AGREEMENT made as of the \_\_\_th day of \_\_\_\_\_ in the year 2023.

BETWEEN the Owner:

Kenaitze Indian Tribe

P.O. Box 988

Kenai, Alaska 99611

and the Design-Builder:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

for the following Project:

Kenaitze Indian Tribe Transportation Building and Covered Parking

11823 Kenai Spur Highway, Kenai, AK 99611

The Owner and Design-Builder agree as follows.

TABLE OF ARTICLES

1 GENERAL PROVISIONS

2 COMPENSATION, PROGRESS PAYMENTS, AND PROJECT COST RECORDS

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

4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT

5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT

6 CHANGES IN THE WORK

7 OWNER’S RESPONSIBILITIES

8 TIME

9 PAYMENT APPLICATIONS AND PROJECT COMPLETION

10 PROTECTION OF PERSONS AND PROPERTY

11 UNCOVERING AND CORRECTION OF WORK

12 COPYRIGHTS AND LICENSES

13 TERMINATION OR SUSPENSION

14 CLAIMS AND DISPUTE RESOLUTION

15 MISCELLANEOUS PROVISIONS

16 SCOPE OF THE AGREEMENT

TABLE OF EXHIBITS

A DESIGN-BUILD AMENDMENT

# ARTICLE 1   GENERAL PROVISIONS

§ 1.1 Owner’s Criteria

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

§ 1.1.1 The Owner’s program for the Project:

Design-Builder shall provide preliminary design documents to Owner for its review and approval at three stages of design development. Owner may review and comment on the preliminary design at the 35%, 65%, and 95% levels of completion. At the time of these reviews, Owner and Design-Builder may discuss changes to the Project’s scope and material specifications to gain the benefit of value engineering and otherwise maximize the beneficial use of the facility, while keeping Project costs within the available Project budget. Once all design adjustments have been made at the 95% completion stage, Design-Builder will move forward with development of the Final Design-Build Documents (100% design completion).

§ 1.1.2 Owner’s design requirements and design review stages for the Project:

The Project shall be designed to comply with all applicable state, federal and local building codes and standards for a facility of this type. The final Design-Build Documents shall satisfy all the design requirements listed below and any other design requirements that Owner and Design-Builder identify during the design process as materially improving the facility while remaining within the Project budget. The final design shall be incorporated into the Owner-approved Final Design-Build Documents (100% design completion).

The Transportation Building included in the Project design shall include the following characteristics:

* Two (2) bus bays;
* Two (2) wash bays;
* Two (2) staff offices; and
* One (1) multi-use classroom.

§ 1.1.3 The Project’s physical characteristics:

The Project will be located at 11823 Kenai Spur Highway, Kenai, AK 99611.

The Project will consist of the design and construction of a 7,000 square-foot Transportation Building and Covered Parking.

§ 1.1.4 The Owner’s Contract Sum for all Work to be provided by the Design-Builder under this Agreement is set forth below:

The Owner’s total budget for the Work to be provided is $2,000,000.

Owner and Design-Builder have agreed on compensation for all design-phase Work, which is set forth in Section 2.1.1 of this Agreement. The total Contract Sum for all Work completed under this Agreement, including the design-phase Work, shall be an aggregate firm fixed price which shall be established and set forth in the Design-Build Amendment, (“Contract Sum”), which shall be separately invoiced as provided in this Agreement The total Contract Sum is inclusive of all reimbursable expenses, profit, overhead, and general and administrative expenses of Design-Builder. Design-Builder’s progress of the Work and Applications for Payment shall be based on an approved Schedule of Values.

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

.1 Design phase milestone dates:

35% Preliminary Design 3/3/2023

65% Plan in Hand Design TBD

95% Final Design TBD

.2 Submission of Design-Builder Proposal:

TBD

**.3** Construction Commencement date:

At the earliest date possible in the construction season when weather conditions are appropriate for the construction activity, consistent with industry practices in the locality.

.4 Substantial Completion date:

9/1/2023

.5 Other milestone dates:

Final Completion of Project and Close Out of Agreement (Dates to be reflected in the Design-Build Amendment).

**§ 1.1.6** Additional Owner’s Criteria upon which the Agreement is based:

Design-Builder understands that the Project funds will be provided to the Owner from Federal Transit Administration, a Federal Funding Agency. Design-Builder understands that Owner is constructing this Project pursuant to agreements with a Federal Funding Agency and that development of the Project is contingent upon the Tribe receiving funding from the Funding Agency. Design-Builder further understands and agrees that the Funding Agency may have certain oversight responsibilities with respect to the services provided under any agreement between Design-Builder and the Tribe. Design-Builder agrees, at the request of the Tribe, to provide copies of documents produced under such agreement to the Funding Agency. Design-Builder shall comply with all applicable Federal laws, regulations, Executive Orders, and the terms of Owner’s agreements with the Federal Funding Agency, but solely to the extent applicable to the Design-Builder.

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

.1 Architect

\_\_\_\_\_\_\_\_

.2 Consultants

\_\_\_\_\_\_\_\_

.3 Contractors

\_\_\_\_\_\_\_\_

§ 1.1.8 Design-Builder shall confirm that the information included in the Owner’s Criteria complies with applicable tribal, federal, state, and local laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

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

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

§ 1.1.10 Design-Builder shall transmit all preliminary and final design documents or any other Project information or documentation in a digital format that permits Owner to review the documents.

§ 1.2 Project Team

§ 1.2.1 The Owner identifies the following Owner’s Representative in accordance with Section 7.1.1:

Peter Evon

Executive Director

Phone: (907) 335-7281

Email: Pevon@kenaitze.org

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

James Rendle

Interim Construction Director

Phone: (907) 335-7276 (office), (907) 513-1042 (cell)

Email: jrendle@kenaitze.org

§ 1.2.3 The Design-Builder identifies the following representative in accordance with Section 3.1.2:

\_\_\_\_\_\_\_

§ 1.2.4 Neither the Owner’s nor the Design-Builder’s representative shall be changed without 21 days’ written notice to the other party.

§ 1.3 Binding Dispute Resolution

The method of dispute resolution shall be binding arbitration pursuant to the terms and conditions of Article 14.

§ 1.4 Definitions

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

§ 1.4.2 The Contract. The Design-Build Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Design-Build Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Design-Builder.

§ 1.4.3 The Work. The term “Work” means the design, construction and related services required to fulfill the Design-Builder’s obligations under the Design-Build Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Design-Builder. The Work may constitute the whole or a part of the Project.

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

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

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

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

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

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

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

§ 1.4.11 Contractor. A Contractor is a person or entity performing all or a portion of the construction, required in connection with the Work, for the Design-Builder. All Contractors shall be lawfully licensed in the State of Alaska. Although the Parties recognize that Design-Builder may retain multiple Contractors, “Contractor” is referred to throughout the Design-Build Documents as if singular in number and means any Contractor or an authorized representative of any Contractor.

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

§ 1.4.13 Contract Time. Contract Time is the period of time set forth in Section 1.1.5 for the Substantial Completion of the Work and the Final Completion and closeout of the Contract, including authorized Contract Time adjustments, as provided in Article 6.

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

§ 1.4.15 Contract Sum. The Contract Sum is the amount to be paid to the Design-Builder for performance of the Work after execution of the Design-Build Amendment, as identified in Article A.1 of the Design-Build Amendment. The Contract Sum is inclusive of all reimbursable expenses, profit, overhead, general and administrative expenses.

# ARTICLE 2 COMPENSATION, PROGRESS PAYMENTS, AND PROJECT COST RECORDS

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

§ 2.1.1 Payments for Work performed prior to Execution of the Design-Build Amendment shall be made on a monthly basis upon Design-Builder’s presentation of a proper invoice describing the Work completed, the hours of service for each labor category.For the Design-Builder’s performance of Work prior to the execution of the Design-Build Amendment, the Owner shall compensate the Design-Builder as follows:

Owner shall pay Design-Builder in accordance with the hourly billing rates set out in Section 2.1.2; provided however, that all design Work shall be completed for a Not to Exceed (“NTE”) amount of $\_\_\_\_\_\_\_\_\_\_\_\_\_\_, inclusive of all administrative fees or any other charges.

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

|  |  |
| --- | --- |
| Individual or Position | Rate |
|   |  |

**§ 2.2 No Additional Compensation for Reimbursable Expenses or Contractor/Supplier Mark-up Costs**

The Owner and Design-Builder understand and agree that all Reimbursable Expenses and any Contractor or supplier mark-up costs are included in the fixed price Contract Sum. In the event a Contract Sum increase is authorized through the Change Order procedures set forth in Article 6, the Design-Builder shall be allowed ten (10%) percent for overhead and five (5%) percent for profit solely for the purpose of calculating equitable Change Order pricing, to the extent authorized and approved by the Owner.

**§ 2.3 Project Cost Records**

To assist the Owner with any audit requirements, the Design-Builder shall keep a complete record of all Project costs, including but not limited to Reimbursable Expenses, Contractor and supplier mark-up costs, and any other costs related to the performance of Work for a period of three years following the Substantial Completion of the Work. The Design-Builder shall provide the Owner with access to these Project Records upon request, provided that the Owner provides reasonable advance notice and pays any required copying costs.

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

§ 3.1 General

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

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

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

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

§ 3.1.3.2 The Design-Builder shall not make any subcontracts to any subcontractors that are debarred, suspended, or otherwise excluded from participation in any projects funded by the State of Alaska or the U.S. Government.

§ 3.1.3.3 The Design-Builder agrees to comply with and pay prevailing wage rates under the Davis-Bacon Act, 40 U.S.C. §§ 3141–3148, to pay wages not less than once a week, and provide Owner payroll reports of the wages paid to laborers and mechanics during the preceding payroll period. Each payroll submitted must be accompanied by a “Statement of Compliance.” The Design-Builder, Contractor, subcontractor, or the authorized officer or employee of the Design-Builder, Contractor, or subcontractor who supervises the payment of wages must sign the weekly statement.

§ 3.1.3.4 The Design-Builder shall comply with the provisions of the Contract Work Hours and Safety Standards Act, 40 U.S.C. §§ 3701–3708, and pay laborers and mechanics at least one and one-half times their regular rate of pay for all hours Worked over 40 in a Workweek. Further, no laborer or mechanic must be required to Work in surroundings or under Working conditions which are unsanitary, hazardous, or dangerous.

§ 3.1.3.5 The Design-Builder will comply with the Copeland “Anti–Kickback” Act, 40 U.S.C. § 3145 and 29 C.F.R. Part 3, and is therefore prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public Work, to give up any part of the compensation to which he or she is otherwise entitled.

§ 3.1.3.6 Equal Opportunity Clause

During the performance of this Agreement, the Design-Builder agrees to comply with all applicable provisions of 41 C.F.R § 60–1.4(b), including but not limited to the following:

(1) The Design-Builder will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Design-Builder will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Design-Builder agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Design-Builder will, in all solicitations or advertisements for employees placed by or on behalf of the Design-Builder, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Design-Builder will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee’s essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Design-Builder’s legal duty to furnish information.

§ 3.1.3.7 Anti-Lobbying Requirements

The Design-Builder shall comply, and ensure that all its subcontractors comply, with all applicable provisions of the Byrd Anti–Lobbying Amendment, 31 U.S.C. § 1352.

§ 3.1.3.8 The Design-Builder agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, 42 U.S.C. §§ 7401–7671q, and the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251–1388.

§ 3.1.3.9 Owner, as a Federally Recognized Indian Tribe, has adopted a Tribal Employment Rights Ordinance (TERO), Ordinance No. 2017-01. The Design-Builder shall make best efforts to employ and subcontract with Owner’s Tribal members, Tribal members’ spouses, and other Alaska Native and American Indians. The Design-Builder shall review and consider Owner’s preferred vendor list and index of Tribal members and eligible Indians seeking employment that is maintained by the TERO office.

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

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

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

§ 3.1.6 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals.

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

§ 3.1.8 Progress Reports

§ 3.1.8.1 The Design-Builder shall keep the Owner informed of the progress and quality of the Work. Upon the request of the Owner (at no more than monthly intervals), the Design-Builder shall submit a written progress report to the Owner, showing estimated percentages of completion and other information identified below, as requested:

.1 Work completed for the period;

.2 Project schedule status;

.3 Submittal schedule and status report, including a summary of outstanding Submittals;

.4 Responses to requests for information to be provided by the Owner;

.5 Approved Change Orders and Change Directives;

.6 Pending Change Order and Change Directive status reports;

.7 Tests and inspection reports;

.8 Status report of Work rejected by the Owner;

.9 Status of Claims previously submitted in accordance with Article 14;

.10 Cumulative total of the Cost of the Work to date including the Design-Builder’s compensation and Reimbursable Expenses, if any;

.11 Current Project cash-flow and forecast reports; and

.12 Additional information as agreed to by the Owner and Design-Builder.

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

§ 3.1.9.1 The Design-Builder, promptly after execution of the Design-Build Amendment, shall prepare and submit for the Owner’s information a schedule for the Work. The schedule shall not exceed time limits set forth in this Agreement, or any modifications to the Contract Time set forth in the Owner-approved Final Design-Build Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner’s review and for approval of submissions by authorities having jurisdiction over the Project.

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

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

§ 3.1.11 Design-Builder’s Submittals

§ 3.1.11.1 Prior to submission of any Submittals, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule to the Architect, along with a copy to the Owner for review (and concurrence if the Submittal relates to matters of aesthetics, ease of use or other matters of concern to the Owner). The Owner’s approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (1) be coordinated with the Design-Builder’s schedule provided in Section 3.1.9.1, (2) allow the Owner reasonable time to review Submittals, and (3) be periodically updated to reflect the progress of the Work. If the Design-Builder fails to submit a Submittal schedule, the Design-Builder shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of Submittals.

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

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

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

§ 3.1.12 Warranty.

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

**§ 3.1.12.2** The Design-Builder shall remedy, at Design-Builder’s own expense, any failure of the Work (including Materials and equipment whether acquired as Materials from Design-Builder, a Contractor or Subcontractor) to conform to the Design-Build Documents and Construction Documents and any defect of material, workmanship, or design in the Work for a period of one year, provided that the Owner gives Design-Builder notice of any such failure or defect promptly after discovery but not later than one year after final acceptance of the Work. The Design-Builder, at his own expense, shall also remedy damage to equipment, the Project site, or affected areas which are the result of any failure or defect and restore any Work damaged in fulfilling the terms of this Contract. Should the Design-Builder fail to remedy any such failure or defect within twenty-one (21) calendar days after receipt of notice thereof, the Owner shall have the right to replace, repair, or otherwise remedy such failure or defect at Design-Builder’s expense. The entire cost thereof shall be paid by the Design-Builder and may be collected from the Design-Builder or the Design-Builder’s surety or sureties or both.

**§ 3.1.12.3**  All Contractor, manufacturer, and supplier warranties and guaranties, expressed or implied, respecting any part of the Work and any materials used therein shall be deemed obtained and shall be enforced by the Design-Builder as the agent and for the benefit of the Owner without the necessity of a separate transfer or assignment thereof, provided that, if directed by the Owner, the Design-Builder shall require its Contractors, manufacturer and suppliers to transfer such warranties and guaranties in writing to Owner. The rights and remedies of the Owner provided in this clause are in addition to and do not limit any other rights and remedies afforded to the Owner by the Contract.

§ 3.1.13 Ownership of Documents, Royalties, Patents and Copyrights

**§ 3.1.13.1** The Design-Builder shall pay all royalties and license fees required to complete the Work. The Owner shall receive ownership of the property rights of all documents, drawings, specifications, electronic data, and information (hereinafter "Documents") prepared, provided or procured by the Design-Builder, its Design Professional, Subcontractors, or Consultants and distributed to the Owner for this Project, upon the making of final payment to the Design-Builder, or in the event of termination under Article 13, upon payment for all sums due to Design-Builder pursuant to Article 13.

**§ 3.1.13.2** **Copyright** The Parties agree that Owner shall obtain ownership of the copyright of all Documents. The Owner's acquisition of the copyright for all Documents shall be subject to the making of payments as required by subsection 1.1.4.

**§ 3.1.13.3** **Owner Use of Documents in the Event of Termination** In the event of a termination of this Contract pursuant to Article 13, the Owner shall have the right to use, to reproduce, and to make derivative works of the Documents to complete the Project, regardless of whether there has been a transfer of copyright under subsection 3.1.13.2, provided payment has been made pursuant to subsection 1.1.4.

**§ 3.1.13.4 Owner Use of Documents After Completion of the Project** After completion of the Project, the Owner may reuse, reproduce, or make derivative works from the Documents solely for the purposes of maintaining, renovating, remodeling, or expanding the Project at the Worksite. The Owner’s use of the Documents without the Design-Builder’s involvement or on other projects is at the Owner’s sole risk.

**§ 3.1.13.5 Design-Builder Use of Documents** Where the Design-Builder has transferred its copyright interest in the Documents under subsection 3.1.13.2, the Design­ Builder may reuse Documents prepared by it pursuant to this Contract in its practice, but only in their separate constituent parts and not as a whole. The Design-Builder shall obtain from its Design Professional, Subcontractors, and Consultants rights and rights of use that correspond to the rights given by the Design-Builder to the Owner in this Contract, and the Design-Builder shall provide evidence that such rights have been seemed.

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

**§ 3.1.14 Indemnification**

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

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

§ 3.1.15 Contingent Assignment of Agreements

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

.1 assignment is effective only after termination of the Agreement by the Owner for cause, pursuant to Sections 13.1.4 or 13.2.2, and only for those agreements that the Owner accepts by written notification to the Design-Builder and the Architect, Consultants and Contractors whose agreements are accepted for assignment; and

.2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of an agreement, the Owner assumes the Design-Builder’s rights and obligations under the agreement in accordance with the assignment agreement executed by the Owner, insofar as such obligations are not in conflict with the Design-Build Documents and Construction Documents, or any applicable laws or regulations.

**§ 3.1.16 Design-Builder’s Insurance and Bonds.** The Design-Builder shall purchase and maintain general liability and other insurance as follows:

|  |  |  |  |
| --- | --- | --- | --- |
| **Type of insurance** | **Limit of liability** |  |  |
| Workers’ CompensationEmployer’s Liability: | State: statutory$2,000,000.00 |
| General Liability | Each Occurrence: $2,000,000.00Aggregate: $4,000,000.00 |
| Automobile Liability | Each Accident (Bodily Injury and Property Damage): $2,000,000.00 |
| Contractual Liability | Each Occurrence: $2,000,000.00Aggregate: $4,000,000.00 |
| Professional Liability Insurance for Design-Builder | Each Occurrence: $2,000,000.00Aggregate: $2,000,000.00 |

**§ 3.1.16.1** The parties understand and agree that Owner is not required to purchase property insurance to cover the value of the Owner’s property, including any Work provided under this Agreement.

**§ 3.1.16.2** The Design-Builder shall obtain an endorsement to its General Liability and Contractual Liability insurance policies to cover Design-Builder’s obligations under this Agreement.

**§ 3.1.16.3** Contractor shall provide certificates of insurance to Owner showing it has obtained the required coverages prior to commencement of the Work. Prior to commencing the Work, Contractor shall supply Owner with a certificate of additional insured coverage listing the Owner as an additional insured under Design-Builder’s insurance.

**§ 3.1.16.4** Unless specifically precluded by the Owner’s insurance policies, the Owner and Design-Builder waive all rights against each other and any of their subcontractors, suppliers, agents and employees, each of the other for damages caused by fire or other causes of loss to the extent covered by property insurance or other insurance applicable to the Work.

**§ 3.1.16.5 Performance Bond and Payment Bond**. Design-Builder shall furnish performance and payment bonds, each in an amount equal to 100% of the construction portion(s) of the total Contract Sum, as security for the faithful performance and payment of all Contractor’s obligations under the Design-Build Documents. Bonds shall remain in effect until one year after the date when final payment becomes due under the Agreement or until completion of the period of correction set forth in Section 3.1.12 (“Warranty”), whichever is later.

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

§ 4.1 General

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

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

§ 4.2 Evaluation of the Owner’s Criteria

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

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

.1 allocations of program functions, detailing each function and their square foot areas;

.2 a preliminary estimate of the Cost of the Work, and, if necessary, recommendations to adjust the Owner’s Criteria to conform to the Owner’s budget; and

.3 a preliminary schedule, which shall include proposed design milestones; dates for receiving additional information from, or for work to be completed by, the Owner; anticipated date for the Design-Builder’s Proposal; and dates of periodic design review sessions with the Owner.

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

§ 4.3 Preliminary Design

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

.1 Confirmation of the allocations of program functions;

.2 Site plan;

.3 Building plans, sections and elevations;

.4 Structural system;

.5 Selections of major building systems, including but not limited to mechanical, electrical and plumbing systems; and

.6 Outline specifications or sufficient drawing notes describing construction materials.

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

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

§ 4.4 Design-Builder’s Proposal

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

.1 A list of the Preliminary Design documents and other information, including the Design-Builder’s clarifications, assumptions and deviations from the Owner’s Criteria, upon which the Design-Builder’s Proposal is based;

.2 The proposed Contract Sum, including the compensation method;

.3 The proposed date the Design-Builder shall achieve Substantial Completion, which has already been set as 9/1/2023;

.4 An enumeration of any qualifications and exclusions, if applicable;

.5 A list of the Design-Builder’s key personnel, Contractors and suppliers; and

.6 The date on which the Design-Builder’s Proposal expires.

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

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

# ARTICLE 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 5.1 Construction Documents

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

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

§ 5.2 Construction

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

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

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

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

§ 5.3 Labor and Materials

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

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

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

§ 5.4 Taxes

The Design-Builder shall be responsible to pay all taxes or fees that may be applicable to the Work provided by the Design-Builder, that are legally enacted when the Design-Build Amendment is executed, whether or not yet effective or merely scheduled to go into effect, without any adjustment to the Total Contract Sum.

§ 5.5 Permits, Fees, Notices and Compliance with Laws

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

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

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

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

§ 5.6 Allowances

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

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

.1 allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

.2 the Design-Builder’s costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts, shall be included in the Contract Sum but not in the allowances; and

.3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 5.6.2.1 and (2) changes in Design-Builder’s costs under Section 5.6.2.2.

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

§ 5.7 Key Personnel, Contractors and Suppliers

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

§ 5.7.2 If the Design-Builder changes any of the personnel, Contractors or suppliers identified in the Design-Build Amendment, the Design-Builder shall notify the Owner and provide the name and qualifications of the new personnel, Contractor or supplier. The Owner may reply within 21 days to the Design-Builder in writing, stating (1) whether the Owner has reasonable objection to the proposed personnel, Contractor or supplier or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 21-day period shall constitute notice of no reasonable objection.

§ 5.7.3 Except for those persons or entities already identified or required in the Design-Build Amendment, the Design-Builder, as soon as practicable after execution of the Design-Build Amendment, shall furnish in writing to the Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner may reply within 21 days to the Design-Builder in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner to reply within the 21-day period shall constitute notice of no reasonable objection.

§ 5.7.3.1 If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection.

§ 5.8 Documents and Submittals at the Site

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

§ 5.9 Use of Site

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

§ 5.10 Cutting and Patching

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

§ 5.11 Cleaning Up

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

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

§ 5.12 Access to Work

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

§ 5.13 Construction by Owner or by Separate Contractors

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

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

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

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

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

§ 5.14 Mutual Responsibility

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

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

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

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

§ 5.14.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching the Work as the Design-Builder has with respect to the construction of the Owner or separate contractors in Section 5.9.

§ 5.15 Owner’s Right to Clean Up

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

# ARTICLE 6 CHANGES IN THE WORK

§ 6.1 General

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

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

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

§ 6.2 Change Orders

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

.1 The change in the Work;

.2 The amount of the adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder’s compensation; and

.3 The extent of the adjustment, if any, in the Contract Time.

§ 6.3 Change Directives

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

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

§ 6.3.3 If the Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

.1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

.2 Unit prices stated in the Design-Build Documents or subsequently agreed upon;

.3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

.4 As provided in Section 6.3.7.

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

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

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

§ 6.3.7 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum the Owner shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase, ten (10%) percent for overhead and five (5%) percent for profit. In such case, and also under Section 6.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section 6.3.7 shall be limited to the following:

.1 Additional costs of professional services;

.2 Costs of labor, including social security, unemployment insurance, fringe benefits required by agreement or custom, and workers’ compensation insurance;

.3 Costs of Materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;

.4 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Design-Builder or others;

.5 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and

.6 Additional costs of supervision and field office personnel directly attributable to the change.

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

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

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

# ARTICLE 7 OWNER’S RESPONSIBILITIES

§ 7.1 General

§ 7.1.1 The Owner has designated as its representative the individual listed in Section 1.2.1 of this Contract, who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner’s approval or authorization.

§ 7.1.2 The Owner shall render decisions in a timely manner and in accordance with the Design-Builder’s schedule agreed to by the Owner. The Owner shall furnish to the Design-Builder, within 21 days after receipt of a written request, information necessary and relevant for the Design-Builder to evaluate, give notice of or enforce mechanic’s lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner’s interest therein.

§ 7.2 Information and Services Required of the Owner

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

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

§ 7.3 Submittals

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

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

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

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

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

§ 7.8 Owner’s Right to Stop Work

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

§ 7.9 Owner’s Right to Carry Out the Work

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

# ARTICLE 8   TIME

§ 8.1 Progress and Completion

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

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

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

§ 8.2 Delays and Extensions of Time

§ 8.2.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a consultant or separate contractor employed by the Owner; or by changes ordered in the Work by the Owner; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder’s control; or by delay authorized by the Owner pending binding arbitration dispute resolution or by other causes that the Owner determines may justify delay, then the Contract Time may be extended by Change Order for such reasonable time as the Owner may determine.

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

§ 8.2.3 This Section 8.2 does not preclude recovery of damages for delay by either party under other provisions of the Design-Build Documents.

**§ 8.2.4** The Design-Builder shall not be entitled to an adjustment in Contract Time for delays within control of the Design-Builder. Delays attributable to and within the control of a Contractor, subcontractor, or supplier shall be deemed to be delays within the control of the Design-Builder. Design-Builder understands and agrees that no adjustment in Contract Time shall be permitted due to the COVID-19 virus because it is a known risk.

**§ 8.2.5** If the Design-Builder is not achieving the Project Schedule for any reason, other than as indicated in this Section 8.2, then the Design-Builder shall be required to provide any additional labor, materials, equipment, and/or extended work days and work weeks, at no additional cost to the Owner, to regain conformance with the Project Schedule. The Project Schedule shall be maintained.

**§ 8.3 LIQUIDATED DAMAGES FOR DELAY**

**§ 8.3.1** The parties recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by the Owner if the Work is not completed on time. Instead of requiring any such proof, the Owner and Contractor agree that as liquidated damages for the delay (but not as a penalty):

 **.1** If the Design-Builder fails to substantially complete the Project within the specified times, as liquidated damages for delay (but not as a penalty), the Design-Builder shall pay Owner two hundred and fifty dollars ($250.00) each day that expires after Substantial Completion until the Owner certifies that the Work is substantially complete.

 **.2** If the Design-Builder fails to meet the Final Completion date provided by the Contract Documents, or any proper extension thereof granted by Owner, as liquidated damages for delay (but not as a penalty), the Design-Builder shall pay Owner two hundred and fifty dollars ($250.00) each day that expires after Substantial Completion until the Owner certifies that the Work meets Final Completion.

**§ 8.3.2** Liquidated damages shall be deducted from progress payments, if applicable, and the final payment as the damages are incurred.

# ARTICLE 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION

§ 9.1 Contract Sum

The Contract Sum is a firm fixed price set out in Section 1.1.4.

§ 9.2 Schedule of Values

The Schedule of Values approved by Owner, allocates the entire Contract Sum to the various portions of the Work. This schedule, following execution of this Contract by Owner, shall be used as a basis for reviewing the Design-Builder’s Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work. The Application shall be supported by data substantiating the Design-Builder’s right to payment as the Owner may require, such as progress reports on the status of the Work or copies of requisitions from the consultants, Contractors, and material suppliers.

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

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

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

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

§ 9.4 Certificates for Payment

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

**§ 9.4.2** The issuance of a Certificate for Payment will constitute a representation by the Owner that to the best of the Owner’s knowledge, information, and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Design-Build Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Owner. The issuance of a Certificate for Payment will not be a representation that the Owner has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences, or procedures, or (3) made examination to ascertain how or for what purpose the Design-Builder has used money previously paid on account of the Contract Sum.

**§ 9.4.3** Prior to making payment, the Owner shall reduce the sum owed to reflect a retainage amount of five (5) percent of the invoiced sum to ensure proper completion of the Work. If the Design-Builder fails to complete the Work in accordance with the Design-Build Documents, the Owner may use the retained funds to remedy the failure, including, but not limited to (a) assuring payment of just claims of any persons supplying labor or materials for the Work; (b) protecting Owner from loss due to defective Work not remedied; (c) remedying defective Work; (d) completing the Work as specified in the Design-Build Documents; or (e) paying any and all additional costs incurred as a result of Design-Builder’s failure to complete the Work in accordance with the Design-Build Documents.

**§ 9.4.4** Retainage will be computed and withheld from all payments for the duration of the project.The amount of retainage may be reduced upon request of the Design-Builder for good cause shown, provided however that the reduction of retainage is at the sole discretion of the Owner, and the Owner is not obligated to reduce the retainage amount.

§ 9.5 Decisions to Withhold Certification

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

.1 defective Work, including design and construction, not remedied;

.2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design-Builder;

.3 failure of the Design-Builder to make payments properly to the Architect, Consultants, Contractors or others, for services, labor, materials or equipment;

.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

.5 damage to the Owner or a separate contractor;

.6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or

.7 repeated failure to carry out the Work in accordance with the Design-Build Documents.

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

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

§ 9.6 Progress Payments

§ 9.6.1 Within thirty (30) days after the Owner has issued a Certificate for Payment, the Owner shall make payment in the manner provided in the Design-Build Documents, less retainage of ten (10) percent.

§ 9.6.2 The Design-Builder shall pay each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder no later than the later of (1) the time period required by applicable law, but in no event more than seven (7) days after receipt of payment from the Owner the amount to which the Consultant, Contractor, and other person or entity providing services or work for the Design-Builder is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the portion of the Work performed by the Consultant, Contractor, or other person or entity; or (2) the time required under Design-Builder’s contract or other agreement with said Consultant, Contractor or other person. The Design-Builder shall, by appropriate agreement with each Consultant, Contractor, and other person or entity providing services or work for the Design-Builder, require each Consultant, Contractor, and other person or entity providing services or work for the Design-Builder to make payments to subconsultants and subcontractors in a similar manner.

§ 9.6.3 The Owner has the right to request written evidence from the Design-Builder that the Design-Builder has properly paid the Architect, Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, amounts paid by the Owner to the Design-Builder for the Work. If the Design-Builder fails to furnish such evidence within seven (7) days, the Owner shall have the right to contact the Consultants, and Contractors to ascertain whether they have been properly paid. The Owner shall have no obligation to pay or to see to the payment of money to a Consultant or Contractor, except as may otherwise be required by law.

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

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

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

§ 9.7 Failure of Payment

If the Owner does not issue a Certificate for Payment, through no fault of the Design-Builder, within thirty (30) days after the date established for certifying the Design-Builder’s Application for Payment, then the Design-Builder may, thirty (30) additional days’ written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder’s reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Design-Build Documents.

§ 9.8 Substantial Completion

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

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

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

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

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

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

§ 9.9 Partial Occupancy or Use

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

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

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

§ 9.10 Final Completion and Final Payment

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

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

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

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

.1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;

.2 failure of the Work to comply with the requirements of the Design-Build Documents; or

.3 terms of special warranties required by the Design-Build Documents.

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

**§ 9.11 Equipment Operation and Maintenance Training**.

As part of the Project completion process, the Design-Builder shall provide instruction and training to the Owner’s facility operation and maintenance staff on the proper maintenance, operation and warranty requirements of the completed Project.

# ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

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

§ 10.2 Safety of Persons and Property

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

.1 employees on the Work and other persons who may be affected thereby;

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

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

§ 10.2.2 The Design-Builder shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property, or their protection from damage, injury or loss. The Design-Builder shall *immediately* notify the Owner if any person(s) entering the Project work site tests positive for COVID-19 or begins to show symptoms of COVID-19 and take *immediate* steps to quarantine the infected person(s) to prevent the spread of the infection.

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

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

§ 10.2.5 The Design-Builder shall promptly remedy damage and loss to property referred to in Section 10.2.1, caused in whole or in part by the Design-Builder, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Section 10.2.1; except damage or loss attributable to acts or omissions of the Owner, or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder’s obligations under Section 3.1.14, and nothing herein will absolve the Design-Builder from remedying damage and loss in accordance with this Agreement.

§ 10.2.6 The Design-Builder shall designate a responsible member of the Design-Builder’s organization, at the site, whose duty shall be the prevention of accidents. The person designated shall be a Competent Person as defined in 29 C.F.R. § 1926.32(f). This person shall be the Design-Builder’s superintendent unless otherwise designated by the Design-Builder in writing to the Owner. The Superintendent in attendance at the Project site during the progress of the Work shall remain at the site and on the Project until Final Completion, unless Owner authorizes a substitution of an equally qualified Superintendent.

§ 10.2.7 The Design-Builder shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition judged against as-built and other structural information provided by Owner.

§ 10.2.8 Injury or Damage to Person or Property. If the Owner or Design-Builder suffers injury or damage to person or property because of an act or omission of the Design-Builder, or of others for whose acts such party is legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the Owner within one (1) day after discovery. The notice shall provide sufficient detail to enable the Owner to investigate the matter, including but not limited to providing notification to the Design-Builder’s insurers.

§ 10.3 Hazardous Materials

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

§ 10.3.2 Upon receipt of the Design-Builder’s written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to cause it to be rendered harmless. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Design-Builder. By Change Order, the Contract Time may be extended appropriately, and the Contract Sum may be increased in the amount of the Design-Builder’s reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 The Owner shall not be responsible under this Section 10.3 for materials or substances the Design-Builder brings to the site.

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

§ 10.4 Emergencies

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

# ARTICLE 11 UNCOVERING AND CORRECTION OF WORK

§ 11.1 Uncovering of Work

The Owner may request to examine a portion of the Work that the Design-Builder has covered to determine if the Work has been performed in accordance with the Design-Build Documents. If such Work is in accordance with the Design-Build Documents, the Owner and Design-Builder shall execute a Change Order to adjust the Contract Time and Contract Sum, as appropriate. If such Work is not in accordance with the Design-Build Documents, the costs of uncovering and correcting the Work shall be at the Design-Builder’s expense and the Design-Builder shall not be entitled to a change in the Contract Time unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs and the Contract Time will be adjusted as appropriate. If a portion of the Work is covered contrary to the Owner’s request or contrary to the requirements of the Design-Build Documents, Design-Builder must, if requested in writing by the Owner, uncover the Work for the Owner’s examination and replaced at the Design-Builder’s expense, without change in the Contract Time or Contract Sum.

§ 11.2 Correction of Work

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

§ 11.2.2 After Substantial Completion

§ 11.2.2.1 In addition to the Design-Builder’s obligations under Section 3.1.12, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found not to be in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it within twenty-one (21) days after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of the Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct nonconforming Work within twenty-one (21) days after receipt of notice from the Owner, the Owner may correct it in accordance with Section 7.9.

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

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

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

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

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

§ 11.3 Acceptance of Nonconforming Work

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

# ARTICLE 12 COPYRIGHTS AND LICENSES

**Intentionally Omitted**

# ARTICLE 13 TERMINATION OR SUSPENSION

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

§ 13.1.1 If the Owner fails to make payments to the Design-Builder for Work prior to execution of the Design-Build Amendment in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Design-Builder’s option, cause for suspension of performance of services under this Agreement. If the Design-Builder elects to suspend the Work, the Design-Builder shall give thirty (30) days’ written notice to the Owner before suspending the Work. In the event of a suspension of the Work, the Design-Builder shall have no liability to the Owner for delay or damage caused by the suspension of the Work. Before resuming the Work, the Design-Builder shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Design-Builder’s Work. The Design-Builder’s compensation for, and time to complete, the remaining Work shall be equitably adjusted.

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

§ 13.1.3 If the Owner suspends the Project for more than sixty (60) cumulative days for reasons other than the fault of the Design-Builder, the Design-Builder may terminate this Agreement by giving not less than thirty (30) days’ written notice.

§ 13.1.4 Either party may terminate this Agreement upon not less than seven (7) days’ written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 13.1.5 The Owner may terminate this Agreement upon not less than seven (7) days’ written notice to the Design-Builder for the Owner’s convenience and without cause.

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

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

§ 13.2.1 Termination by the Design-Builder

§ 13.2.1.1 The Design-Builder may terminate the Contract if the Work is stopped for a period of sixty (60) consecutive days through no act or fault of the Design-Builder, the Architect, a Consultant, or a Contractor, or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:

.1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;

.2 An act of government, such as a declaration of national emergency that requires all Work to be stopped; or

.3 Because the Owner has not issued a Certificate for Payment and has not notified the Design-Builder of the reason for withholding certification as provided in Section 9.5.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Design-Build Documents.

§ 13.2.1.2 The Design-Builder may terminate the Contract if, through no act or fault of the Design-Builder, the Architect, a Consultant, a Contractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 13.2.3 constitute in the aggregate more than thirty-five percent (35%) of the total number of days scheduled for completion.

§ 13.2.1.3 If one of the reasons described in Section 13.2.1.1 or 13.2.1.2 exists, the Design-Builder may, upon thirty (30) days’ written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit and costs incurred by reason of such termination.

§ 13.2.1.4 If the Work is stopped for a period of sixty (60) consecutive days through no act or fault of the Design-Builder or any other persons or entities performing portions of the Work under contract with the Design-Builder because the Owner has repeatedly failed to fulfill the Owner’s obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon thirty (30) additional days’ written notice to the Owner, terminate the Contract and recover from the Owner as provided in Section 13.2.1.3.

§ 13.2.2 Termination by the Owner For Cause

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

.1 fails to submit the Design-Build Proposal by the date required by this Agreement, or if no date is indicated, within a reasonable time consistent with the date of Substantial Completion;

.2 repeatedly refuses or fails to supply an Architect, or enough properly skilled Consultants, Contractors, or workers or proper materials;

.3 fails to make payment to the Architect, Consultants or Contractors for services, materials or labor in accordance with their respective agreements with the Design-Builder;

.4 disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or

.5 is otherwise guilty of substantial breach of a provision of the Design-Build Documents.

§ 13.2.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder’s surety, if any, seven (7) days’ written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:

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

.2 Accept assignment of the Architect, the Consultant and Contractor agreements pursuant to Section 3.1.15; and

.3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

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

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

§ 13.2.3 Suspension by the Owner for Convenience

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

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

.1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design-Builder is responsible; or

.2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 13.2.4 Termination by the Owner for Convenience

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

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

.1 cease operations as directed by the Owner in the notice;

.2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and,

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Project agreements, including agreements with the Architect, Consultants, Contractors, and purchase orders, and enter into no further Project agreements and purchase orders.

§ 13.2.4.3 In case of such termination for the Owner’s convenience, the Design-Builder shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

# ARTICLE 14 CLAIMS AND DISPUTE RESOLUTION

§ 14.1 Dispute Resolution

§ 14.1.1 A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term “Claim” also includes other disputes between Owner and Contractor arising out of or relating to the Contract Documents. The responsibility to substantiate Claims shall rest with the party making the Claim. The parties shall initially attempt to resolve any Claim informally by providing written notice of the Claim to the other party. Within twenty-one (21) calendar days of receipt of a written Claim notice, the parties shall meet in person to discuss and attempt to resolve the matter, unless the parties mutually agree to an extension of this time.

§ 14.1.2 If informal resolution is not successful, a Claim shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the arbitration proceedings. The party filing a notice of demand for arbitration must assert in the demand letter all Claims then known to that party seeking arbitration. A demand for arbitration shall be made no earlier than thirty (30) days after providing the written notice required in Section 14.1.1. In no event shall a Claim be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations, provided however that Owner may pursue a Claim for latent or hidden defective Work within three (3) years after actual discovery of the basis for the Claim either in an Alaska Superior Court of competent jurisdiction or through the arbitration process set out in this Agreement, at the Owner’ sole election. For statute of limitations purposes, receipt of a written demand for arbitration by the entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 14.1.3 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable Alaska state law.

§ 14.1.4 The foregoing agreement to arbitrate by the parties to the Agreement shall be specifically enforceable under applicable Alaska state law.

§ 14.1.5 Either party may seek enforcement of a final and binding arbitration decision, award, or judgment issued in accordance with this Section 14.1 in the Superior Court located in Kenai, Alaska in the Third Judicial District. Contractor understands and agrees that any arbitration decision, award, or judgment being sought against Owner is expressly made subject to the limitations set forth in Section 14.2 and any other limitations that may apply under the federal laws and regulations governing federally recognized Indian tribes.

§ 14.2 Sovereign Immunity

§ 14.2.1 It is understood that Owner is a federally recognized Indian Tribe which possesses sovereign immunity from suit. Nothing in the Contract Documents shall be construed to be a waiver of Owner’s sovereign immunity, except to the limited extent necessary to permit Contractor to pursue the dispute resolution procedures authorized in this Agreement. Sovereign immunity is not waived as to any employee, Council member, or agent of Owner, and Owner hereby specifically reserves and retains its sovereign immunity and all rights and privileges pertaining thereto, except to the limited extent expressly stated in this Section 14.2.

§ 14.2.2 To the extent jurisdiction obtains, this limited waiver of sovereign immunity shall be deemed a consent to the jurisdiction only of the Superior Court located in Kenai, Alaska in the Third Judicial District.

§ 14.2.3 This limited waiver of sovereign immunity authorizes only the following forms of relief or remedies against Owner: an order directing specific performance of the requirements of the Agreement for payment of monies due and owing under the Agreement for Work properly performed. A judgment or award against Owner may be satisfied only from available funds which Owner has specifically budgeted for this Project and shall not exceed the total Contract Sum. Nothing in this limited waiver of immunity shall be construed as a waiver or consent to the levy of any judgment, lien, attachment, or encumbrance upon any other funds, assets, income, or real property or interest in any real property belonging to Owner, whether held in trust for the benefit of Owner by the United States, as restricted fee land, or in fee simple.

§ 14.2.4 This limited waiver of sovereign immunity does not permit Contractor to seek the recovery of attorneys’ fees or post-judgment interest against Owner and does not extend to actions for declaratory judgment or injunctive relief beyond the remedies expressly set forth in this Section 14.2.

§ 14.2.5 The parties hereby acknowledge that this limited sovereign immunity waiver shall apply to any other agreements entered into by the parties during the respective terms of such agreements and shall continue to apply notwithstanding the prior termination of this Agreement or any ancillary agreements between the parties. Owner specifically reserves and retains its full sovereign immunity, and all rights and privileges pertaining thereto, concerning any claims brought more than three (3) years after the date of the execution of this Agreement by Owner and Contractor.

# ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Governing Law

The Contract shall be governed by the laws of the State of Alaska, provided, however, that references to the laws of the State of Alaska shall not be construed as an admission or concession by the Owner that the State of Alaska or any subdivision or agency thereof has authority to promulgate laws applicable to Owner or to the Design-Builder in connection with the Work performed under the Design-Build Documents on trust, allotment, or restricted fee lands of the Owner.

§ 15.2 Successors and Assigns

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

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

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

§ 15.3 Written Notice

Written notice shall be deemed to have been duly served if delivered in person or sent by registered or certified mail or by courier service providing proof of delivery to the Owner’s representative as designated in Section 1.2.1 or the Design-Builder’s representative in Section 1.2.3 of this Contract.

§ 15.4 Rights and Remedies

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

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

§ 15.5 Tests and Inspections

§ 15.5.1 Tests, special inspections and approvals of portions of the Work shall be made as required by the Design-Build Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, special inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Design-Builder shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures. The Design-Builder shall bear costs of tests, special inspections and approvals.

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

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

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

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

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

§ 15.6 Confidential Information

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

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

§ 15.7 Capitalization

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

§ 15.8 Interpretation

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

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

§ 15.9 Counterparts

The Contract may be executed in one or more counterparts, any one of which need not contain the signatures of more than one party, but all such counterparts taken together will constitute one and the same instrument.

**ARTICLE 16 SCOPE OF THE AGREEMENT**

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

.1 AIA Document A141™–2014, Standard Form of Agreement Between Owner and Design-Builder (as amended)

.2 AIA Document A141™–2014, Exhibit A, Design-Build Amendment (when executed by the parties)

This Agreement entered into as of \_\_\_\_\_\_\_, 2022.

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|   |  |   |
| OWNER *(Signature)* |  | DESIGN-BUILDER *(Signature)* |
| Peter EvonExecutive Director of Tribal Administration |  | \_\_\_\_\_ |
| (Printed name and title) |  | (Printed name and title) |

|  |
| --- |
|   |

|  |
| --- |
| Ronette StantonTribal Council Chair |
| (Printed name and title) |