconnection from existing panel is to code, contractor must include all cost to meet current code requirements
- In general the Contractor is responsible to providing a complete turnkey system, if existing pump's or ancillary devices not identified in the above are not functional Contractor must include cost to repair or replace.

General for all work listed above:

- Contractor to include all permitting cost and requirements
- Cost of Rigging, staging, shall be included in Contractors cost.
- Contractor shall verify and document the proper performance of the new equipment. This information will be made available to the Client in the close out documentation.
- Contractor will furnish Operations and Maintenance Information and As-builts to the Clients personnel, as directed by the Client.
- On site start up and training for all new mechanical installations of the Clients personnel will be provided by Contractor.

C. Performance Contracting Approach (limit to five (5) pages)

a. Approach

- (1) Differentiation of Your Firm. Describe particular characteristics of how your firm approaches performance contracting.
- (2) Performance Contract Agreement. Provide a copy of the standard terms and conditions of your firm's performance contract.

b. Other Services

- (1) Training Provisions. Describe your firm's capabilities in providing technical training for facility personnel and experience on past projects. Describe your firm's involvement in developing training manuals for facility staff.

- (2) Performance Guarantee. Describe your firm's approach to the performance guarantee.
- (3) Measurement and Verification. Describe the methodology proposed for ongoing measurement and verification of savings of each recommended project's performance, including the frequency of such efforts.
- (4) Maintenance Contract. Describe the types of services that can be included in the maintenance contract. Comment on whether Town's maintenance staff can perform some of these duties if desired, and describe any impact on the guarantee.
- (5) Project Financing. Describe your firm's preferred approach to providing or arranging financing for the proposed project.
- (6) Emissions Reductions Reporting. Describe your willingness and capability to calculate and report emissions reductions.

c. Construction Issues

- (1) Environmental Liability. State your firm's position with respect to liability for hazardous materials encountered during the course of the project.
- (2) Equipment Township and Service Responsibility. Describe the status of equipment Township and service responsibility at contract expiration.
- (3) Warranties. State the nature and term of typical warranties.

D. Technical-Specific Information (limit to five (5) pages)

a. Relevant Experience to Apply to this Site

- (1) Areas of Expertise. List all areas of expertise related to potential energy and water improvements in facilities. Include specialized areas of expertise in areas that might be relevant to the project (laboratories, renewable energy system application or rehabilitation, daylight design, etc.) Also describe the professional and skilled trades that your firm customarily performs with employees.

b. Project Management

- (1) Management Approach. Briefly describe your firm's approach to managing this project.
- (2) Qualifications and Experience of Staff Assigned to this Project. Identify the individual who will have primary responsibility for each task and phase of the project. List name, title, intended role and responsibilities for the duration of the contract, specific qualifications related to role and responsibilities, past relevant experience, number of years of relevant experience, supervisory responsibilities, if relevant, list of projects individual was associated with during the last five (5) years including type of project and project cost and resume.

- (3) Subcontractors. Describe the nature of work that will likely be conducted by subcontractors. Describe your willingness to use local subcontractors or subcontractors specified by Town.

c. Technical and Construction Issues

- (1) Construction Management. Describe how your firm would work with current building management and maintenance personnel in order to coordinate construction and avoid conflicts with the building's operation and use.
- (2) Standards of Comfort. Describe standards of comfort and functionality that you would propose for light levels, space temperatures, ventilation rates, etc. in the intended facilities. Also describe how those standards will be maintained throughout the contract term.

XI. ADDITIONAL INFORMATION

Modification or Withdrawal of Proposal

Any proposal may be withdrawn or modified by written request of the Respondent, provided that such request is received by the Town at the above address prior to the date and time set for receipt of proposals.

Cost of Proposal Preparation

The cost of preparing responses to this RFP, including site visits or analyses will not be reimbursed.

Bid Bond

Each Bidder will submit a bid bond in the form attached hereto as Exhibit E. The Town will also accepted a certified cashier's check in the amount of the ten percent (10%) of the Bid as an acceptable alternate.

Town's Rights

The Town reserves the right to reject any and all proposals if it is deemed to be in the best interests of the Town to do so.

Review of Written Proposals

Proposals must be prepared as described in Attachment C: Contractor Response. An evaluation team will review and score written proposals based on the evaluation criteria identified in Attachment D: Evaluation Criteria.

Possible Interviews

The project evaluation team will interview selected contractors. Interviews will be scored as described in Attachment C: Evaluation Criteria. The interview provides the opportunity for the Contractor to address questions and to more fully describe how its approach to this project satisfies the evaluation criteria. representatives at the interview should include individuals who will be *key* points of contact and have *major* responsibility for the project.

CONSTRUCTION/IMPLEMENTATION PHASE

Equipment Compatibility or Standardization: All equipment installed that is comparable to equipment at the facilities shall offer compatibility with existing systems, and/or be of the same manufacturer for standardization of equipment town-wide, unless otherwise accepted by Town.

Prevailing Wage: Prevailing wage requirements will be applied where mandatory under Connecticut labor laws.

COMMISSIONING/GUARANTEE/MEASUREMENT AND VERICATION PHASE

Contract Term: The desired contract term is limited to 20 years.

Annual Guarantee Cost Savings: A written annual guarantee will be provided for the first three years of the contract, such that the sum of utility cost savings and operation and maintenance cost savings will equal or exceed the calculated annual savings and the amount of the annual payment.

A guarantee may be required for a longer period up to the end of contract term; however, Town reserves the option to eliminate the guarantee at any time after the third year.

NOTE:

By submitting the proposal, Contractor agrees to all of the terms and conditions set forth in the form Agreement, and its Exhibits, attached hereto as ATTACHMENTS A-E, inclusive, which will be an integral part of the subsequent contracts and are deemed mandatory and non-negotiable.

XII. EVALUATION CRITERIA

The criteria listed below will be used to evaluate written proposals and the subsequent interviews. The scoring weight is listed for each criterion. These criteria will be applied and interpreted solely at the discretion of Town. Proposals should include all necessary information that is pertinent to these evaluation criteria. Additional information required for proper assessment of proposals may be requested from the Contractor at the discretion of Town.

| | Category | Total Available Points | Available Category Points |
|-----------|---|-------------------------------|----------------------------------|
| A. | QUALIFICATIONS AND CAPABILITY | 35 | |
| | Experience | | 20 |
| | Financial Stability | | 15 |
| B. | COST | 25 | 25 |
| C. | EXPERIENCE AND EXPERTISE | 20 | |
| | Project History 1 | | 10 |
| | Project History 2 | | 10 |
| | Project History 3 | | 10 |
| | Personnel Qualification | | 5 |
| D. | TECHNICAL APPROACH | 15 | |
| | Audit/Design/Construction | | 5 |
| | Engineering Analysis | | 5 |
| | Site Recommendations | | 10 |
| E. | PERFORMANCE CONTRACTING APPROACH | 5 | |
| | Approach | | 5 |
| | Other Services | | 3 |
| | Construction Issues | | 2 |
| | Total Points | 100 | 100 |

XIII. ATTACHMENTS

- ATTACHMENT A: Form AIA Document A141-2014 Standard Form Agreement Between Owner and Design Builder
- ATTACHMENT B: Form AIA Document A141-2014 Exhibit A, Design-Build Amendment
- ATTACHMENT C: Form AIA Document A141-2014 Exhibit B, Insurance and Bonds
- ATTACHMENT D: Form AIA Document A305-1986 Contractor's Qualification Statement
- ATTACHMENT E: Form AIA Document A310-2010 Bid Bond
Form AIA Document A312-2010 Payment Bond
Form AIA Document A312-2010 Performance Bond

ATTACHMENT A

DRAFT AIA® Document A141™ - 2014

Standard Form of Agreement Between Owner and Design-Builder

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

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

«Town of East Hampton»« »
«20 East High Street»
«East Hampton, CT 06424 »
« »

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

« »« »
« »
« »
« »

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

«Energy Savings Performance Contracting Sample»
«Conversion of Town Owned Facilities to Natural Gas
Town of East Hampton
»
«20 East High Street
East Hampton CT 06424»

The Owner and Design-Builder agree as follows.

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

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

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

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TABLE OF ARTICLES

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

TABLE OF EXHIBITS

- A DESIGN-BUILD AMENDMENT
- B INSURANCE AND BONDS
- C SUSTAINABLE PROJECTS

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Owner's Criteria

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

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

§ 1.1.1 The Owner's program for the Project:

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

«See Request for Proposalss, dated April 61, 2015, attached hereto as Exhibit A. ->»

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

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

«See Request for Proposals, dated April 6, 2015, attached hereto as Exhibit A.»

§ 1.1.3 The Project's physical characteristics:

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

« »

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

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

« »

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

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

«See Request for Proposals, dated April 6, 2015, attached hereto. See Request for Proposal, dated April 1, 2015, attached hereto as Exhibit A.»

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

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

« »

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

.1 Design phase milestone dates:

«May 8, 2015»

.2 Submission of Design-Builder Proposal:

«June 12, 2015 for Final Engineering Design and Audit
June 19, 2015 for Final Report and Presentation»

.3 Phased completion dates:

« »

.4 Substantial Completion date:

«August 20, 2015 for Middle School, Memorial School and Center School
November 20, 2015 for Town Hall, Public Works Building, Fire Station Company 1, Library,
Board of Education Central Office»

.5 Other milestone dates:

«See [Schedule attached to Request for Proposals, dated April 6, 2015, attached hereto.](#)»

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

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

.1 Architect

« »

.2 Consultants

« »

.3 Contractors

« »

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

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

« »

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

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

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

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

§ 1.2 Project Team

§ 1.2.1 The Owner identifies the following representative in accordance with Section 7.1.1:

(List name, address and other information.)

«[Michael Maniscalco, MPA](#)»

«[Town Manager](#) »

«[Town of East Hampton](#)»

«[20 East High Street](#)»

«[East Hampton, CT 06424](#)»

«[Tel. \(860\) 267-4468](#)»

«[E-mail: mmaniscalco@easthamptonct.gov](mailto:mmaniscalco@easthamptonct.gov)»

§ 1.2.2 The persons or entities, in addition to the Owner's representative, who are required to review the Design-Builder's Submittals are as follows:

(List name, address and other information.)

« »

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

« »

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

« »
« »
« »
« »
« »
« »

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

§ 1.3 Binding Dispute Resolution

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

(Check the appropriate box. If the Owner and Design-Builder do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

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

« »

§ 1.4 Definitions

§ 1.4.1 Design-Build Documents. The Design-Build Documents consist of this Agreement between Owner and Design-Builder and its attached Exhibits (hereinafter, the "Agreement"); other documents listed in this Agreement; and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, including the Design-Build Amendment, (2) a Change Order, or (3) a Change Directive.

§ 1.4.2 The Contract.

§ 1.4.2.1 The Design-Build Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification in accordance with Article 6. No alterations, edits or modifications to any terms of the Design-Build Contract shall be valid or binding on the Owner, unless made in writing and signed by an authorized agent of the Owner. The only persons authorized to sign contractual documents for the Owner are the Chief Administrative Officer for the Town of East Hampton. The Design-Build Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Design-Builder.

§ 1.4.2.2 If any provision of the Agreement is declared or found to be illegal, unenforceable, or void, then the Design-Builder and the Owner agree to substitute for such invalid provision a valid provision which most closely approximates the economic effect and intent of the invalid provision. The remainder of the Agreement, however, shall be enforced to the fullest extent permitted by law.

§ 1.4.2.3 All conditions, agreements, duties and obligation contained in the Agreement can be waived only by written agreement. An indulgence in any form or manner by the Owner shall not be construed as a waiver. A party's waiver of non-compliance or failure to exercise or enforce any right conferred upon it hereunder shall not be deemed to be a waiver of any such right or any other right or operate to bar the exercise or performance thereof at any time

or times thereafter; nor shall a party's waiver of any right hereunder at any time, including the right to any payment, be deemed a waiver thereof for any other time.

§ 1.4.2.4 There is no intention to create a joint venture, partnership, or similar business entity or relationship between or among the Owner, the Design-Builder, Subcontractor, Design Professional, or any other person directly or indirectly related to such persons and any inference or implication relating thereto is hereby expressly disclaimed.

§ 1.4.2.5 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which taken together shall constitute one and the same instrument. The signatures of this Agreement may be executed by facsimile or electronic mail, and when so attached to this Agreement shall constitute one complete document.

§ 1.4.3 The Work. The term "Work" means the design, construction and related services required to fulfill the Design-Builder's obligations under the Design-Build Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Design-Builder. The Work may constitute the whole or a part of the Project. The Work shall be deemed to include, in the reasonable opinion of the Owner, all items reasonably inferable from the Design-Build Documents.

§ 1.4.4 The Project.

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

§ 1.4.4.2 ~~The Project is subject to approval when and thereafter funding for the entire amount of the Design-Build Contract Sum is approved via a town-wide referendum. Once bonding and financing is secured by all commissions having jurisdiction with the Owner, the Project will, then and only then, proceed~~ The Owner expressly reserves the right to award the scope of work set forth in the Request for Proposals, dated April 6, 2015, attached hereto, under one agreement or under multiple agreements to more than one Design-Builder, at its sole discretion. The Owner has sole discretion to award all or part of the scope of work set forth in the Request for Proposals, dated April 6, 2015, attached hereto. The Design-Builder must acknowledge the anticipated schedule within the Project schedule and timeline. The Project cannot proceed to construction until the Design-Builder fully secures all land-use approvals and permits (local, state and federal, as applicable) necessary to complete the Work

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS

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

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

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

« »

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

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

« »

Individual or Position

Rate

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

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

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

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

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

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

«Not applicable-» % « »

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

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

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

§ 2.2.2 Acceptance by the Design-Builder of any payments accepted under this Agreement, including any payments pursuant to the Design-Build Amendment, shall release the Owner from all claims and all liability to the Design-Builder in connection with this Agreement arising during the period for which the payment is made. No payment, however, shall release the Design-Builder, its sureties and/or insurers from any obligation under this Agreement, the Design-Build Amendment or the performance and payment bonds or any insurance policies issued in connection with this Agreement.

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

§ 3.1 General

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

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

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

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

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

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

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

§ 3.1.6 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals. The Owner understands and agrees that the services of the Design-Builder's Architect and the Design-Builder's other Consultants are performed in the sole interest of, and for the exclusive benefit of, the Design-Builder.

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

§ 3.1.8 **Progress Reports**

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

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

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

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

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

§ 3.1.9.1 The Design-Builder, promptly after execution of this Agreement, shall prepare and submit for the Owner's information a schedule for the Work. The schedule, including the time required for design and construction, shall not exceed time limits current under the Design-Build Documents, ~~shall be revised at appropriate intervals as required by the conditions of the Work and Project,~~ shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. The Design-Builder shall update and submit for the Owner's information an updated schedule at least once every thirty (30) days with each of the Design-Builder's Application for Payment, or sooner if required by Project conditions as may be reasonably requested by the Owner. Failure of the Design-Builder to submit an updated schedule as provided herein shall entitle the Owner to suspend all payment obligations to the Design-Builder until the Design-Builder complies with the provisions herein.

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

§ 3.1.9.3 **Substantial Completion.**

§ 3.1.9.3.1 The Contractor shall achieve Substantial Completion of the entire Work for Middle School, Memorial School and Center School (the "Schools"), including receipt of a certificate of occupancy (or temporary certificate of occupancy as they case may be), in accordance with the Project Schedule, a copy of which is attached hereto as Exhibit D (the "Project Schedule") Request for Proposals, dated April 6, 2015, attached hereto, and the current schedule pursuant to Section 3.1.9.1 herein, but in no event shall the date of Substantial Completion, be later than «

~~sixty~~ August 20, 2015 » (~~« 60 »~~) days from the Commencement Date of the Work, unless such date is adjusted pursuant to Article 76 of the General Conditions (as hereinafter defined) ~~this Agreement~~.

§ 3.1.9.3.2 The Contractor shall achieve Substantial Completion of the entire Work for the Town Hall, the Public Works Building, Fire Station #2, Central Fire Station, the Library, the Board of Education Central Office (the "Municipal Buildings"), including receipt of a certificate of occupancy (or temporary certificate of occupancy as they case may be), in accordance with the Request for Proposals, dated April 6, 2015, attached hereto, and the current schedule pursuant to Section 3.1.9.1 herein, but in no event shall the date of Substantial Completion, be later than ~~« November 20, 2015 »~~, unless such date is adjusted pursuant to Article 6 of this Agreement.

§ 3.1.9.3.24 Liquidated Damages

§ 3.1.9.4.1 The Owner and Contractor hereby acknowledge and agree that time is of the essence with respect to Contractor's performance of the Work ~~hereunder~~ under Section 3.1.9.3.1 only. Accordingly, upon Owner's issuance to Contractor of the Notice to Proceed, Contractor shall immediately commence performance of the Work and continue to perform the same during the term of this Agreement in accordance with the Project Schedule set forth in current schedule pursuant to SubSection 3.33.1.9.1 hereinafter. Owner and Contractor recognize the difficulties involved in proving actual damages and losses suffered by Owner if the Work is not completed and ready for Owner's acceptance by the date of Substantial Completion as set forth in ~~the Project Schedule~~ said schedule. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for any such delay in completion or readiness for acceptance of the entire Work for the Schools (but not as a penalty) Contractor shall pay Owner the sum of Two Thousand Five Hundred and 00/100 Dollars (\$ 2,500.00) for each calendar day beyond the date of Substantial Completion that Contractor fails to complete all of the Work and have the same ready for Owner's acceptance until all such Work is completed by Contractor and readied by Contractor for acceptance by Owner. Any sums that may be due the Owner as liquidated damages may be deducted from any monies due or to become due the Contractor under the Contract or may be collected from the Contractor's surety.

§ 3.1.9.3.4.2 The total amount calculated in the manner set forth in Section 3.1.9.3.24.1 is referred to as "Liquidated Damages". Owner and Contractor agree that the Liquidated Damages calculated above constitute a reasonable estimate of the costs and expenses to be incurred by Owner in the event the Contractor fails to achieve the foregoing by the dates specified herein. The Liquidated Damages provided herein are intended to reimburse Owner for only the damages it will suffer as a result of the Contractor's failure to achieve Substantial Completion at the time specified herein and shall not limit the obligations or liability of Contractor or the remedies of the Owner pursuant to any other provisions of this Agreement or at law. Owner shall be entitled to deduct any Liquidated Damages due hereunder from the Contract Sum.

~~§ 3.1.9.3.4~~ The Contractor shall achieve Substantial Completion of the entire Work for the Town Hall, the Public Works Building, Fire Station #2, Central Fire Station, the Library, the Board of Education Central Office (the "Municipal Buildings"), including receipt of a certificate of occupancy (or temporary certificate of occupancy as they case may be), in accordance with the Project Schedule, a copy of which is attached hereto as Exhibit D (the "Project Schedule"), but in no event shall the date of Substantial Completion, be later than « _____ » (« _____ ») days from the Commencement Date of the Work, unless such date is adjusted pursuant to Article 7 of the General Conditions (as hereinafter defined).

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

§ 3.1.11 Design-Builder's Submittals

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

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

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

§ 3.1.11.3 The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require Submittals until the Owner has approved the respective Submittal.

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

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

§ 3.1.12 Warranty.

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

§ 3.1.12.2 The Design-Builder shall provide copies of all fully executed warranties and guarantees required by the Design-Build Documents within ten (10) days of the date of Substantial Completion or as otherwise provided for Work accepted before or after such date.

§ 3.1.12.3 All warranties shall commence as of the date of Substantial Completion of the Work, and shall continue for a period of ~~two~~three (3) years or longer as required by the Design-Build Documents. In no event shall the commencement of the use of building systems be deemed to commence the term of any warranty unless the Owner has, at that time, actually commenced beneficial use of the Project.

§ 3.1.12.4 Work, materials or equipment which fails to perform under the proper use and normal wear for intended purposes for a period of ~~two~~three (3) years after the date of Substantial Completion, except where warranties for longer durations are called for by the Design-Build Documents, shall be considered defective.

§ 3.1.12.5 Longer term or extended warranties required by the Design-Build Documents shall be provided by the relevant subcontractor, vendor or manufacturer directly to the Owner, and the Design-Builder shall obtain documentation of such warranties and transmit such documentation to the Owner for review and approval.

§ 3.1.13 Royalties, Patents and Copyrights

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

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

§ 3.1.14 Indemnification

§ 3.1.14.1 To the fullest extent permitted by law, the Design-Builder shall defend, indemnify and hold harmless the Owner, including the Owner's agents and employees, all departments, boards, commissions, elected and non-elected officials of the Owner, and the Owner's consultants, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, but only to the extent caused by the negligent acts or omissions of the Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.1.14.

§ 3.1.14.2 In claims against any person or entity indemnified under this Section A.3.17 by an employee of the Design-Builder, the Architect, a Contractor, a Subcontractor, a Design Professional, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section 3.1.14 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them, under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.1.14.3 The Design-Builder shall defend, indemnify and hold harmless the Owner, all departments, boards, commissions, elected and non-elected officials of the Owner, including the Town of East Hampton Building Committee, and agents and employees of the Owner from any and all losses, costs and expenses, including fines and reasonable attorneys' fees incurred by the Owner by reason of the violation of such laws, ordinances, regulations and directives, federal, state and local, which are currently in effect or which become effective in the future and caused by the negligence of the Design-Builder, its Subcontractors, its Design Professionals or anyone either directly or indirectly employed by any of them.

§ 3.1.14.4 To the fullest extent permitted by law, the Design-Builder shall provide a defense to the Owner, and all departments, boards, commissions, elected and non-elected officials of the Owner, including the Town of East Hampton Building Committee, and their respective employees, agents, volunteers and affiliated entities for any claims concerning, arising out of, or relating to the Design-Builder's or the Design-Builder's Subcontractor's operations concerning, the Project whether or not such claim has in part its origin in a claim that the Owner's conduct was in part responsible for said damage, loss or expense. The duty to defend the Owner extends to situations where there is no duty to indemnify or save the Owner harmless for that portion of the claim , loss or damage attributable to the Owner's conduct.

§ 3.1.15 Contingent Assignment of Agreements

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

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

When the Owner accepts the assignment of an agreement, the Owner assumes the Design-Builder's rights and obligations under the agreement.

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

§ 3.1.15.3 Upon such assignment to the Owner under this Section 3.1.15, the Owner may further assign the agreement to a successor design-builder or other entity. If the Owner assigns the agreement to a successor design-builder or other entity, the Owner shall nevertheless remain legally responsible for all of the successor design-builder's or other entity's obligations under the agreement.

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

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

§ 4.1 General

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

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

§ 4.2 Evaluation of the Owner's Criteria

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

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

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

« »

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

§ 4.3 Preliminary Design

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

- .1 Confirmation of the allocations of program functions;
- .2 Site plan;
- .3 Building plans, sections and elevations;
- .4 Structural system;

- .5 Selections of major building systems, including but not limited to mechanical, electrical and plumbing systems; and
- .6 Outline specifications or sufficient drawing notes describing construction materials.

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

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

§ 4.4 Design-Builder's Proposal

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

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

§ 4.4.2 Submission of the Design-Builder's Proposal shall constitute a representation by the Design-Builder that it has visited the site and become familiar with local conditions under which the Work is to be completed.

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

ARTICLE 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 5.1 Construction Documents

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

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

§ 5.2 Construction

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

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

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

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

§ 5.2.5 The Design-Builder, as soon as practicable after award of the Design-Build Contract, shall furnish in writing to the Owner the names of design professionals, subcontractors or suppliers for each portion of the Work. The Design-Builder shall not contract with any design professional, subcontractor or supplier to whom the Owner has made a timely and reasonable objection. The Design-Builder shall be as fully responsible to the Owner for the acts and omissions of its design professionals, subcontractors and of persons either directly or indirectly employed by them as Design-Builder is for the acts and omissions of persons directly employed by him.

§ 5.2.6 In the event that Design-Builder is permitted to assign or subcontract a portion of the services, the Design-Builder must ensure that the design professional, subcontractor or assignee is in compliance with the applicable laws, rules, regulations and ordinances and with all the terms and conditions of this Agreement. Nothing in this paragraph shall relieve the Design-Builder from any liability under this Agreement.

§ 5.2.7 Nothing contained in the Design-Build Documents shall create any direct contractual relation between any design professional or subcontractor and the Owner.

§ 5.3 Labor and Materials

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

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

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

§ 5.4 Taxes

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

§ 5.5 Permits, Fees, Notices and Compliance with Laws

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

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

§ 5.5.3 Concealed or Unknown Conditions. If the Design-Builder encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, the Design-Builder shall promptly provide notice to the Owner before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Design-Builder in writing, stating the reasons. If the Design-Builder disputes the Owner's determination or recommendation, the Design-Builder may proceed as provided in Article 14.

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

§ 5.6 Allowances

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

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

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

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

§ 5.7 Key Personnel, Contractors and Suppliers

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

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

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

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

§ 5.8 Documents and Submittals at the Site

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

§ 5.9 Use of Site

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

§ 5.10 Cutting and Patching

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

§ 5.11 Cleaning Up

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

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

§ 5.12 Access to Work

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

§ 5.13 Construction by Owner or by Separate Contractors

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

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

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

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

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

§ 5.14 Mutual Responsibility

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

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

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

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

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

§ 5.15 Owner's Right to Clean Up

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

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 General

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

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

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

§ 6.2 Change Orders

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

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 6.3 Change Directives

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 7 OWNER'S RESPONSIBILITIES

§ 7.1 General

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

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

§ 7.2 Information and Services Required of the Owner

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

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

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

§ 7.2.4 The Owner shall cooperate with the Design-Builder in securing building and other permits, licenses and inspections.

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

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

§ 7.2.7 Prior to the execution of the Design-Build Amendment, the Design-Builder may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Design-Build Documents and the Design-Builder's Proposal. Thereafter, the Design-Builder may only request such evidence if (1) the Owner fails to make payments to the Design-Builder as the Design-Build Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Design-Builder

identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Design-Builder.

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

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

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

§ 7.3 Submittals

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

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

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

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

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

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

§ 7.8 Owner's Right to Stop Work

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

§ 7.9 Owner's Right to Carry Out the Work

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

ARTICLE 8 TIME

§ 8.1 Progress and Completion

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

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

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

§ 8.2 Delays and Extensions of Time

§ 8.2.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner, all departments, boards, commissions, elected and non-elected officials of the Owner, including the Town of Canton Building Committee, or of an employee of either, or of a separate contractor employed by the Owner, or if and to the extent caused by the negligence of the Owner; or by changes ordered in the Work pursuant to Article A.7; or by delays associated with the delivery of materials ordered by the Owner for which the Design-Builder is not responsible and which impact the critical path of the construction schedule; or acts of God (such as tornado, hurricane, flood, etc.), or unusual delays by relevant governmental authorities in performing inspections and/or issuing governmental approvals which are a condition precedent to the issuance of a certificate of occupancy (temporary or permanent) or failure or unusual delay by any local utility (i.e., electricity, water, sewer) providing services to the Project that impact the critical path of the construction schedule or is necessary to obtain a certificate of occupancy (temporary or permanent), then the Contract Time shall be extended by Change Order or Constructive Change Directive for such reasonable time as the Owner may determine and the construction schedule shall be revised accordingly. In order for the Design-Builder to obtain an extension of time, the Design-Builder must prove to the Owner that the cause of the delay will extend the critical path of the construction schedule leading to the occupancy or use of the Project. Such extensions of Contract Time shall apply only to delays for which the Design-Builder has no responsibility. If a delay is attributable to both the Design-Builder and the Owner (including parties for which each is responsible), then entitlement to an extension of Contract Time shall apply proportionately. ~~If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a consultant or separate contractor employed by the Owner; or by changes ordered in the Work by the Owner; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's control; or by delay authorized by the Owner pending mediation and binding dispute resolution or by other causes that the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.~~

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

§ 8.2.3 Notwithstanding anything to the contrary in the Design-Build Documents, an extension of Contract Time, to the extent permitted herein, shall be the sole remedy of the Design-Builder for any (1) delay in the start, prosecution, or completion of the Work, (2) hindrance or obstruction in the performance of the Work, (3) loss of productivity, or (4) other similar claims, whether or not such claims are foreseeable, contemplated, or unanticipated. In no event is the Design-Builder entitled to any compensation or recovery of any damages, in connection with any claim, including without limitation, consequential damages, lost opportunity costs, impact damages or other similar remuneration. The Owner's exercise of any of its rights or remedies under the Design-Build Documents, including without limitation, ordering changes in the Work, or directing the suspension, rescheduling or correction of the Work, regardless of the extent or frequency of the Owner's exercise of such rights or remedies, are not to be construed as active interference with the Design-Builder's performance of the Work. This Section 8.2 does not preclude recovery of damages for delay by either party under other provisions of the Design-Build Documents.

ARTICLE 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION

§ 9.1 Contract Sum

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

§ 9.2 Schedule of Values

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

§ 9.3 Applications for Payment

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

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

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

§ 9.3.2 Unless otherwise provided in the Design-Build Documents, payments shall be made for services provided as well as materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Design-Builder with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Design-Builder warrants that title to all Work, other than Instruments of Service, covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Design-Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Design-Builder, Architect, Consultants, Contractors, material suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the Work. Provided that the Owner shall have paid the Design-Builder all amounts properly due and owing under the Design-Build Documents, the Design-Builder shall defend, indemnify and hold the Owner and all departments, boards, commissions, elected and non-elected officials of the Owner, including the Town of Canton Building Committee, harmless from any liens, claims, security interests or encumbrances filed by the Design-Builder, any Subcontractor, Sub-subcontractor, Design

Profesional or anyone claiming by, through or under them. As a condition of Payment, the Design-Builder shall provide a fully executed waiver with respect to all Work for which payment has been made by the Owner through the previous Application for Payment.

§ 9.3.4 The Design-Builder agrees that it shall take whatever action is reasonably necessary to remove or discharge any lien, claim, security interest or encumbrance placed on the Project in favor of any Subcontractor, material supplier, or other person or entity making a claim by reason of having provided labor, materials and equipment related to the Work for which the Design-Builder is responsible, including without limitation, discharging by substitution of a bond. The Design-Builder agrees that it shall take such action within twenty (20) days of written receipt of notice and evidence of such lien, claim, security interest or encumbrance from the Owner.

§ 9.4 Certificates for Payment

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

§ 9.5 Decisions to Withhold Certification

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

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

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

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

§ 9.6 Progress Payments

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

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

agreement with each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder, require each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder to make payments to subconsultants and subcontractors in a similar manner. The Owner shall not have responsibility for payments to the Architect, each design professional and other consultants retained directly by the Design-Builder.

§ 9.6.3 The Owner will, on request and if practicable, furnish to the Architect, a Consultant, Contractor, or other person or entity providing services or work for the Design-Builder, information regarding percentages of completion or amounts applied for by the Design-Builder and action taken thereon by the Owner on account of portions of the Work done by such Architect, Consultant, Contractor or other person or entity providing services or work for the Design-Builder. The Owner shall not have responsibility for payments to the Contractor, Sub-Contractors, suppliers or other contractors retained directly by the Design-Builder.

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

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

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

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

§ 9.7 Failure of Payment

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

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion is the date certified by the Owner in accordance with this Section 9.8.

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

§ 9.8.3 Upon receipt of the Design-Builder's list, the Owner shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not included on the Design-Builder's list, which is not sufficiently complete in accordance with the Design-Build

Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Design-Builder shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner. In such case, the Design-Builder shall then submit a request for another inspection by the Owner to determine Substantial Completion.

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

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

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

§ 9.9 Partial Occupancy or Use

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

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

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

§ 9.10 Final Completion and Final Payment

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

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which the Owner or the Owner's property might be responsible or encumbered, (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, (5) as-constructed record copy of the Construction Documents marked to indicate field changes and selections made during construction, (6) manufacturer's warranties, product data, and maintenance and operations manuals, and (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, or releases

and waivers of liens, claims, security interests, or encumbrances, arising out of the Contract, to the extent and in such form as may be designated by the Owner. If an Architect, a Consultant, or a Contractor, or other person or entity providing services or work for the Design-Builder, refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such liens, claims, security interests, or encumbrances. If such liens, claims, security interests, or encumbrances remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be compelled to pay in discharging such liens, claims, security interests, or encumbrances, including all costs and reasonable attorneys' fees.

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

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

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

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

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

§ 10.2 Safety of Persons and Property

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

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

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

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

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

§ 10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections 10.2.1.2 and

10.2.1.3, caused in whole or in part by the Design-Builder, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections 10.2.1.2 and 10.2.1.3; except damage or loss attributable to acts or omissions of the Owner, or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section 3.1.14.

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

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

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

§ 10.3 Hazardous Materials

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

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

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

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

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

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

§ 10.4 Emergencies

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

ARTICLE 11 UNCOVERING AND CORRECTION OF WORK

§ 11.1 Uncovering of Work

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

§ 11.2 Correction of Work

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

§ 11.2.2 After Substantial Completion

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

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

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

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

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

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

§ 11.3 Acceptance of Nonconforming Work

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

ARTICLE 12 COPYRIGHTS AND LICENSES

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

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

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

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

§ 12.3.2 In the event the Owner alters the Instruments of Service without the author's written authorization or uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all claims and causes of action arising from or related to such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Design-Builder, Architect, Consultants,

Contractors and any other person or entity providing services or work for any of them, from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service under this Section 12.3.2. The terms of this Section 12.3.2 shall not apply if the Owner rightfully terminates this Agreement for cause under Sections 13.1.4 or 13.2.2.

ARTICLE 13 TERMINATION OR SUSPENSION

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

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

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

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

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

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

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

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

§ 13.2.1 Termination by the Design-Builder

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

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

§ 13.2.1.2 The Design-Builder may terminate the Contract if, through no act or fault of the Design-Builder, the Architect, a Consultant, a Contractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, repeated suspensions, delays or

interruptions of the entire Work by the Owner as described in Section 13.2.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 13.2.1.3 If one of the reasons described in Section 13.2.1.1 or 13.2.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, ~~costs incurred by reason of such termination, and damages on the Work actually completed and accepted by the Owner, and costs incurred by reason of such termination.~~ In no event shall the Design-Builder be entitled to anticipated overhead and profit on Work not performed as of the date of the termination.

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

§ 13.2.2 Termination by the Owner For Cause

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

- .1 fails to submit the Proposal by the date required by this Agreement, or if no date is indicated, within a reasonable time consistent with the date of Substantial Completion;
- .2 ~~repeatedly~~ refuses or fails to supply an Architect, or enough properly skilled Consultants, Contractors, or workers or proper materials;
- .3 fails to make payment to the Architect, Consultants, or Contractors for services, materials or labor in accordance with their respective agreements with the Design-Builder;
- .4 ~~repeatedly~~ disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .5 ~~becomes insolvent or makes an assignment for the benefit of creditors;~~
- .6 ~~has a voluntary or involuntary petition in bankruptcy filed by or against the Design-Builder;~~
- .7 ~~has a receiver or receivers appointed to take charge of the property or affairs of the Design-Builder;~~
- .8 ~~fails to proceed with and perform Work when and as directed by the Owner;~~
- .9 ~~sublets, assigns, transfers, conveys or otherwise disposes of the Agreement other than as herein specified; -or~~
- .105 is otherwise guilty of substantial breach of a provision of the Design-Build Documents.

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

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

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

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

§ 13.2.3 Suspension by the Owner for Convenience

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

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

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

§ 13.2.4 Termination by the Owner for Convenience

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

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

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

§ 13.2.4.3 In the event of termination for the Owner's convenience prior to commencement of construction, the Design-Builder shall be entitled to receive payment for design services performed, costs incurred by reason of such termination and reasonable overhead and profit on design services actually completed and accepted by the Owner. In no event shall the Design-Builder be entitled to anticipated overhead and profit on design services or Work not performed.

§ 13.2.4.4 In case of termination for the Owner's convenience after commencement of construction, the Design-Builder shall be entitled to receive payment for Work executed and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work actually executed and accepted by the Owner. In no event shall the Design-Builder be entitled to anticipated overhead and profit on Work not performed. In case of such termination for the Owner's convenience, the Design-Builder shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

ARTICLE 14 CLAIMS AND DISPUTE RESOLUTION

§ 14.1 Claims

§ 14.1.1 **Definition.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Design-Builder arising out of or relating to the Contract. The term "Claim" specifically excludes a demand or assertion by the Design-Builder for an adjustment of the Design-Build Contract Sum or payment of money for delays or impacts in the commencement or progress of the Work as defined in Article 8.2. The responsibility to substantiate Claims shall rest with the party making the Claim.

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

§ 14.1.3 Notice of Claims

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

§ 14.1.3.2 **Claims Arising After Final Payment.** After Final Payment, Claims by either the Owner or Design-Builder that have not otherwise been waived pursuant to Sections 9.10.4 or 9.10.5, must be initiated by prompt written

notice to the other party. The notice requirement in Section 14.1.3.1 and the Initial Decision requirement as a condition precedent to mediation in Section 14.2.1 shall not apply.

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

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

§ 14.1.6 Claims for Additional Time

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

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

§ 14.1.7 Claims for Consequential Damages

The Design-Builder and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Design-Builder for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 13. Nothing contained in this Section 14.1.7 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Design-Build Documents.

§ 14.2 Initial Decision

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

§ 14.2.2 Procedure

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

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

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

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

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

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

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

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

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

§ 14.2.9 For any Claim, dispute or other matter in question arising out of or related to this Agreement and not arising out of, or relating to problems caused by the Owner or for which the Owner is responsible, the Owner and Design-Builder will first attempt to resolve such Claim, dispute or other matter at the field level through discussions between the Owner's representative and the Design-Builder's representative.

§ 14.2.10 If such Claim, dispute or other matter in Section 14.2.9 cannot be resolved through the Owner's representative and the Design-Builder's representative, the Owner's senior-representative and the Design-Builder's representative, upon such request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such request is made, to attempt to resolve such Claim, dispute or other matter.

§ 14.3 Mediation

§ 14.3.1 ~~If after the senior representatives of the Owner and the Design-Builder determine that the Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 14.1.7~~ Section 14.2.9 cannot be resolved on terms satisfactory to both parties, the parties shall submit the Claim, dispute or other matter to non-binding mediation. Such mediation, shall be subject to mediation as a condition precedent to binding dispute resolution.

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

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

§ 14.4 Arbitration Litigation

~~§ 14.4.1 If such Claim, dispute or other matter is Section 14.2.9 cannot be resolved through mediation, the method of binding dispute resolution shall be litigation in a court of competent jurisdiction, the parties have selected arbitration as the method for binding dispute resolution in Section 1.3, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.~~

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

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

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

§ 14.4.4 Consolidation or Joinder

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

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

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

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Governing Law

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

§ 15.2 Successors and Assigns

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

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

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

§ 15.2.4 The Design-Builder shall not assign the Design-Build Contract without the written consent of the Owner. Any such assignment shall be null and void. The Owner may, without the Design-Builder's prior written consent, assign its rights hereunder, provided that such assignee agrees to comply with all applicable provisions of the agreement and the Design-Builder is given written notice of such agreement signed by both the Owner and the assignee.

§ 15.3 Written Notice

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

§ 15.4 Rights and Remedies

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

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

§ 15.5 Tests and Inspections

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

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

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

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

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

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

§ 15.6 Confidential Information

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

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

§ 15.7 Capitalization

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

§ 15.8 Interpretation

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

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

§ 15.9 No Damages for Delay. In all events, the Design-Builder shall not have a separate Claim for damages or costs of any kind resulting from a delay in the Work as demonstrated by the Design-Builder's schedule of critical path activities, regardless of whether all or part of such delay may be in any way attributable to the acts, the failure to act, or the omissions of the Owner, all departments, boards, commissions, elected and non-elected officials of the Owner, the Owner's agents or representatives, or the Owner's consultants, if any. The Design-Builder agrees that its sole remedy for such delay shall be an extension of time, which may be granted or denied in accordance with the terms of this Agreement. The Design-Builder shall include a similar No Damages For Delay provision in any agreement that the Design-Builder executes with any Subcontractors, suppliers, design professionals or any other persons or entities that the Design-Builder employs to perform the Work, and shall name the Owner as third-party beneficiary of such provision.

§ 15.10 Waiver of Impact Claims. In all events, the Design-Builder waives all kinds of impact claims, including but not limited to, efficiency, loss of productivity, trade stacking, disruption, re-sequencing, and the like, regardless of whether all or part of such impact may be in any way attributable to the acts, the failure to act, or the omissions of the Owner, all departments, boards, commissions, elected and non-elected officials of the Owner, the Owner's agents or representatives, or the Owner's consultants, if any. The Design-Builder shall include a similar Waiver of Impact Claim provision in any agreement that the Design-Builder executes with any Subcontractors, suppliers, design professionals or any other persons or entities that the Design-Builder employs to perform the Work, and shall name the Owner as third-party beneficiary of such provision.

§ 15.11 Liquidated Damages.

§ 15.121 Any deviation from the Design-Build Contract Documents must be completely detailed in writing by the Design-Builder and approved in writing by the Owner prior to the performance of said Work.

§ 15.132 The Design-Builder agrees that all persons working on behalf of the Design-Builder shall obey the rules and regulations established by the Owner and shall obey the reasonable directions of the Owner's employees. The

Design-Builder shall be responsible for the acts and conduct of its employees, subcontractors, design professionals and agents while on the Owner's premises. The Design-Builder shall take all necessary measures to prevent injury and loss to persons and property located on the Owner's premises. The Design-Builder shall be responsible for all damages to persons or property caused by the Design-Builder, its employees, subcontractors, design professionals and agents. The Owner reserves the right to approve and /or reject any personnel assigned to any phase of the Project for any reason the Owner deems appropriate in its sole discretion.

§ 15.143 If the Design-Build Contract entails any exposure to a regulated material, including, but not limited to, asbestos or lead, the Design-Builder certifies that it and each of its subcontractors and their employees shall be certified and trained under all OSHA and other relevant regulations for such Work.

§ 15.154 Public funding. State, federal or other grant programs may fund some or the entire [Contract Agreement](#). The Design-Builder is advised that such funding programs may include contractual provisions binding on contractors and which may, for example, require audits or certifications under oath that the Design-Builder has not been debarred, suspended or excluded from any publicly funded project or programs.

§ 15.165 No Discrimination.

§ 15.165.1. The Design-Builder is required to comply with all provisions of the Civil Rights Act of 1964, the Equal Employment Opportunity Act of 1972, Executive Orders 11246, 11375, 11478, the 13th, 14th, and 15th Amendments of the United States Constitution, Civil Rights Act of 1886, 1870, 1871, Equal Pay of 1963, Title VI and VII of the 1964 United States Civil Rights Act, Presidential Executive Orders 11246, amended by 11375, (nondiscrimination under federal contracts), Act 1, Section 1 and 20 of the Connecticut Constitution, Governor Grasso's Executive Order Number 11, Governor O'Neill's Executive Order Number 9, the Connecticut Fair Practices Law (Sec. 46a-60-69) of the Connecticut General Statutes, Connecticut Code of Fair Practices (Sec. 46a-70-81), Deprivation of Civil Rights (Sec. 46a-58(a)(d)), Public Accommodations Law (Sec. 46a-63-64), Discrimination against Criminal Offenders (Sec. 46a-80), definition of blind (Sec. 46a-51(1)), definition of Physically Disabled (Sec. 46a-51(15)), definition of Mentally Retarded (Sec. 46a-51(13)), cooperation with the Commission on Human Rights and Opportunities (Sec. 46a-77), Sexual Harassment (Sec. 46a-60(a)(8)), Connecticut Credit Discrimination Law (360436 through 439), Title 1 of the State and the Local Fiscal Assistance Act of 1972..

§ 15.165.2. Pursuant to section 4a-60 of the Connecticut General Statutes, the Design-Builder agrees and warrants that, in the performance of the Design-Build Contract, the Design-Builder will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, mental retardation or physical disability, including, but not limited to, blindness, unless it is shown by the Design-Builder that such disability prevents performance of the Work involved, in any manner prohibited by the laws of the United States or the State of Connecticut. The Design-Builder further agrees (1) to take affirmative action to insure that applicants with job related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, mental retardation, or physical disability, including, but not limited to, blindness, unless it is shown by such Design-Builder that such disability prevents performance of the work involved; (2) in all solicitations or advertisements for employees placed by or on behalf of the Design-Builder, to state that it is an "affirmative action-equal opportunity employer" in accordance with regulations adopted by the Connecticut Commission on Human Rights and Opportunities' (3) to provide each labor union or representative of workers with which such Design-Builder has a collective bargaining agreement or other contract or understanding and each vendor with which such Design-Builder has a contract or understanding, a notice to be provided by the commission advising the labor union or workers' representative of the contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment; (4) to comply with each provision of section 4a-60 and section 46a-56, 46a-68e, and 46a-68f of the Connecticut General Statutes; (5) to provide the Commission on Human Rights and Opportunities with such information requested by the commission and permit access to pertinent books, records and accounts concerning the employment practices and procedures of the contractor as related to the provisions of this section and section 46a-56 of the Connecticut General Statutes.

§ 15.165.3. The foregoing principles and requirements of Equal Opportunity and Affirmative Action, as incorporated herein, will be incorporated into "Equal Opportunity- Non-Discrimination Clause" to be included in all bid documents, purchase orders, leases and contracts executed by the Design-Builder or any contractor, subcontractor, design professional or any entity acting on its behalf.

§ 15.165.4. In the event that this Design-Build Contract is at or above the prevailing wage threshold as defined by Connecticut law, section 31-53 of the Connecticut General Statutes, as amended, the Design-Builder shall include the costs of such wages in the Design-Build Contract Price.

ARTICLE 16 SCOPE OF THE AGREEMENT

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

- .1 AIA Document A141™-2014, Standard Form of Agreement Between Owner and Design-Builder
- .2 AIA Document A141™-2014, Exhibit A, Design-Build Amendment, if executed
- .3 AIA Document A141™-2014, Exhibit B, Insurance and Bonds
- .4 AIA Document A141™-2014, Exhibit C, Sustainable Projects, if completed
- .5 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if completed, or the following:

« »

.6 Other:

«Request for Proposals, dated April 6, 2015, attached hereto as Exhibit A
Project Specifications, dated April 1, 2015, attached hereto as Exhibit B
Proposed Project Schedule, dated April 1, 2015, attached hereto as Exhibit C
Bid Proposal, attached hereto.
Instruction to Bidders, dated April 1, 2015, attached hereto as Exhibit D»

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

OWNER (Signature)

« »« »

(Printed name and title)

DESIGN-BUILDER (Signature)

« »« »

(Printed name and title)

ATTACHMENT B

DRAFT AIA[®] Document A141[™] - 2014

Exhibit A

Design-Build Amendment

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

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

«Energy Savings Performance Contracting»
«Conversion of Town Owned Facilities to Natural Gas»
Town of East Hampton
20 East High Street
East Hampton CT 06424Sample»
« »

THE OWNER:
(Name, legal status and address)

«Town of East Hampton»« »
«20 East High Street»
«East Hampton, CT 06424-»« »
« »

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

« »« »
« »

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

TABLE OF ARTICLES

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

ARTICLE A.1 CONTRACT SUM

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

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

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

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

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(Check the appropriate box.)

Stipulated Sum, in accordance with Section A.1.2 below

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

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

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

§ A.1.2 Stipulated Sum

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

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

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

§ A.1.2.3 Unit prices, if any:

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

| Item | Units and Limitations | Price per Unit (\$0.00) |
|----------------------|-----------------------|-------------------------|
| <input type="text"/> | <input type="text"/> | <input type="text"/> |

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

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

§ A.1.3.2 The Design-Builder's Fee:

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

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

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

§ A.1.4.2 The Design-Builder's Fee:

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

§ A.1.4.3 Guaranteed Maximum Price

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

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

§ A.1.4.3.2 Itemized Statement of the Guaranteed Maximum Price

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

(Provide information below or reference an attachment.)

« »

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

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

« »

§ A.1.4.3.4 Unit Prices, if any:

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

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

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

« »

§ A.1.5 Payments

§ A.1.5.1 Progress Payments

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

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

« »

§ A.1.5.1.3 ~~Provided that an Application for Payment is received not later than the « » day of the month, t~~The Owner shall make payment of the certified amount to the Design-Builder not later than ~~thirtye~~ ~~«30»~~ days ~~after the date upon which the Owner approves all or part of the Design-Builder's Application for Payment.~~ ~~of the « » month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than « » (« ») days after the Owner receives the Application for Payment.~~
(Federal, state or local laws may require payment within a certain period of time.)

§ A.1.5.1.4 ~~With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Design-Builder on account of the Cost of the Work equal or exceed (1) progress payments already received by the Design-Builder, less (2) that portion of those payments attributable to the Design-Builder's Fee; plus (3) payrolls for the period covered by the present Application for Payment.~~ Not applicable.

§ A.1.5.1.5 ~~With each Application for Payment where the Contract Sum is based upon a Stipulated Sum or Cost of the Work with a Guaranteed Maximum Price, t~~The Design-Builder shall submit the ~~most recent~~ schedule of values ~~for the completed portions of the Work~~ in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services, if any, shall be shown separately. ~~Where the Contract Sum is based on the Cost of the Work with a Guaranteed~~

Maximum Price, the Design-Builder's Fee shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

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

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

§ A.1.5.2 Progress Payments—Stipulated Sum

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

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

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of ~~«five»~~ percent (~~«5»~~ %) on the Work. Pending final determination of cost to the Owner of Changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of ~~«five»~~ percent (~~«5»~~ %);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, the Owner has withheld or nullified, as provided in Section 9.5 of the Agreement.

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

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

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

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

« »

§ A.1.5.2.5 Acceptance by the Design-Builder of any payments accepted under this Design-Build Amendment, shall release the Owner from all claims and all liability to the Design-Builder in connection with this Agreement arising during the period for which the payment is made. No payment, however, shall release the Design-Builder, its sureties and/or insurers from any obligation under the Agreement, this Design-Build Amendment or the performance and payment bonds or any insurance policies issued in connection with this Agreement.

§ A.1.5.3. Liquidated Damages- Stipulated Sum

§ A.1.5.3.1 The Owner and Contractor hereby acknowledge and agree that time is of the essence with respect to Contractor's performance of the Work under Section A.2.2.1 hereunder. Accordingly, upon Owner's issuance to Contractor of the Notice to Proceed, Contractor shall immediately commence performance of the Work and continue to perform the same during the term of this Agreement in accordance with the current schedule pursuant to Section 3.1.9.1 of the Agreement. Owner and Contractor recognize the difficulties involved in proving actual damages and losses suffered by Owner if the Work is not completed and ready for Owner's acceptance by the date of Substantial Completion as set forth in said schedule. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for any such delay in completion or readiness for acceptance of the entire Work for the Schools (but not as a penalty) Contractor shall pay Owner the sum of Two Thousand Five Hundred and 00/100 Dollars (\$2,500.00) for each calendar day beyond the date of Substantial Completion that Contractor fails to complete all of the Work and have the same ready for Owner's acceptance until all such Work is completed by Contractor and readied by Contractor for acceptance by Owner. Any sums that may be due the Owner as liquidated damages may be deducted from any monies due or to become due the Contractor under the Contract or may be collected from the Contractor's surety.

§ A.1.5.3.2 The total amount calculated in the manner set forth in Section A.1.5.3.1 herein is referred to as "Liquidated Damages". Owner and Contractor agree that the Liquidated Damages calculated above constitute a reasonable estimate of the costs and expenses to be incurred by Owner in the event the Contractor fails to achieve the foregoing by the dates specified herein. The Liquidated Damages provided herein are intended to reimburse Owner for only the damages it will suffer as a result of the Contractor's failure to achieve Substantial Completion at the time specified herein and shall not limit the obligations or liability of Contractor or the remedies of the Owner pursuant to any other provisions of this Agreement or at law. Owner shall be entitled to deduct any Liquidated Damages due hereunder from the Contract Sum.

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

§ A.1.5.3.1 Where the Contract Sum is based upon the Cost of the Work plus a fee without a Guaranteed Maximum Price, Applications for Payment shall show the Cost of the Work actually incurred by the Design-Builder through the end of the period covered by the Application for Payment and for which Design-Builder has made or intends to make actual payment prior to the next Application for Payment. Not applicable.

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

- .1 Take the Cost of the Work as described in Article A.5 of this Amendment;
- .2 Add the Design-Builder's Fee, less retainage of ~~« »~~ percent (~~« »~~ %). The Design-Builder's Fee shall be computed upon the Cost of the Work described in the preceding Section A.1.5.3.2.1 at the rate stated in Section A.1.3.2; or if the Design-Builder's Fee is stated as a fixed sum in that Section, an amount which bears the same ratio to that fixed sum Fee as the Cost of the Work in that Section bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract retainage of ~~« »~~ percent (~~« »~~ %) from that portion of the Work that the Design-Builder self-performs;
- .4 Subtract the aggregate of previous payments made by the Owner;
- .5 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section A.1.5.1.4 or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Subtract amounts, if any, for which the Owner has withheld or withdrawn a Certificate of Payment as provided in the Section 9.5 of the Agreement. Not applicable.

§ A.1.5.3.3 The Owner and Design-Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on agreements with the Architect, Consultants, and Contractors, and the Design-Builder shall execute agreements in accordance with those terms. Not applicable.

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

§ A.1.5.4.1 Applications for Payment where the Contract Sum is based upon the Cost of the Work Plus a Fee with a Guaranteed Maximum Price shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the

percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Design-Builder on account of that portion of the Work for which the Design-Builder has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Not applicable.

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

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

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

§ A.1.5.5 Final Payment

§ A.1.5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder not later than 30 days after the Design-Builder has fully performed the Contract and the requirements of Section 9.10 of the Agreement have been satisfied, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment, when the Project is fully and finally completed as determined by the Owner and not later than thirty (30) days after the Owner approves the Design-Builder's final Application for Payment.

§ A.1.5.5.2 If the Contract Sum is based on the Cost of the Work, the Owner's auditors will review and report in writing on the Design-Builder's final accounting within 30 days after the Design-Builder delivers the final accounting to the Owner. Based upon the Cost of the Work the Owner's auditors report to be substantiated by the Design-Builder's final accounting, and provided the other conditions of Section 9.10 of the Agreement have been met, the Owner will, within seven days after receipt of the written report of the Owner's auditors, either issue a final Certificate for Payment, or notify the Design-Builder in writing of the reasons for withholding a certificate as provided in Section 9.5.1 of the Agreement. Not applicable.

ARTICLE A.2 CONTRACT TIME

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

§ A.2.2 The Design-Builder shall achieve Substantial Completion of the Work not later than ~~« »~~ (~~« »~~) days from the date of this Amendment, or as follows:

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

§ A.2.2.1 The Contractor shall achieve Substantial Completion of the entire Work for Middle School, Memorial School and Center School (the "Schools"), including receipt of a certificate of occupancy (or temporary certificate of occupancy as they case may be), in accordance with the Request for Proposals, dated April 6, 2015, attached hereto, and the current schedule pursuant to Section 3.1.9.1 herein, but in no event shall the date of Substantial Completion, be later than «August 20, 2015», unless such date is adjusted pursuant to Article 6 of this Agreement.

§ A.2.2.2 The Contractor shall achieve Substantial Completion of the entire Work for the Town Hall, the Public Works Building, Fire Station #2, Central Fire Station, the Library, the Board of Education Central Office (the "Municipal Buildings"), including receipt of a certificate of occupancy (or temporary certificate of occupancy as they case may be), in accordance with the Request for Proposals, dated April 6, 2015, attached hereto, and the current schedule pursuant to Section 3.1.9.1 herein, but in no event shall the date of Substantial Completion, be later than « November 20, 2015», unless such date is adjusted pursuant to Article 6 of this Agreement.

~~«§ A.2.2.1 The Contractor shall achieve Substantial Completion of the entire Work for Middle School, Memorial School and Center School (the "Schools"), including receipt of a certificate of occupancy (or temporary certificate of occupancy as they case may be), in accordance with the Project Schedule, a copy of which is attached hereto as Exhibit D (the "Project Schedule"), but in no event shall the date of Substantial Completion, be later than « sixty » (« 60 ») days from the Commencement Date of the Work, unless such date is adjusted pursuant to Article 7 of the General Conditions (as hereinafter defined).~~

§ A.2.2.2 The Owner and Contractor hereby acknowledge and agree that time is of the essence with respect to Contractor's performance of the Work hereunder. Accordingly, upon Owner's issuance to Contractor of the Notice to Proceed, Contractor shall immediately commence performance of the Work and continue to perform the same during the term of this Agreement in accordance with the Project Schedule set forth in Subsection 3.3 hereof. Owner and Contractor recognize the difficulties involved in proving actual damages and losses suffered by Owner if the Work is not completed and ready for Owner's acceptance by the date of Substantial Completion as set forth in the Project Schedule. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for any such delay in completion or readiness for acceptance (but not as a penalty) Contractor shall pay Owner _____ (\$ _____) for each calendar day beyond the date of Substantial Completion that Contractor fails to complete all of the Work and have the same ready for Owner's acceptance until all such Work is completed by Contractor and readied by Contractor for acceptance by Owner. Any sums that may be due the Owner as liquidated damages may be deducted from any monies due or to become due the Contractor under the Contract or may be collected from the Contractor's surety.

§ A.2.2.3 The total amount calculated in the manner set forth in Section 3.1.9.3.2 is referred to as "Liquidated Damages". Owner and Contractor agree that the Liquidated Damages calculated above constitute a reasonable estimate of the costs and expenses to be incurred by Owner in the event the Contractor fails to achieve the foregoing by the dates specified herein. The Liquidated Damages provided herein are intended to reimburse Owner for only the damages it will suffer as a result of the Contractor's failure to achieve Substantial Completion at the time specified herein and shall not limit the obligations or liability of Contractor or the remedies of the Owner pursuant to any other provisions of this Agreement or at law. Owner shall be entitled to deduct any Liquidated Damages due hereunder from the Contract Sum.

§ A.2.2.4 The Contractor shall achieve Substantial Completion of the entire Work for the Town Hall, the Public Works Building, Fire Station #2, Central Fire Station, the Library, the Board of Education Central Office (the "Municipal Buildings"), including receipt of a certificate of occupancy (or temporary certificate of occupancy as they case may be), in accordance with the Project Schedule, a copy of which is attached hereto as Exhibit D (the "Project Schedule"), but in no event shall the date of Substantial Completion, be later than « _____ » (« _____ ») days from the Commencement Date of the Work, unless such date is adjusted pursuant to Article 7 of the General Conditions (as hereinafter defined).

—>

Portion of Work

Substantial Completion Date

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

« »

ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

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

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

| Document | Title | Date | Pages |
|--------------|-------|------|-------|
| Bid Proposal | | | |

§ A.3.1.2 The Specifications:

(Either list the specifications here or refer to an exhibit attached to this Amendment.)

«See Project Schedule Request for Proposal, dated April 1, 2015, attached hereto as Exhibit DC.--»

| Section | Title | Date | Pages |
|---------|-------|------|-------|
|---------|-------|------|-------|

§ A.3.1.3 The Drawings:

(Either list the drawings here or refer to an exhibit attached to this Amendment.)

« »

| Number | Title | Date |
|--------|-------|------|
|--------|-------|------|

§ A.3.1.4 The Sustainability Plan, if any:

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

| Title | Date | Pages |
|-------|------|-------|
|-------|------|-------|

Other identifying information:

« »

§ A.3.1.5 Allowances and Contingencies:

(Identify any agreed upon allowances and contingencies, including a statement of their basis.)

.1 Allowances

« »

.2 Contingencies

« »

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

« »

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

« »

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

« »

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

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

(Identify name, title and contact information.)

.1 Superintendent

« »

.2 Project Manager

« »

.3 Others

« »

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

« »

ARTICLE A.5 COST OF THE WORK

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

§ A.5.1.1 Labor Costs

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

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

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

| Person Included | Status (full-time/part-time) | Rate (\$0.00) | Rate (unit of time) |
|-----------------|------------------------------|---------------|---------------------|
| | | | |

§ A.5.1.1.3 Wages and salaries of the Design-Builder's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

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

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

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

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

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

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

§ A.5.1.3.3 The Design-Builder is to furnish all materials, equipment and related components incorporated or to be incorporated in the completed construction such that the Owner shall lease such materials, equipment and related components with an option to purchase, at the Owner's sole discretion.

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

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

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

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

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

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

§ A.5.1.5 **Miscellaneous Costs**

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

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

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

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

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

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

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

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

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

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

§ A.5.1.6 Other Costs and Emergencies

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

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

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

§ A.5.1.7 Related Party Transactions

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

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

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

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

- .1 Salaries and other compensation of the Design-Builder's personnel stationed at the Design-Builder's principal office or offices other than the site office, except as specifically provided in Section A.5.1.1;

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

§ A.5.3 Discounts, Rebates, and Refunds

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

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

§ A.5.4 Other Agreements

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

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

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

§ A.5.5 Accounting Records

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

§ A.5.6 Relationship of the Parties

The Design-Builder accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to exercise the Design-Builder's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an

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

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

OWNER (Signature)

« »« »

(Printed name and title)

DESIGN-BUILDER (Signature)

« »« »

(Printed name and title)

REBAR

ATTACHMENT C

DRAFT AIA® Document A141™ - 2014

Exhibit B

Insurance and Bonds

for the following PROJECT:

(Name and location or address)

«Energy Savings Performance Contracting»
«Conversion of Town Owned Facilities to Natural Gas»
Town of East Hampton
20 East High Street
East Hampton CT 06424Sample»
«-»

THE OWNER:

(Name, legal status and address)

«Town of East Hampton»« »
«20 East High Street»
«East Hampton, CT 06424»«-»
«-»

THE DESIGN-BUILDER:

(Name, legal status and address)

« »« »
« »

THE AGREEMENT

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

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

TABLE OF ARTICLES

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

ARTICLE B.1 GENERAL

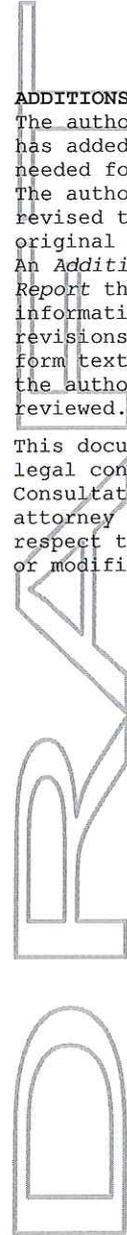
The Owner and Design-Builder shall purchase and maintain insurance and provide bonds as set forth in this Exhibit B. Where a provision in this Exhibit conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Exhibit will prevail.

ARTICLE B.2 DESIGN BUILDER'S INSURANCE AND BONDS

§ B.2.1 The Design-Builder shall purchase and maintain the following types and limits of insurance from a company or companies lawfully authorized to do business in the

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

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



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jurisdiction where the Project is located. The Design-Builder shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 11.2.2.1 of the Agreement, unless a different duration is stated below:

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

« »

§ B.2.1.1 Commercial General Liability with policy limits of not less than «One Million and 00/100 Dollars» (\$ «1,000,000.00») for each occurrence and «Two Million and 00/100 Dollars» (\$ «2,000,000.00») in the aggregate providing coverage for claims including

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

§ B.2.1.2 Automobile Liability covering vehicles owned by the Design-Builder and non-owned vehicles used by the Design-Builder with policy limits of not less than «One Million and 00/100 Dollars» (\$ «1,000,000.00») per claim and «Two Million and 00/100 Dollars» (\$ «2,000,000.00») in the aggregate for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles specified in this Section B.2.1.2, along with any other statutorily required automobile coverage. Automobile Liability insurance requirements include a Hired and Non-Owned provision of One Million and 00/100 Dollars (\$1,000,000.00).

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

§ B.2.1.4 Workers' Compensation at statutory limits. The Design-Builder shall have workers' compensation and liability insurance as provided by Connecticut and Federal law with statutory limits of \$500,000 per accident, \$500,000 disease each employee and \$1,000,000 disease policy limit.

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

« »

§ B.2.1.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than «One Million and 00/100 Dollars» (\$ «1,000,000.00») per claim and «Two Million and 00/100 Dollars» (\$ «2,000,000.00») in the aggregate.

§ B.2.1.7 Pollution Liability covering performance of the Work, with policy limits of not less than «One Million and 00/100 Dollars» (\$ «1,000,000.00») per claim and «Two Million and 00/100 Dollars» (\$ «2,000,000.00») in the aggregate.

§ B.2.1.7.1 The Design-Builder may obtain a combined Professional Liability and Pollution Liability policy to satisfy the requirements set forth in Sections B.2.1.6 and B.2.1.7, with combined policy limits that are not less than «Two Million and 00/100 Dollars» (\$ «2,000,000.00») per claim and «Five Million and 00/100 Dollars» (\$ «5,000,000.00») in the aggregate.

§ B.2.1.8 The Design-Builder shall provide written notification to the Owner of the cancellation or expiration of any insurance required by this Article B.2. The Design-Builder shall provide such written notice within five (5) business days of the date the Design-Builder is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first. All insurance policies of the Design-Builder shall provide for sixty (60) days written notice prior to cancellation, substantial change or non-renewal.

§ B.2.1.9 Additional Insured Obligations. The Owner, and all departments, boards, commissions, elected and non-elected officials of the Owner, including the Town of East Hampton Building Committee, and their respective agents, employees, officers, members, volunteers and affiliated entities, and the Owner's consultants and contractors (collectively, the "Additional Insureds") shall be named as additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, Automobile Liability, Worker's Compensation, Professional Liability, and Pollution Liability and any other applicable policies. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations. The policy limits applicable to the additional insureds shall be the same amount applicable to the named insured or, if the policy provides otherwise, policy limits not less than the amounts required under this Agreement.

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

§ B.2.1.11 The Design Builder shall include a provision in its agreements with its Subcontractors and Design Professionals requiring that the Additional Insureds be named as additional insureds on the Subcontractor's and Design Professional's insurance policies. The insurance of the Design-Builder and the insurance of the Design-Builder's Subcontractors and Design Professionals shall be primary to any insurance available to the Additional Insureds, which insurance shall be secondary and non-contributory. The Design-Builder shall, before commencement of its Work, and prior to the commencement of the Work of any of its Subcontractors, submit to the Owner evidence of the aforementioned insurance requirements from itself and its Subcontractors in the form of a certificate of insurance and additional insured endorsements. Failure by the Design-Builder to provide the endorsements required in this section shall entitle the Owner to withhold payment from any Application for Payment then due or to become due until such time as the endorsements are provided. All insurance shall include a 30 day notice of cancellation.

§ B.2.1.12 The Design-Builder shall procure and pay for the insurance coverages described above with the minimum limits of liability as stated above. The above coverages and limits are minimum coverages under this Agreement and Design-Build Amendment and shall in no way limit the liability or obligations of the Design-Builder.

§ B.2.1.13 The Owner reserves the right to modify the insurance coverages and minimum limits of liability as stated above if it exercises reserves the right to award the scope of work set forth in the Request for Proposals, dated April 6, 2015, attached hereto, under one agreement or under multiple agreements to more than one Design-Builder.

§ B.2.2 Performance Bond and Payment Bond

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

Type

AIA Document A310-2010 Bid Bond (if applicable)
AIA Document A312-2010 Labor and Materials Payment Bond
AIA Document A312-2010 Performance Bond

Penal Sum (\$0.00)

10% of the Contract Sum (Total)
Contract Sum (Total), plus costs associated with obtaining such bond
Contract Sum (Total) Contract Sum plus costs associated with obtaining such bond

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

§ B.2.2.2 The Design-Builder shall furnish bonds covering faithful performance of the Design-Build Contract and payment of obligations arising thereunder, including payment to design professionals engaged by or on behalf of the Design-Builder, as stipulated in bidding requirements or specifically required in the Agreement or elsewhere in the Design-Build Documents on the date of execution of the Design-Build Contract. The Design-Builder shall furnish payment and performance bonds in the full amount of the Design-Build Contract Sum, and any costs associated with obtaining such bonds shall be included in such contract sum. The AIA Document A312 shall be used as the form for the bonds. The Town of East Hampton shall be named as the obligee on the bonds. The bonds must be written by a surety company licensed to transaction business in the State of Connecticut.

ARTICLE B.3 OWNER'S INSURANCE

§ B.3.1 Owner's Liability Insurance

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

§ B.3.2 Property Insurance

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

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

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

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

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

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

Design-Builder, Architect, Consultants, Contractor and Subcontractors in the Work, and the Owner and Design-Builder shall be named insureds.

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

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

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

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

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

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

§ B.3.2.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and

Design-Builder. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Design-Builder after notification of a Change in the Work in accordance with Article 6 of the Agreement.

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

ARTICLE B.4 SPECIAL TERMS AND CONDITIONS

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

« »

ATTACHMENT D



AIA[®]

Document A305™ – 1986

Contractor's Qualification Statement

The Undersigned certifies under oath that the information provided herein is true and sufficiently complete so as not to be misleading.

SUBMITTED TO: Town of East Hampton

ADDRESS: 20 East High Street, East Hampton, CT 06424

SUBMITTED BY:

NAME:

ADDRESS:

PRINCIPAL OFFICE:

Corporation

Partnership

Individual

Joint Venture

Other

NAME OF PROJECT: *(if applicable)*

Conversion of Town Owned Facilities to Natural Gas

TYPE OF WORK: *(file separate form for each Classification of Work)*

General Construction

HVAC

Electrical

Plumbing

Other: *(Specify)*

§ 1 ORGANIZATION

§ 1.1 How many years has your organization been in business as a Contractor?

§ 1.2 How many years has your organization been in business under its present business name?

§ 1.2.1 Under what other or former names has your organization operated?

§ 1.3 If your organization is a corporation, answer the following:

§ 1.3.1 Date of incorporation:

§ 1.3.2 State of incorporation:

This document has important legal consequences.

Consultation with an attorney is encouraged with respect to its completion or modification.

This form is approved and recommended by the American Institute of Architects (AIA) and The Associated General Contractors of America (AGC) for use in evaluating the qualifications of contractors. No endorsement of the submitting party or verification of the information is made by AIA or AGC.

- § 1.3.3 President's name:
- § 1.3.4 Vice-president's name(s)

- § 1.3.5 Secretary's name:
- § 1.3.6 Treasurer's name:

- § 1.4 If your organization is a partnership, answer the following:
 - § 1.4.1 Date of organization:
 - § 1.4.2 Type of partnership (if applicable):
 - § 1.4.3 Name(s) of general partner(s)

- § 1.5 If your organization is individually owned, answer the following:
 - § 1.5.1 Date of organization:
 - § 1.5.2 Name of owner:

- § 1.6 If the form of your organization is other than those listed above, describe it and name the principals:

§ 2 LICENSING

- § 2.1 List jurisdictions and trade categories in which your organization is legally qualified to do business, and indicate registration or license numbers, if applicable.

- § 2.2 List jurisdictions in which your organization's partnership or trade name is filed.

§ 3 EXPERIENCE

- § 3.1 List the categories of work that your organization normally performs with its own forces.

- § 3.2 Claims and Suits. (If the answer to any of the questions below is yes, please attach details.)

- § 3.2.1 Has your organization ever failed to complete any work awarded to it?

- § 3.2.2 Are there any judgments, claims, arbitration proceedings or suits pending or outstanding against your organization or its officers?

- § 3.2.3 Has your organization filed any law suits or requested arbitration with regard to construction contracts within the last five years?

- § 3.3 Within the last five years, has any officer or principal of your organization ever been an officer or principal of another organization when it failed to complete a construction contract? (If the answer is yes, please attach details.)

§ 3.4 On a separate sheet, list major construction projects your organization has in progress, giving the name of project, owner, architect, contract amount, percent complete and scheduled completion date.

§ 3.4.1 State total worth of work in progress and under contract:

§ 3.5 On a separate sheet, list the major projects your organization has completed in the past five years, giving the name of project, owner, architect, contract amount, date of completion and percentage of the cost of the work performed with your own forces.

§ 3.5.1 State average annual amount of construction work performed during the past five years:

§ 3.6 On a separate sheet, list the construction experience and present commitments of the key individuals of your organization.

§ 4 REFERENCES

§ 4.1 Trade References:

§ 4.2 Bank References:

§ 4.3 Surety:

§ 4.3.1 Name of bonding company:

§ 4.3.2 Name and address of agent:

§ 5 FINANCING

§ 5.1 Financial Statement.

§ 5.1.1 Attach a financial statement, preferably audited, including your organization's latest balance sheet and income statement showing the following items:

Current Assets (e.g., cash, joint venture accounts, accounts receivable, notes receivable, accrued income, deposits, materials inventory and prepaid expenses);

Net Fixed Assets;

Other Assets;

Current Liabilities (e.g., accounts payable, notes payable, accrued expenses, provision for income taxes, advances, accrued salaries and accrued payroll taxes);

Other Liabilities (e.g., capital, capital stock, authorized and outstanding shares par values, earned surplus and retained earnings).

§ 5.1.2 Name and address of firm preparing attached financial statement, and date thereof:

§ 5.1.3 Is the attached financial statement for the identical organization named on page one?

§ 5.1.4 If not, explain the relationship and financial responsibility of the organization whose financial statement is provided (e.g., parent-subsidiary).

§ 5.2 Will the organization whose financial statement is attached act as guarantor of the contract for construction?

§ 6 SIGNATURE

§ 6.1 Dated at this day of

Name of Organization:

By:

Title:

§ 6.2

M being duly sworn deposes and says that the information provided herein is true and sufficiently complete so as not to be misleading.

Subscribed and sworn before me this day of

Notary Public:

My Commission Expires:

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Frederick E. Hedberg, Esq., hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with this certification at 15:14:23 on 04/09/2015 under Order No. 0086092076_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A305™ – 1986, Contractor's Qualification Statement, as published by the AIA in its software, other than changes shown in the attached final document by underscoring added text and striking over deleted text.

(Signed)

(Title)

(Dated)

ATTACHMENT E



AIA[®]

Document A310™ – 2010

Bid Bond

CONTRACTOR:

(Name, legal status and address)

SURETY:

(Name, legal status and principal place of business)

OWNER:

(Name, legal status and address)

Town of East Hampton
20 East High Street
East Hampton, CT 06424

BOND AMOUNT: \$

PROJECT:

(Name, location or address, and Project number, if any)

Conversion of Town Owned Facilities to Natural Gas
Town of East Hampton
20 East High Street
East Hampton CT 06424

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

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

The Contractor and Surety are bound to the Owner in the amount set forth above, for the payment of which the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein. The conditions of this Bond are such that if the Owner accepts the bid of the Contractor within the time specified in the bid documents, or within such time period as may be agreed to by the Owner and Contractor, and the Contractor either (1) enters into a contract with the Owner in accordance with the terms of such bid, and gives such bond or bonds as may be specified in the bidding or Contract Documents, with a surety admitted in the jurisdiction of the Project and otherwise acceptable to the Owner, for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; or (2) pays to the Owner the difference, not to exceed the amount of this Bond, between the amount specified in said bid and such larger amount for which the Owner may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect. The Surety hereby waives any notice of an agreement between the Owner and Contractor to extend the time in which the Owner may accept the bid. Waiver of notice by the Surety shall not apply to any extension exceeding sixty (60) days in the aggregate beyond the time for acceptance of bids specified in the bid documents, and the Owner and Contractor shall obtain the Surety's consent for an extension beyond sixty (60) days.

If this Bond is issued in connection with a subcontractor's bid to a Contractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Project, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such

Init.

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Frederick E. Hedberg, Esq., hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with this certification at 15:13:57 on 04/09/2015 under Order No. 0086092076_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A310™ – 2010, Bid Bond, as published by the AIA in its software, other than changes shown in the attached final document by underscoring added text and striking over deleted text.

(Signed)

(Title)

(Dated)

DRAFT AIA® Document A312™ - 2010

Payment Bond

CONTRACTOR:

(Name, legal status and address)

« »
« »

SURETY:

(Name, legal status and principal place of business)

« »
« »

OWNER:

(Name, legal status and address)

«Town of East Hampton»
«20 East High Street»
«East Hampton, CT 06424»
« »

CONSTRUCTION CONTRACT

Date: « »

Amount: \$ « »

Description:

(Name and location)

«Conversion of Town Owned Facilities to Natural Gas
Town of East Hampton
20 East High Street
East Hampton CT 06424East Hampton Boiler Conversion»
« »

BOND

Date:

(Not earlier than Construction Contract Date)

« »

Amount: \$ « »

Modifications to this Bond: None See Section 18

CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

SURETY

Company: (Corporate Seal)

Signature:

Name and « »

Title:

(Any additional signatures appear on the last page of this Payment Bond.)

Signature:

Name and « »

Title:

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

« »
« »
« »

OWNER'S REPRESENTATIVE:

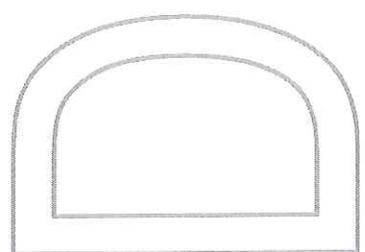
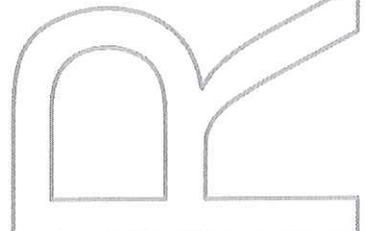
(Architect, Engineer or other party:)

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

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

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.



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§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

§ 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

§ 16.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

« »

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

SURETY

Company: (Corporate Seal)

Company: (Corporate Seal)

Signature:
Name and Title: « »
Address: « »

Signature:
Name and Title: « »
Address: « »

DRAFT AIA® Document A312™ - 2010

Performance Bond

CONTRACTOR:

(Name, legal status and address)

« »
« »

SURETY:

(Name, legal status and principal place of business)

« »
« »

OWNER:

(Name, legal status and address)

«Town of East Hampton»
«20 East High Street»
«East Hampton, CT 06424»
« »

CONSTRUCTION CONTRACT

Date: « »

Amount: \$ « »

Description:

(Name and location)

«Conversion of Town Owned Facilities to Natural Gas
Town of East Hampton
20 East High Street
East Hampton CT 06424 East Hampton Boiler Conversion»
« »

BOND

Date:

(Not earlier than Construction Contract Date)

« »

Amount: \$ « »

Modifications to this Bond: None See Section 16

CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

SURETY

Company: (Corporate Seal)

Signature:

Name and « »

Title:

(Any additional signatures appear on the last page of this Performance Bond.)

Signature:

Name and « »

Title:

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

« »
« »
« »

OWNER'S REPRESENTATIVE:

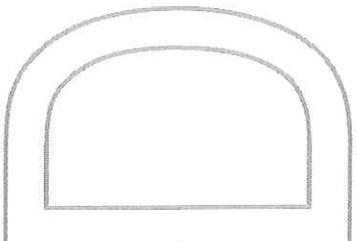
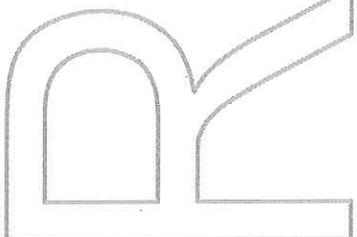
(Architect, Engineer or other party:)

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

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

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.



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§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

- .1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
- .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
- .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§ 4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

§ 5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§ 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

§ 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

§ 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

§ 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
- .3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 14 Definitions

§ 14.1 **Balance of the Contract Price.** The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 **Construction Contract.** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 **Contractor Default.** Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 **Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 **Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 16 Modifications to this bond are as follows:

« »

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

SURETY

Company: (Corporate Seal)

Company: (Corporate Seal)

Signature:

Signature:

Name and Title: « »« »

Name and Title: « »« »

Address: « »

Address: « »

