



ADDENDUM NO. 1

Project: Torrington Board of Education—REQUEST FOR QUOTATIONS FOR TORRINGFORD ELEMENTARY SCHOOL AIR-COOLED SCREW CHILLER REPLACEMENT

Purpose of this Addendum The purpose of this document is to answer requests for information, provide Exhibit F, remove the heat trace tape from the bid to owner responsibility, clarify the amount of butterfly valves, and clarify the BMS system responsibilities.

1. Requests for Information (RFI) Answers

- **Question:** Is a DAS prequalification certificate and bid statement required? **Answer:** No.
- **Question:** What is the retainage? **Answer:** 5% of each progress payment.
- **Question:** Are we required to provide preventative maintenance once the job is done? If so, for how long? This would be separate from our 1-Year Workmanship Warranty. **Answer:** Not required.
- **Question:** Under Commissioning and start up: System Flushing: Confirming the water loop was properly flushed to prevent debris from clogging the chiller's heat exchangers. Typically this is done for new systems unless there are existing issues. This could increase the cost. Can this be added as an add on? **Answer:** Every component of the water loop and interconnected systems accessed or impacted during this replacement—including all new piping, isolation valves, and the boiler room's hydraulic assembly—must be properly flushed. This ensures the entire system is clear of debris before the new chiller is commissioned to prevent clogging the heat exchangers.

2. Scope of Work Clarifications & Changes

- **Valve Clarification:** The contractor must furnish and install two (2) new gear-driven butterfly valves for isolation on the lines going to the chiller unit barrel.
- **Scope Removal:** Remove from the scope of work: furnish and install new self-regulating heat trace tape on the outside supply and return lines to the chiller unit barrel.

3. BMS System Clarification

Owner's/SNE BMS Responsibility:

- To provide a BACnet connection to the chiller.
- All low-voltage electrical work for the BMS connection.
- All programming and interfacing with the chiller and graphics.
- Provide startup assistance to the chiller manufacturer.

The RFQ bid shall include:

- Flow switches installed. Wired by SNE.
- BACnet card provided by manufacturer—interface connection by SNE.
- All coordination with SNE.

4. Exhibits

- **Exhibit F:** Provided (Form of Contract).

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

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ARTICLE 1 AGREEMENT

This Agreement ("Agreement") is made this [] day of [MONTH] in the year 2026 ("Effective Date") by and between the

OWNER ("Owner"):

TORRINGTON BOARD OF EDUCATION
50 MAJOR BESSE DRIVE
TORRINGTON, CT 06790

and the

DESIGN-BUILDER ("Design-Builder"):

[NAME]
[ADDRESS]

for services in connection with the following

PROJECT: Turnkey design, construction and installation, commissioning and start-up by Design-Builder of and for a new air-cooled screw chiller unit (the "**Chiller Unit**") for the Torrington Elementary School building ("**Facility**"), at the Worksite (as defined in Section 2.4.28) located 800 Charles Street, Torrington, CT 06790 (the "**Property**").

ARTICLE 2 GENERAL PROVISIONS

2.1. TEAM RELATIONSHIP Design-Builder and Owner agree to proceed with the Project on the basis of trust, good faith, and fair dealing. Design-Builder agrees to furnish or procure, as permitted by Applicable Law, the architectural and engineering services set forth in this Agreement and the construction and administration of the Work.

2.1.1. Neither Design-Builder nor any of its agents, employees, or Subcontractors, shall act on behalf of or in the name of Owner unless authorized in writing by Owner's Representative.

2.2. ETHICS The Parties shall perform their obligations under this Agreement with integrity, and shall, at a minimum: (a) avoid conflicts of interest; (b) promptly disclose to the other Party any conflicts of interest which may arise. Each Party warrants that it has not and shall neither pay nor receive any contingent fees or gratuities to or from the other Party, including its agents, officers and employees, Design Professional, Subcontractors, Sub-subcontractors, Suppliers or Separate Contractors, or others for whose acts or omissions they may be liable, to secure preferential treatment.

2.3. DESIGN PROFESSIONAL Architectural and engineering services shall be provided or procured by licensed, independent design professionals retained by Design-Builder, or furnished by licensed employees of Design-Builder, as permitted by Applicable Law. The person(s) or entity(ies) providing architectural and/or engineering services shall be referred to in this Agreement, collectively, as “Design Professional.” If a Design Professional is an independent design professional, the architectural services and/or engineering services shall be procured pursuant to a separate written agreement between Design-Builder and Design Professional.

2.3.1. STANDARD OF CARE Design Professional shall furnish and provide the architectural services and/or engineering services necessary to design the Project in accordance with Owner’s requirements, as outlined in Owner’s Program and other relevant data defining the Project. The architectural services and/or engineering services shall be performed in accordance with the standard of professional skill and care required for a Project of similar size, scope, and complexity, during the time in which the Services are provided.

2.4. DEFINITIONS

2.4.1. “Agencies” or an “Agency” mean and include the Connecticut Office of Policy and Management (“OPM”), the Connecticut Commission on Human Rights and Opportunities (“CHRO”), and all other governmental authorities having regulatory or administrative jurisdiction over the Work and/or the Project, and all representatives or designees of DAS, CHRO, and such other governmental authorities.

2.4.2. “Agreement” means this Design-Build Agreement and General Conditions Between Owner and Design-Builder, amendments, exhibits, addenda, and attachments made part of this Agreement upon its execution and/or upon the execution of any amendment to this Agreement.

2.4.3. “Applicable Law” and “Applicable Laws” mean and include all federal, state, and local laws, statutes, regulations, ordinances, codes, building codes, rules, and/or permits, and lawful orders enacted, promulgated or issued by any governmental body or public or quasi-public authority having jurisdiction over the Work, Design-Builder, and/or the site of the Project that are applicable to the Work, and with which Design-Builder must comply. “Applicable Law” shall include, without limitation, those relating to equal opportunity, labor, wages and employment laws, statutes, ordinances, codes, rules and regulations, and all guidelines, standards and conditions of funding imposed on the Work and/or Project by the Agencies or otherwise applicable to the Project, the Agreement, any Subcontract and/or the performance of the Work.

2.4.4. “Business Day” means all days, except weekends and official federal or state holidays where the Project is located.

2.4.5. A “Change Order” is a written order signed by Owner and Design-Builder after execution of this Agreement, indicating changes in the scope of the Work or Contract Time, including substitutions proposed by Design-Builder and accepted by Owner.

2.4.6. “Construction Schedule” is the document prepared by Design-Builder that specifies the dates on which Design-Builder plans to begin and complete various parts of the construction phase services Work, and the Project, including dates on which information and approvals are required from Owner.

2.4.7. The “Contract Documents” consist of those documents identified in section 14.1.

2.4.8. The “Contract Time” is the period of time beginning on and including the Date of Commencement through the total time within which Design-Builder is required to achieve Substantial Completion established in Section 6.2.

2.4.9. “Day” and “day” mean calendar day.

2.4.10. “Date of Commencement” is as provided for in section 6.1.

2.4.11. “Defective Work” is any portion of the Work that is not in substantial conformance with the requirements of the Contract Documents.

2.4.12. “Final Completion” occurs on the date when Design-Builder’s obligations under this Agreement are complete and accepted by Owner, and final payment becomes due and payable.

2.4.12.1 “Final Completion Time” is period of time beginning on the Date of Substantial Completion through the total time within which Design-Builder is required to achieve Final Completion established in Section 6.2.

2.4.13. “Hazardous Material” means and includes a substance or material identified now or in the future as hazardous under any Applicable Laws, or any other substance or material which is considered hazardous or otherwise subject to statutory or regulatory requirements governing handling, disposal or clean-up. “Hazardous Material” does not mean or include any substance or material that is specified or foreseeably required to be removed, disposed of, or used as part of or in the performance of the Work by Design-Builder notwithstanding that such substance or material is otherwise identified as hazardous under Applicable Laws, is considered hazardous, or is otherwise subject to statutory or regulatory requirements governing handling, disposal or clean-up.

2.4.14. “Construction Change Directive” is any written order containing Work instructions directed by Owner for changes to the scope of the Work required to be performed or provided by Design-Builder pursuant to this Agreement, which is signed by Owner after execution of this Agreement and before Substantial Completion of the Work.

2.4.15. “Separate Contractors” means other contractors engaged by Owner performing construction work or providing construction services at the Project site as part of the Project, other than Design-Builder, its Subcontractors, and its Suppliers.

2.4.16. “Overhead” shall mean (a) payroll costs and other compensation of Design-Builder’s employees in Design-Builder’s principal and branch offices; (b) general and administrative expenses of Design-Builder’s principal and branch offices including charges against Design-Builder for delinquent payments; and (c) Design-Builder’s capital expenses, including interest on capital used for the Work.

2.4.17. The “Owner” is the person or entity identified in ARTICLE 1 and includes Owner’s representative(s).

2.4.18. The “Owner’s Program” is a description of Owner’s objectives, budgetary and time criteria, space requirements and relationships, and if applicable to the Project, flexibility and expandability requirements, special equipment and systems, and site requirements. The Owner’s Program may include preliminary Design Documents which shall include drawings, and may include outline specifications and other conceptual documents illustrating the Project’s basic elements, scale, and their relationship to the Worksite.

2.4.19. The “Parties” are collectively Owner and Design-Builder.

2.4.20. The “Project,” as identified in ARTICLE 1, is the facility and other improvements for which Design-Builder is to perform the Work under this Agreement. The Project may also include improvements to be undertaken by Owner or Separate Contractors.

2.4.21. “Project Schedule” A schedule that shows the timing and sequencing of the design and construction required to meet the time criteria set forth in the Owner’s Program. The Project includes the Construction Schedule and is coordinated with design phase service activities.

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

2.4.23. “Substantial Completion” of the Work occurs on the date when construction is sufficiently complete in accordance with the Contract Documents so that Owner can occupy or utilize the Project for the use for which it is intended, without unscheduled disruption. The date on which Substantial Completion is achieved shall be the date set forth in and confirmed in and through a certificate of Substantial Completion signed by Owner and Design-Builder (the “**Date of Substantial Completion**”). The certificate shall state the respective responsibilities of Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work, and insurance. The certificate shall also list the items to be completed or corrected by Design-Builder, and establish the time for completion and correction of such items within the timeframe, if any, established in subsection 6.2.3 for the Final Completion Time.

2.4.24. A “Sub-subcontractor” is a party or entity who has an agreement with a Subcontractor or other Sub-subcontractor, or Supplier to perform any portion of the Work or to supply material or equipment as part of the Work.

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

2.4.26. "Terrorism" means a violent act, or an act that is dangerous to human life, property, or infrastructure, that is committed by an individual or individuals and that appears to be part of an effort to coerce a civilian population or to influence the policy or affect the conduct of any government by coercion. Terrorism includes, but is not limited to, any act certified by the United States Secretary of Treasury as an act of terrorism pursuant to the Terrorism Risk Insurance Act, as amended.

2.4.27. The "Work" means and includes the design services procured in accordance with section 3.1, the construction services provided in accordance with section 3.2, additional services in accordance with section 3.11, and other services which are necessary to complete the Project in accordance with and reasonably inferable from the Contract Documents.

2.4.28. "Worksite" means the geographical area of the Project at the Property location referred to in ARTICLE 1, where the Work is to be performed.

ARTICLE 3 DESIGN-BUILDER'S RESPONSIBILITIES

Design-Builder is responsible for: development of the Owner's Program, and other information and documentation as may be required to establish the feasibility of the Project; procuring or furnishing all design services required for the Project except as expressly provided otherwise pursuant to the Contract Documents; and procuring or furnishing all services, labor, materials, equipment, and/or machinery required for construction of the Work consistent with the Owner's Program. Design-Builder shall exercise its best skill, attention and judgment in the performance of the Work.

3.1. DESIGN SERVICES Pursuant to a mutually agreeable schedule, Design-Builder shall submit for Owner's written approval, Design Development Documents and Construction Documents, and shall provide any further development of Contract Documents that have been approved in writing by Owner.

3.1.1. DESIGN DEVELOPMENT DOCUMENTS. Design-Builder shall further develop the Design Development Documents to further define the Project, including drawings and outline specifications fixing and describing the Project size and character as to site utilization, and other appropriate elements incorporating, as applicable to and necessary design and construction of the Work consistent with the Owner's Program, all structural, architectural, mechanical, electrical, plumbing, drainage, irrigation, and/or specialized equipment systems, and shall submit the Design Development Documents for Owner's review. When Design-Builder submits the Design Development Documents, Design-Builder shall identify in writing all material changes and deviations that are incorporated therein from any previously approved Owner's Program or other Contract Documents in existence at the time of execution of this Agreement. Design-Builder shall provide to Owner an update on the schedule and budget based upon the changes made in the Design Development Documents. Any changes in the Work contained in the Design Development Documents approved by Owner shall, at the option of Owner, result in a Change Order pursuant to ARTICLE 8 adjusting the Contract Price or the Contract Time or the Final Completion Time.

3.1.2. CONSTRUCTION DOCUMENTS. The Construction Documents shall set forth in detail the requirements for construction of the Work, and shall be based upon Applicable Law enacted at the time of their preparation. Based upon the Design Development Documents approved by Owner, Design-Builder shall prepare or cause to be prepared, and shall submit for Owner's review and approval, the Construction Documents. When Design-Builder submits the Construction Documents, Design-Builder shall identify in writing all material changes and deviations that have taken place from the Design Development Documents or the Contract Documents in existence at the time of the execution of this Agreement. Design-Builder shall provide to Owner an update on the schedule and budget based upon the changes made in and through the Construction Documents. Any changes in the Work contained in the Construction Documents approved by Owner shall result in a Change Order pursuant to ARTICLE 8 adjusting the Contract Price or the Contract Time or the Final Completion Time. Construction shall be in accordance with the approved Construction Documents. One set of the final Construction Documents in paper format, and one set in electronic format, shall be furnished to Owner by Design-Builder before Design-Builder commences construction activities on the Property.

3.1.3. OWNERSHIP OF DOCUMENTS

3.1.3.1. OWNERSHIP OF TANGIBLE DOCUMENTS Owner shall receive ownership of the property rights, excluding copyrights, of all documents, drawings, specifications, electronic data, and information (hereinafter "Documents") prepared by, provided by, or procured by Design-Builder, its Design Professional, Subcontractors, or

consultants and distributed to Owner in connection with the Project, upon the making of final payment to Design-Builder, or in the event of termination under ARTICLE 11 upon payment for all sums due to Design-Builder pursuant to ARTICLE 11. Owner's acquisition of the copyright shall be subject to Owner's making of all payments required by this Agreement.

3.1.3.2. COPYRIGHT The Parties agree that Owner shall obtain ownership of the copyright of all Documents (if any), upon Owner's making of all payments required by this Agreement.

3.1.3.3. USE OF DOCUMENTS IN EVENT OF TERMINATION In the event of a termination of this Agreement pursuant to ARTICLE 11, provided payment has been made in accordance with subsection 3.1.3.1, Owner shall have the right to use, to reproduce, and to make derivative works of the Documents in connection with completion of the Project or for the purpose of maintaining, renovating, remodeling, or expanding the Project at the Worksite or for any other purpose relating to the Worksite, regardless of whether there has been a transfer of copyright under subsection 3.1.3.1.

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

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

3.2. CONSTRUCTION SERVICES

3.2.1. Construction of the Work shall commence upon the issuance by Owner of a written notice to proceed.

3.2.2. In order to complete the Work, Design-Builder shall provide all necessary construction supervision, inspection, construction equipment, construction labor, materials, tools, and subcontracted items.

3.2.2.1. WORKSITE VISIT By executing this Agreement, Design-Builder acknowledges and agrees that it has visited, or has had the opportunity to visit, the Worksite and the Property to visually inspect the general and local conditions under which the Work at the Property and Worksite is to be performed, and has correlated Design-Builder's personal observations with the requirements of the Contract Documents.

3.2.2.2 TEMPORARY COOLING In the event that Design-Builder has not achieved Substantial Completion of the Work in accordance with the time requirements set forth in Section 6.2.2., Design-Builder shall be responsible for providing temporary cooling to the Facility, as-needed for Owner to use the Facility for Owner's ordinary educational operations, through the date that Design-Builder actually achieves Substantial Completion of the Work, or November 1, 2026, whichever occurs first. Unless Design-Builder's failure to achieve Substantial Completion of the Work in accordance with the time requirements set forth in Section 6.2.2. is solely due to the fault of Owner, Design-Builder shall provide temporary cooling for the Facility in accordance with this Section 3.2.2.2 at Design-Builder's own cost and expense, and without any cost or expense to Owner.

3.2.3. COMPLIANCE WITH LAW Design-Builder comply with all Applicable Law and shall give all notices required by Applicable Laws, at its own cost. Design-Builder shall be liable to Owner for all loss, cost, and expense attributable to any acts or omissions by Design-Builder, its employees, subcontractors, and agents resulting from the failure to comply with Applicable Laws, including any corrective measures and/or fines or penalties assessed against Owner or Design-Builder by any Agency to the extent such fines and penalties arise from the violation of any of Applicable Laws by the Design-Builder, any Subcontractor or Sub-subcontractor, or anyone for whom or which any of them is responsible. Design-Builder shall be solely responsible for assuring that the procurement and award of Subcontracts for the Work is conducted in a manner consistent with Applicable Laws and the Contract Documents.

3.2.3.1. CHANGES IN LAW The Contract Price or Contract Time, or both shall be equitably adjusted by Change Order for additional costs or time needed to perform and complete the Work which solely result from a change in Applicable Law, including increased taxes, enacted after the Effective Date of this Agreement.

3.2.3.2. Design-Builder shall also maintain records and reports as required by OPM, CHRO, and other Agencies.

3.2.3.3. Design-Builder shall preserve and maintain financial books and records relating to this Agreement and Design-Builder's performance of the Work for a period of five (5) years after the date of final payment, or for such longer period as may be required by Applicable Laws, and upon request by Owner or an Agency, shall make such records available to Owner and/or such Agency as needed to address any audit by an Agency, including without limitation by OPM, CHRO, and/or other Agencies. Such records shall include, without limitation, Design-Builder's accounting records including complete documentation to support accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor bids, Subcontractor or supplier invoices, purchase orders, vouchers, memoranda, written policies and procedures, Change Order files (including documentation covering negotiated settlements), back charge logs and supporting documentation, general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends; electronic or computer data, any other supporting evidence deemed necessary to substantiate charges, and other data relating to this Agreement reasonably requested by Owner or an Agency. Upon request by Owner and/or any Agency, Design-Builder shall deliver to Owner such records, or any other records or items as are reasonably requested by Owner in connection with any audit of the Project by Owner or OPM in connection with any grant or financial assistance from the State of Connecticut for the Project ("Grants"). Design-Builder shall comply with all accounting procedures and record retention policies reasonably requested by Owner and/or required by Applicable Laws, including without limitation OPM's rules and regulations relating to the Grants.

3.2.3.4. Upon request of Owner, Design-Builder will cooperate with and assist Owner with any audit of the Project conducted by Owner or an Agency at any time after Substantial Completion. Such cooperation shall be at no cost to Owner unless such cooperation is (1) in connection with an audit other than an audit by OPM, CHRO, or other Agencies, and (2) provided after the close-out of the Project and demobilization by Design-Builder and its Subcontractors, in which case Design-Builder shall be entitled to reasonable compensation determined in the manner provided under Section 8.4.

3.2.4. Design-Builder shall maintain the Schedule of Work. This schedule shall indicate the dates for the start and completion of the various stages of the construction, including the dates when information and approvals are required from Owner. The Schedule of Work shall be revised as required by the conditions of the Work.

3.2.5. Design-Builder shall obtain, and Owner shall pay for, in addition to the Contract Price, the building permits necessary for the construction of the Project.

3.2.6. Design-Builder shall keep such full and detailed accounts as may be necessary for proper financial management of Design-Builder's performance its obligations under this Agreement, including without limitation, services provided and portions of the Work furnished or performed by Design Professional and/or Subcontractors. Design-Builder, upon request by Owner, shall give Owner access to and permit Owner to examine all of, Design-Builder's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to services or Work performed in connection with this Agreement, during Design-Builder's normal business hours. Design-Builder shall preserve all such records for a period of seven (7) years after the final payment or longer where required by Applicable Law. Design-Builder shall preserve all records relating to a claim arising out of the performance of this Agreement until the claim has been fully and finally resolved. In the event that an examination of Design-Builder's records discloses any error in prior payments by Owner, Design-Builder shall promptly refund any overpayment it has received.

3.2.7. Design-Builder shall provide periodic written reports to Owner on the progress of the Work in such detail as is required by Owner and as agreed to by the Parties. In the event Owner requests more than monthly written reports during the Contract Time, such additional reports will be provided as an additional service on a time and materials basis.

3.2.8. Design-Builder shall regularly remove debris and waste materials at the Worksite and the Property resulting from the Work. Before discontinuing Work in an area of the Worksite, Design-Builder shall clean the area and remove all rubbish and its construction equipment, tools, machinery, waste, and surplus materials. Design-Builder shall minimize and confine dust and debris resulting from construction activities. At the completion of the Work, Design-Builder shall remove from the Worksite all construction equipment, tools, surplus materials, waste materials, and debris. If Design-Builder fails to commence compliance with cleanup duties within two (2) days after written notification from

Owner that Design-Builder has failed to fully comply with its obligations under this Section 3.2.8, Owner may implement appropriate cleanup measures without further notice to Design-Builder and costs and expenses incurred by Owner be deducted from any amounts due or to become due Design-Builder in the next payment period.

3.2.9. Design-Builder shall prepare and submit to Owner either:

[X] final marked up as-built record drawings, in electronic format

[] updated electronic data

that generally document how the various elements of the Work including changes that were actually constructed or installed, or as defined by the Parties by attachment to this Agreement.

3.3. CONSTRUCTION SCHEDULE Design-Builder shall prepare and submit a Schedule of Work for Owner's acceptance and written approval. This schedule shall indicate the commencement and completion dates of the various stages of the Work, including the dates when information and approvals are required from Owner. The Schedule shall be revised on a monthly basis or as mutually agreed by the Parties, as required by the conditions of the Work and based on the progress of the Work.

3.4. SAFETY OF PERSONS AND PROPERTY

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

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

3.4.2.1. its employees and other persons at the Worksite and the Property;

3.4.2.2. materials, supplies, and equipment stored at the Worksite or other portions of the Property for use in performance of the Work; and

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

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

3.4.4. Design-Builder shall provide Owner with copies of all notices required by Design-Builder by Applicable Law. Design-Builder's safety program shall comply with the requirements of governmental and quasi-governmental authorities having jurisdiction over the Work.

3.4.5. Damage or loss not insured under property insurance which may arise from the performance of the Work, to the extent of the negligence attributed to such acts or omissions of Design-Builder, or anyone for whose acts Design-Builder may be liable, shall be promptly remedied by Design-Builder. Damage or loss attributable to the acts or omissions of Owner or Separate Contractors, and not partially attributable to Design-Builder, shall be promptly remedied by Owner.

3.4.6. If Owner deems any part of the Work or Worksite unsafe, Owner, without assuming responsibility for Design-Builder's safety program, may require Design-Builder to stop performance of the Work or take reasonable corrective measures satisfactory to Owner, or both. If Design-Builder does not adopt reasonable corrective measures, Owner may perform such reasonable corrective measures, and the amount of the Contract Price shall be reduced by the costs thereof incurred by Owner. Design-Builder agrees to make no claim for damages, no claim for an adjustment in the

Contract Price, and no claim for the Date of Substantial Completion or the Date of Final Completion, based on Design-Builder's compliance with Owner's reasonable request that Design-Builder take reasonable corrective measures.

3.5. EMERGENCIES In any emergency affecting the safety of persons or property, Design-Builder shall act in a reasonable manner to prevent threatened damage, injury, or loss. Any change in the Contract Price, the Contract Time, or the Final Completion Time, on account of emergency work shall be determined as a Change Order.

3.6. HAZARDOUS MATERIAL AND HAZARDOUS WASTE MANAGEMENT AND DISPOSAL

3.6.1. HAZARDOUS MATERIAL

3.6.1.1. In the event that Hazardous Material (as defined in subsection 2.4.13) is discovered at the Worksite prior to Design-Builder's commencement of the Work or discovered or encountered on the Worksite by Design-Builder in the course of performance of the Work, Design-Builder shall not be obligated to commence or continue Work until such Hazardous Material has been removed, rendered, or determined to be harmless by Owner, as certified by an independent testing laboratory and approved by the appropriate government agency.

3.6.1.2. If after commencing the Work, Hazardous Material is discovered at the Worksite, Design-Builder shall be entitled to immediately stop Work in the affected area of the Worksite. Design-Builder shall report in writing the condition to Owner and, if required, the government agency with jurisdiction.

3.6.1.3. Design-Builder shall not be required to perform any Work in or on any area of the Worksite affected by the presence of a Hazardous Material without written mutual agreement between the Parties.

3.6.1.4. In the event that Hazardous Material is discovered at the Worksite, Owner shall be responsible for retaining an independent testing laboratory to determine the nature of the material encountered, whether it is a Hazardous Material, and if so, whether corrective measures or remedial action are required under Applicable Law. Such corrective measures or remedial action shall be the responsibility of Owner, provided that Design-Builder shall, if requested by Owner and agreed to by Owner and Design-Builder via Change Order adjusting the Contract Price, engage the independent testing laboratory and/or engage a duly qualified and licensed Subcontractor to perform such corrective measures or remedial action. Any such Change Order shall adjust the Contract Price in accordance with ARTICLE 8. Design-Builder shall resume Work in the area affected by any Hazardous Material after the Hazardous Material has been removed or rendered harmless, and if required by Applicable Laws, approval has been obtained from governmental agency or agencies having jurisdiction that such Hazardous Material has been removed or rendered harmless.

3.6.1.5. Excluding additional costs in the performance of the Work or delays caused by the negligent or intentional wrongful acts or omissions of Design-Builder, its Subcontractors and Sub-subcontractors, and the agents, officers, directors, and employees of each of them, if Design-Builder incurs additional costs in performance of the Work or is delayed due to the presence or remediation of Hazardous Material, Design-Builder shall be entitled to an equitable adjustment in the Contract Price or the Contract Time.

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

3.6.1.7. During Design-Builder's performance of the Work, Design-Builder shall be responsible for the proper handling and application, and storage as applicable, of all materials brought to the Worksite by Design-Builder. Upon the issuance of the Certificate of Substantial Completion, Owner shall be responsible for materials and substances brought to the Worksite by Design-Builder if such materials or substances are required by the Contract Documents.

3.6.2. HAZARDOUS WASTE MANAGEMENT AND DISPOSAL

3.6.2.1. To the extent the Work requires or involves any substance or material that is specified or required to be removed, disposed of, or used as part of or in the performance of the Work by Design-Builder and which substance or material is considered hazardous under Applicable Laws or otherwise subject to statutory and/or regulatory requirements and standards governing the removal, disposal, handling, clean up or use of such substance or material, Design-Builder shall fully comply with all such Applicable Laws, statutory and regulatory requirements and

standards, and shall comply with the **Hazardous Waste Management and Disposal Requirements** set forth in **EXHIBIT C** to this Agreement, appended hereto.

3.6.2.2 Design-Builder shall indemnify, defend, and hold harmless Owner, Owner's designated representative, any lender of Owner, and all of its respective directors, members of governing boards, officers, partners, employees, managers, beneficiaries, agents and representatives, from and against any and all claims, fines, penalties, cleanup costs, response costs, damages, liabilities, or expenses (including reasonable attorneys' fees) to the extent related to a failure by Design-Builder to comply with the requirements set forth in Exhibit C to this Agreement or to comply related Applicable Laws.

3.7. WARRANTY

3.7.1. Design-Builder warrants that all materials and equipment furnished under this Agreement will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, free from defects in manufacture, and free from defective workmanship and materials. Warranties shall commence on the Date of Substantial Completion of the entirety of the Work.

3.7.1.1. With respect to defects in workmanship and/or goods, materials or equipment installed as part of Work, Design-Builder's warranty obligations pursuant to this Section 3.7 shall be, for one year commencing on the date of Substantial Completion of the entirety of the Work, to repair or replace such defective goods or parts thereof, and to repair any defects in workmanship, all at Design-Builder's cost and at no cost to Owner.

3.7.2. To the extent products, equipment, systems, or materials incorporated in the Work are specified and purchased directly by Owner from persons other than Design-Builder, and are incorporated into the Work by Design-Builder, defects in such products, equipment, systems, or materials shall be covered by the warranty of the manufacturer thereof; provided that any defects resulting from the installation of such products, equipment, systems, or materials by Design-Builder and/or its Subcontractors shall be the responsibility of Design-Builder. To the extent products, equipment, systems, or materials which are specified by Owner, and which are purchased and incorporated in the Work by Design-Builder, are inconsistent with selection criteria that otherwise would have been followed by Design-Builder, Design-Builder shall assist Owner in pursuing warranty claims.

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

3.7.4. Design-Builder shall collect all written warranties and equipment manuals for the work performed by Design-Builder and its Subcontractors and deliver them to Owner in a format directed by Owner.

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

3.8. CORRECTION OF WORK WITHIN ONE YEAR

3.8.1. If, prior to the Date of Substantial Completion and/or within one (1) year after the Date of Substantial Completion of the Work or for such longer periods of time as may be set forth with respect to specific warranties required by the Contract Documents, any Defective Work is found, Owner shall promptly notify Design-Builder. Unless Owner provides written acceptance of the condition constituting the Defective Work, Design-Builder shall promptly correct the Defective Work at its own cost and time and bear the expense of additional services required for correction of any Defective Work for which it is responsible.

3.8.2. With respect to any portion of Work first performed after Substantial Completion, the one-year correction period shall not commence until that portion of Work is complete.

3.8.3. If Design-Builder fails to commence and complete correction of Defective Work within a reasonable time after receipt of written notice from Owner and prior to final payment, Owner may correct the Defective Work in accordance with Owner's right to carry out the Work. In such case, an appropriate Change Order shall be issued deducting the reasonable cost of correcting such deficiencies from payments then or thereafter due Design-Builder. If the amount of payments then or thereafter due Design-Builder are less than Owner's costs for correction of such deficiencies, Design-Builder shall pay the difference to Owner.

3.8.4. Design-Builder's obligations and liability with respect to any Defective Work discovered after the one-year correction period shall be determined by Applicable Law. If, after the one-year correction period, however, prior to expiration of an applicable limitation or repose period, Owner discovers any Work which Owner considers Defective Work, Owner shall, unless the Defective Work requires emergency correction, promptly notify Design-Builder and allow Design-Builder the opportunity to correct the Work. If Design-Builder agrees to undertake correction of the Defective Work, Design-Builder shall provide written notice to Owner within fourteen (14) days of its receipt of notice of the Defective Work from Owner, and Design-Builder shall commence and complete the correction of the Defective Work within the time mutually agreed by Owner and Design-Builder. If Design-Builder refuses to correct the Defective Work, Owner may proceed with correction of the Defective Work through its own forces or through Separate Contractors, and, if Owner may seek recovery from its costs from Design-Builder.

3.8.5. If Design-Builder's correction or removal of Defective Work causes damage to or loss of other completed or partially completed Work or existing buildings or other portions of the Property, Design-Builder shall be responsible for such damage and loss.

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

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

3.9. CONFIDENTIALITY

3.9.1. Design-Builder shall treat as confidential and neither disclose to third-persons, except Design-Builder's employees, Subcontractors, Sub-subcontractors, and Design Professional to the extent necessary for the performance of the Work for the Project, provided such employees, Subcontractors, Sub-subcontractors, and Design Professional are subject to the restrictions on the disclosure and use of such information that are set forth in this Section 3.9, nor use for Design-Builder's own benefit, any of Owner's confidential information that may be disclosed to Design-Builder or which Design-Builder may acquire in connection with the Work. Owner shall treat as confidential information all of Design-Builder's estimating systems and historical and parameter cost data that may be disclosed to Owner in connection with the performance of this Agreement. Owner and Design-Builder shall each specify those items that shall be treated as confidential by the other, by marking such items as "Confidential" or otherwise identifying in writing items designated as confidential.

3.9.2. Owner or Design-Builder may disclose the other's "confidential" information after seven (7) days' written notice to the other, if and to the extent required by Applicable Law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court of competent jurisdiction or officer or commissioner thereof, or a governmental entity, or to the extent such information is reasonably necessary for Owner or Design-Builder, as the case may be, to defend itself in any dispute. In the event either party knows or reasonably believes that "confidential" or "business proprietary" information received from the other party has been subject to any circumstance where the security, integrity, or confidentiality of any of the "confidential" or "business proprietary" information has been compromised, damaged, lost, corrupted, destroyed, or the "confidential" or "business proprietary" information has been accessed, acquired, modified, used, disclosed, or rendered inaccessible, by any unauthorized person, by any person in an unauthorized manner, or for an unauthorized purpose, the party experiencing the breach will provide written notice to the other party as soon as reasonably possible after it becomes aware of any breach.

3.9.3. The obligations in this Section 3.9 shall survive the expiration or termination of this Agreement.

3.10. ADDITIONAL SERVICES Design-Builder shall provide or procure the following Additional services upon the request of Owner. A written agreement between Owner and Design-Builder and/or a Change Order or other amendment to this Agreement, shall define the extent of such Additional services. Such Additional services shall be considered a Change in the Work unless otherwise already part of the Work and Design-Builder's obligations under this Agreement.

3.10.1. Legal descriptions or aerial photographs of the Worksite;

3.10.2. Appraisals of existing equipment, existing properties, new equipment, and developed properties;

3.10.3. Soils, subsurface, and environmental studies, reports or investigations if required for submission to governmental authorities or others having jurisdiction over the Project;

3.10.4. Artistic models and mockups of the Project or any part of the Project or the Work;

3.10.5. Inventories of existing furniture, fixtures, furnishings, and equipment which might be under consideration for incorporation into the Project;

3.10.6. Interior design and related services including procurement and placement of furniture, furnishings, artwork, and decorations;

3.10.7. Design, coordination, management, expediting, and other services supporting the procurement of materials to be obtained, or work to be performed, by Owner and/or Separate Contractors, including but not limited to telephone systems, computer wiring networks, sound systems, alarms, security systems, and other specialty systems which are not a part of the Work to be performed or provided by Design-Builder under this Agreement;

3.10.8. Estimates, proposals, appraisals, consultations, negotiations, and services in connection with the repair or replacement of an insured loss, provided such repair or replacement did not result from the negligence of Design-Builder;

3.10.9. Serving or preparing to serve as an expert witness in connection with any proceeding, legal or otherwise, regarding the Project in which Design Professional is not a party to such proceeding;

3.10.10. Document reproduction exceeding the limits provided for in this Agreement;

3.10.11. Providing services relating to Hazardous Material discovered at the Worksite; and

3.10.12. Other services as agreed to by the Parties and identified in an attached exhibit.

3.11. TAXES Design-Builder shall pay sales, consumer, use and similar taxes, for the any of the Work or other services performed or provided by Design-Builder in connection with this Agreement, the Project or the Work, if any, which are legally enacted as of the Effective Date, whether or not yet effective or merely scheduled to go into effect.

3.11.1. TAX EXEMPT OWNER Owner is a tax-exempt entity. Owner is exempt from the payment of sales use and similar taxes. Design-Builder shall be familiar with the current regulations of the Connecticut Department of Revenue Services and the sales or use tax on materials or supplies exempted by such regulations shall not be included as part of the Contract Price. Upon request, Owner shall provide to Design-Builder a tax-exempt certificate, sales tax certificate, and/or other documentation issued by the Connecticut Department of Revenue Services which evidence that Owner is exempt from such taxes.

3.11.2. Design-Builder shall be responsible for complying with all Applicable Laws relating to federal, state and local tax which, notwithstanding Owner's tax-exempt status, apply to services, materials, equipment or supplies to be provided by Design-Builder or Design Professional or any Subcontractor or Supplier, or any Sub-subcontractor or any of their suppliers in connection with this Agreement and any portion of the Work, including without limitation (1) paying or causing to be paid any and all such sales and use taxes, and (2) complying with all Applicable Laws relating to sales and use tax on purchases from out-of-state contractors, Subcontractors, Suppliers or other vendors and suppliers.

3.11.3. NONRESIDENT CONTRACTOR

If Design-Builder is a "nonresident contractor" as defined in Section 12-430(7)(A) of the Connecticut General Statutes, as revised, Design-Builder shall provide evidence to Owner prior to commencement of the Work that Design-Builder has complied fully with the provisions of Section 12-430(7). Design-Builder is hereby notified that, if any Subcontractor or Supplier performing any part of the Work under the Contract Documents is a nonresident unverified contractor, Design-Builder shall withhold five percent (5%) of all payments to such Subcontractor or Supplier unless and until such Subcontractor or Supplier provides to Design-Builder a Certificate of Compliance issued by the Connecticut Department of Revenue Services as defined in the Connecticut General Statutes Section 12-430(7). A nonresident unverified contractor is a contractor without an office in the State of Connecticut that is continuously maintained, occupied and used by the contractor's regular employees regularly in attendance to carry on the contractor's business in the contractor's own name and which contractor has not been verified pursuant to the requirements of the Connecticut Department of Revenue Services. The amount withheld by Design-Builder pursuant to Connecticut General Statutes Section 12-430(7)

shall be in addition to, and not in lieu of, the retainage held by Design-Builder under any subcontract with its Subcontractor or Supplier.

3.12. LABOR AND MATERIALS

3.12.1 Unless otherwise provided in the Contract Documents, 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.

3.12.2 All labor shall be performed by workmen skilled in their respective trades, and workmanship shall be of good quality so that first class work in accordance with the standards of construction set forth in the Contract Documents will be achieved. Design-Builder shall enforce strict discipline and good order among Design-Builder's employees and other persons carrying out the Work. Design-Builder shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

3.12.3 Design-Builder shall take all necessary steps to ensure harmony between persons performing labor as part of the Work. Design-Builder shall perform Work in accordance with Applicable Laws, including regulations, applicable to the Project labor.

3.12.4 Design-Builder shall be solely responsible for the proper and safe operation and maintenance of all utility systems within the areas of site where the Work is performed, whether supplied by Owner's distribution system or otherwise, until the Work is complete and accepted by Owner and Owner has notified Design-Builder that other arrangements for utility service have been made. Design-Builder shall maintain, protect, and/or operate equipment or facilities within the site construction area which serve the distribution system, subject to periodic inspection by Owner's personnel. Inspection by any representative or personnel of Owner shall not relieve Design-Builder of responsibilities in connection with operation, maintenance and protection of these facilities and equipment. Design-Builder shall notify Owner's representatives no less than 72 hours in advance of the desire to extend, connect, disconnect, turn on or off any electric, water or other service from Owner's utility supply systems at the site. The actual operation shall be witnessed and approved by authorized representatives of Owner. All plumbing or electrical work, including installation of equipment and any other Work to be performed by Design-Builder, shall be performed without interference with Owner's normal operations at the site.

3.12.5 Adequate toilet facilities for use during construction of the Work shall be provided by Design-Builder.

3.13. COMPLIANCE WITH CONNECTICUT GENERAL STATUTES SECTION 31-52a In the employment of labor to perform the Work specified under the Contract Documents, preference shall be given by Design-Builder to residents of the State of Connecticut, who are, and continuously for at least six (6) months prior to the date of this Agreement have been, residents of the State of Connecticut, and if no such person is available then to residents of other states.

3.14. COMPLIANCE WITH PREVAILING WAGE LAWS

3.14.1 The Project is subject to the Connecticut Prevailing Wage law, including without limitation, Connecticut General Statutes Section 31-53. Design-Builder and all Subcontractors at every tier shall pay wages and fringe benefits at rates not less than those prevailing for the applicable trades, as determined by the Connecticut Department of Labor. The Connecticut Department of Labor prevailing wage rate schedule for the City of Torrington as of July 1, 2025 is attached hereto as **EXHIBIT D**. Design-Builder shall comply with, and cause all Subcontractor and Suppliers to comply with, all prevailing wage rate requirements applicable to the Project for the duration of the Project, including without limitation, paying and/or ensuring payment of wages and fringe benefits at not less than the rates set forth on **EXHIBIT D**, as such rates may be adjusted by the Connecticut Department of Labor prior to completion of the Work, maintenance of payroll records, and submission of certified payrolls. Design-Builder shall be responsible for ensuring compliance with prevailing wage requirements by all Subcontractors at every tier. Design-Builder's failure to comply with applicable prevailing wage laws may result in withholding of payments or other remedies available to Owner under Applicable Law.

3.14.2 Design-Builder shall comply with, and cause all Subcontractors and Sub-subcontractors providing labor for performance of the Work and/or off-site custom fabrication for the Work to comply with Connecticut General Statutes Section 31-53. The wages paid on an hourly basis to any person performing the work of any mechanic, laborer or worker on the Work herein contracted to be done and the amount of payment or contribution paid or payable on behalf of each

such person to any employee welfare fund, as defined in subsection (i) of Connecticut General Statutes Section 31-53, shall be at a rate equal to the rate customary or prevailing for the same work in the same trade or occupation in the City of Torrington. Any contractor who is not obligated by agreement to make payment or contribution on behalf of such persons to any such employee welfare fund shall pay to each mechanic, laborer or worker as part of such person's wages the amount of payment or contribution for such person's classification on each pay day. For purposes of this Section 13.14, "off-site custom fabrication" means the fabrication of mechanical systems that are fabricated at a site located within the State of Connecticut other than the location of the Project, but are fabricated specifically for the Project, including plumbing systems, heating systems, cooling systems, pipefitting systems, ventilation systems or exhaust duct systems; provided, "off-site custom fabrication" does not include components or materials that are stock shelf items or readily available.

3.15. COMPLIANCE WITH CONNECTICUT GENERAL STATUTES SECTION 31-53b As required pursuant to Connecticut General Statutes Section 31-53b, Design-Builder shall furnish proof, and shall cause its Subcontractors to furnish proof, with the weekly certified payroll form for the first week each employee begins work on the Project that any person performing the work of a mechanic, laborer or worker pursuant to the classifications of labor under Connecticut General Statutes Section 31-53 on the Project, pursuant to this Agreement, has completed a course of at least ten hours in duration in construction safety and health approved by the federal Occupational Safety and Health Administration or, has completed a new miner training program approved by the Federal Mine Safety and Health Administration in accordance with 30 CFR 48 or, in the case of telecommunications employees, has completed at least ten hours of training in accordance with 29 CFR 1910.268 and that any plumber or electrician subject to the continuing education requirements of Connecticut General Statutes Section 20-334d, who has completed a course of at least ten hours in duration in construction safety and health approved by the federal Occupational Safety and Health Administration five or more years prior to the date such electrician or plumber begins work on the Project, has completed a supplemental refresher training course of at least four hours in duration in construction safety and health taught by a federal Occupational Safety and Health Administration authorized trainer.

3.16. DESIGN-BUILDER'S REPRESENTATIVE Design-Builder shall designate a person who shall be Design-Builder's authorized representative and who shall have express authority to bind Design-Builder with respect to all matters concerning this Agreement, the Project and the Work. Design-Builder's Representative shall possess full authority to receive instructions from Owner and to act on those instructions. Design Builder shall not change its representative or their authority without prior written approval from Owner, which approval shall not unreasonably be withheld.

Design-Builder's Representative is: [NAME/TITLE]
[ADDRESS]
[PHONE]
[EMAIL]

ARTICLE 4 OWNER'S RESPONSIBILITIES

4.1. INFORMATION AND SERVICES PROVIDED BY OWNER Owner's responsibilities under this article shall be provided with reasonable detail and in a timely manner.

4.2. WORKSITE INFORMATION To the extent Owner has obtained prior to the Effective Date, or is required elsewhere in the Contract Documents to obtain, the Worksite information set forth in subsections 4.2.1, 4.2.2, or 4.2.3, Owner shall provide such information at Owner's expense and with reasonable promptness:

4.2.1. to the extent under Owner's control and if not required by the Contract Documents to be provided by Design-Builder, the results and reports of prior tests, inspections, or investigations conducted for the Project or for the Worksite 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 Worksite;

4.2.2. information describing the physical characteristics of the Worksite, including surveys, site evaluations, legal descriptions, data, or drawings depicting existing conditions. Legal descriptions shall include easements, title restrictions, boundaries, and zoning restrictions. Worksite descriptions shall include existing buildings, public and private utilities, and other construction and all other pertinent site conditions. Adjacent property descriptions shall include structures, streets, sidewalks, alleys, public and private utilities and other features relevant to the Work. Utility details shall include available services, lines at the Worksite and adjacent thereto, and connection points. The information shall include public and private information, subsurface information, grades, contours, and elevations, drainage data, exact locations and dimensions, and benchmarks that can be used by Design-Builder in laying out the Work;

4.2.3. tests, inspections, and other reports dealing with environmental matters or Hazardous Material, required by the Contract Documents or by Applicable Law.

4.3. RESPONSIBILITIES DURING DESIGN

4.3.1. Owner shall review and approve further development of the drawings and specifications as set forth in ARTICLE 3.

4.3.2. If Owner becomes aware of any error, omission or failure to meet the requirements of the Owner's Program or any fault or defect in the design services or other services Work performed or provided by Design Professional or other professionals engaged by Design-Builder in connection with or as part of the Work, Owner shall give prompt written notice to Design-Builder. The failure of Owner to give such notice shall not relieve the Design Builder of its obligations to fulfill the requirements of the Contract Documents.

4.4. RESPONSIBILITIES DURING CONSTRUCTION

4.4.1. Owner shall review the Construction Schedule, timely approve milestone dates set forth therein, and timely provide information or services required of Owner under the Agreement with reasonable promptness.

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

4.4.3. Owner shall have no contractual obligations to Subcontractors, Suppliers, or Design Professional.

4.4.4. Owner shall provide insurance for the Project as provided in ARTICLE 10.

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

4.6. Owner's Representative is: [NAME/TITLE]
[ADDRESS]
[PHONE]
[EMAIL]

Owner's representative shall: (a) be fully acquainted with the Project; (b) furnish the information and services required of Owner in a timely manner; and (c) have the authority to bind Owner in all matters requiring Owner's approval, authorization or written notice. If Owner changes its representative or the representative's authority as listed above, Owner shall notify Design-Builder in writing in advance.

ARTICLE 5 SUBCONTRACTS

5.1. RETAINING SUBCONTRACTORS Work not performed by Design-Builder with its own forces and/or employees shall be performed by Subcontractors, Suppliers, or Design-Builder's Design Professional. Design-Builder shall not retain any Subcontractor or Supplier to whom Owner makes a reasonable and timely objection. Owner may propose particular subcontractors to be considered by Design-Builder for engagement by Design-Builder as a Subcontractor for performance of a portion of the Work. Design-Builder shall not be required to retain as a Subcontractor any subcontractor proposed by Owner to whom Design-Builder has a reasonable objection.

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

5.3. CONTINGENT ASSIGNMENT OF AGREEMENTS

5.3.1. Each agreement between Design-Builder and Design Professional, a Subcontractor, or a Supplier, for a portion of the Work is assigned by Design-Builder to Owner, provided that

5.3.1.1. assignment is effective only after termination of this Agreement by Owner for cause pursuant to Section 11.2 or Section 11.3, and only for those agreements which Owner accepts by notifying Design-Builder and Design Professional or the Subcontractor or the Supplier whose agreements are accepted for assignment;

5.3.1.2. assignment is subject to the prior rights of the surety, if any, obligated under a bond relating to this Agreement or the Work; and

5.3.1.3. when Owner accepts the assignment of an agreement, Owner assumes Design-Builder's rights under the agreement, and the obligations of Design-Builder accruing under the agreement after the assignment; provided, however, by accepting assignment of an agreement Owner does not accept or assume Design-Builder's obligations with respect to any payment due and owing by Design-Builder under such agreement prior to assignment of the agreement to Owner.

5.3.2. If Owner accepts such an assignment, and the Work has been suspended for more than ninety (90) consecutive days, following termination, if appropriate, Design Professional's or Subcontractor's or Supplier's compensation shall be equitably adjusted as a result of the suspension.

5.4. BINDING OF DESIGN PROFESSIONAL, SUBCONTRACTORS AND SUPPLIERS Design-Builder agrees to include in every agreement with a Design Professional or a Subcontractor or a Supplier, a provision pursuant to which Design Professional or the Subcontractor or the Supplier binds themselves to all the provisions of this Agreement and provisions of the Contract Documents applicable to the portion of the Work to be performed or provided by the Design Professional, Subcontractor or Supplier under such agreement, and which requires them to so-bind its Sub-subcontractors and suppliers.

ARTICLE 6 CONTRACT TIME

6.1. DATE OF COMMENCEMENT The Date of Commencement is the Effective Date stated in ARTICLE 1. Design-Builder shall proceed with performance of the Work in general accordance with the Schedule of Work as such schedule may be amended from time to time with Owner's approval in accordance with this Agreement, subject, however, to other provisions under this Agreement.

6.1.1 Design-Builder shall commence the construction Work at the Worksite on: **AUGUST 1, 2026.**

6.2. SUBSTANTIAL COMPLETION AND FINAL COMPLETION

6.2.1. TIME LIMITS STATED IN THIS AGREEMENT FOR SUBSTANTIAL COMPLETION AND FINAL COMPLETION ARE OF THE ESSENCE OF THIS AGREEMENT. By executing this Agreement, Design-Builder confirms that the time required in this Section 6.2 and in Exhibit A for achieving Substantial Completion of the entirety of the Work and Final Completion are a reasonable period for performing and completing the entirety of the Work.

6.2.2. Substantial Completion of the entirety of the Work shall be achieved by Design-Builder on or before **AUGUST 19, 2026**, subject to adjustments to the Contract Time as provided for in the Contract Documents.

6.2.2.1. Within five (5) days after the date Design Builder believes it has achieved Substantial Completion of the Work, Design Builder shall submit to Owner a proposed draft Certificate of Substantial Completion, which (1) states the date on which Design Builder proposes as the date on which it achieved Substantial Completion of the Work, (2) states the respective responsibilities of Owner and Design-Builder for security, maintenance, utilities, damage to the Work, and insurance, and (3) includes a list of Work items to be completed or corrected by Design-Builder together with the time for completion and correction of such items within the timeframe established in subsection 6.2.3 for the Final Completion of the Work. Within five (5) days after Owner's receipt of Design Builder's proposed Certificate of Substantial Completion, Owner shall accept it by signing the Certificate of Substantial Completion, or reject the proposed Certificate of Substantial Completion by delivering to Design Builder a written notice of rejection that includes Owner's reasons for rejection and corrections that are required by Design-Builder for

Owner's approval, if any. If rejected by Owner, Design-Builder shall revise, correct, and resubmit the proposed Certificate of Substantial Completion as set forth in Owner's notice of rejection.

6.2.3. Unless otherwise specified in the Contract Documents, Design-Builder shall achieve Final Completion of the Work within thirty (30) days after the date of Substantial Completion, subject to adjustments of the Final Completion Time as provided for in the Contract Documents.

6.2.5. Unless otherwise by Owner in writing, Design-Builder shall not knowingly commence the Work before the effective date of insurance that is required to be provided by Design-Builder and Owner.

6.3. DELAYS AND EXTENSIONS OF TIME

6.3.1. If Design-Builder is delayed at any time in the commencement, performance, or completion of the Work by any of the following causes, Design-Builder shall be entitled to an equitable extension of the Contract Time or the Final Completion Time, and shall not be liable to Owner for damages or losses caused by such delay, provided that any such cause of delay is beyond the control of Design-Builder, its Subcontractors and/or Suppliers, or the Design Professional, and not caused by the acts or omissions of Design-Builder, its Subcontractors and/or Supplier, or the Design Professional: (a) acts or omissions of Owner; (b) changes in the Work ordered by Owner; (c) Hazardous Materials or concealed or unknown conditions encountered at the Worksite; (d) strikes or other labor disputes not involving Design-Builder; (e) fire; (f) Terrorism; (g) epidemics affecting the location of the Project; (h) riot affecting the Worksite; (i) embargo; (j) adverse governmental actions not resulting from the acts or omissions of Design-Builder, its Design Professional, its Subcontractors or their Sub-subcontractors; (k) or other causes that are unforeseeable and beyond the control of Design-Builder, its Design Professional, its Subcontractors or their Sub-subcontractors. Design-Builder shall process any requests for equitable extensions of the Contract Time or the Final Completion Time in accordance with the provisions of ARTICLE 8.

6.3.2. In the event delays to the Work are encountered for any reason, the Parties agree to undertake reasonable steps to mitigate the effect of such delays.

6.4. LIQUIDATED DAMAGES

6.4.1. SUBSTANTIAL COMPLETION Owner and Design-Builder agree that this Agreement shall provide for the imposition of liquidated damages based on the Contract Time and the Date of Substantial Completion.

6.4.1.1 It is acknowledged that Design-Builder's failure to achieve Substantial Completion of the Work within the time required under Section 6.2.2, as such time may be amended by Change Order, will cause Owner to incur substantial economic damages and losses of types and in amounts which are impossible to compute and ascertain with certainty as a basis for recovery by Owner of actual damages, and that liquidated damages represent a fair, reasonable and appropriate estimate thereof. Accordingly, in lieu of actual damages for such delay, Design-Builder and Owner agree that if Design-Builder fails to achieve Substantial Completion within the time required under, under Section 6.2.2, as such time may be amended by Change Order (the "**Substantial Completion Date**"), then Owner shall be entitled to assess and recover from Design-Builder, as liquidated damages, an amount equal to **ONE THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (\$1,500.00)** for each day after the Substantial Completion Date up to and including the date that Design-Builder achieves Substantial Completion of the Work, without Owner being required to present any evidence of the amount or character of actual damages sustained by Owner by reason thereof. The total amount calculated in the manner set forth above is referred to as the "Liquidated Damages." Owner and Design-Builder agree that the Liquidated Damages calculated above constitute a reasonable estimate of the damages, costs and expenses that will be incurred by Owner in the event Design-Builder fails to achieve Substantial Completion by Substantial Completion Date and that the same do not constitute a penalty. Liquidated Damages provided for herein are intended to reimburse Owner for only the damages it will suffer as a result of Design-Builder's failure to achieve Substantial Completion by the Substantial Completion Date and shall not limit the obligations or liability of Design-Builder or the remedies of Owner pursuant to any other provisions of this Agreement or the other Contract Documents. Owner shall be entitled to deduct any Liquidated Damages assessed against and due from Design-Builder, from the Contract Price. Design-Builder shall not be liable for Liquidated Damages for delays caused solely by Owner or Owner's agents.

The Parties understand and agree that, by including a provision for Liquidated Damages in this Agreement, or in pursuing any relief pursuant to such provision: (i) the Parties do not intend to set a price for the privilege not to perform; (ii) the availability of Liquidated Damages may not be relied upon as a basis for any claim by

Design-Builder that Owner has an adequate remedy at law; and (iii) the remedies available to Owner under the Contract Documents are cumulative and not exclusive.

ARTICLE 7 CONTRACT PRICE

7.1. CONTRACT PRICE In consideration of, and as full compensation for performance and completion by Design-Builder of the entirety of the Work in compliance with all the terms and conditions of this Agreement and the requirements of the Contract Documents, Owner shall pay to Design-Builder a lump sum **Contract Price in the amount of [ADD AMOUNT] and XX/100 DOLLARS (\$XXXXXX.XX)**, subject to adjustment pursuant to and in accordance with ARTICLE 8. The Contract Price is the total amount, including authorized adjustments pursuant to ARTICLE 8, payable by Owner to Design-Builder for performance and completion of the Work and all Design-Builder's obligations under this Agreement and the other Contract Documents.

Except as otherwise expressly provided under this Agreement, in no event shall Design-Builder be entitled to the payment of amounts in addition to the Contract Price, whether for "extras," additional work, services, or otherwise, unless the same shall have been authorized in advance in writing by Owner, which written authorization specifically identifies the work or services to be performed by Design-Builder, acknowledges Design-Builder's performance of such work and/or services as the basis for Design-Builder's entitlement to payment of amounts additional to the Contract Price, and which specifies the amount of additional payment and terms thereof.

7.2. ALTERNATES

7.2.1 The following alternates are included in the Contract Price:

- (1) [ADD ITEMS AND PRICE IF APPLICABLE]
- (2) [ADD ITEMS AND PRICE IF APPLICABLE]

7.2.2 One or more of the following alternates may be accepted by Owner following execution of this Agreement, provided that Owner gives notice to Design-Builder of such acceptance prior to the date(s) that Design-Builder has purchased materials for the Work and commenced construction of the Work. Upon acceptance of an such alternate, Owner shall issue a Change Order for the accepted alternates.

- (1) Alternate 1: [DESCRIPTION] – [PRICE]
- (2) Alternate 2: [DESCRIPTION] – [PRICE]
- (3) Alternate 3: [DESCRIPTION] – [PRICE]

7.3. UNIT PRICES

7.3.1 The following unit prices will apply if and to the extent the Work includes the following unit price Work items: 4 Unit prices applicable to the Work, if any, are set forth below (the "Unit Prices"). Unit Prices shall be valid for the life of the Project and are inclusive of all costs associated with the complete performance, furnishing, and installation of the portion of the Work subject to Unit Prices including, without limitation, labor, materials, equipment, machinery, services, engineering, transportation, taxes and insurance as well as overhead and profit. Unit Prices shall be applicable to both additions to and deductions from the Work:

Unit Price Work Item	Units and Limitations	Price per Unit
1. ITEM	UNIT	\$XX.XX per XXX
2. ITEM	UNIT	\$XX.XX per XXX

7.4. WORK PERFORMED PRIOR TO THE EFFECTIVE DATE Owner and Design-Builder acknowledge and agree that: all the terms and conditions of this Agreement and all other Contract Documents shall govern and apply to any and all planning, coordination, and design services that were performed or provided by or for Design-Builder in connection with the Project prior to the Effective Date of this Agreement as if this Agreement had been executed prior to the commencement of such services; that the amount of the initial Contract Price set forth in Section 7.1 encompasses compensation for all such services within the scope of the Work that were performed by or on behalf of Design-Builder for the Project prior to the Effective Date; and that any payments by Owner prior to the Effective Date to Design-Builder for services within the scope

of the Work that were performed by or on behalf of Design-Builder for the Project prior to the Effective Date shall be credited as payments towards the Contract Price.

ARTICLE 8 CHANGES IN THE WORK

Changes in the Work which are within the general scope of this Agreement may be accomplished by Change Order or Construction Change Directive, without invalidating this Agreement, subject to the limitations stated in the Contract Documents.

8.1. CHANGE ORDERS

8.1.1. Design-Builder may request, or Owner, without invalidating this Agreement, may order, changes in the Work within the general scope of the Contract Documents. All such changes in the Work shall be authorized by a Change Order and processed in accordance with this Article 8, including any adjustment to the Contract Price or Contract Time or the Final Completion Time. Each adjustment in the Contract Price resulting from a Change Order shall clearly separate the amount attributable to design services, if any.

8.1.2. The Parties shall negotiate an appropriate adjustment to Contract Price or Contract Time or the Final Completion Time in good faith and conclude negotiations as expeditiously as possible. Acceptance of a Change Order and any adjustment in the Contract Price or the Contract Time or the Final Completion Time therein shall not be unreasonably withheld.

8.1.3. NO OBLIGATION TO PERFORM Design-Builder shall not be obligated to perform changes in the Work until a Change Order has been executed or a written Construction Change Directive has been issued.

8.2. CONSTRUCTION CHANGE DIRECTIVE

8.2.1. Owner may issue a written Construction Change Directive directing: (1) a change in the Work prior to Owner and Design-Builder reaching agreement on the amount of an adjustment to the Contract Price or the Contract Time or the Final Completion Time, if any, in connection with a change in the Work, and if appropriate, the compensation for design services, or (2) directing Design-Builder to proceed with performing Work that Owner believes is not a change to the Work and which Design-Builder believes to constitute a change in the Work.

8.2.2 If the Parties agree that the work under a Construction Change Directive constitutes a change in the Work, Design-Builder shall submit to Owner within seven (7) days after Design-Builder's receipt of the Construction Change Directive and before proceeding with such work, a proposed Change Order setting forth any adjustment to Contract Price and/or the Contract Time attributable to such work, together with an itemized estimate of Design-Builder's costs of the performing such work. Design-Builder shall proceed with such work promptly upon receiving written direction from Owner to proceed.

8.2.3 If the Parties disagree that the work under a Construction Change Directive constitutes a change in the Work for which a Change Order is required pursuant to this Agreement, Design-Builder shall proceed with the disputed work promptly upon receiving written direction from Owner to proceed with performing the disputed work. Within (7) after Design-Builder receives written direction from Owner to proceed such disputed work, Design-Bulder shall furnish to Owner a written estimate of Design-Builder's costs to perform the disputed work in accordance with the Construction Change Directive and Owner's interpretations of the Contract Documents set forth therein.

8.2.4 If the Parties agree upon the adjustments in the Contract Price or the Contract Time or the Final Completion Time, and if appropriate, the compensation for design services, for a change in the Work directed by a Construction Change Directive, such agreement shall be the subject of an appropriate Change Order.

8.2.5. The Parties shall negotiate expeditiously and in good faith for appropriate adjustments, as applicable, to the Contract Price or Contract Time or the Final Completion Time, and if appropriate the compensation for design services, arising out of a Construction Change Directive. As the work under a Construction Change Directive is completed, Design-Builder shall submit its costs for such work together with its Application for Payment beginning with the next Application for Payment within thirty (30) days of the issuance of the Construction Change Directive. Owner's payment does not prejudice its right to be reimbursed should it be determined that the disputed work was within the scope of the Work.

8.3. CONCEALED OR UNKNOWN SITE CONDITIONS If a condition encountered at the Worksite is a subsurface or concealed physical condition which is unknown, unusual, and materially different from conditions ordinarily encountered and generally recognized as inherent in Work required by the Contract Documents, Design-Builder shall give prompt written notice of the condition to Owner. Owner shall thereafter investigate the condition and then issue a Construction Change Directive specifying the extent to which Owner agrees that a concealed or unknown condition exists and directing Design-Builder as to how it is to proceed with performance of the remainder of the Work. Any change in the Contract Price or Contract Time as a result of the condition, including any dispute about its existence or nature, shall be determined as provided in this ARTICLE 8.

8.4. DETERMINATION OF COSTS FOR CHANGES IN THE WORK

8.4.1. An increase or decrease in the Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:

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

8.4.1.2. a mutually accepted, itemized lump sum; or

8.4.1.3. if an increase or decrease cannot be agreed to as set forth in subsection 8.4.1.1 or 8.4.1.2 and Owner issues a written order for Design-Builder to proceed with the change, the adjustment in the Contract Price shall be determined by the reasonable cost incurred and savings realized in the performance of the Work resulting from the change. If there is a net increase in the Contract Price, such increase shall include the net increase to Design-Builder's direct cost of performing the Work plus fifteen percent (15%) for Design-Builder's overhead and profit. In the case of a net decrease in cost, the amount of decrease in the Contract Price will not include a reduction in Design-Builder's overhead and profit.

8.4.1.4. Design-Builder shall maintain a documented, itemized accounting evidencing the expenses and savings.

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

8.4.3. If Owner and Design-Builder disagree as to whether work required by Owner is within the scope of the Work and therefore does not constitute a change in the Work for which Design-Builder is entitled to an increase to the Contract Price, Design-Builder shall submit to Owner a written estimate of Design-Builder's costs to perform the disputed work in accordance with Owner's interpretations of the Contract Documents. If Owner and Design-Builder disagree as to the amount of a change to the Contract Price (if any) proposed by Design-Builder, Design-Builder shall proceed with performance of the disputed work, and Design-Builder may submit a claim in accordance with Section 8.5 requesting an increase to the Contract Price.

8.5. CLAIMS FOR ADDITIONAL COST OR TIME For any claim for an increase in the Contract Price or an extension in the Contract Time or the Final Completion Time, Design-Builder shall give Owner written notice of the claim within ten (10) days after the occurrence giving rise to the claim or within ten (10) days after Design-Builder first recognizes the condition giving rise to the claim, whichever is later. Except in an emergency, notice shall be given before proceeding with the subject work. Claims for design and estimating costs incurred in connection with possible changes to the Work requested by Owner, and with which Owner elects **not** to proceed, shall be made by Design-Builder within ten (10) days after Design-Builder receives written notice of Owner's decision to not to proceed with such work. Thereafter, Design-Builder shall submit written documentation in support of its claim, including appropriate supporting documentation, within fourteen (14) days after giving notice, unless the Parties mutually agree upon a longer period of time. Owner shall respond in writing, denying or approving Design-Builder's claim no later than fourteen (14) days after receipt of Design-Builder's supporting documentation. Owner's failure to so-respond shall be deemed a denial of Design-Builder's claim. Any change in Contract Price or the Contract Time or the Final Completion Time resulting from such claim shall be authorized by Change Order.

8.5.1. **TAXES** Owner shall pay all taxes, duties, governmental levies and other governmental charges assessed against or arising from the Work notwithstanding that Owner is a tax-exempt entity, excluding any taxes, duties, governmental levies and other governmental charges expressly included as part of the initial Contract Price. To the extent that taxes, duties, governmental levies and other governmental charges expressly included as part of the initial Contract Price

increase after the Effective Date and result in an actual increase to Design-Builder's cost to perform and complete the entirety of the Work, Design-Builder shall be entitled to an equitable adjustment to the Contract Price.

8.5.2. TARIFFS Owner and Design-Builder acknowledge that the initial Contract Price:

8.5.2.1. does not include or reflect federal tariffs enacted after the Effective Date which will result in any increase in Design-Builder's cost to perform and complete the Work;

8.5.2.2. includes and reflects federal tariffs enacted and effective on or before the Effective Date; and

8.5.2.3. includes and reflects federal tariffs enacted as of the Effective Date which do not take effect until a date after the Effective Date.

If, notwithstanding that Owner is exempt from the payment of sales, use and similar taxes and/or federal excise tax for labor, services, materials or equipment purchased for the Work, Design-Builder incurs increased costs to perform and complete the Work solely as a result of a new or increased federal tariff on products or materials necessary for performance of the Work which is first enacted after the Effective Date, Design-Builder may submit a claim for adjustment of the Contract Price or the Contract Time, which shall be determined as provided in this Section 8.5.

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

ARTICLE 9 PAYMENT

9.1. PROGRESS PAYMENTS

9.1.1. SCHEDULE OF VALUES Together with each application for payment Design-Builder shall provide and include a schedule of values ("**Schedule of Values**") consisting of a breakdown of the Contract Price, with a separate line item for items of Work, including all design services and separate line items showing, in percentage and dollar amounts, the value that the various parts, systems, segments and units of the Work bear to the total Work and the Contract Price. As to major parts, systems, segments and units of the Work items, the Schedule of Values shall also reflect the value of the particular Work item relative to its status of completion. The Schedule of Values shall be in substantially the same form and format as AIA Document G703, and a proposed version of the Schedule of Values shall be submitted by Design-Builder for Owner's review and approval prior to Design-Builder's first application for payment. The Schedule of Values as-approved by Owner, shall be submitted with Design-Builder's first application for payment. Design-Builder shall, with each subsequent application for payment, revise the Schedule of Values to reflect changes in the progress of the Work and/or Owner-approved changes in the Work, and in any event, Design-Builder shall furnish to Owner for Owner's review all revisions made in the Schedule of Values. Changes in the Work approved by Owner and resulting in increases or decreases in the Contract Price, shall be allocated to the corresponding Work items in the Schedule of Values, provided that any change in the Work which does not constitute an addition to any Work item reflected in the Schedule of Values at the time of such change shall be added to the Schedule of Values as an additional Work item.

9.1.2. On or before the last Business Day of each month after the Work has commenced, Design-Builder shall submit to Owner for Owner's review and consideration an itemized application for payment prepared in accordance with the Schedule of Values, for portions of the Work for which Design-Builder is requesting payment. Design-Builder's applications for payment shall be supported by the Schedule of Values, shall be based on the percentage of completion of each portion of the Work as of the end of the period covered by the application for payment, shall be itemized, shall identify the design services and construction services, including labor, material, equipment, and services, comprising the Work that has been completed by Design-Builder through the period covered by the application for payment, shall reflect retainage as provided for in Section 9.2, and shall be submitted with all Supporting Documentation or other information or documents required by this Agreement or otherwise required by Owner as substantiation for Design-Builder's entitlement to payment in the amount requested, and shall be signed by an officer or principal of Design-Builder and notarized. Subject to Section 9.1.9, each application for payment may, if approved in advance by Owner, request payment for materials or equipment suitably stored at the Worksite or at other locations approved by Owner.

9.1.2.1. Each application for payment shall include a statement showing the status of all pending change orders, other pending change directives and approved changes to this Agreement or the other Contract Documents. Such statement shall identify the pending Change Orders and other pending Construction Change Directives, and shall include the date such Change Orders and Construction Change Directives were initiated, the costs associated with their performance, and a description of any work completed.

9.1.2.2. "Supporting Documentation" means and may include, any data, information and documentation required by Owner to substantiate Design-Builder's entitlement to payment of the amount requested by Design-Builder or which Owner reasonably requires otherwise to substantiate such entitlement. Supporting Documentation may include, without limitation, payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, releases and waivers of liens and claims from Design-Builder, Design Professional, Subcontractors, Suppliers, and/or their Sub-subcontractors or suppliers, and any other persons who performed any of the Work, and other evidence required by Owner to demonstrate the amount of payment requested in an application for payment is due and payable to Design-Builder pursuant to this Agreement and/or that cash disbursements already made by Design-Builder to others on account of portions of the Work for which payment was requested in prior applications for payment, equal or exceed progress payments already made by Owner to Design-Builder.

9.1.2.3. Applications for payment may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives but not yet included in Change Orders.

9.1.2.4. Applications for payment shall not include requests for payment for portions of the Work for which Design-Builder does not intend to pay the Design Professional, or a Subcontractor, or a Supplier, unless such Work has been performed by others whom Design-Builder intends to pay.

9.1.3. Within seven (7) days after Design-Builder's submission of an application for payment to Owner, Owner shall give written notice to Design-Builder of Owner's approval or rejection, in whole or in part, of such application for payment. Not later than thirty (30) days after the date the Owner receives the final version of the application for payment and all required Supporting Documentation from the Design-Builder, which Application for Payment is approved in whole or in part by the Owner, the Owner shall pay to Design-Builder a progress payment on account of the Contract Price in the amount for which the application for payment is made and approved by Owner. If Owner and Design-Builder cannot agree on a revised payment amount, then within thirty (30) days after Owner's receipt of the application for payment, Owner shall pay to Design-Builder a progress payment on account of the Contract Price in an amount for those items not rejected by Owner for which application for payment is made and approved by Owner. Amounts for which Design-Builder's application for payment has been rejected by Owner, shall not be due and payable unless and until Owner's reasons for the rejection have been removed or cured by Design-Builder.

9.1.3.1. The amount of each progress payment shall first include:

- (1) that portion of the Contract Price properly allocable to completed Work based on the Schedule of Values;
- (2) that portion of the Contract Price 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 Owner, suitably stored off the site at a location agreed upon in writing; and
- (3) that portion of Construction Change Directives that Owner reasonably determines to be justified.

9.1.3.2. The amount of each progress payment shall then be reduced by:

- (1) the aggregate of any amounts previously paid by Owner;
- (2) the amount, if any, for Work that remains uncorrected and for which Owner has previously rejected an application for payment in whole or in part as provided in Section 9.3;
- (3) any amount for which Design-Builder does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others Design-Builder intends to pay;
- (4) for Work performed or defects discovered since the last payment application, any amount for which Owner may withhold payment, or nullify a previously approved application for payment in whole or in part, as provided in Section 9.3;
- (5) retainage withheld pursuant to Section 9.2.1;
- (6) in addition to retainage withheld pursuant to Section 9.2.1, unless Design-Builder is exempted by CHRO from the requirements of, or compliance with, Connecticut General Statutes Section 46a-68e, the Owner shall withhold from each progress payment to Design-Builder an amount equal to two percent (2%) of the amount otherwise due (the "**CHRO Holdback**"), until such time as Design-Builder has filed with CHRO and caused all Subcontractors to file with CHRO all compliance reports required by CHRO

pursuant to General Statutes Section 46a-68e, and such reports have been approved by the executive director of CHRO or the executive director's designee or deemed by CHRO deficient without consequence; (7) in addition to retainage withheld pursuant to Section 9.2.1, any additional amounts required by Applicable Law to be withheld or retained by Owner due to Design-Builder's failure to comply with its obligations under Connecticut General Statutes Sections 4a-60, 4a-60g, 4a-60h, or Sections 46a-68c, 46a-68d, 46a-68e and/or 46a-68f, inclusive, or as required by an order of CHRO made pursuant to Connecticut General Statutes Section 46a-56.

9.1.4. If Owner fails to pay Design-Builder at the time payment of any amount becomes due, then Design-Builder may at any time thereafter serve written notice to Owner that the Work will be stopped after thirty (30) additional days after the date of Owner's receipt of such notice unless the amount owed is paid by Owner within such thirty (30) day period. If, after such thirty (30) day period has elapsed, payment of the amount due has not been made by Owner, Design-Builder may stop the Work until payment of the amount owing has been received; provided, however, Design Builder shall not stop performance of the Work by reason of having not received payment from Owner for (1) portions of the Work that are subject to a dispute with Owner as to the quantity or quality of construction, or (2) amounts which Owner properly disputes are due and owing to Design-Builder under this Agreement, or (3) amounts in an application for payment which was approved by Owner prior to Owner giving written notice of default or breach of this Agreement to Design-Builder.

9.1.5. Payments due but unpaid pursuant to Section 9.1.3 shall bear interest only to the extent required by Connecticut law and, if so required, at the minimum required rate.

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

9.1.7. Owner's progress payment, occupancy, or use of the Project, whether in whole or in part, shall not be deemed an acceptance of any Work not conforming to the requirements of the Contract Documents.

9.1.8. Subject to Sections 9.4.1 and 9.4.2, after Substantial Completion of the Work, Owner shall pay Design-Builder the unpaid balance of the Contract Price, less a sum equal to one hundred fifty percent (150%) of Design-Builder's estimated cost of completing any unfinished items of the Work set forth in the certificate of Substantial Completion signed by Owner and Design-Builder. Owner thereafter shall pay Design-Builder the amount retained pursuant to this Subsection 9.1.8 for unfinished items of the Work, or portion thereof, after such items of the Work are completed by Design-Builder.

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

9.1.10. **PAYMENTS TO DESIGN PROFESSIONAL, SUBCONTRACTORS AND SUPPLIERS**

9.1.10.1. Design-Builder shall use amounts paid by Owner under this Agreement on account of the Work solely for the purpose of performance of the Work pursuant to the Contract Documents. Design-Builder shall pay for all services performed, and materials, equipment and machinery supplied by others in connection with the performance of the Work, in accordance with the Contract Documents and as required by Applicable Laws.

9.1.10.2. Design-Builder shall pay any amounts due its Design Professional or any Subcontractor or Supplier providing or performing any of the Work, whether for labor or services performed or materials, equipment or machinery furnished, not later than fifteen (15) days after the date the Design-Builder receives payment from the Owner which encompasses such labor or services performed or materials, equipment or machinery furnished by the Design-Professional, Subcontractor or Supplier or other person or entity providing or performing Work. Payment shall be the amount to which the Design Professional, Subcontractor or Supplier or other person or entity is entitled, reflecting percentages actually retained by the Owner from payments to the Design-Builder on account of the portion of the Work performed by the Design Professional, Subcontractor or Supplier or other person or entity.

9.1.10.3. The Design-Builder shall, by appropriate agreement with each Subcontractor or Supplier or other person or entity providing or performing Work for the Design-Builder, require each person or entity providing or performing such Work to make payments to subconsultants or Sub-subcontractors in a similar manner. The Design-Builder shall include in each subcontract entered into by the Design-Builder with any Subcontractor or Supplier or other person or entity in connection with the Work, a provision requiring the Subcontractor or Supplier or other person or entity to pay any amounts due any of their Sub-subcontractors or suppliers, whether for labor or services performed or materials, equipment or machinery furnished, within thirty (30) days after such Subcontractor or Supplier or other person or entity receives a payment from the Design-Builder which encompasses labor or services performed, or materials, equipment or machinery furnished by such sub-subcontractor or supplier.

9.1.10.4. Retainage withheld by the Design-Builder on amounts due any Subcontractor or Supplier or other person or entity performing or providing the Work shall not exceed five percent (5%) of such amount due.

9.1.10.5. Owner will, on request, furnish to a Subcontractor or Supplier, if practicable, information regarding percentages of completion or amounts applied for by Design-Builder and action taken thereon by Owner on account of portions of the Work performed or provided by such Subcontractor or Supplier.

9.1.11. LIEN WAIVERS As a condition precedent to the amount requested in any application for payment becoming due and owing to Design-Builder, Design-Builder shall provide to Owner with each application for payment, releases and waivers of payment claims and mechanic's liens, duly executed by Design-Builder, Design Professional, and all Subcontractors and Suppliers, and their Sub-subcontractors and suppliers, in the form and format required by this Agreement or as otherwise required Owner, which establish to Owner's satisfaction that payments made by Design-Builder prior to the date of any such application for payment on account of design services, labor, materials, and equipment provided for or otherwise relating to the Work, equal or exceed progress payments already received by Design-Builder from Owner, and that all Work for which prior payments have been received by Design-Builder from Owner is free and clear of liens, claims, security interests, or encumbrances in favor of Design-Builder, the Design Professional, Subcontractors, Suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

9.1.11.1 Commencing with the first application for payment and continuing with each application for payment submitted thereafter, Design-Builder shall furnish to Owner a properly executed conditional release and waiver of payment claims and mechanic's liens from Design-Builder, Design Professional, and each Subcontractor and Supplier, and their Sub-subcontractors and suppliers, whose Work is included on the application for payment subject only to receipt of payment under such application for payment, which releases and waivers of payment claims and mechanic's liens shall be in a form and format acceptable to Owner.

9.1.11.2 Commencing with Design-Builder's second application for payment, and continuing with each application for payment submitted thereafter, if requested by Owner Design-Builder shall furnish to Owner unconditional releases and waivers of payment claims and mechanic's liens, properly executed by Design-Builder, Design Professional, and each Subcontractor and Supplier, and their Sub-subcontractors and suppliers, for all portions of the Work included as the basis for payment requested in Design-Builder's previous applications for payment for which payment was made by Owner, which releases and waivers of payment claims and mechanic's liens shall be in a form and format acceptable to Owner. In no event shall Design-Builder be required to sign an unconditional waiver of Liens or claims, before receiving payment or in an amount in excess of what it has been paid.

9.1.12. REMOVAL OF LIENS

9.1.12.1. In the event that Design Professional, any Subcontractor, Supplier or other party for whom Design-Builder is responsible establishes a Lien against the Property or Worksite, Design-Builder shall, upon request of Owner and at no cost to Owner, and provided that such Lien does not arise from Owner's failure to comply with its payment obligations under this Agreement, cause the Lien to be released and dissolved by the subject lienor within thirty (30) days after date of filing of such Lien on the land records of the City of Torrington, Connecticut, at Design-Builder's own cost and expense, or commence a judicial proceeding to substitute a surety bond or the Lien in accordance with applicable Connecticut General Statutes Section 49-37 or remove the Lien or otherwise cause such lien to be released and discharged. If Design-Builder fails to cause any such Lien to be discharged and dissolved within such thirty (30) day period or fails commence a judicial proceeding to substitute a surety bond or the Lien in accordance with applicable Connecticut General Statutes Section 49-37 or to otherwise cause the release and/or discharge the Lien within such thirty (30) day period, Owner shall have the right, but not the obligation, to do so, and Owner shall have the right to setoff Owner's costs incurred in doing so, including Owner's attorney's fees, litigation expenses,

and court costs, against any amounts that are due, or may become due, to Design-Builder under this Agreement, including without limitation, the right to withhold any such amounts from the next progress payment or the final payment to Design-Builder until such Lien is discharged and dissolved to the satisfaction of Owner.

9.1.12.2. To the fullest extent permitted by Applicable Law, Design-Builder shall further indemnify, defend and hold harmless Owner, Owner's designated representative, any lender of Owner, and all of its respective directors, members of governing boards, officers, partners, employees, managers, beneficiaries, agents and representatives (each an "Indemnified Person") from and against (1) all claims for payment by Design Professional, any Subcontractor, Supplier, or any of their Sub-subcontractors or suppliers, (2) any and all actions, lawsuits, claims and proceedings brought to enforce a Lien recorded against the Worksite and/or the Property or against the Indemnified Person as a result of or in connection with Liens recorded in connection with the Work, the Property, or the Worksite or any improvements thereon, by Design Professional, any Subcontractor, any Supplier, or any of their Sub-subcontractors or suppliers, or anyone claiming by, through or under them, and (3) all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any Lien, claim or other claim for payment by Design Professional, any Subcontractor, any Supplier, or any of their Sub-subcontractors or suppliers. Design-Builder shall pay any judgment or Lien resulting from any such actions, lawsuits or proceedings. Design-Builder's obligations under this Section 9.1.11.2 are conditioned upon Owner having fulfilled its payment obligations to Design-Builder with respect to the Work that is the subject of the Lien or claim and for which indemnification is sought.

9.1.12.3. If claim and related Lien or other matter indemnified against under Section 9.1.12.2 has not been settled or discharged or bonded at the time of Final Completion of the Work, and if such claim is not covered in full by a policy of insurance then in effect from a reputable and financially sound insurance company which has not declined or reserved the right to decline coverage of such claim, Owner may withhold an amount equal to two hundred percent (200%) of the outstanding claim until any such claim is paid or settled or Design-Builder provides a bond, acceptable to Owner, to satisfy such claim.

9.1.12.4. The provisions of this Section 9.1.12 shall survive the termination of this Agreement.

9.2. PROGRESS PAYMENTS PRIOR TO SUBSTANTIAL COMPLETION.

9.2.1. Owner and Design-Builder agree that for each progress payment made prior to Substantial Completion of the Work, Owner may withhold from the amount of the payment otherwise due, as retainage, five percent (5%) of each progress payment.

9.3. ADJUSTMENT OF AN APPLICATION FOR PAYMENT Owner may adjust or reject an application for payment or nullify a previously approved application for payment, in whole or in part, as may reasonably be necessary to protect Owner from loss or damage based upon one or more of the following grounds:

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

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

9.3.3. Design-Builder's failure to pay either Design Professional, a Subcontractor or a Supplier with the proceeds of payments received from Owner for services, labor, materials, equipment, or supplies properly performed or furnished in connection with the Work, provided that Owner is making payments to Design-Builder in accordance with the terms of this Agreement;

9.3.4. Defective Work not corrected in a timely fashion;

9.3.5. reasonable evidence of delay in performance of the Work such that the Work will not be completed within the Contract Time, and that the unpaid balance of the Contract Price is not sufficient to offset damages that Owner may suffer as result of the anticipated delay caused by Design-Builder;

9.3.6. reasonable evidence demonstrating that the unpaid balance of the Contract Price is insufficient for Design-Builder to fund the cost for Design-Builder to complete all the Work;

9.3.7. uninsured third-party claims involving Design-Builder or reasonable evidence demonstrating that third-party claims are likely to be made against Owner unless and until Design-Builder furnishes Owner with adequate security in the form of a surety bond, letter of credit, or other collateral sufficient to discharge any such claims or save Owner harmless against such claims.

If disapproving or nullifying all or part of an application for payment from Design-Builder, Owner shall give written notice to Design-Builder no later than seven (7) days after receipt of the application for payment, stating Owner's reasons for such disapproval or nullification and the corrective actions required by Design-Builder to obtain Owner's approval and payment of the subject application for payment. When Owner's reasons for disapproving or nullifying an application for payment are removed and/or cured by Design-Builder, Owner shall promptly make payment of the amount previously withheld.

9.4. FINAL PAYMENT

9.4.1. Upon receipt of Design-Builder's notice that the Work is ready for final inspection and acceptance by Owner, and upon receipt of a final application for payment, Owner will promptly make such inspection. When Owner finds the Work acceptable and complete and that this Agreement has otherwise been fully performed by Design-Builder, excepting only Design-Builder's obligations for correction of the Work pursuant to Section 3.8 or Design-Builder's obligations pursuant to any warranty relating to the Work, and Design Builder has provided all evidence requested by Owner to demonstrate that amounts owed by Design-Builder to others in connection with the Work have been paid or otherwise satisfied, Owner will, subject to Section 9.4.2 and 9.4.3, issue a final payment of the unpaid balance of the Contract Price, including retainage withheld by Owner, within thirty (30) days after Owner's written approval of Design-Builder's final application for payment or written acceptance of the entirety of the Work performed or provided by Design-Builder. All warranties and guarantees required under or pursuant to the Contract Documents not previously delivered shall be assembled and delivered by Design-Builder to Owner as part of the final application for payment. The final application for payment shall be approved by Owner until all warranties and guarantees and all other close-out deliverables (including those set forth in Section 9.4.2 below) have been received and accepted by Owner.

9.4.2. Design-Builder shall be required to submit the following to Owner, in the form satisfactory to Owner, as conditions to Owner's approval of the final application for payment and Owner's delivery of final payment to Design-Builder:

- (1) an affidavit and waiver of claims by Design-Builder attesting that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which Owner or 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 Contract Documents to remain in force after final payment is currently in effect, which shall include, without limitation product liability and completed operations, for the six (6) year period following the date of Final Completion of the Work, and evidence that such insurance will not be canceled or allowed to expire;
- (3) a written statement that Design-Builder knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents;
- (4) consent of surety, if any, to final payment;
- (5) final prints for record drawing use marked by Design-Builder with record information;
- (6) all guarantees and warranties to which Owner is entitled including documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor or Supplier warranties;
- (7) a final sworn statement from Design-Builder, duly executed and acknowledged showing all Subcontractors and Suppliers to be fully paid and similar sworn statements from Subcontractors and Suppliers, and where appropriate from Sub-subcontractors;
- (8) satisfactory proof that all claims, including taxes (if any), arising out of the Work (including any claims of Subcontractors or Suppliers) have been released or bonded and other data establishing payment or satisfaction of obligations, such as receipts and waivers of liens, and releases of claims, security interests, or encumbrances arising out of the Work, including but not limited to a release and final waiver of claims signed by each Subcontractor, Supplier, Sub-subcontractor and material supplier who performed or provided Work or materials for the Project and conditioned only upon receipt of final payment, the amount of which is consistent with Design-Builder's final application for payment, all to the extent and in such form as may be designated by Owner;
- (9) final documents of similar nature to those required as Supporting Documentation for any monthly payments hereunder;
- (10) all final permits, approvals (including, without limitation, the approval of Owner's insurance company, if required and requested in a timely fashion), certificates (including, without limitation, certificates in respect of electrical systems and life safety systems), and authorizations for use and occupancy of the Project required by

any authority having jurisdiction, including any building permits, temporary and unconditioned permanent and full certificate of occupancy and any other necessary occupancy and use permits;

- (11) the Operating and Maintenance Manual for the Project as provided below;
- (12) a final statement of accounting for all allowances, if any, in form satisfactory to Owner; and
- (13) delivery of all spare parts required to be provided by Design-Builder.

9.4.2.1. The "Operating and Maintenance Manual" for the Project shall contain, as applicable to the Work: (1) full information for each item of mechanical, electrical, or other operating equipment, copies of warranties therefor, schematic diagrams of control systems, circuit directories for each electric and communications panel board, and charts showing the tagging of all valves; and if applicable to the Work, (2) complete keying schedules, paint color schedules, and paint color samples. Each volume of the manual shall be clearly indexed, and shall include a directory of all Subcontractors and maintenance contractors, indicating the area of responsibility of each, and the name and telephone number of the responsible member of each organization. The volumes shall be in both electronic and in bound book form.

9.4.2.2. If Design Professional or any Subcontractor, Supplier, Sub-subcontractor or supplier, or any other person or entity providing services, labor, materials, or equipment relating to the Work, refuses to furnish a release or waiver required by Owner, Design-Builder may furnish a bond satisfactory to Owner to indemnify Owner against any Lien, claim, security interest, or encumbrance. If no such bond is provided, Owner may, without limiting its remedies under law, in equity, or under the Contract Documents, withhold the portion of final payment claimed to be due by the Design Professional or the relevant Subcontractor, Supplier, Sub-subcontractor or supplier, until such Lien, claim, security interest, or encumbrance is resolved or otherwise ceases to be a viable or valid encumbrance. Design-Builder shall refund to Owner all money that Owner may be compelled to pay in discharging or otherwise resolving such Lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

9.4.2.3. Notwithstanding anything to the contrary set forth herein or in any other Contract Documents, Owner shall not be required to make final payment until Design-Builder has submitted all documentation required by the Contract Documents to Owner and Owner has accepted the same, including without limitation, all warranties and guarantees associated with the Work and "as built" surveys in form acceptable to Owner.

9.4.3. If, after Substantial Completion of the Work, Final Completion of the Work is materially delayed through no fault of Design-Builder, Design Professional, or any Subcontractor, Supplier, Sub-subcontractor or any other person or entity for whom or which any of them is responsible, or by issuance of Change Orders by Owner affecting Final Completion, Owner shall, upon application by Design-Builder and approval of Owner, which approval shall not be unreasonably withheld, and without terminating this Agreement, make payment of the balance of the Contract Price due for that portion of the Work fully completed, corrected, and accepted. If the cost to complete Work not fully completed or corrected is less than remaining retainage stipulated in this Agreement, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Design-Builder to Owner prior to Owner's approval of Design-Builder's application and Owner's delivery of such payment. Such payment shall be made under terms and conditions governing final payment, and shall not be deemed a waiver of any of Owner's claims.

ARTICLE 10 INDEMNITY, INSURANCE, AND BONDS

10.1. INDEMNITY

10.1.1. Notwithstanding any other provision set forth in the Contract Documents, to the fullest extent permitted by Applicable Law, Design-Builder shall indemnify, defend and hold harmless Owner, Owner's designated representative, Owner's officers, directors, members of governing boards, officers, partners, employees, managers, beneficiaries, consultants, representatives, and agents (each an "Indemnitee" and collectively the "Indemnitees") from and against any and all liabilities, actions, claims, damages, losses, judgments, workers' compensation payments, costs and expenses, including but not limited to attorneys' fees and/or costs to investigate, defend and settle any claim, judgment or payment of any legal liability arising out of, in connection with, or resulting from performance of the Work, however, only to the extent caused by the negligent acts or omissions, violations of Applicable Laws, or breach of contract by Design-Builder, Design Professional, or any Subcontractor, Supplier, Sub-subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable. The obligations of Design-Builder under the foregoing indemnity shall include, without limitation, to the fullest extent permitted by Applicable Law, any and all claims (including attorneys' fees resulting therefrom) directly or indirectly arising or alleged to arise (1) out of bodily injuries and/or death, property damage, or other damages sustained by any of the Indemnitees or any other person, caused or alleged to have been

caused in whole or in part by the acts, omissions, errors or negligence of Design-Builder, Design Professional, or any Subcontractor, Supplier, Sub-subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, (2) out of the performance of or the failure to perform the Work, the condition of the Work, the Worksite, the Property, adjoining land or driveways, or streets or alleys used in connection with the performance of the Work, by workmen, suppliers, Subcontractors or Sub-subcontractors who are involved in the performance of the Work, and (3) under any scaffolding, structural work, or safe place law or any law with respect to the protection of adjacent landowners. These defense and indemnification obligations shall not require defense or indemnification of an Indemnatee against liability for claims, damages, losses, or expenses caused by or resulting from the sole negligence of such Indemnatee or such Indemnatee's agents or employees, nor shall such obligations 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 10.1. Upon demand by an Indemnatee, Design-Builder shall immediately pay to the Indemnatee the amount of any expenses incurred by such Indemnitees for which Design-Builder is obligated to indemnify the Indemnatee pursuant to this Section 10.1.

10.1.2. In claims against any person or entity indemnified under this Section 10.1 by an employee of Design-Builder, Design Professional, a Subcontractor, a Supplier, a Sub-subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 10.1.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Design-Builder, or the Design Professional, or a Subcontractor, a Supplier, or a Sub-subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

10.1.3. In To the fullest extent permitted by Applicable Law, Design-Builder shall release, defend, indemnify, and hold harmless Owner and Owner's designated representative, and Owner's officers, directors, members of governing boards, officers, partners, employees, managers, beneficiaries, consultants, representatives, and agents from and against any and all suits, claims, damages, costs, (including without limitation reasonable attorneys' fees), compensation, penalties, fines, liabilities or judgments that may arise out of the failure of Design-Builder, Design Professional, or any Subcontractor, Supplier, Sub-subcontractor, anyone directly or indirectly employed by them to comply with any Applicable Laws, including all statutes, ordinances, building codes, and rules and regulations of the United States of America, the State of Connecticut, the City of Torrington, or their respective agencies. This undertaking shall not be affected by other portions of the Contract Documents relating to insurance requirements.

10.1.4. The obligations of Design-Builder under this Section 10.1 shall survive the termination or expiration of this Agreement. The existence of insurance shall in no way limit the scope of Design-Builder's obligations under this Section 10.1.

10.2. DESIGN-BUILDER'S LIABILITY INSURANCE

10.2.1. Prior to commencement of the Work, and as a condition precedent to any payment under this Agreement becoming due and owing by Owner to Design-Builder, Design-Builder shall procure and maintain the types and limits of insurance set forth in this Section 10.2 from an insurance company or insurance companies lawfully authorized to issue insurance in the State of Connecticut, having a minimum AM Best rating of A-, VII. Except as otherwise required by this Agreement, Design-Builder shall maintain the required insurance until the expiration of the period for correction of the Work as set forth in Section 3.8 of the Agreement, with the exception of Commercial General Liability Insurance coverage for products and completed operations which shall be maintained for no less than seven (7) years after Substantial Completion of the Work.

10.2.1.1. Commercial General Liability Insurance for the Project written on an occurrence form with policy limits of not less than One Million Dollars (\$1,000,000) each occurrence, Two Million Dollars (\$2,000,000) general aggregate which shall apply separately on a per-project basis, and Two Million Dollars (\$2,000,000) aggregate for products-completed operations hazard, 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 and advertising injury;
- (3) damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- (4) bodily injury or property damage arising out of completed operations; and
- (5) Design-Builder's indemnity obligations under Section 10.1 of this Agreement applicable to third-party claims, damages, losses and expenses.

10.2.1.1.1. Design-Builder's Commercial General Liability Insurance policy under this Section 10.2.1.1 shall not contain an exclusion or restriction of coverage for the following:

- (1) Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim;
- (2) Claims for property damage to Design-Builder's construction Work arising out of the products-completed operations hazard where the damaged construction Work or the construction Work out of which the damage arises was performed by a Subcontractor;
- (3) Claims for bodily injury other than to employees of the insured;
- (4) Claims for indemnity under Section 10.1 of this Agreement arising out of injury to employees of the insured;
- (5) Claims or loss excluded under a prior work endorsement or other similar exclusionary language;
- (6) Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language;
- (7) Claims related to residential, multi-family, or other habitational projects, if the construction Work is to be performed on such a project;
- (8) Claims related to roofing, if the construction Work involves roofing;
- (9) Claims related to exterior insulation finish systems (EIFS), synthetic stucco, or similar exterior coatings or surfaces, if the construction Work involves such coatings or surfaces;
- (10) Claims related to earth subsidence or movement; or
- (11) Claims related to explosion, collapse, and underground hazards, where the construction Work involves such hazards.

10.2.1.1.2. Commercial General Liability Insurance coverage shall be written on ISO Occurrence form CG 00 01 10 01 or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent contractors, personal and advertising injury, and products-completed operations covering construction means and methods to be maintained for no less than a period of seven (7) years after completion of the Work, contractual liability (without requiring privity of contract), and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). The Commercial General Liability coverage shall apply to, and not exclude coverage for: joint negligence of Design-Builder and other persons; acts and/or omissions of Subcontractors, Suppliers, and Subcontractors' Sub-subcontractors; and completed operations without limitation.

10.2.1.1.3. Owner, Owner's designated representative, the City of Torrington, and their officers, directors, members of governing boards, officers, partners, employees, managers, beneficiaries, consultants, representatives, and agents ("**Additional Insured Parties**" and each an "**Additional Insured Party**"), shall be included as additional insureds under the Commercial General Liability policy. Insurance for Additional Insured Parties shall be as broad as the coverage provided for the named insured. Commercial General Liability coverage shall apply as primary and non-contributory insurance before any other insurance or self-insurance, including any deductible maintained by, or provided to, any Additional Insured Party. Primary limits required for additional insured coverage shall provide uninterrupted and continuous coverage to Design-Builder's or any Subcontractors' umbrella or excess coverage without a gap in coverage.

10.2.1.1.4. Design-Builder shall require and verify that Design Professional, and each Subcontractor shall maintain Commercial General Liability coverage for itself and all Additional Insured Parties for the duration of the Project and maintain Completed Operations coverage for itself and each Additional Insured Party for at least seven (7) years after completion of the Work.

10.2.1.2. Automobile Liability Insurance written on the most recent ISO form CA 00 01 or its equivalent, covering vehicles owned, hired vehicles, and non-owned vehicles, including trailers, used by Design-Builder and/or used in connection with the Work, with policy limits of not less than One Million Dollars (\$1,000,000) combined single limit for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

10.2.1.3. Worker's Compensation Insurance as required by Applicable Law, at statutory limits.

10.2.1.4. Employers' Liability Insurance with policy limits not less than One Million Dollars (\$1,000,000) each accident, One Million Dollars (\$1,000,000) each employee, and One Million Dollars (\$1,000,000) policy limit.

10.2.1.5. Umbrella or Excess liability insurance on an occurrence basis in excess of the coverages and limits required for the primary liability insurance required under Sections 10.2.1.1, 10.2.1.2, and 10.2.1.4, with policy limits not less than Five Million Dollars (\$5,000,000) per occurrence and Five Million Dollars (\$5,000,000) unimpaired general aggregate per policy year. Umbrella or Excess coverage shall be follow-form on a primary and non-contributory basis. The Umbrella or Excess insurance policies shall provide the same or greater coverage as the coverages required under Sections 10.2.1.1, 10.2.1.2, and 10.2.1.4, and in no event shall any Excess or Umbrella liability insurance provide narrower coverage than the primary policy. The Umbrella or Excess insurance policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers. Umbrella or Excess coverage must include as additional insureds all Additional Insured Parties, and Umbrella or Excess coverage for such additional insureds shall apply as primary and non-contributory before any other insurance or self-insurance or self-insured retention, including any deductible maintained by or provided to an Additional Insured Party and shall apply without the need for privity of contract as to any Additional Insured Party.

10.2.1.6. Design-Builder may achieve the required limits and coverage for Commercial General Liability Insurance, Automobile Liability Insurance, and Employer's Liability Insurance, through a combination of primary and excess or umbrella "follow form" liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under subsections 10.2.1.1, 10.2.1.2, and 10.2.1.4, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers, and aggregate limits of liability shall apply separately with respect to the Work.

10.2.1.7. If Design-Builder will furnish professional services as part of the Work, including without limitation, surveying, design, engineering, stamping of drawings or specifications, consulting, programing or development of software, Professional Liability insurance coverage covering performance of professional services, with policy limits not less than One Million Dollars (\$1,000,000) per claim and One Million Dollars (\$1,000,000) in the aggregate. The Professional Liability insurance shall be effective from the earliest date that the design services of Design-Builder or any of its Design Professionals commenced for the Project until seven (7) years after the Date of Substantial Completion. The Professional Liability Insurance shall include prior acts coverage sufficient to cover all services rendered by any design professional for Design-Builder in connection with the Project. The coverage required by this Section is in addition to any professional liability coverage Design-Builder requires of Design Professional or any Subcontractors. If Design-Builder maintains Professional Liability insurance with broader coverage or higher limits of insurance than that required by this Section 10.2.1.7, that such broader and/or higher insurance shall apply for the purposes of this Agreement and the Project.

10.2.1.8. Pollution Liability insurance with policy limits not less than of One Million Dollars (\$1,000,000) per occurrence, and Two Million Dollars (\$2,000,000) in the aggregate, covering the transportation, dissemination, use, or release of pollutants, which coverage shall apply on per-project basis and be location specific.

10.2.2. To the fullest extent permitted by Applicable Law, Design-Builder shall cause the insurance required under subsections 10.2.1.1, 10.2.1.2, 10.2.1.4, 10.2.1.5, and 10.2.1.7 to include all Additional Insured Parties as additional insureds. The additional insured coverage shall be primary and non-contributory to any insurance policies or self-insurance maintained by Additional Insured Parties, including any deductible maintained by or provided to any Additional Insured Party. The policy limits applicable to each Additional Insured Party as additional insured 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. Without limiting the foregoing, additional insured coverage under the Commercial General Liability coverage shall (1) include all Additional Insured Parties an additional insured for claims caused in whole or in part by Design-Builder's negligent acts or omissions during Design-Builder's operations; (2) include Additional Insured Parties an additional insureds for claims caused in whole or in part by Design-Builder's negligent acts or omissions for which loss occurs during completed operations; (3) shall be primary and non-contributory to any of the Additional Insured Parties' general liability insurance policies and shall apply to both ongoing and completed operations; and (4) to the extent commercially available, the additional insured coverage shall be no less than that provided by ISO forms CG 20 10 07 04, CG 20 37 07 04.

10.2.3. Design-Builder shall provide certificates of insurance, policy declaration pages, and policy endorsements acceptable to Owner, and upon request of Owner full certified copies of Design-Builder's insurance policies required under this Agreement, evidencing compliance with the requirements in this Section 10.2, at the following times: (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. Additional certificates evidencing continuation of commercial general liability coverage, including coverage for completed operations coverage for a minimum of seven (7) years, shall be submitted with the

final application for payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section 10.2.1 for each insurance policy. To the fullest extent permitted by Applicable Law, the certificates and endorsements will show all Additional Insured Parties additional insureds on Design-Builder's liability policies required under Sections 10.2.1.1, 10.2.1.2, 10.2.1.4, 10.2.1.5, and 10.2.1.7. All certificates for Design-Builder, Design-Builder's architects and engineers, and any Subcontractor, shall be provided by Design-Builder to Owner prior to commencing the Work, including without limitation specific endorsements evidencing, if commercially available, additional insured coverage and waivers of subrogation for each insurance policy.

10.2.4. INSURANCE COVERAGE FROM DESIGN PROFESSIONALS AND SUBCONTRACTORS

Design-Builder shall require Design-Builder's Design Professional, Design-Builder's other architects and engineers (if any), and Subcontractors to purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the State of Connecticut. Design-Builder shall obligate the Design Professional, Design-Builder's other architects and engineers (if any), and its Subcontractors to maintain the required insurance until the expiration of the period for correction of the construction Work as set forth in Section 3.8.

10.2.4.1 Design-Builder shall ensure that its Design Professional, Design-Builder's other architects and engineers (if any), and all Subcontractors, maintain insurance consistent with the requirements set forth in this Section 10.2, including without limitation, the naming of Additional Insured Parties as additional insureds thereunder, as provided and required in Section 10.2.1 and Section 10.2.2 above, with limits acceptable to Owner. Design-Builder shall include in all contracts with others for the performance of the Work the obligation of the Design Professional or Subcontractor to comply with these insurance requirements. Design-Builder shall not permit any Design Professional or Subcontractor to perform any Work at or in connection with the Property until such time as Design-Builder has received satisfactory evidence from such Design Professional or Subcontractor that the foregoing insurance requirements have been satisfied.

10.2.5. To the extent commercially available, insurance policies required under this Section 10.2 shall contain a provision that the insurance company or its designee must give Owner written notice transmitted in paper or electronic format: (a) thirty (30) days before coverage is nonrenewed by the insurance company and (b) within fifteen (15) days prior to cancelation of coverage by the insurance company. Before commencing the Work, upon renewal or replacement of the insurance policies, and for one year after Substantial Completion the Work or longer if and as required by the Contract Documents, Design-Builder shall furnish to Owner certificates of insurance for each insurance coverage required under this Section 10.2. In addition, if any insurance policy required under Section 10.2 is not to be immediately replaced without lapse in coverage when it expires, exhausts its limits, or is to be cancelled, Design-Builder shall give Owner prompt written notice upon actual or constructive knowledge of such condition.

10.2.6. WAIVER OF SUBROGATION

10.2.6.1. All liability insurance policies required to be procured and maintained by Design-Builder's under this Section 10.2 shall, to the greatest extent permitted by Applicable Law, and if commercially available (1) permit Design-Builder to waive rights of subrogation against Owner, Owner's designated representative, the City of Torrington, and their officers, directors, members of governing boards, officers, partners, employees, managers, beneficiaries, consultants, representatives, and agents and, (2) include a waiver of subrogation endorsement in favor of Owner, Owner's designated representative, the City of Torrington, and their officers, directors, members of governing boards, officers, partners, employees, managers, beneficiaries, consultants, representatives, and agents.

10.2.6.2. To the greatest extent permitted by Applicable Law, Design-Builder waives all rights of recovery against Owner, Owner's designated representative, the City of Torrington, and their officers, directors, members of governing boards, officers, partners, employees, managers, beneficiaries, consultants, representatives, and agents, for losses within the scope of each liability insurance policy which Design-Builder is required to procure and maintain under this Section 10.2, and/or which Design-Builder in-fact procures and maintains, pursuant to this Agreement, or otherwise.

10.2.7. Design-Builder's failure to comply with any requirement of this Section 10.2 applicable to insurance coverage required to be maintained by Design-Builder, Design-Professional, and any Subcontractor or Supplier shall constitute a material breach of this Agreement. If Design-Builder, Design Professional, or any Subcontractor or Supplier fails to obtain or maintain any insurance coverage required under this Agreement, including the minimum coverage limits required under this Agreement, Owner may, after providing ten (10) days' written notice to Design-Builder, and upon Design-Builder's failure to cure during such ten (10) day period by obtaining or causing to be obtained any such

insurance coverage and providing certificates and endorsements for such insurance to Owner as evidence thereof, (i) terminate this Agreement in accordance with Section 11.4, or (ii) in Owner's sole discretion and option, procure or renew any such coverage, the cost of which Design-Builder shall reimburse to Owner upon Owner's written demand or which Owner may offset against any sums otherwise due and payable Design-Builder under this Agreement.

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

10.4. OWNER'S INSURANCE Prior to commencement of the Work, Owner shall be responsible for purchasing and maintaining Owner's usual general liability insurance.

10.5. PERFORMANCE BOND/PAYMENT BOND

10.5.1 Design-Builder shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the State of Connecticut with an AM Best rating of no less than A-, VII or who are otherwise acceptable to Owner, as follows: Except as set forth in subsection 10.5.2, Design-Builder shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the State of Connecticut with an AM Best rating of no less than A-, VII or who are otherwise acceptable to the Owner, as follows:

10.5.1.1. A Payment Bond in the amount of 100% of the Contract Price, for the protection of persons supplying labor or materials in the prosecution of the Work for the use of each such person; and

10.5.1.2. A Performance Bond in the amount of 100% of the Contract Price.

10.5.1.3. Payment and Performance Bonds shall be AIA Document A312-2010™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312-2010™, or shall be on such other form of surety bond that is otherwise acceptable to Owner.

10.5.2. LETTER OF CREDIT IN LIEU OF SURETY BONDS If Design-Builder is a small contractor or a minority business enterprise as defined by Connecticut General Statutes Section 4a-60g, Design-Builder may:

- (1) in lieu of providing a Payment Bond in accordance with Section 10.5.1.1., provide a letter of credit in an amount equal to twenty-five percent (25%) if the Contract Price; and
- (2) in lieu of providing a Performance Bond in accordance with Section 10.5.1.2., provide a provide a letter of credit in an amount equal to twenty-five percent (25%) if the Contract Price.

10.5.3 Design-Builder shall obtain from each Subcontractor with whom Design-Builder enters into a Subcontract having a Subcontract value or price of One Hundred Thousand Dollars (\$100,000.00) or more, a Payment Bond for the protection of persons supplying labor or materials in the prosecution of the Work for the use of each such person, from a company or companies lawfully authorized to issue surety bonds in the State of Connecticut with an AM Best rating of no less than A-VII or who are otherwise acceptable to the Owner and Design-Builder, which bond shall be in the amount of 100% of the amount of such Subcontract. Such Payment Bond shall be AIA Document A312-2010™, Payment Bond or contain provisions identical thereto.

ARTICLE 11 SUSPENSION, OWNER'S RIGHT TO PERFORM THE WORK, AND TERMINATION

11.1. SUSPENSION BY OWNER FOR CONVENIENCE

11.1.1. Owner shall have the right to, without cause and for Owner's convenience, order Design-Builder in writing to suspend, delay, or interrupt the Work for such period of time as Owner may determine to be appropriate for its convenience.

11.1.2. The Contract Price and the Contract Time shall be adjusted for increases in Design-Builder's costs of performing its obligations under this Agreement and delays to Design-Builder's performance of the Work caused by suspension, delay, or interruption under Section 11.1.1. Adjustment of the Contract Price shall include profit, not exceeding fifteen percent (15%) if Design-Builder's actual increased costs. 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 Design-Builder is responsible; or (2) that an equitable adjustment is made or denied under another provision of this Agreement.

11.2. OWNER'S RIGHT TO PERFORM THE WORK WITHOUT TERMINATING

11.2.1. If Design-Builder fails to perform its obligations under this Agreement, or fails to make prompt payment to its workers, Subcontractors, or Suppliers, disregards Applicable Laws or orders of any public authority having jurisdiction, or has otherwise materially breached a provision of this Agreement, Design-Builder may be deemed in default and material breach of this Agreement by Owner. If Design-Builder fails within seven (7) days after receipt of written notice from Owner to commence and continue correction of such default, then Owner shall give Design-Builder a second notice to correct the default within a five (5) day period.

11.2.2. After receiving Owner's second written notice, if Design-Builder fails to promptly commence and continue satisfactory correction of the default after receipt of such second notice, Owner may, without prejudice to any other rights or remedies Owner may have: (a) take possession of the Worksite; (b) complete the Work utilizing any reasonable means; (c) withhold payment due to Design-Builder; and (d) as Owner deems necessary, supply workers and materials, equipment, and other facilities for the satisfactory correction of the default, and charge Design-Builder the costs and expenses, including reasonable Overhead, profit, and attorneys' fees.

11.2.3. In the event of an emergency affecting the safety of persons or property, Owner may immediately commence and continue satisfactory correction of a default without first giving written notice to Design-Builder but shall give written notice of such action to Design-Builder upon commencing such actions.

11.3. TERMINATION BY DESIGN-BUILDER

11.3.1. Design-Builder may terminate this Agreement if the Work is stopped for a period of sixty (60) consecutive days through no act or fault of Design-Builder, or any other persons or entities performing portions of the Work, 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 Owner has not approved an application for payment and has not notified Design-Builder of the reason for not approving the application for payment in accordance with Article 9, or because Owner has not made payment on an application for payment that has been approved by Owner within the time stated in Article 9.

11.3.2. Design-Builder may terminate this Agreement if, through no act or fault of Design-Builder, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by Owner as described in Section 11.1, constitute in the aggregate more than 100 percent of the total number of days scheduled for the Contract Time.

11.3.3. If one of the reasons described in Section 11.3.1 or 11.3.2 exists, Design-Builder may, upon fifteen (15) days' prior written notice and opportunity to cure to Owner, terminate this Agreement and recover from Owner payment for Work executed.

11.3.4. If the Work is stopped for a period of sixty (60) consecutive days through no act or fault of Design-Builder, or any other persons or entities performing portions of the Work because Owner has repeatedly failed to fulfill Owner's obligations under the Design-Build Documents with respect to matters material to the progress of the Work, then Design-Builder may, upon fifteen (15) additional days' prior written notice to Owner, terminate this Agreement and recover from Owner as provided in Section 11.3.3.

11.4. TERMINATION FOR CAUSE BY OWNER

11.4.1. Owner may terminate this Agreement if Design-Builder:

- (1) fails to submit the Design Development Documents or the Construction Documents within a reasonable time consistent with the Contract Time within which Design-Builder is required to achieve Substantial Completion;
- (2) refuses or fails to supply enough properly skilled workers or proper materials;
- (3) refuses or fails to supply qualified engineers, consultants, or Subcontractor, where required;
- (4) fails to make payment to the Design Professional or Design-Builder's Subcontractors or Suppliers in accordance with their respective agreements with Design-Builder;
- (5) repeatedly disregards Applicable Laws;

- (6) institutes proceedings or consents to proceedings requesting relief or arrangement under the Federal Bankruptcy Act or any similar or applicable Federal or state law, or if a petition under any Federal or state bankruptcy or insolvency law is filed against Design-Builder and such petition is not dismissed within sixty (60) days after the date of said filing, or if Design-Builder admits in writing its inability to pay its debts generally as they become due, or if it makes a general assignment for the benefit of its creditors, or if a receiver, liquidator, trustee or assignee is appointed on account of its bankruptcy or insolvency; or if a receiver of all or any substantial portion of Design-Builder's properties is appointed;
- (7) submits, or is found to have submitted, an application for payment, sworn statement, waiver of Lien, affidavit or document of any nature whatsoever which is intentionally falsified;
- (8) if requested by Owner, fails to furnish Owner with assurances satisfactory to Owner evidencing Design-Builder's ability to complete the Work in compliance with all requirements of the Contract Documents; or
- (9) is otherwise in material breach of Design-Builder's obligations under and/or arising from the Contract Documents or the Work.

11.4.2. When any of the reasons described in Section 14.4.1 exist, Owner may, without prejudice to any other rights or remedies of Owner and after giving Design-Builder and Design-Builder's surety, if any, fifteen (15) days' prior written notice and opportunity to cure, terminate employment of Design-Builder and may, subject to any prior rights of the surety:

- (1) exclude Design-Builder from the Worksite and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by Design-Builder;
- (2) accept assignment of Design-Builder's Design Professional(s), and Subcontractor agreements pursuant to Section 5.3;
- (3) finish the Work by whatever reasonable method Owner may deem expedient. Upon written request of Design-Builder, Owner shall furnish to Design-Builder a detailed accounting of the costs incurred by Owner in finishing the Work; and
- (4) terminate Design-Builder's right to proceed with a separate part of the Work if Owner so elects.

11.4.3. When Owner terminates this Agreement for one of the reasons stated in Section 14.4.2, Design-Builder shall not be entitled to receive further payment until the Work is complete.

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

11.4.5. If any termination by Owner for cause under this Section 11.4 is determined by an arbitrator or court of competent jurisdiction to have been wrongful, invalid, or in violation of this Agreement, such termination shall be deemed converted to a termination for convenience by Owner under Section 11.5 and shall not be deemed a breach of this Agreement.

11.5. TERMINATION BY OWNER FOR CONVENIENCE

11.5.1. Owner may, at any time, without prejudice and without waiving any other right or remedy Owner may have under the Contract Documents, at law or in equity, terminate this Agreement for Owner's convenience and without cause. Termination by Owner under this Section 11.5 shall be by a written Notice of Termination delivered to Design-Builder specifying the extent of termination and the effective date of termination.

11.5.2. Upon receipt of written notice of termination for convenience from Owner, Design-Builder shall immediately, in accordance with instructions from Owner, proceed with performance of the following duties regardless of delay in determining or adjusting amounts due under this Section:

- (1) cease operations as directed by Owner in the notice;
- (2) take actions necessary, or that Owner may direct, for the protection and preservation of the Work; and,
- (3) place no further orders and enter into no further contracts for materials, labor, services or facilities except as necessary to complete continued portions of this Agreement;
- (4) except for Work directed to be performed prior to the effective date of termination stated in the Notice of Termination, terminate all existing contracts and other Project agreements, including agreements with the Design Professional, subcontracts, purchase orders, and enter into no further Project agreements or purchase orders;
- (5) proceed to complete the performance of Work not terminated by Owner, if any; and

(6) take actions that may be necessary or that Owner may direct for the protection and preservation of the terminated Work.

11.5.3. Upon such termination for convenience, Design-Builder shall recover as its sole remedy: (1) payment for Work performed in accordance with Contract Documents which relates to the terminated portion of the Work and which Design-Builder performed prior to the effective date of termination, plus (2) payment for items properly and timely purchased or fabricated off the Worksite, delivered and stored in accordance with Owner's instructions, plus (3) Design-Builder's reasonable and actual direct demobilization costs. In determining the amount of payment to which Design-Builder is entitled pursuant to this Section 11.5.3, Owner shall be credited for: (1) payments previously made to Design-Builder for the terminated portion of the Work; (2) the amount of claims which Owner has against Design-Builder under the Agreement; and (3) the value of the materials, supplies, equipment or other items that are to be disposed of by Design-Builder that are part of the Contract Price. In the event of a termination for convenience by Owner pursuant to this Section 11.5, Design-Builder hereby waives and forfeits all other claims for payment and damages, including without limitation, anticipated profits, arising from or relating in any manner to such termination.

ARTICLE 12 DISPUTE MITIGATION OR RESOLUTION

12.1. WORK CONTINUANCE AND PAYMENT Unless otherwise agreed in writing, Design-Builder shall continue the Work and maintain the approved schedules during any dispute mitigation or resolution proceedings. If Design-Builder continues to perform, Owner shall continue to make payments in accordance with the Agreement. Pending final resolution of a dispute between Owner and Design-Builder arising out of this Agreement, except as otherwise agreed in writing or as provided in Article 9 or Article 11, Design-Builder shall proceed diligently with performance of the Work and Owner shall continue to make payments in accordance with this Agreement.

12.2. DIRECT DISCUSSIONS

12.2.1. If the Parties cannot reach resolution of a disputed matter relating to or arising out of this Agreement, the Parties shall endeavor to reach resolution of the dispute through good faith direct discussions between the Parties' representatives at a meet and confer session, attended by the Parties' representatives, who shall possess the necessary authority to resolve such dispute. The meet and confer session shall be attended by executive officers of Owner and Design-Builder (and/or their respective affiliates) who have the authority to bind Owner and Design-Builder. Owner or Design-Builder may request senior representatives from the Design Professional, Subcontractors, or other interested parties to attend the meet and confer session. The meet and confer session shall take place within fifteen (15) days after a request by either party to this Agreement unless the parties mutually agree otherwise. During the meet and confer session, the Parties shall discuss and attempt in good faith to resolve the dispute at issue.

12.2.2. Discussions held during the meet and confer process shall be treated as settlement discussions and, as such, will be confidential and inadmissible in any dispute resolution proceeding.

12.2.3. If Owner and Design-Builder reach a mutually acceptable resolution, appropriate documentation memorializing the resolution shall be prepared. If the resolution results in a change to the Contract Price or the Contract Time, the Parties shall execute a Change Order.

12.2.4. If Owner and Design-Builder cannot reach a mutually acceptable resolution at the meet and confer session or within fourteen (14) days thereafter, or if the meet and confer session does not take place within the time specified in Section 12.2.1, either party may proceed to mediation in accordance with Section 12.3 or binding dispute resolution in accordance with Section 12.4.

12.3. MEDIATION

12.3.1. Claims, disputes, or other matters in controversy arising out of or related to this Agreement, except those waived as provided for in this Agreement, shall be subject to mediation as a condition precedent to binding dispute resolution.

12.3.2. The Parties shall endeavor to resolve all disputes arising out of this Agreement which involve a claim for adjustment of the Contract Price or Contract Time, or claims for damages, 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 this Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, 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 sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the Parties or court order.

12.3.3. Either Party may, within thirty (30) days after the date that mediation has been concluded without resolution of the dispute or sixty (60) days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution.

12.3.4. The Parties shall share the costs of mediation, including the mediator's fee and any filing fees, equally. The mediation shall be held in Hartford County, Connecticut, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction.

12.4. BINDING DISPUTE RESOLUTION If the matter is unresolved after submission of the matter to the meet and confer process and mediation, the Parties may proceed with binding dispute resolution through litigation in the courts of the State of Connecticut

12.4.1. FORUM SELECTION/VENUE Owner and Design-Builder, for themselves and their respective successors and assigns, hereby irrevocably (i) submit to the exclusive jurisdiction of the Superior Court of the State of Connecticut, Judicial District of Hartford, (ii) waive, to the fullest extent permitted by law, any objection that they may now or in the future have as to the venue of any action, proceeding or litigation arising out of or in connection with this Agreement brought and maintained in the Superior Court of the State of Connecticut, Judicial District of Hartford, and (iii) agree that any legal action or proceeding by Owner or Design-Builder against the other, which action or legal proceeding arises from or relates to this Agreement, the Contract Documents, and/or the Project, shall be commenced in the Superior Court of the State of Connecticut, Judicial District of Hartford, which shall be the exclusive forum and venue for any such action or legal proceeding.

12.4.2. WAIVER OF JURY TRIAL.

TO THE FULLEST EXTENT PERMITTED BY LAW, DESIGN-BUILDER HEREBY KNOWINGLY AND IRREVOCABLY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY ACTION, DEFENSE, COUNTERCLAIM, CROSSCLAIM AND/OR ANY FORM OF PROCEEDING, LEGAL OR OTHERWISE, ARISING FROM, RELATING TO, OR BROUGHT IN CONNECTION WITH THIS AGREEMENT, AND/OR THE PROJECT.

ARTICLE 13 MISCELLANEOUS PROVISIONS

13.1. EXTENT OF AGREEMENT Except as expressly provided, this Agreement represents the entire and integrated agreement between Owner and Design-Builder relating to the subject matter of this Agreement and supersedes all prior negotiations, representations or agreements, either written or oral, verifiable or alleged. No alteration, modification, or amendment to this Agreement shall be binding upon the Parties hereto unless by written instrument, signed by Owner and Design-Builder. This Agreement may be amended only by written instrument signed by both Owner and Design-Builder, by written Change Order, or writing as otherwise expressly permitted and provided in this Agreement or the other Contract Documents. This Agreement and each and every provision is for the exclusive benefit of the Parties and not for the benefit of any third party.

13.2. ASSIGNMENT Excluding any assignment pursuant to Section 5.3, neither Owner nor Design-Builder shall not assign its interest in this Agreement, or its right to payment or claims under this Agreement, without the written consent of the other, except as to the assignment of proceeds thereof. The terms and conditions of this Agreement shall be binding upon both Parties, their partners, successors, assigns, and legal representatives. Excluding any assignment pursuant to Section 5.3, neither Party to this Agreement shall assign this Agreement, in whole or in part, without the written consent of the other Party except that Owner may assign the Agreement to a wholly owned subsidiary of Owner when Owner has fully indemnified Design-Builder or to an institutional lender providing construction financing for the Project as long as the assignment is no less favorable to Design-Builder than this Agreement. In the event of such assignment, Design-Builder shall execute all consents reasonably required. In such event, the wholly-owned subsidiary or lender shall assume Owner's rights and obligations under the Contract Documents. If either Party attempts to make such an assignment, that Party shall nevertheless remain legally responsible for all obligations under the Agreement, unless otherwise agreed by the other Party. Any assignment in violation of this provision shall be null and void.

13.3. **GOVERNING LAW** This Agreement shall be governed by and construed in accordance with the laws of the State of Connecticut, without regard to its choice of law or conflict of law principles which would result in the application of the laws of any jurisdiction other than the State of Connecticut and applicable federal law of the United States.

13.4. **SUCCESSORS AND ASSIGNS** Owner and Design-Builder, respectively, bind themselves, their partners, successors, assigns, and legal representatives to the covenants, agreements, and obligations contained in the Contract Documents. All terms and provisions of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by Owner's affiliates, heirs, executors, administrators, legal representatives, directors, officers, employees, agents, successors and permitted assigns.

13.5. INTERPRETATION

13.5.1. In the interest of brevity the Contract 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.

13.5.2. 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.

13.5.3. **Exhibits and Conflicts.** All exhibits and other documents included within the Contract Documents (including any schedules, appendices, statements of work, or similar attachments) are hereby incorporated into and made a part of this Agreement. To the extent that there is any conflict or inconsistency between the provisions of this Agreement and the provisions of any such exhibits or other Contract Documents, the provisions of this Agreement shall control, unless the provisions of the other Contract Document at issue explicitly acknowledge such a conflict and explicitly state that it is the Parties' intent that such provisions of the exhibit or other Contract Document control with respect to the involved topic.

13.6. **HEADINGS AND GROUPINGS** Article and section headings in this Agreement are intended solely for convenience of reference, and shall be given no effect in the construction or interpretation of this Agreement.

13.7. **SEVERABILITY** The invalidity of any provision of this Agreement shall not invalidate this Agreement or its remaining provisions. If it is determined by a court of competent jurisdiction or arbitrator(s) that any provision of this Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be deemed revised to the extent necessary to make that provision legal, and/or valid and enforceable, and in any event shall not affect the validity or continuing force and effect of any other provision of this Agreement. In such case this Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing this Agreement.

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

13.9. **NO WAIVER OF PERFORMANCE** The failure of either Party to insist, in any one or more instances, on the performance of any of the terms, covenants, or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition, or right with respect to further performance. The election by either Party to exercise or enforce its rights and remedies shall not preclude that Party from thereafter exercising one or more other rights and remedies.

13.10. **RIGHTS AND REMEDIES** Duties and obligations imposed by the Contract 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 to either of the Parties by Applicable Law. The rights and remedies of the Parties that are provided for in this Agreement, and all other rights and remedies that are available to either of the Parties at law or in equity, are, to the extent permitted by Applicable Law cumulative, and are not exclusive of any other right or remedy the either of the Parties may now have or hereafter have at law or in equity. Either Party may exercise its rights and remedies available under this Agreement and the Contract Documents, or at law or in equity, successively or concurrently. Neither asserting a right nor employing a remedy shall preclude the concurrent assertion of any other right or the employment of any other remedy.

13.11. **JOINT DRAFTING** The Parties expressly agree that this Agreement was jointly prepared by Owner and Design-Builder, and that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms before execution. None of the provisions hereof shall be construed against one Party on the ground that such Party is

the author or drafter of this Agreement or any part hereof and/or based upon application of the doctrine of contra proferentem.

13.12. The signatories to this Agreement on behalf of Owner and Design-Builder warrant and represent that they have the authority to bind their respective party to the terms of this Agreement.

13.13. EXECUTION IN COUNTERPARTS This Agreement and any other of the Contract Documents requiring signature of the Parties may be executed in separate counterparts, but shall not be effective until each party has executed and exchanged at least one counterpart. Each counterpart shall constitute an original of the Agreement or other Contract Document, but all the counterparts, when taken together, shall constitute one and the same instrument. Exchange by fax, or by email attaching an executed copy of this Agreement or other Contract Document so-executed, and/or in Adobe Portable Document Format (".pdf"), will be considered to be a valid and binding obligation of the executing party and such a signature shall have the same force and effect as an original signature that had been written by hand by such party.

13.14. ELECTRONIC SIGNATURES Each party agrees that the parties may, to the extent that it is permissible under Applicable Law, sign this Agreement or other Contract Documents requiring signature of the parties, by way of electronic signature (such as DocuSign, AdobeSign, etc.), and that that method of signature is as conclusive of each party's intent to be bound by this Agreement or other Contract Document so-executed, as if it had been signed by each party's manual "wet ink" signature.

13.15 NONDISCRIMINATION

13.15.1 Pursuant to the requirements of Connecticut General Statutes Section 4a-60:

- (a) (1) Design-Builder agrees and warrants that in the performance of this Agreement 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, sexual orientation, gender identity or expression, status as a veteran, status as a victim of domestic violence, status as a victim of sexual assault or status as a victim of trafficking in persons, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by Design-Builder that such disability prevents performance of the Work involved, in any manner prohibited by the laws of the United States or of the state of Connecticut; and Design-Builder further agrees to take affirmative action to ensure 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, gender identity or expression, sexual orientation, status as a veteran, status as a victim of domestic violence, status as a victim of sexual assault or status as a victim of trafficking in persons, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by Design-Builder that such disability prevents performance of the Work involved;
- (2) Design-Builder agrees, in all solicitations or advertisements for employees placed by or on behalf of 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) Design-Builder agrees to provide each labor union or representative of workers with which Design-Builder has a collective bargaining agreement or other contract or understanding and each vendor with which Design-Builder has a contract or understanding, a notice to be provided by the Connecticut Commission on Human Rights and Opportunities advising the labor union or worker's representative of Design-Builder's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment;
- (4) Design-Builder agrees to comply with each provision of Section 4a-60 of the Connecticut General Statutes, Connecticut General Statutes Sections 46a-68e and 46a-68f, and with each regulation or relevant order issued by the Connecticut Commission on Human Rights and Opportunities pursuant to Connecticut General Statutes Sections 46a-56, 46a-68e, 46a-68f and 46a-86; and
- (5) Design-Builder agrees to provide the Connecticut 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 Design-Builder as relate to the provisions of Connecticut General Statutes Sections 4a-56 and 4a-60.

(b) Design-Builder agrees and warrants that it will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on the Project.

(c) Pursuant to Connecticut General Statutes Section 4a-60(g), Design-Builder shall include the provisions of subsections (a) and (b) of this Section 13.15 in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the state, and in every subcontract entered into in order to fulfill any obligation of a public works contract, and such provisions shall be binding on a subcontractor, vendor or manufacturer, unless exempted by regulations or orders of the Commission on Human Rights and Opportunities. Design-Builder shall take such action with respect to any such subcontract or purchase order as the commission may direct as a means of enforcing such provisions, including sanctions for noncompliance in accordance with Connecticut General Statutes Section 46a-56; provided, if Design-Builder becomes involved in, or is threatened with, litigation with a Subcontractor or vendor as a result of such direction by the commission regarding a state contract, Design-Builder may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the state and the state may so enter.

(d) Design-Builder agrees to comply with the regulations referred to in this Section 13.15 as they exist on the date of this Agreement and as they may be adopted or amended from time to time during the term of this Agreement and any amendments thereto.

13.15.2 Design-Builder shall at all times comply with all federal and state law, regulations, and executive orders non-discrimination. Design-Builder affirms that, by signing this Agreement, Design-Builder represents and warrants to Owner that Design-Builder does not make employment decisions (including decisions related to hiring, assignment, compensation, promotion, demotion, disciplinary action and termination) on the basis of race, color, religion, age, sex, marital status, sexual orientation, national origin, alienage, ancestry, disability, pregnancy, genetic information, veteran status, gender identity or expression or status as a victim of domestic violence, or any other basis prohibited by state and federal law ("Protected Class") except in the case of a bona fide occupational qualification.

13.16. NONDISCRIMINATION AFFIRMATION Design-Builder affirms that, by signing this Agreement, Design-Builder certifies (i) that Design-Builder has reviewed Connecticut General Statutes Sections 4a-60, (ii) that Design-Builder understands its obligations pursuant to Connecticut General Statutes Section 4a-60, and (iii) that Design-Builder will maintain a policy for the duration of this Agreement to assure that this Agreement will be performed in compliance with the nondiscrimination requirements set forth in Connecticut General Statutes Section 4a-60(b).

13.17. UTILIZATION OF SMALL BUSINESS AND MINORITY BUSINESS ENTERPRISES

13.17.1. This Agreement and the Project are subject to compliance with Connecticut General Statutes Section 4a-60g and State of Connecticut law requirements for spending allocation goals ("SAGs") established by CHRO for the award of subcontracts to small contractor and/or minority business enterprises. Connecticut law requires a minimum SAG of twenty-five (25%) percent of the total state-funded portion of this Agreement for award to Subcontractors holding current certification from the Connecticut Department of Administrative Services under the provisions of Connecticut General Statutes Section 4a-60g as Small Business Enterprises ("SBE"), and a minimum of 6.25% of the total state-funded portion of this Agreement for award to Subcontractors holding current certification from the Connecticut Department of Administrative Services under the provisions of Connecticut General Statutes Section 4a-60g as Minority, Women-, and/or Disabled-owned businesses ("MBEs"). Design-Builder must demonstrate good faith effort to meet the SAGs for the Project.

13.17.2. Design-Builder shall perform under this Agreement on accordance with Connecticut General Statutes Sections 4a-60, 4a-60g and 4a-60h in the procurement of Subcontractors to perform the Work.

13.17.3. Determination of Design-Builder's good faith efforts shall include, but shall not be limited to, the following factors: Design-Builder's employment and subcontracting policies, patterns and practices, including without limitation Design-Builder's utilization of reasonable steps and best suggested practices established by CHRO to achieve SAGs; affirmative advertising, recruitment and training; technical assistance activities and such other reasonable activities or efforts as CHRO may prescribe that are designed to promote the participation of SBEs and MBEs in public works projects.

13.17.4. Design-Builder shall develop and maintain adequate documentation, in a manner prescribed by CHRO, of its good faith efforts.

13.18. EQUAL EMPLOYMENT OPPORTUNITY

13.18.1. Design-Builder agrees and warrants that in the performance of this Agreement, it 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, sex, sexual orientation, physical disability, including but not limited to blindness, unless it is shown by 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. Design-Builder shall provide to Owner such information that Owner requests concerning the employment practices and procedures of Design-Builder as relates to the provisions of this Section 13.18. For the purpose of the aforesaid provision, performance of this Agreement shall include, but not be limited to, the following: advertising, recruitment, layoff, termination, rates of pay or other forms of compensation, conditions or privileges of employment, selection for apprenticeship, selection for retention of Subcontractors, or in the procurement of materials, equipment or services.

13.18.2. Design-Builder shall hereinafter post on the Project site, in conspicuous places available for employees and applicants for employment, notices setting forth its non-discrimination requirements.

13.18.3. In all contracts between Design-Builder and any Subcontractor or supplier, either for Work to be performed under a Subcontract or the procurement of materials, equipment or services, each consultant, Subcontractor or supplier shall be notified in writing by Design-Builder of Design-Builder's obligations under this Agreement relating to non-discrimination, and each, by their contracting agent, shall agree to and be bound by the such terms of this Agreement.

13.18.4. Nothing in this Section 13.18 shall be deemed to relieve Design-Builder from compliance with all applicable federal, state and municipal law concerning equal employment opportunity, non-discrimination, good faith efforts to award subcontracts to small contractors and minority business enterprises, and related subjects during the term of this Agreement.

ARTICLE 14 CONTRACT DOCUMENTS

14.1. CONTRACT DOCUMENTS The Contract Documents are as follows:

1. This Agreement;
2. **EXHIBIT A** - Assumptions, Clarifications, Limitations and Exclusions to the Scope of the Work;
3. **EXHIBIT B** - Basis of Design/Owner's Program and all plans and other design documents referenced therein;
4. **EXHIBIT C** - Hazardous Waste Management and Disposal Requirements
5. **EXHIBIT D** - Connecticut Department of Labor Prevailing Wage Rate Information (City of Torrington)
6. **EXHIBIT E** - Torrington Board of Education Request for Quotations for Torrington Elementary School Air-Cooled Screw Chiller Replacement (the "RFQ") issued [DATE] and all Addendums
7. **EXHIBIT F** - (reserved pending finalization of Article 14)
8. **EXHIBIT G** - (reserved pending finalization of Article 14)
9. **EXHIBIT H** - (reserved pending finalization of Article 14)
10. Other Owner-provided information intended to be a Contract Document;
11. The Design Development Documents upon Owner approval pursuant to Section 3.1;
12. The Construction Documents upon Owner approval under Section 3.1;
13. Change Order, Construction Change Directives, and amendments issued and executed in accordance with this Agreement;
14. Other: []

TITLE: _____

TITLE: _____

EXHIBIT A
of Design-Build Agreement between
Torrington Board of Education (as Owner) and [NAME] (as Design-Builder)

Assumptions, Clarifications, Limitations and Exclusions to the Scope of the Work

The scope of the design and other professional services, labor, material, equipment, and other services included as part of the Work for which Design-Builder is responsible under the Agreement and Contract Documents for the turnkey design, professional removal and disposal of the Existing Chiller, furnishing and professional installation of the new air-cooled screw Chiller Unit, other related improvements, and related professional commissioning and start-up services at the Facility, is set forth below, and is subject to the clarifications, assumptions, limitations and exclusions set forth below.

- I. **SCOPE OF THE WORK:** The scope of the Work to be performed or provided by Design-Builder for the Project, includes, but is not limited to, the following items:
1. Retain engineer(s) and/or other professional consultants as required to develop any and all design documents required for the Work and to provide commissioning and startup services, except as expressly provided otherwise pursuant to the Contract Documents, including without limitation, plans, drawings and specifications for the Project. All design documents shall be consistent with Owner's requirements for the Project and shall be adequate for all permits required for the Project to be obtained by Design-Builder or, to the extent responsible for obtaining permits under the Agreement, Owner.
 2. Worksite Safety: Create a safe work site for all persons potentially present at or near the Worksite during construction activities, including laborers and other individuals involved in construction of the Work, as well as Owner's employees, Owner's students, visitors and invitees present at the Property in areas in proximity to the Worksite, including without limitation, responsibility for all Worksite safety.
 3. Perform all necessary site work and preparatory work for required prior to removal and disposal of the Existing Chiller and installation of the new Chiller, per building code and approved construction documents and building permit(s).
 4. Remove and dispose of the Existing Chiller in accordance with all Applicable Laws.
 5. Supply, furnish and install the new Chiller, including: **[TO BE COMPLETED]**
 - A. **[SCOPE ITEMS TO BE COMPLETED]**
 - B. Provide warranties for the Work, including without limitation:
 - i. **[TO BE COMPLETED]**
 - ii. **[TO BE COMPLETED]**
 6. Provide startup and commissioning services, including: **[TO BE COMPLETED]**
 7. **UNIT PRICE WORK.** If and to the extent required by the Project, the scope of the Work to be performed by Design-Builder shall include the unit price Work items set forth in Section 7.3 of the Agreement, and Design-Builder shall compensated for unit price Work performed at the unit prices set forth in Section 7.3 of the Agreement.

CLARIFICATIONS AND ASSUMPTIONS: The scope of Work to be performed and/or provided by Design-Builder, and Contract Price established in the Agreement, are based on and reflect the following clarifications and assumptions:

1. The Work and Project are subject to Connecticut prevailing wage law compliance or union labor wage rates, Design-Builder is required to comply with Connecticut prevailing wage law in the performance of Work for the Project, and the Contract Price includes all costs relating to or resulting from such compliance by Design-Builder and/or any Subcontractor or Supplier.
2. Design-Builder shall provide a payment bond and a performance bond, and shall obtain payment bonds from certain Subcontractors, in accordance with Section 10.5 of the Agreement, and the Contract Price includes all costs relating to or resulting from such compliance by Design-Builder and/or any Subcontractor.
3. Design-Builder is responsible for obtaining any building permit(s) required for the Work.
4. Design-Builder shall have access to the Worksite during the work hours of 6:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays; provided that requests to perform the Work outside of the normal hours may be a

requested by Design-Builder and coordinated with Owner's designated representative for the Project. Construction activities will be confined to the immediate Worksite area at the Facility site only, and additional areas that are designated by Owner upon request by Design-Builder.

5. The Contract Price does not include any taxes, and Owner will provide a valid tax exemption certificate to Design-Builder.
6. [TO BE COMPLETED]
7. [TO BE COMPLETED]
- 8.

LIMITATIONS AND EXCLUSIONS: The following items are excluded from, and not included as part of, the Work to be performed or provided by Design-Builder for the Project:

1. [TO BE COMPLETED]
2. [TO BE COMPLETED]

**Acknowledged
and agreed:**

Owner: _____
Initial Date

Design-Builder: _____
Initial Date

EXHIBIT B
of Design-Build Agreement between
Torrington Board of Education (as Owner) and [NAME] (as Design-Builder)

BASIS OF DESIGN/OWNER'S PROGRAM

The Basis of Design and Owner's Program for the Project, the design services to be performed or provided by Design-Builder, and the construction Work for the Project, include the following objectives, time criteria, Chiller Unit specifications and performance requirements and scope of Work requirements, flexibility and expandability requirements, special equipment and systems, and site requirements, together with preliminary Design Documents which shall include drawings and may include outline specifications and other preliminary conceptual documents.

SECTION 1. THE PROJECT AND OWNER'S OBJECTIVES

The Project will include the **turnkey** design, professional removal and disposal of the Existing Chiller, furnishing and professional installation of the new air-cooled screw Chiller Unit, other related improvements, and related professional commissioning and start-up services (collectively the "Work") for the replacement of the Existing Chiller with the new Chiller Unit at the Torrington Elementary School building at 800 Charles St, Torrington, CT 06790.

Design-Builder's obligations and responsibilities pursuant to the Agreement for performance of work and services required for design and construction of the Project will include all design and other professional consultant services and construction work needed to perform and complete the Work at the Worksite, required to be performed or provided by Design-Builder for the removal of the Existing Chiller, and installation, commissioning and startup of the new Chiller Unit at the Facility. Design-Builder is responsible for all design, construction, and related services which are necessary to complete the Project and which are part of the Work required to be performed or provided by Design-Builder pursuant to the Agreement and the other Contract Documents (including, without limitation, the Work as-described in and required by Schedule A to the RFQ, appended to the Agreement as **EXHIBIT E**) in Schedule, subject to the scope of the Work, assumptions, clarifications, limitations and exclusions set forth in **EXHIBIT A** of the Agreement.

Design-Builder will be responsible for retaining all design professionals and other project consultants, licensed contractors including without limitation mechanical, electrical and plumbing contractors, and other contractors, as necessary for Design-Builder to complete its obligations under the Agreement and the Contract Documents for the completion of design, permitting, construction work, and commissioning and startup services which are required for the Project.

After execution of the Agreement by Owner and Design-Builder, further development of the design and specifications for the Project by Design-Builder, including without limitation any Design Development Documents and any Construction Documents, construction Work for removal of the Existing Chiller and installation of the new Chiller Unit, and other improvements required for same, and commissioning and startup services, shall all be consistent with and in conformance with the Project requirements, and the Facility conditions and limitations included in the preliminary design documents and other Project goals and requirements identified in SECTION 3, SECTION 4, SECTION 5, and SECTION 6 hereof.

The Work shall be performed to achieve replacement of the Existing Chiller with the new Chiller Unit, and the full operation of the new Chiller Unit, which must perform and function as needed for Owner's BOE's operation of a public elementary school at the Facility. The new Chiller Unit, related improvements to the Facility building, and other Work, are to include the equipment, dimensions, materials, and elements described in, or which are equivalent in quality, function and performance as those described in **EXHIBIT A** and as depicted or described in the documents and information listed in SECTION 3, SECTION 4, SECTION 5, and SECTION 6 hereof.

SECTION 2. BUDGETARY AND TIME CONSTRAINTS

1. Owner's budget for the Work to be provided by Design-Builder is: **[AMOUNT]** _____ XX/100 DOLLARS **(\$XXXXX.00)**.
2. Owner requires construction the Work, commissioning and start-up to be complete such that the Chiller Unit is fully operational no later than: **AUGUST 19, 2026**.
3. PRELIMINARY SCHEDULE:
 1. Commence of the on-site construction and installation Work at the Worksite: **AUGUST 1, 2026**

2. Substantial Completion of the Work, including commissioning and startup by: **AUGUST 19, 2026**
3. Completion of all punchlist and Final Completion by: **SEPTEMBER 18, 2026**

SECTION 3. PRELIMINARY DESIGN DOCUMENTS AND OTHER DESIGN DOCUMENTS

After execution of the Agreement, further development of the design for the Project by Design-Builder, including without limitation the Design Development Documents and the Construction Documents, and construction of the Work and other improvements at the Worksite as part of the Work, shall all be consistent with and as-depicted on the following preliminary site plans and schematic drawings, and design documents:

1. [DRAWINGS -TO BE COMPLETED TITLE, AUTHOR, DATE] and [LIST OF EACH DRAWING]
2. [SPECIFICATIONS – TO BE COMPLETED]:

SECTION 4. SPACE REQUIREMENTS

1. Per SCHEDULE A to the RFQ, appended to the Agreement as EXHIBIT E.
2. [TO BE COMPLETED]

SECTION 5. FLEXIBILITY AND EXPANDABILITY REQUIREMENTS

1. Per SCHEDULE A to the RFQ, appended to the Agreement as EXHIBIT E.
2. [TO BE COMPLETED]

SECTION 6. SPACE/SITE REQUIREMENTS

1. Per SCHEDULE A to the RFQ, appended to the Agreement as EXHIBIT E.
2. [TO BE COMPLETED]

**Acknowledged
and agreed:**

Owner: _____
Initial Date

Design-Builder: _____
Initial Date

EXHIBIT C
of Design-Build Agreement between
Torrington Board of Education (as Owner) and [NAME] (as Design-Builder)

HAZARDOUS WASTE MANAGEMENT AND DISPOSAL REQUIREMENTS

Without limiting or reducing Design-Builder's obligation to comply with all Applicable Laws relating to the Work, in the performance of the Work and its obligations under the Agreement, Design-Builder shall comply with the following requirements for any part of the Work which involves or requires removal, disposal, handling, clean up, or use of a substance or material considered hazardous under Applicable Laws or otherwise subject to statutory and/or regulatory requirements and standards governing the removal, disposal, handling, clean up or use of such substance or material.

1. Compliance with Environmental Law. Design-Builder shall at all times during the performance of the Work, comply in with applicable federal, state, and local environmental law, regulations, requirements, and guidance, including Conn. Gen. Stat. 22a-454 et seq., and the Connecticut Hazardous Waste Management Regulations (RCSA §§ 22a-449(c)-100 through 22a-449(c)-119), which incorporate by reference regulations promulgated under the Resource Conservation and Recovery Act (40 CFR Parts 260–279) related to the identification, generation, storage, labeling, handling, transportation, treatment, and disposal of hazardous wastes, universal waste, and regulated waste.

2. Hazardous Waste Determination and Characterization. Design-Builder shall be solely responsible for determining whether any waste that will be or is generated from the performance of the Work constitutes "hazardous waste" under Connecticut and federal law, and if required by Applicable Law, Design-Builder shall sample such waste to characterize it.

3. Storage and Labeling. Hazardous waste and universal waste shall be stored in accordance with Applicable Law, within the relevant accumulation time limits, and shall be properly labeled, segregated, and placed in appropriate containers.

4. Mandatory Use of Licensed Waste Hauler. Design-Builder shall not remove, transport, treat, store, or dispose of any hazardous waste, including without limitation, propylene glycol, ethylene glycol, hazardous building materials including lead-based paint, asbestos-containing materials, and polychlorinated biphenyls, except through a licensed waste transporter approved by the Connecticut Department of Energy and Environmental Protection (DEEP) pursuant to Conn. Gen. Stat. § 22a-454. Design-Builder shall contract directly with such permitted waste transporter and shall ensure that all such waste is delivered only to licensed facilities authorized by DEEP (or the appropriate state regulatory authority) to receive hazardous waste.

5. Hazardous Waste Manifests. Design-Builder shall arrange for the disposal of all hazardous wastes and universal wastes and sign any required hazardous waste manifests as the generator. Copies of all manifests, bills of lading, invoices, or other related documents shall be provided to Owner as received.

6. Design-Builder Costs. All costs associated with the sampling, storing, labeling, transportation, and proper disposal of hazardous waste shall be at Design-Builder cost and expense, and are deemed included in the Contract Price. Design-Builder shall not be entitled to any additional compensation or extension to the Contract Time based on Design-Builder's compliance with the requirements set forth in this Exhibit to the Agreement or for compliance related Applicable Laws.

**Acknowledged
and agreed:**

Owner: _____
Initial Date

Design-Builder: _____
Initial Date

EXHIBIT D
of Design-Build Agreement between
Torrington Board of Education (as Owner) and [NAME] (as Design-Builder)

CONNECTICUT DEPARTMENT OF LABOR
PREVAILING WAGE RATE INFORMATION (CITY OF TORRINGTON)

**Acknowledged
and agreed:**

Owner: _____
Initial **Date**

Design-Builder: _____
Initial **Date**

EXHIBIT E
of Design-Build Agreement between
Torrington Board of Education (as Owner) and [NAME] (as Design-Builder)

TORRINGTON BOARD OF EDUCATION REQUEST FOR QUOTATIONS FOR
TORRINGFORD ELEMENTARY SCHOOL AIR-COOLED SCREW CHILLER REPLACEMENT
AND ADDENDUMS

**Acknowledged
and agreed:**

Owner: _____
Initial **Date**

Design-Builder: _____
Initial **Date**

EXHIBIT F
of Design-Build Agreement between
Torrington Board of Education (as Owner) and [NAME] (as Design-Builder)

**Acknowledged
and agreed:**

Owner: _____
Initial **Date**

Design-Builder: _____
Initial **Date**

EXHIBIT G
of Design-Build Agreement between
Torrington Board of Education (as Owner) and [NAME] (as Design-Builder)

**Acknowledged
and agreed:**

Owner: _____
Initial **Date**

Design-Builder: _____
Initial **Date**

DRAFT