

Town of Cheverly
Town Meeting
Minutes
December 9, 2021

Call to order:

Meeting called to order at 8:00 pm via Zoom.

In attendance: Mayor Munyeneh, Council Members Nettles, Watson, McCann, Dalaker, and Garces. Council Member Fry joined at 8:03.

Town Attorney: Jason DeLoach

Staff: Town Administrator – Dylan Galloway, Director of Public Works – Steve Brayman, Acting Chief of Police – Carl Miller, and Acting Town Clerk -Tonya Jones.

Pledge of Allegiance: led by Anna Colvin
flag CM Micah Watson

Motion to Approve the Agenda: by CM Garces, seconded by CM Nettles. Approved unanimously

Motion to Approve the Consent Agendas: by CM Watson, seconded by Dalaker. Approved unanimously

Items on the Consent Agenda:

- A. November 10, 2021, November 12, 2021, November 13, 2021, December 2, 2021
- B. Woodworth Park Design

Resident Input – Zora Heneghan of the Cheverly Youth Mission updates from Worksession regarding the Youth Coordinator Role and Youth Council. Some members of the organization have interest in Youth Council. The organization wants to remain youth lead. They are excited to see what events will be planned by a Youth Coordinator and potential of lowering the voting age to 16. Currently working on their bylaws.

Committee Reports –

Green Infrastructure *Sheila Salo* gave an update on local research and the Smithsonian Nest Watch Program.

Board of Elections *John Legloahec* stated they are looking forward to the new Charter Amendment that will address the homes in Cheverly that were incorrectly identified by wards. There will be a need in January to appoint new Board of Elections Supervisors. They want to have a budget plan ready for presentation at the January Town Meeting.

Employment Agreement –

Motion to Approve the Employment Agreement for Mr. Stephen Brayman, Public Works Director and Mr. Dylan Galloway, Town Administrator: CM Watson, seconded by CM Fry. Approved unanimously.

Town Administrators Report – Town Administrator Dylan Galloway gave his bi-weekly Covid-19 Report. The mask mandate was extended in Prince George’s County to January 23, 2022.

Mr. Galloway gave an update on the Cheverly Booms and has proposed meetings with the University of Maryland and the County.

Due to the holiday, Town offices will be closed on December 24th. Town wide regular and bulk trash services will be on December 3rd.

The goal is to open the gym in mid-January. The audio and cabling project materials are backorder.

We are in the midst of updating our website with Civic Plus and hope to go live in February.

Police Report – Acting Chief Miller gave the crime report update.

Mayor gave reminder to lock your cars and watch out for porch pirates.

CM Fry stated to be careful of your surrounding when you are out.

CM Watson asked if residents could call for vacation house checks? Acting Chief stated it is available.

CM Nettles inquired about thoughts when 911 is causing us to have wait. Acting Chief stated that we can document it and look into what else we can do.

Public Works Report – Director Brayman states he bring forward the Carlyle Street Traffic Study in January. Completed fall planting, 50 public trees and 30 private trees were planted. The water project has made some progress made with the county and will have details in January.

CM Nettles asked about raised sidewalks when there is paving. Mr. Brayman stated that was a Washington Gas project. He is hoping to get speed humps.

CM McCann asked about mapping of the water issues. Mr. Brayman stated we are working on 60 items currently.

Mayor Munyeneh stated we may be able to use ARP funds to address private property water problems that effect the Town.

DC Circulator Update – Mayor Munyeneh stated public pressure may be working. She asked if we could keep adding and filling out the petition.

CM Nettles asked if there was coordination with the survey and Fairmont Heights. The mayor stated that Cheverly is spearheading this, and we haven’t gotten the cohesiveness yet with our neighbors.

Review of January Town Meeting Agenda and Future Requests

Mayor stated we should have a Town Seal by January. We should have finalized our Police Complaint Board. We will look to Mr. Galloway to the opening of the Gym. We will also need to discuss opening protocol.

CM McCann stated he would like to discuss Police Chief search.

CM Dalaker asked if we could a walk through of the new website.

CM Watson mentioned we will need to do a financial update and to beginning to plan for the new fiscal year budget at the January Worksession.

CM Nettles asked if we could a Hospital Hill update.

Mayor and Council Announcements

CM Dalaker stated he has an email list and newsletter that you can sign up to get.

CM Watson reminded that the last market of the year would be on Saturday and the American Legion has a weekend donut and coffee sale.

CM Fry stated if you want to participate in the holiday lights contest you should have lights on.

CM Nettles wanted to thank Pastor Lillian and Cert for 100 meals and remind us about the Angel Tree and that there are still families that need to be paired.

CM Dalaker wants to remind us to talk about writing a letter to the County to allow virtual access for court hearing.

CM Fry reminded us that Santa Claus was coming to Town.

Mayor Munyeneh reminded us that COVID is still a concern.

Motion to Adjourn: CM Fry, seconded by CM McCann. Approved anonymously. 9:02 pm

ENGINEERING CONSULTANT AGREEMENT

THIS ENGINEERING CONSULTANTS AGREEMENT (the "Agreement") is effective this ____ day of _____ 2022, by and between the MAYOR AND TOWN COUNCIL OF CHEVERLY (the "Town"), a municipal corporation of the State of Maryland, and THE LOW IMPACT DEVELOPMENT CENTER, INC., hereinafter referred to as "Consultant.

WHEREAS, Consultant desires to provide to the Town engineering services on an as requested basis; and

WHEREAS, the Town desires that Consultant provide such services; and

WHEREAS, the Mayor and Town Council have determined that it is in the best interest of the Town and for the good government, health and improvement of the Town, this is a professional service, and there is not a requirement for competitive bidding to enter into this Agreement with the Consultant for provision of on demand engineering services.

NOW, THEREFORE, in consideration of the forgoing, the premises and mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Appointment.** The Town hereby engages Consultant, as an independent professional contractor and not as an agent or employee of the Town, to provide engineering consulting services on an as requested basis and Consultant hereby accepts such work, subject to the terms and provisions of this Agreement.

2. **Scope of Services.** Pursuant to the Agreement, the Consultant agrees to furnish all the materials and perform all of the work in compliance with the requirements and standards contained in the Contract Documents, as defined herein. All work shall be performed in accordance with the standards in the industry. Consultant services included as part of this Agreement will include, upon request of the Town provision of advisory services with respect to civil and site engineering. All services shall be described in per task scope of work approved by the Town describing the services and a not to exceed cost therefor based on hourly rates stated in this Agreement.

3. **Term.** The term of this Agreement is _____ years from the effective date, The term may be extended by agreement of the Parties. All work shall be performed at the written request of the Town. It is understood by the parties hereto that time is of the essence in the completion of approved services under this contract.

4. **Contract Price.** The Town agrees to pay the Consultant, as consideration for the Consultant's satisfactory performance of specific tasks approved by the Town, based on the following hourly rates:

Principal Engineer/P.E./Project Manager	\$ 160.00
Sr. Environmental Planner	\$ 147.00
Sr. Civil/Environmental Engineer	\$ 125.00
Engineer/Landscape Architect	\$ 100.00
GIS Technician/Designer	\$ 70.00

The not to exceed contract price for each project or task shall be included in an approved per task scope of work. The parties recognize that a specific project may require the Consultant to retain sub-contractor services. Fees for sub-contractor services must be pre-approved by the Town. All out of pocket expenses by the Consultant, such as postage, reproduction, diagrams, photographs, blueprinting, courier service, etc., may be billed to

the Town as reimbursable expenses, at cost. Consultant must notify the Town prior incurring them if reimbursable costs are expected to exceed \$ 100.00 per task. The Town shall pay Consultant for approved tasks and expense reimbursement on monthly basis subject to receipt and approval of an invoice by the Town. All services related to this Agreement will be provided by the Consultant on an as requested basis as directed by the Town in writing. Such services shall be billed to the Town at the hourly rates referenced herein.

5. **Contract Documents.** This Agreement and the following enumerated documents, which are incorporated by reference as if fully set forth herein, form the contract and are termed the Contract Documents:

Required affidavits and certifications
Approved task scope of work and not to exceed cost
Certificate(s) of Insurance and additional insured endorsement

6. **Other Payments; Expenses; Taxes.** The Town will not be responsible for any cost or expenses of operation of any kind associated with Consultant's provision of services pursuant to this Agreement, except as set out herein, Consultant shall be entitled to no fees, bonuses, contingent payments, or any other amount in connection with the services to be rendered hereunder except as set out herein. The parties hereto further agree that the Town shall have no obligation to reimburse, pay directly or otherwise satisfy any expenses of the Consultant in connection with the performance of obligations under this Agreement except as set out herein.

It is expressly understood and acknowledged by the parties hereto that the fees payable hereunder shall be paid in the gross amount, without reduction for any Federal or State withholding or other payroll taxes, or any other governmental taxes or charges. The

parties hereto further recognize that Consultant, as an independent contractor of the Town, is responsible for directly assuming and remitting any applicable Federal or State withholding taxes, estimated tax payments, Social Security payments, unemployment compensation payments, and any other fees, taxes, and expenses whatsoever. In the event that Consultant is deemed not to be an independent contractor by any local, state or federal governmental agency, Consultant agrees to indemnify and hold harmless the Town for any and all fees, costs and expenses, including, but not limited to, attorneys fees incurred thereby.

7. **Insurance.** Consultant will purchase and maintain during the entire term of this Agreement, professional errors and omissions insurance, automobile and workers' compensation insurance, if applicable, with limits of not less than those set forth below. On each policy, with the exception of Workers' Compensation, Consultant will name the Mayor and Town Council of Cheverly and any contract partner designated by the Town, as an additional insured and will provide an additional insured endorsement for all coverages except workers compensation and professional errors and omissions.

A. Comprehensive General Liability Insurance

(1) Personal injury liability insurance with a limit of \$2,000,000 each

occurrence/aggregate;

(2) Property damage liability insurance with limits of \$500,000.00 each

occurrence/aggregate.

All insurance shall include completed operations and contractual liability coverage.

B. Automobile Liability Coverage. Automobile insurance for personal injury property damage \$1,000.00 each occurrence/aggregate

C. Workers' Compensation Insurance. Consultant shall comply with the requirements and benefits established by the State of Maryland for the provision of Workers' Compensation insurance, if applicable. The Town will deduct a predetermined percentage of each payment to any Consultant who has failed to provide a Certificate of Insurance for Workers' Compensation, in order to defray coverage costs of the Town. This percentage is subject to change. The Consultant will be provided notification of any change. All Corporations are required to provide Workers' Compensation Certificates of Insurance.

D. Professional errors and omissions. \$1,000.00 each occurrence/aggregate.

Consultant covenants to maintain insurance, in these amounts, which will insure all activities undertaken by Consultant on behalf of the Town under this Agreement. The Town shall be provided with thirty days prior notice of changes that would reduce the coverage available. Copies of certificates of insurance and additional insured endorsements for all required coverage shall be furnished to the Town prior to beginning work.

Provision of any insurance required herein does not relieve Consultant of any of the responsibilities or obligations assumed by the Consultant in the contract awarded, or for which the Consultant may be liable by law or otherwise. Provision of such insurance

is not intended in any way to waive the Town's immunities or any damage limits applicable to municipal government as provided by law.

8. **Indemnification.** The Consultant shall indemnify and save harmless the Town, its officers, employees and agents, from all suits, actions and damages or costs of every kind and description, including without limitation attorneys' fees, personal injury, death and property damage, arising directly or indirectly out of the performance of the contract, whether caused by negligent or willful act or omission on the part of the Consultant, its agents, servants, employees and subcontractors. Subject to and without waiving common law and other governmental immunities and the provisions § 5-301 et seq., Local Government Tort Claims Act, Courts and Judicial Proceedings Article, Annotated Code of Maryland, the Town shall indemnify and save harmless the Consultant, its offers, employees and agents, from all suits, actions and damages or costs of every kind and description, including without limitation attorneys' fees, personal injury, death and property damage, arising directly or indirectly out of the performance of the contract, whether caused by the negligent or willful act or omission on the part of the Town, its agents, servants employees and subcontractors.

9. **Licenses, Applicable Laws.** Consultant will be responsible for obtaining any and all licenses pertaining to performance of work under the Agreement., All services and materials provided by Consultant shall conform to all applicable laws and regulations.

10. **Materials and Standard of Work.** All work performed and material provided pursuant to this Agreement shall be in conformance with standards and specifications applicable in the industry.

11. **Subcontracting.** The Consultant may not subcontract any work approved under this Agreement without the written consent of the Town. If the Consultant wishes to subcontract any of the said work, it must provide subcontractor names, addresses, and telephone numbers and a description of the work to be done. The Consultant is not relieved of primary responsibility for full and complete performance of any work identified to the subcontractor. There shall be no contractual relationship between the Town and the subcontractors.

12. **Accurate Information.** The Consultant certifies that all information provided in response to requests for information is true and correct. Any false or misleading information is grounds for the Town to terminate this Agreement.

13. **Errors in Specifications.** The Consultant shall take no advantage of any error or omission in the specifications. The Town shall make such corrections and interpretations as may be deemed necessary and that decision shall be final

14. **Construction and Legal Effect.** This Agreement, including all Contract Documents, constitutes the entire understanding between the parties. No modification or addition to this Agreement shall have any effect unless made in writing and signed by both parties hereto.

15. **No Assignment.** This Agreement shall not be assigned or transferred by Consultant, whether by operation of law or in any other manner, without prior consent in writing from the Town. In the event of insolvency of either party, this Agreement shall terminate immediately at the election of the other party.

16. **Relief.** The Consultant recognizes the substantial and immediate harm that a breach or threatened breach of this Agreement will impose upon the Town, and further recognizes that in such event monetary damages may be unavailable to the Town. Accordingly, in the event of a breach or threatened breach of this Agreement, Consultant consents to the Town's entitlement to seek ex parte, preliminary, interlocutory, temporary or permanent injunctive, or any other equitable relief, protecting and fully enforcing the Town's rights hereunder and preventing the Consultant from further breaching any of its obligations set forth herein. Nothing herein shall be construed as prohibiting the Town from pursuing any other remedies available to the Town at law or in equity for such breach or threatened breach, including the recovery of damages from Consultant.

17. **Termination for Default.** Notwithstanding anything to the contrary herein, this Agreement may be terminated upon the failure of the Consultant to deliver work, supplies, materials or services in a timely manner, to correct defective work or materials, to act in good faith, or to carry out the work in accordance with contract documents, each of which shall constitute a breach of this Agreement. In such event, the Town may give notice to the Consultant to cease work until the cause for such order has been eliminated. Should the Consultant fail to correct such default within 24 hours after receipt of notification, the Town may terminate this Agreement. This provision shall not limit the Town in exercising any other rights or remedies it may have.

18. **Termination for Convenience.** The performance of work or delivery of services under this Agreement may be terminated in whole or in part at any time upon written notice when the Town determines that such termination is in its best interest, The

Town will be liable only for labor, materials, goods, services furnished prior to the effective date of such termination.

19. **Notices.** All notices shall be sufficient if delivered in person or sent by certified mail to the parties at the following addresses:

To the Town: Dylan Galloway
Town of Cheverly
6401 Forest Road
Cheverly, MD 20785

To the Consultant: Neil A. Weinstein, P.E., RLA, AICP, ASLA, ASCE, ENV SP
Low Impact Development Center, Inc
5000 Sunnyside Ave, Ste 100
Beltsville, MD 20705

20. **Costs.** In the event of any breach or failure by a party to fulfill any term, covenant or provision of this Agreement, the prevailing party shall be entitled to any and all costs and expenses, including reasonable attorneys' fees.

21. **Enforcement Provisions.** The failure of the Town of Consultant, at any time, to enforce any of the provisions of this Agreement, or any right with respect thereto, will in no way be construed to be a waiver of such provisions or right, or in any way to affect the validity of this Agreement. The exercise by either party of any rights under this Agreement shall not preclude or prejudice the subsequent exercise of the same or any other rights under the Agreement.

22. **Governing Law.** This Agreement shall be governed by the laws of the State of Maryland, excluding its conflicting of law rules, as if this Agreement were made and to be performed entirely within the State of Maryland. The parties hereby irrevocably consent to the jurisdiction of the state and federal courts located in Prince George's

County, Maryland, in any action arising out of or relating to this Agreement, and waive any other venue to which either party may be entitled by domicile or otherwise.

23. **Severability.** If any term or provision of this Agreement shall be held invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be enforced to the fullest extent permitted by law.

24. **Materials.**

A. Materials produced under or by reason of this Agreement shall be considered Official Products of Work owned by the Town.

B. Materials independently developed and owned by the Consultant or other authors and third parties, which may be used by Consultant in the fulfillment of this Agreement, remain the property of their authors or owners. Subsequent use of such materials by the Town shall require written permission of the Consultant or other author(s) thereof.

C. Information contained in records that may be given to the Consultant for the review remain the property of the Town and may not duplicated or distributed or otherwise published without its express consent. Material provided to the Consultant for review shall be returned to the Town upon completion of the task.

D. The Consultant understands that information and records provided to or made available about participants and clients or services during the performance of this

Agreement are considered confidential and shall not be used for any purpose other than to perform the required services. Regardless of the data format, the Consultant agrees that it, and any of its employees and sub-contractors, shall not disclose or allow disclosure of only such data or derivatives of it to any third party without the written permission of the Town. Any copies of such records made during performance of this Agreement shall be returned to the Town upon the expiration of the Agreement.

25. Counterparts and Right.

(a) This Agreement may be signed in counterparts, which together shall constitute one agreement. If this Agreement is signed in counterparts, no signatory hereto shall be bound until both parties named below have duly executed, or caused to be duly executed, a counterpart of this Agreement.

(b) The person signing on behalf of each party represents that he or she has the right and power to execute this Agreement.

IN WRITTEN WHEREOF, the parties hereto have executed this Agreement under seal the day and year first above written.

ATTEST:

MAYOR AND TOWN COUNCIL
OF CHEVERLY

By: _____
Kayce Munyeneh, Mayor

WITNESS:

LOW IMPACT DEVELOPMENT CENTER, INC.

By: _____

APPROVED AS TO LEGAL SUFFICIENCY:

Jason A. DeLoach
Town Attorney

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WHEREAS, the Town desires that Consultant provide such services; and

WHEREAS, the Mayor and Town Council have determined that it is in the best interest of the Town and for the good government, health and improvement of the Town, and that this is a professional service, and there is not a requirement for competitive bidding to enter into this Agreement with the Consultant for provision of on demand engineering services.

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3. **Term.** The term of this Agreement is _____ years from the effective date, The term may be extended by agreement of the Parties. All work shall be performed at the written request of the Town. It is understood by the parties hereto that time is of the essence in the completion of approved services under this contract.

4. **Contract Price.** The Town agrees to pay the Consultant, as consideration for the Consultant's satisfactory performance of specific tasks approved by the Town, based on the following hourly rates:

Principal Engineer/ P.E./Project Manager	\$140.00
Sr. Engineer/Scientist	\$ 120.00
Engineer/Scientist	\$ 100.00
CADD/GOS Technician	\$ 70.00
Field Technician	\$ 60.00

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It is expressly understood and acknowledged by the parties hereto that the fees payable hereunder shall be paid in the gross amount, without reduction for any Federal or

State withholding or other payroll taxes, or any other governmental taxes or charges. The parties hereto further recognize that Consultant, as an independent contractor of the Town, is responsible for directly assuming and remitting any applicable Federal or State withholding taxes, estimated tax payments, Social Security payments, unemployment compensation payments, and any other fees, taxes, and expenses whatsoever. In the event that Consultant is deemed not to be an independent contractor by any local, state or federal governmental agency, Consultant agrees to indemnify and hold harmless the Town for any and all fees, costs and expenses, including, but not limited to, attorneys fees incurred thereby.

7. **Insurance.** Consultant will purchase and maintain during the entire term of this Agreement, professional errors and omissions insurance, automobile and workers' compensation insurance, if applicable, with limits of not less than those set forth below. On each policy, with the exception of Workers' Compensation, Consultant will name the Mayor and Town Council of Cheverly and any contract partner designated by the Town, as an additional insured and will provide an additional insured endorsement for all coverages except workers compensation and professional errors and omissions.

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occurrence/aggregate;

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Provision of any insurance required herein does not relieve Consultant of any of the responsibilities or obligations assumed by the Consultant in the contract awarded, or for which the Consultant may be liable by law or otherwise. Provision of such insurance

is not intended in any way to waive the Town's immunities or any damage limits applicable to municipal government as provided by law.

8. **Indemnification.** The Consultant shall indemnify and save harmless the Town, its officers, employees and agents, from all suits, actions and damages or costs of every kind and description, including without limitation attorneys' fees, personal injury, death and property damage, arising directly or indirectly out of the performance of the contract, whether caused by negligent or willful act or omission on the part of the Consultant, its agents, servants, employees and subcontractors. Subject to and without waiving common law and other governmental immunities and the provisions § 5-301 et seq., Local Government Tort Claims Act, Courts and Judicial Proceedings Article, Annotated Code of Maryland, the Town shall indemnify and save harmless the Consultant, its offers, employees and agents, from all suits, actions and damages or costs of every kind and description, including without limitation attorneys' fees, personal injury, death and property damage, arising directly or indirectly out of the performance of the contract, whether caused by the negligent or willful act or omission on the part of the Town, its agents, servants employees and subcontractors.

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12. **Accurate Information.** The Consultant certifies that all information provided in response to requests for information is true and correct. Any false or misleading information is grounds for the Town to terminate this Agreement.

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writing from the Town. In the event of insolvency of either party, this Agreement shall terminate immediately at the election of the other party.

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written notice when the Town determines that such termination is in its best interest, The Town will be liable only for labor, materials, goods, services furnished prior to the effective date of such termination.

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To the Town: Dylan Galloway
Town of Cheverly
6401 Forest Road
Cheverly, MD 20785

To the Consultant: Michael L. Clar, P.E.
Ecosite, Inc
4920 Niagara Road, Ste 311
College Park, MD 20740

20. **Costs.** In the event of any breach or failure by a party to fulfill any term, covenant or provision of this Agreement, the prevailing party shall be entitled to any and all costs and expenses, including reasonable attorneys' fees.

21. **Enforcement Provisions.** The failure of the Town of Consultant, at any time, to enforce any of the provisions of this Agreement, or any right with respect thereto, will in no way be construed to be a waiver of such provisions or right, or in any way to affect the validity of this Agreement. The exercise by either party of any rights under this Agreement shall not preclude or prejudice the subsequent exercise of the same or any other rights under the Agreement.

22. **Governing Law.** This Agreement shall be governed by the laws of the State of Maryland, excluding its conflicting of law rules, as if this Agreement were made and to be preformed entirely within the State of Maryland.

23. **Severability.** If any term or provision of this Agreement shall be held invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be enforced to the fullest extent permitted by law.

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A. Materials produced under or by reason of this Agreement shall be considered Official Products of Work owned by the Town.

B. Materials independently developed and owned by the Consultant or other authors and third parties, which may be used by Consultant in the fulfillment of this Agreement, remain the property of their authors or owners. Subsequent use of such materials by the Town shall require written permission of the Consultant or other author(s) thereof.

C. Information contained in records that may be given to the Consultant for the review remain the property of the Town and may not duplicated or distributed or otherwise published without its express consent. Material provided to the Consultant for review shall be returned to the Town upon completion of the task.

D. The Consultant understands that information and records provided to or made available about participants and clients or services during the performance of this Agreement are considered confidential and shall not be used for any purpose other than to perform the required services. Regardless of the data format, the Consultant agrees that it, and any of its employees and sub-contractors, shall not disclose or allow disclosure of only such data or derivatives of it to any third party without the written permission of the

Town. Any copies of such records made during performance of this Agreement shall be returned to the Town upon the expiration of the Agreement.

IN WRITTEN WHEREOF, the parties hereto have executed this Agreement under seal the day and year first above written.

ATTEST:

MAYOR AND TOWN COUNCIL
OF CHEVERLY

By: _____
Kayce Munyeneh, Mayor

WITNESS:

ECOSITE, INC.

By: _____

APPROVED AS TO LEGAL SUFFICIENCY:

Jason A. DeLoach
Town Attorney

**TOWN OF CHEVERLY
MARYLAND**

**UNCODIFIED EMERGENCY ORDINANCE
2022-01-UEO**

An uncodified Ordinance whereby the Town of Cheverly confirms the Town Administrator's authority to take all appropriate and reasonable actions necessary to prevent and/or reduce the impact of the outbreak of disease caused by the coronavirus ("COVID-19") on the efficient operation of the Town's government in order to protect the health, safety, and welfare of its residents, in light of the new State of Emergency issued by Governor Hogan on January 4, 2022.

- WHEREAS,** an outbreak of disease caused by the coronavirus ("COVID-19") occurred in Hubei province, China, in late 2019, and as of this writing it has been detected in more than 89 countries, including the United States; and
- WHEREAS,** the World Health Organization ("WHO") and the Centers for Disease Control and Prevention ("CDC") have declared the COVID-19 outbreak a "public health emergency of international concern;" and
- WHEREAS,** on March 5, 2020, Governor Larry J. Hogan, Jr., declared a state of emergency as a result of COVID-19 which he described as a public health catastrophe, a public emergency, an immediate danger to public safety within the entire State of Maryland; and
- WHEREAS,** leading public health entities and officials recommend that individuals who fall ill should telecommute or work remotely during the pendency of their recovery; and
- WHEREAS,** the Mayor and Council find that the COVID-19 pandemic constitutes an emergency; and
- WHEREAS,** the Town encourages individuals to observe all necessary health precautions to prevent and or reduce the potential of spreading COVID-19; and
- WHEREAS,** Maryland Code, Local Government Article, Section 5-202, as amended, authorizes the legislative body of each municipal corporation in the State of Maryland to pass ordinances that such legislative body deems necessary to assure the good government of the municipality, to protect and preserve the municipality's rights, property and privileges, to preserve peace and good order, to secure persons and property from danger and destruction, and to protect the health, comfort, and convenience of the citizens of the municipality; and

- WHEREAS,** to support the awarding of paid administrative leave and continuation of wages for Town Staff in the event of restricted hours of operation or closure of the Town offices and services due to the progression of COVID-19.
- WHEREAS,** pursuant to § C-14 of the Town Charter the Mayor and Town Council have the authority to enact emergency legislation by the affirmative vote of the greater of either 2/3 of the quorum present or four members of the Council, with the Mayor being able to provide a fifth vote if necessary.
- WHEREAS,** Governor Hogan ended the March 5, 2020, COVID-19 State of Emergency on July 1, 2021, and the Town of Cheverly's ordinance ended 90 days after.
- WHEREAS,** Governor Hogan issued a new State of Emergency on January 4, 2022, to control and prevent the spread of the COVID-19 Omicron Variant within the state and the state of emergency and catastrophic health emergency continue to exist;
- WHEREAS,** COVID-19, a highly infectious respiratory disease caused by the SARS-CoV-2 virus, is transmitted easily from person to person and may result in serious illness or death and, as a viral agent capable of causing extensive loss of life or serious disability, is a deadly agent;
- WHEREAS,** the Centers for Disease Control and Prevention has determined that emergent variants, such as the B.1.1.529 variant of SARS-CoV-2, known as the Omicron variant, are more transmissible than the original SARS-CoV-2 virus;
- WHEREAS,** According to available data, this variant (Omicron) is the predominant SARS-CoV-2 variant in Maryland;
- WHEREAS,** there are currently more than 3,000 persons hospitalized in Maryland because of COVID-19, which is more than at any prior time during the COVID-19 pandemic;
- WHEREAS,** data suggests that the number of persons hospitalized in Maryland because of COVID-19 could continue to increase significantly in the near future;
- WHEREAS,** the widespread health impacts of COVID-19 are a public health catastrophe and public health emergency;
- WHEREAS,** COVID-19 poses an immediate danger to public safety; and

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE TOWN OF CHEVERLY, MARYLAND, THAT the Mayor and Council hereby confirm the Town Administrator's authority to act in response to the emergency created by the COVID-19 pandemic and enact this uncodified emergency Ordinance as follows:

- Section 1.** Upon the enactment of this uncodified ordinance by the Mayor and Council, the Town Administrator shall take all appropriate and reasonable measures to assure the efficient operation of the Town's government and to protect the public health, safety, and welfare.
- Section 2.** The actions taken by the Town Administrator pursuant to this uncodified Ordinance shall be rationally related to the impact of the public health emergency created by the coronavirus on the Town's affairs and any such actions shall be taken within the authority of the Town as a municipal corporation in the State of Maryland.
- Section 3.** In the event a conflict arises between this uncodified Ordinance and any existing Town Code provision, Town Regulation, Town Policy, or Town Personnel Manual, the Town Administrator shall attempt to give effect to both provisions, but in the event that is not possible, this uncodified Ordinance shall control.
- Section 4.** During the pendency of this uncodified Ordinance, the Town Administrator shall report to the Mayor and Council in Town Meetings regarding the actions taken pursuant to this section and what impact those actions have had on Town affairs.
- Section 5.** This uncodified Ordinance shall terminate on the ninetieth (90th) day from the date of its enactment, or on the day that the Governor of the State of Maryland declares that the State of Emergency in Maryland has ended, whichever is later.
- Section 6.** A two-week transition period shall follow the termination of this uncodified Ordinance during which time the Town Administrator shall retain decision-making authority on matters related to the emergency in order to oversee the Town's transition to normal operations.
- Section 7.** If, for whatever reason, the Town Administrator shall become incapacitated or otherwise unable to perform these responsibilities, they shall be assumed by the Town Administrator's designee and he shall promptly submit a writing to the Mayor and Council identifying the designee and any successors to the designee.
- Section 8.** The Mayor and Council may rescind, modify, or extend this uncodified Ordinance by a majority vote of those present. Nothing herein shall be construed as modifying the authority of the Mayor and/or Council as set forth in the Charter.

AND BE IT FURTHER RESOLVED, that this Emergency Ordinance shall take effect immediately on January 13, 2022; provided that a fair summary of the ordinance is published at least once in a newspaper of general circulation in the Town of Cheverly.

INTRODUCED by the Mayor and Town Council of the Town of Cheverly, Maryland, at a Regular Meeting on January 13, 2022, at which meeting copies were available to the public for inspection.

ADOPTED by the Mayor and Town Council of the Town of Cheverly, Maryland, at a Regular Meeting on January 13, 2022, at which meeting copies were available to the public for inspection.

Adopted: _____

Attest: _____
Acting Town Clerk

Kayce Munyeneh, Mayor

Councilmember Marverly Nettles, Ward 1

Councilmember Micah Watson, Ward 2

Councilmember Ted McCann, Ward 3

Councilmember Joe Dalaker, Ward 4

Councilmember Charly Garces, Ward 5

Councilmember Amy Fry, Ward 6

**TOWN OF CHEVERLY
RESOLUTION NO: R-01-22**

Appointment of Members of the Board of Election Supervisors

WHEREAS, the Mayor and Council of the Town of Cheverly, Maryland desire to make appointments to the positions of Board of Election Supervisors.

NOW, THEREFORE, BE IT RESOLVED that in accordance with the provisions of Section C-18A., of the Charter of the Town of Cheverly, Maryland, the following persons are appointed as members of the Board of Election Supervisors to fill vacancies occurring on the Board and shall serve out the remainder of terms:

Robin Kaye	Term 2020 – January 2023
Joseph Pruden	Term 2020 – January 2023
Connie Pruitt	Term 2022 – January 2024
David Thorpe	Term 2022 – January 2024
Kelly Carnes	Term 2022 – January 2024

These appointments are effective on the date of this resolution.

Adopted: _____

Attest: _____

Mayor Kayce Munyeneh

Councilmember Marverly Nettles

Councilmember Joseph Dalaker

Councilmember Micah Watson

Councilmember Charly Garces

Councilmember Ted McCann

Councilmember Amy Fry

RESOLUTION R-2-22

Appointment of Election Judges

WHEREAS, the Mayor and Council of the Town of Cheverly, Maryland desire to make appointments to the positions of judges.

NOW, THEREFORE, BE IT RESOLVED that in accordance with the provisions of Section C-18 C of the Charter of the Town of Cheverly, Maryland, the following persons are appointed as election judges to assist the Board of Election Judges in the conduct of elections in **2022**:

- WARD 1: Meshia Easley**
- WARD 2: Selma Sawaya**
- WARD 3: Adam Fowler**
- WARD 4: Will Burriss**
- WARD 5:**
- WARD 6: Rita Bibbs-Booth**

These appointments are effective on the date of this resolution.

Adopted: January 13, 2022

Attest: _____

Mayor Kayce Munyeneh

Councilmember Marverly Nettles

Councilmember Joseph Dalaker

Councilmember Micah Watson

Councilmember Charly Garces

Councilmember Ted McCann

Councilmember Amy Fry

RESOLUTION R-3-22

Appointment of Election Clerks

WHEREAS, the Mayor and Council of the Town of Cheverly, Maryland desire to make appointments to the positions of Election Clerk.

NOW, THEREFORE, BE IT RESOLVED that in accordance with the provisions of Section C-18 C of the Charter of the Town of Cheverly, Maryland, the following persons are appointed as election judges to assist the Board of Election Supervisors in the conduct of elections in **2022**:

- Priscilla Matthews
- Tonya Jones

These appointments are effective on the date of this resolution.

Adopted: January 13, 2022

Attest: _____

Mayor Kayce Munyeneh

Councilmember Marverly Nettles

Councilmember Joseph Dalaker

Councilmember Micah Watson

Councilmember Charly Garces

Councilmember Ted McCann

Councilmember Amy Fry

RESOLUTION R-4-22

Compensation for Election Supervisors and Election Judges

WHEREAS, the Mayor and Council of the Town of Cheverly, Maryland will provide compensation to the Board of Elections Supervisors and Board of Election Judges.

NOW, THEREFORE, BE IT RESOLVED that in accordance with the provisions of Section C-18 D of the Charter of the Town of Cheverly, Maryland, *“Board members, judges and clerks may, at the pleasure of the majority of the Mayor and Council, be removed from office and successors appointed. Compensation of the members of the board of supervisors of elections and judges of elections and expenditure for their duty shall be determined by the Council annually.”*

The compensation for Board of Election Supervisors shall be \$300 and Election Judges shall be \$150 for their duties on Election Day. Compensation will be granted for any additional days necessary to complete the 2022 election.

This will be effective on the date of this resolution.

Adopted: January 13, 2022

Attest: _____

Mayor Kayce Munyeneh

Councilmember Marverly Nettles

Councilmember Joseph Dalaker

Councilmember Micah Watson

Councilmember Charly Garces

Councilmember Ted McCann

Councilmember Amy Fry

TOWN OF CHEVERLY

FISCAL YEAR 2023

Budget Calendar

Friday, January 28 th	Department Heads Budgets Due
Friday, February 18 th	Mayor and Council Budget priorities due to Town Administrator
Early March	Mayor and Council to receive memo regarding Constant Yield Assessment
Wednesday, March 2 nd	Mayor and Council Budget Revenue, General Government, and Administrative
Tuesday, March 22 nd (Special meeting)	Departmental Budget Reviews <ul style="list-style-type: none"> • Police • Public Works • Capital Improvement Plan (CIP)
March 31 st (Special Meeting)	Budget Review <ul style="list-style-type: none"> • All Departments
Early April	Constant Yield Tax Hearing (if necessary)
Thursday, April 7 th (Special Meeting)	Final Budget Review
Thursday, April 14 th (Town Meeting)	First Reader of Budget Ordinance
Thursday, May 12 th (Town Meeting)	Second Reader of Budget Ordinance
Thursday, June 9 th (Town Meeting)	Final Reader of Budget Ordinance and Passage



January 10, 2022

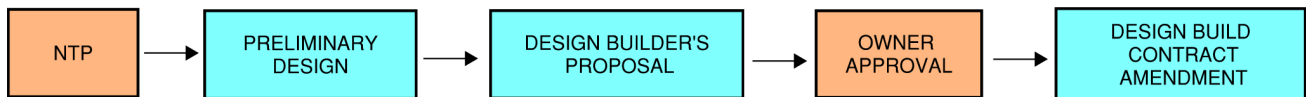
Sent via e-mail to: sbrayman@cheverly-md.gov

Mr. Steve Brayman, Director Public Works
Town of Cheverly, Maryland
6401 Forest Rd.
Cheverly, Maryland 20785
301-773-2666

RE: Town of Cheverly - William Eley Jr. Public Works Building
Design-Build Services Proposal

Mr. Brayman,

Pursuant to our recent correspondence, Keller Construction Management, a Division of Keller Brothers, Inc. ("Keller") is pleased to submit this Design-Build Services proposal for the Preliminary Design for the William Eley Jr. Public Works Building ("PW Building") to replace the existing Town of Cheverly Public Works Building located at 6401 Forest Rd, Cheverly, Maryland 20785. This proposal is for the initial, professional design and preconstruction services including the, "Preliminary Design" as defined by the attached sample AIA A141 Agreement Between Owner and Design-Builder. Keller is proposing that upon acceptance of this proposal, that we would enter into an A141 Contract Agreement with the Town of Cheverly as the "Owner" and Keller as the "Design-Builder". The A141 Contract outlines that upon the Owner's acceptance of the Preliminary Design submission, that the Design-Builder will submit the, "Design-Builder's Proposal". This is followed by the, "Design-Build Contract Amendment" which will include the Contract Sum as a Stipulated Sum for the balance of the design services, construction documents preparation, and the construction services to deliver the new public works facility.



The design and preconstruction fees included in this proposal are defined by the sample agreement as, "Compensation for Work Performed Prior To Execution of Design-Build Amendment", which includes the necessary services required to generate the Preliminary Design, the Design-Builder's Proposal, and the Design-Build Amendment.

It is Keller's understanding that the Town of Cheverly desires to develop the 2-story design concept, inclusive of the 2nd Floor fit-out, that was included in Keller's Scope Study Report dated September 20, 2021. The new building will be a linear structure – approximately 325' long x 50' wide – and will consist of a Pre-Engineered Metal Building (PEMB) with steel columns arranged in a grid and spaced at 25'-0" O.C. It is projected to be 21,716 gross square feet (GSF). This proposal includes the PEMB Covered Vehicle Parking Structure reflected in the concept. This proposal also includes the redevelopment of the site including the site utilities, stormwater management (SWM), parking, main access road, and coordination of the interface between Public Works and the adjacent play fields, walking track, and batting cage.

The concept plan assumes a, 'phased-while-occupied' construction approach, meaning that Public Works operations will remain on-site and continue to use the existing building while the new building is



constructed. Once the new building is completed, Public Works will move in and subsequently, the existing building will be demolished, and the remainder of the site will be redeveloped.

Schedule:

Keller is proposing that the duration for the development of the Preliminary Design will be approximately 13 weeks (3 months). Upon acceptance of this proposal, Keller will schedule a project kickoff meeting with all project stakeholders in attendance. The kickoff meeting will be held at the Public Works site if possible and also serve as an opportunity for further site and existing conditions assessment. Following the kickoff meeting, Keller is proposing to conduct weekly design progress meetings to include the Design-Build Team members and representatives from Public Works.

Services and Fees:

Professional Fees Schedule	
Architecture and Interior Design	\$ 84,080.00
Structural Engineering	\$ 12,980.00
Phase 1 Environmental Site Assessment	\$ 4,979.70
Geotechnical Subsurface Investigation Report	\$ 42,883.50
Natural Resources Management	\$ 15,595.75
Surveys	\$ 19,965.00
Civil Engineering / Site Services	\$ 39,841.00
M/E/P Engineering	\$ 51,230.00
D-B Preconstruction Management Fee (including Cost Estimating)	\$ 19,500.00
SUBTOTAL FEES	\$ 291,054.95
Allowance Schedule	
PEMB Consultant	\$ 6,000.00
Specialized Equipment Consultant	\$ 8,000.00
<i>Fluids Management and Hose Reel Systems</i>	
<i>Exhaust Systems</i>	
<i>Vehicle Lifts</i>	
Low Volt Consultant	\$ 12,000.00
<i>Backbone and horizontal cabling and data drops</i>	
<i>Cameras</i>	
<i>Card readers</i>	
Funding Consultant	\$ 6,000.00
Design Elaboration Contingency	\$ 50,000.00
<i>Evaluate reintroduction of fuel tanks on-site</i>	
<i>Evaluate pretreatment tank storage</i>	
<i>Evaluate relocation of oil recycling station</i>	
<i>Evaluate electrical upsizing for future electric fleet</i>	
<i>Evaluate increased HVAC IAQ for ventilation, MERV13 filtration, UV disinfection</i>	
<i>Redesign of walking track, relocate batting cage</i>	
<i>Evaluate enhanced temporary barriers, screening between construction and fields</i>	
Reimbursable Expenses Allowance (per AIA A141 Contract)	\$ 1,800.00
<i>Transportation Mileage</i>	
<i>Dedicated data and communication services, teleconferences, Project web sites</i>	
<i>Fees paid for securing approval of authorities having jurisdiction over the Project;</i>	
<i>Printing, reproductions, plots, standard form documents;</i>	
<i>Postage, handling and delivery;</i>	
<i>Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;</i>	
<i>Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner;</i>	
<i>All taxes levied on professional services and on reimbursable expenses; and</i>	
<i>Other Project-related expenditures, if authorized in advance by the Owner.</i>	
SUBTOTAL ALLOWANCES	\$ 83,800.00
TOTAL FEES AND ALLOWANCES	\$ 374,854.95



Detailed Services:

Phase 1 Environmental Site Assessment – ASTM Standard E1527-13: “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process” to complete the Phase I ESA at the subject site. The objective of Phase I ESA is the evaluation of past and present land use, and the identification of “recognized environmental conditions” (RECs) at the subject property within the meaning established by the ASTM E1527-13 standard. Additional details concerning the proposed scope of KCI’s Phase I ESA are provided in the following sections:

Task 1 – Environmental Lien Search -KCI’s subcontractor, Environmental Data Resources, LLC (EDR) will perform a review of reasonably ascertainable recorded land title records to identify environmental liens or activity and use limitations, if any, that are currently recorded against the subject site. For purposes of this proposal, it is assumed that one (1) lien search will be conducted.

Task 2 – Review of Historical Aerial Photographs, Topographic Maps, and Sanborn Maps - KCI will review historical aerial photographs, sanborn maps, and topographic maps provided by EDR. The historical aerial photographs and topographic maps will be reviewed to determine former site features and to ascertain changes in site usage. The aerial photographs and topographic maps will also be reviewed to identify potential environmental concerns associated with the subject site and adjoining properties. If available, Sanborn fire insurance maps covering the subject site will also be obtained from EDR. The fire insurance maps will be reviewed to identify previous uses or occupancies of the property at specified dates, including operating history. The fire insurance maps will also be reviewed to identify and assess any RECs in connection with the subject site.

Task 3 – Environmental Setting Review- KCI will obtain and review regional geologic, hydrogeologic, and topographic data to assess the possible direction of groundwater flow and potential for contaminant migration affecting the subject site. In addition, onsite surface drainage systems including swales, trenches, culverts, drainage pathways, and interior/exterior drains will be evaluated to identify the type of runoff received and the eventual point of discharge.

Task 4 – Federal and State Environmental Records/Database Search and Review - KCI will review federal and state environmental database search results from EDR to determine the presence of known, alleged, or potential hazardous waste sites within an approximately one mile radius of the subject site. The environmental database search will include the following database sources:

Environmental Database Search		
Database		A
NPL	National Priority List	1.0
Delisted NPL	Delisted NPL (NPL Deletions) List	1.0
RCRIS-TSD	Resource Conservation and Recovery Information System – TSD Facilities List	0.5
Environmental Database Search		
Database		A
N-CORRACTS	N-CORRACTS (Non-Corrective Action Sites) Facilities	
SHWS-NPL	State Hazardous Waste Sites List – NPL Equivalent	1.0
SHWS-CERLIS	State Hazardous Waste Sites List – CERCLIS Equivalent	0.5
CERCLIS	Comprehensive Environmental Response, Compensation and	0.5



	Liability System List	
CERC-NFRAP	CERC-NFRAP No Further Remedial Action Planned List	0.25
RCRIS-TDS CORRACTS	Resource Conservation and Recovery Information System – TSD Facilities List CORRACTS (Corrective Action Sites) Facilities	1.0
SWF/LF	State Solid Waste Disposal Facilities (SWF)/Landfill Sites (LF) List	0.5
LUST	Leaking Underground Storage Tank Recovery Sites List	0.5
UST	Registered Underground Storage Tank List	TP/AP
AST	Registered Aboveground Storage Tank List	TP
RAATS	RCRA Administrative Action Tracking System	TP
RCRIS-SQG	Resource Conservation & Recovery Info. Sys. – Small Quantity Generators List	TP/AP
RCRIS-LQG	Resource Conservation & Recovery Info. Sys. – Large Quantity Generators List	TP/AP
HMIRS	Hazardous Materials Information Reporting System	TP
PADS	PCB Activity Database System	TP
ERNS	Emergency Response Notification System	TP
FINDS	Facility Index System	TP
TRIS	Toxic Chemical Release Inventory System	TP
NPL Liens	Federal Superfund Liens	TP
TSCA	Toxic Substances Control Act	TP
ROD	Records of Decision	1.0
MLTS	Material Licensing Tracking System	TP
CONSENT	Superfund (CERCLA) Consent Decrees	1.0
Coal Gas	Former Manufactured Gas (Coal Gas) Sites	1.0
Mines	Mines Master Index File	0.25

A = ASTM Standard Search Radii in Miles
 TP = Target Property
 AP = Adjacent Property

In addition, KCI will contact the Maryland Department of the Environment (MDE) and the local health department under the Freedom of Information Act/Public Information Act (FOIA/PIA) to review regulatory files related to environmental concerns or conditions at the subject site and adjacent properties which are identified on the regulatory databases. KCI will also review previous environmental reports and studies, which are reasonably ascertainable and practically reviewable, to determine the past and present operations or activities at or near the subject site.

Note that files requested through FOIA/PIA requests may not be immediately available for review. In the event that permission to review regulatory files is not granted prior to the scheduled completion date for the Phase I ESA, KCI will submit the Phase I ESA report without completing this step, noting the inability to review files as a Data Gap. However, KCI will conduct the file reviews once permission is received, and then provide any new information obtained during the review and any changes in conclusions as a technical addendum to the report.

Task 5 – Site Reconnaissance and Interviews - KCI will conduct a visual site reconnaissance of the subject site in order to assess current conditions and identify any obvious signs of RECs. The subject site will be assessed and reviewed for indicators of hazardous materials and/or wastes using a detailed field checklist. The checklist will include underground storage tanks



(USTs), aboveground storage tanks (ASTs), dumps, drums, storage areas, septic systems, oil/water separators, PCB transformers, stained ground and exposed surface soils, and stressed vegetation. Areas of concern will be noted as appropriate during the site walkthrough. Site photographs and site-specific notes will be collected for each area of concern. KCI will interview current and historic owners of the subject property concerning the environmental history of the subject site, provided these can be identified and are available. KCI will conduct a visual reconnaissance of properties located adjacent to the subject property from the nearest site boundary and/or from publicly accessible areas such as streets or sidewalks.

Task 6 – Vapor Encroachment Screening - KCI will follow the “Tier 1 Screening” process described in Section 8 of ASTM Standard Guide E2100-10: “Standard Guide for Vapor Encroachment Screening on Property Involved in Real Estate Transactions” to conduct a Vapor Encroachment Screen (VES) of the subject property. KCI will review information gathered during the Phase I ESA relevant to the operational history of the subject property and adjacent sites in conjunction with soil and geological characteristics, existing data on contaminated plumes, significant conduits (such as utilities) that might provide preferential pathways for vapor migration, groundwater depth and groundwater flow direction data, and property information data. KCI’s hydrogeologist will utilize this information to determine whether there is potential for a Vapor Encroachment Condition (VEC) at the site. As used herein, a “VEC” refers to the presence or likely presence of contaminant vapors in the subsurface of the subject property caused by the release of vapors from contaminated soil or groundwater, or both, either on or near the subject property, as identified by the Tier 1 procedures outlined in Standard Guide E2100-10.

Task 7 – Reporting - KCI will prepare a Phase I ESA report for the subject property. The report will include signature pages with the “Environmental Professional’s Statement” as found in Section 12.13 of the ASTM E 1527-13 Standard Practice. KCI’s report will generally follow the format provided in Appendix X4 to ASTM E 1527-13, and will include the following sections: Executive Summary; Introduction; Site Description (including hydrogeologic review findings); User Provided Information; Records Review (including historical maps and photographs reviews, file review, and regulatory database review); Site Reconnaissance; Interviews; Evaluation, Non-Scope Services, and Appendices. The report will provide discussions of the purpose, scope, and limitations of the Phase I ESA; and a description of the field methodologies and procedures used. Any RECs that are identified will be discussed and summarized. The report will contain the appropriate exhibits showing suspect areas (if any), field and raw data, and conclusions and recommendations. KCI will submit one electronic version of the report to the client.

Geotechnical Subsurface Investigation

Task 1 – Project Review and Reconnaissance –

Project Information: Review available project information including as-built plans (if any) for existing C-Care building, proposed site plans, existing geotechnical reports (if any), published geologic map and soils information, and Google Mapping for the general project area.

Site Reconnaissance: Perform site reconnaissance to review existing site conditions/features, and site access constraints that will impact subsurface investigation program.

Subsurface Exploration Plan: If required, KCI will prepare an exploration plan consistent with existing site features and constraints, and based on proposed plans. The exploration plan will



include Boring Location Plan, borehole sealing techniques, etc. The exploration plan will be provided to the client (if required) for review and approval, and to ensure layout and combination of borings is appropriate.

Task 2 – Subsurface Investigations and Lab Testing –

Borings Stakeout, Survey and Utility Clearance: KCI-Surveys will mark, and survey all proposed boring locations in the field. As required by law, KCI will Contact MISS UTILITY to clear public utilities prior to beginning subsurface exploration work. KCI will also clear private underground utilities within the proposed boring locations. We will use any available utility plans (provided by the Client) to aid us in clearing the utilities within the proposed boring locations.

Subsurface Explorations: Mobilize our drilling subcontractor with drilling equipment and drill test borings as indicated in the tables below for either option or to auger refusal, whichever occurs first. We will obtain soil samples using the Standard Penetration Test (SPT) method (ASTM D 1586) continuously within the top 10 feet, and 5-foot intervals thereafter to the boring termination depths. If soft clay is encountered, we will collect undisturbed Shelby Tube Samples for consolidation testing. KCI will provide a full-time Field Engineer to supervise and direct the drilling and soil sampling operations.

Schedule of Proposed Test Borings & In-Situ Testing			
LOCATION	Boring No.	Individual Boring Depths (ft)	Infiltration Test Depths (ft)
Proposed PW Building	B-1	30	-
	B-2	30	-
	B-3	70 (seismic)	-
	B-4	40	-
	B-5	30	-
Vehicle Parking Building	B-6	30	-
	B-7	40	-
	B-8	30	-
Entry Access Rd & Parking Area	P-1	10	-
	P-2	10	-
	P-3	10	-
SWM Facilities	SWM-1	10	8*
	SWM-2	10	8*
	SWM-3	10	8*
TOTAL		360	24
* Estimated depths of infiltration as requested by KCI-Land Development			

Groundwater Levels: Monitor short-term water levels (within 24 hours) with a water-level meter during drilling and after completion of drilling, and at other times as necessary if the holes do not collapse.

In-Situ Infiltration Tests: We will perform field infiltration tests (as shown in the table above) within the proposed SWM Pond if surficial or shallow groundwater conditions (less than 4 feet below the base of the SWM) are not encountered at the project site. Infiltration tests will be



performed within PVC pipes installed in test holes to depths specified in the Table above (as requested by KCI-Land development) below existing site grades in accordance with the 2000 Maryland Stormwater Design Manual standards MD 378 Pond Code. After soaking for 24-hours, the test locations will be refilled with water to 24-inches and the water level will be monitored for one hour. The casing will be filled three additional times for a total of four one-hour observations at each test location.

Sealing and Backfilling of Test Borings: Prior to leaving the site we will backfill the borings with auger cuttings. Remaining auger cuttings and soil spoils will be spread in appropriate areas of the site.

Laboratory Testing: Transport the soil samples to our geotechnical laboratory for detailed visual examination, classification, and testing. Perform routine physical property tests (particle size analysis, Atterberg limits, USCS classification, USDA Classification for SWM, standard proctor and natural moisture contents) will be performed on selected representative soil samples to aid in classification and determination of stratigraphic continuity, and to serve as indices to soil behavior. We will also perform CBR tests for use in the pavement design and recommendations.

Task 3 – Geotechnical Engineering Analysis, Evaluations and Report –

KCI will evaluate the results of the subsurface exploration, in-situ and laboratory testing, and prepare a geotechnical engineering report in accordance with generally accepted standards which will contain the following:

- Site vicinity map and boring location plan;
- A review and description of the area and site geologic conditions;
- A review and description of the field and laboratory test procedures conducted and their results;
- Review and description of subsurface conditions encountered including soil types and physical properties, boring logs, subsurface profiles, and depth to groundwater (if encountered);
- Identify and discuss major geotechnical issues that will impact design and construction;
- Seismic site classification and recommendations;
- Infiltration characteristics of in-situ soils based on infiltration testing and soil classification properties at the proposed SWM facilities;
- Pavement recommendations and design for the proposed parking and pavement areas;
- Foundation recommendations for the two proposed buildings including foundation types (shallow vs. deep), bearing capacities and estimated settlements (total and differential);
- Slab-on-grade recommendations for the proposed building; and
- General construction recommendations including construction adjacent to existing building; re-use of on-site soils, subgrade preparation, fill compaction, temporary excavation and potential excavation difficulties, and groundwater control.

Natural Resources Management

Task 1 – Trilogy Letter Requests – Under this task, KCI will prepare and submit letter requests for information on any rare, threatened, and endangered species located within the vicinity of the proposed project site to the Maryland Department of Natural Resources and the U.S. Fish and Wildlife Service. In addition, KCI will submit a request for information on any historical or archeological resources within the vicinity of the proposed project area to the Maryland



Historical Trust. This information is typically required by the regulatory agencies for projects impacting natural resources. No field investigations are associated with this work at this time.

Task 2 – Natural Resources Inventory and Report – KCI will conduct a site investigation to identify waters of the United States (WUS) and jurisdictional wetlands within the study area in accordance with the “Routine” method outlined in the U.S. Army Corps of Engineers (USACE) Wetland Delineation Manual (Environmental Laboratory, 1987) and the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region (Environmental Laboratory, 2010). Wetland and WUS boundaries will be marked with flagging tape. A field map will be developed illustrating wetlands and waterway(s) locations and associated flag numbers to assist with the survey.

In addition to the location of wetlands and streams within the project area, KCI will conduct a Forest Stand Delineation (FSD) in accordance with M-NCPPC Forest Conservation guidelines. Prior to the commencement of fieldwork, KCI will utilize readily available base mapping to estimate the total forest acreage on site, to determine potential forest stand boundaries, and to select the location of sampling points. The FSD will also include the identification of all trees of a DBH of 30” or greater. These trees will be flagged in the field for subsequent field location by survey crews. Based upon field-collected data, KCI will modify the base map and develop the final FSD map.

KCI will compile the information gathered in the field into a Natural Resources Inventory / Forest Stand Delineation (NRI/FSD) document, including a separate wetland delineation report, that can be utilized for waterway permitting requirements as described below and for Tree Conservation Plan updates. The description of wetland/stream systems within the project area will include information required by USACE, as specified in their most recent guidance documents and jurisdictional determination checklists at the time of the investigation. Information to be included in the report may include results of the delineation, field data sheets of wetland systems, representative photographs of site conditions and a NRI Map with surveyed wetland boundaries overlain. Data sheets and site photographs will be appended to the text. The FSD portion of the document will consist of a narrative describing each forest stand identified, stand summary forms, and the FSD checklist will be completed in accordance with the County requirements. Forest stand boundaries and descriptions will be included on the NRI map. KCI will prepare the NRI checklist and application form and submit to MNCPPC and coordinate comments and responses.

Per PGAtlas.com, M-NCPPC records, the site appears to have an existing NRI in place from a previous project in 2015, however, it has a 5 year duration and expired in 2020.

Surveys

Task 1 – Boundary and Topographic Survey – KCI Surveys requests that a current title report or abstract be provided which will identify current title deeds, easements, rights-of way, etc. KCI will research the public records to obtain current deeds and record plats. KCI will prepare a deed mosaic (plot) to be used by the survey field crew in their search for property evidence and also used by the licensed surveyor in his determination of the right- of-way lines and property lines. The survey crew will establish horizontal and vertical control points tied to the Washington Suburban Sanitary Commission (WSSC) – horizontal datum and vertical datum (NGVD 29). The survey crew will search for and locate property markers and other features around the 12.4 acre parcel needed for the boundary determination such as fences, utility poles and buildings. The field crew survey data will be downloaded and processed into a boundary survey worksheet.



The data will be analyzed and, guided by the mosaic, computations will be performed to make a determination of the property lines. The boundary worksheet will reflect these determinations.

KCI Surveys will perform a detailed field run topographic survey of the project area – approximately 3.0 acres, which includes overlap into adjoining properties. The locations will include buildings, roadways, pavement, sidewalks, utilities, trees, fences, tennis courts and landscaping. The data will be processed to create a base drawing showing the topographic features, utility inverts, contours and spot elevations. The property lines determined by the boundary survey will also be shown in the base drawing. The base drawing will be shared with the KCI design team for the preparation of construction plans.

All work will be performed under the direct supervision of a Maryland licensed surveyor. This proposal does not include a boundary and topographic survey plat drawing. This proposal does not include the location of utility markings provided by a utility locator.

Task 2 – Geotechnical Borings Stakeout - KCI Surveys will mark and survey all boring locations (x, y, z, coordinates) in the field prior to the geotechnical soil investigation being completed.

PRELIMINARY DESIGN (50% DD)

Civil/Site Services – Prepare Preliminary Design Phase documents consisting of design criteria, drawings, specifications on drawings as required. The detailed scope of engineering design services to be provided by KCI follows below. The work shall proceed through the 50% design development level for pricing.

Task 1 – Existing Conditions Plan – KCI Land Development will utilize the topographic survey provided by Surveys in order to complete an existing conditions worksheet that will include WSSC (water and sewer), other dry utilities, physical features, natural and manmade, surrounding vegetation and contours shown in one (1') foot intervals on the plan sheet. The sheet shall be prepared on 1929 vertical datum using local NGS survey control points.

Task 2 – Demolition Plan – KCI will complete a Site Demolition Plan for the removal of appropriate site existing features to be demolished to facilitate the project construction. KCI will provide necessary details and temporary site features as needed to complete this work.

Task 3 – Site Plan – KCI will develop a plan based on the existing conditions plan and Owner's proposed option layout. The plan will outline the new DPW Building complex and site features such as parking lot and other site amenities. Necessary dimensions will be included on the plan including but not limited to building dimensions, internal drive widths, typical parking spaces, curb radii, driveway widths and radii. All applicable notes and certifications will be provided on the plans and specification/detail references noted on all site features.

Task 4 – Grading Plan – KCI will develop a grading plan based on the existing conditions plan and site plan detailing the proposed grading on site. Proposed grading will be depicted through contours throughout the site, detailed spot elevations at critical points, and first floor elevations. The plan will show compliance with ADA requirements



and will include min/max slopes where necessary. Standard grading notes will be included on the plans.

Task 5 - Site Details – KCI will provide standard Prince George’s details for items such as paving, curb and gutter, sidewalk, signs, and other site items. Standard details from the local jurisdiction will also be included. Required ADA details and notes will be included, and blowup detail plans shown as required.

Task 6 - Stormwater Management Plan – KCI will develop a plan for the required stormwater management facilities and connection to perimeter points of discharge. The facilities will be designed in accordance with local and state requirements. Typical details will be shown on the plans along with applicable notes and material guidelines.

Task 7 - Erosion and Sediment Control Plan – KCI will prepare preliminary plans depicting the required erosion and sediment control devices as required for the development of the site. These plans will be designed per Prince Georges County and MDE standards

Task 8 - Utility Plan – KCI will prepare utility plans showing locations, size, and materials of storm drain, water, sewer, electric, gas, and communications. Proposed lighting on site will be shown and identified.

Task 9 - Landscape and Lighting Plan – KCI will prepare a preliminary landscape plan depicting proposed site landscaping and site lighting.

Task 10 - Paving & Signage Plan – KCI will prepare a paving plan depicting various paving types utilized on-site. The location of paving will be depicted on the plan and dimensioned as necessary. Striping and Signage will be shown on the plans and pavement sections and details will be shown on the detail plans.

Task 11 – Progress Meetings – KCI civil staff will participate in virtual progress meetings with the client and design team. A total of twelve (12) hour meetings and one (1) on-site kick-off meeting with the client are included as part of this scope.

Task 12 – Fire Flow Test – KCI Civil will coordinate with Washington Suburban Sanitary Commission (WSSC) in order to complete a new fire flow test at the nearest fire hydrant to the site in order to determine adequate pressure is provided for fire sprinkler design and on-site water systems.

Task 13 – Miscellaneous Expenses – Miscellaneous expenses associated with the project for KCI Civil will include items such as: mileage; printing; plotting; courier; mailing; etc.

MEP Services – MEP Scope of services is limited to producing 50% design development drawings and specifications which will be used by Keller to estimate project final design and construction costs. Systems listed in below anticipated systems section are assumed to be the systems that will be further developed during design. 50% design for pricing will consist of major equipment schedules, floor plan drawings reflecting general equipment locations and approximate duct, pipe, sprinkler, power, and lighting utility layouts. General design requirements on HVAC controls, lighting controls, sprinkler and fire alarm system.



Anticipated systems include:

- Mechanical HVAC
 - Variable Refrigerant Volume (VRV/VRF) system with DOAS serving the admin offices, locker rooms, kitchenette, etc
 - Heating and Ventilation (H&V) System for Maintenance Bays // or potentially just exhaust with OA intake louvers
 - Gas-fired IR heaters serving the high-bay vehicle areas
 - Ventilation / Exhaust System (vehicle exhaust)
 - Units will be mounted on pads on grade (since PEMB), but H&V unit for vehicle bays may be on low roof (if provided)
 - BAS control

- Fire Protection
 - New automatic wet pipe fire suppression system throughout
 - Potentially an electric fire pump, depending on water supply (if req'd, 480V electrical service would be strongly preferred)
 - New fire alarm system for supervision of sprinkler system Plumbing
 - New 8" line (noted on civil) for domestic water and fire suppression system
 - Backflow preventer
 - Domestic hot + cold water systems
 - Compressed Air System
 - Petroleum, Oil, Lubricants (POL) System (assumed containment will be required and coordinate with architect for design)
 - Potentially trench drains in maintenance bays and wash areas with oil-water separator (OWS)

- Electrical
 - Size of new service: estimated at 600AMP, 3-phase 120/208V or 480V (480V preferred, if available)
 - CT cabinet and meter (Potentially provided by Utility)
 - Spare electrical service conduit from pole to facility to support future additional loads
 - LED lighting throughout
 - Network, Security, Access Control, Public Address ('ring & string', raceways and locations).

Task 1 - Project Management:

- Kickoff meeting and once a month design progress meetings (only PM will attend 6 virtual meetings)
- Coordination with WSSC, Washington Gas, and PEPCO

Task 2 - Mechanical:

- Systems design per local jurisdictional code requirements/WSSC/and Washington Gas
- Sewage ejector pump design
- Oil/water separator design
- Coordination with Washington Gas and coordination with KCI civil for gas service delivery to building
- Used oil recycling system/POL



- Compressed air system in vehicle maintenance bay
- Design of plumbing systems to support public restrooms accessed from exterior of building to support adjacent play fields
- Truck washing facilities in the yard space
- Vehicle exhaust systems from maintenance bays

Task 3 - Electric:

- Systems design per local jurisdictional code requirements and PEPCO
- Site lighting and photometrics
- Lighting inside salt barn
- Electrical power load analysis, transformer and primary feeders, and secondary amp draw and feeders verification and coordination with PEPCO
- Determination of fiber optics vs telephone cables provided for communications to new building

Task 4 - Fire Protection:

- Systems design per local jurisdictional code requirements
- Evaluate water supply test data and existing/planned fire water service piping to determine whether infrastructure improvements are required (e.g., addition of a fire pump, addition of backflow prevention).
- Develop project-specific conceptual design documents for one (1) Wet-Pipe, Fire Sprinkler System and one (1) Addressable Fire Alarm System, consisting of:
 - Cover Sheet – general notes, symbol legend, applicable codes, project scope, etc.
 - Conceptual Design Drawings – equipment (type and location), keyed notes, etc.
 - Riser Diagram(s) and Details – additional illustrations to reinforce installation and system arrangement concepts
 - Proof-of-concept hydraulic calculations for sprinkler system to determine adequacy of water supply and service infrastructure
 - Electric fire pump design, if required. Outputs include capacity (gpm) and pressure (psi).
 - Typical fire alarm system operations matrix
 - Applicable Division 21 and 28 specifications in spec-on-sheet (22x34) format

Note: Fire Protection Trades are Delegated Design disciplines: a conceptual design package is developed by KCI's Fire Protection Engineer Designer of Record (FPE DOR), which documents code compliance and conveys design intent. Detailed shop drawing equipment packages and supporting calculations are developed by the (awarded) Fire Protection Installation Contractor(s). These shop drawing packages are ultimately submitted to the Authority Having Jurisdiction (AHJ) for final approval / permitting prior to actual system fabrication and installation.

Structural Services - For Preliminary Design of a Pre-Engineered Metal Building ("PEMB") and associated structures proposed for construction in the Town of Cheverly located in Prince Georges County, Maryland.

The Cheverly Department of Public Works PEMB project is planned to include administrative and office space as well as a seven (7) high-bay industrial space to serve the Town of Cheverly Department of Public Works including one (1) bay for the Police Department. The design is to



include four (4) vehicle maintenance bays, two large storage bays and one (1) Fabrication Lab Bay. The project includes the design of a two story PEMB approximately 325 feet long x 50 feet wide with a column grid approximately 25 feet x 25 feet. The seven high bay spaces will be adjoined by an administrative/ office space that has a second floor of approximately 5000 square feet of shell space that would be fit-out and finished in a separate phase to become public meeting space. Access to the second floor would be provided by two stairways and one elevator that would be built during the initial construction. The total area of the two story building would be approximately 21,716 gross Square feet.

Task 1 - Evaluate local code requirements for structural design and develop structural design criteria.

Task 2 - Coordinate foundation layout and structure support reactions with PEMB Manufacturer for administrative office / high bay building and pre-engineered structure manufacturer for the covered parking area and salt dome structure.

Task 3 - Complete Preliminary Design for shallow foundations, associated anchorage for the PEMB, concrete equipment pads required within the buildings, apron slab areas for Overhead Door entrances and for Pedestrian Door entrances, covered parking structure shallow foundations and salt dome structure shallow foundations.

Task 4 - Develop 50% Design Development Drawings for the PEMB structures and the Salt Dome structure.

Assumption, Exclusions, Qualifications:

- Final Design, Subcontractor onboarding, and Construction Administration Phase Services are excluded from this proposal.
- Items not specifically included in the scope but determined to be necessary may be covered by the Design Elaboration Contingency Allowance.
- This scope of work does not include any regulatory permitting services except for the Natural Resource Inventory.
- No landscaping buffering or screening analysis is included.
- Cost estimates will be provided by Keller.
- All work will be performed in CADD and the Owner will own the CADD files at the end of the phase with the execution of a liability waiver form.
- Any items not listed above such as legal descriptions, easement plats, zoning information, boundary plat, wetland survey, forest survey are specifically excluded from the scope.
- Descriptions with associated plats for legal documents are excluded.
- This proposal does not include detailed traffic analysis, traffic control plans and/or studies.
- This scope of work does not include a flood plain study as part of the NRI. The engineer has already confirmed from PG Atlas and FEMA maps that the site is not identified to be in a flood plain.
- This scope of work does not include any joint state and federal permitting coordination.
- Regarding geotechnical borings, utility designation is for planning purposes only and gives only a general location of subsurface utilities.
- KCI will engage a private utility locator to attempt to designate the underground utilities adjacent to the geotechnical borings but cannot guarantee that all abandon or active utility structures can or will be detected, including but not limited to, non-conductive utilities.
- KCI will attempt to mark utilities within a (20) foot radius of the proposed soil boring locations.
- No site retaining wall design or design of exterior equipment pads is included at this time.



- Structural design for additional buildings and structures not mentioned in the Scope of Services are not included in this proposal.
- Storm drainage is assumed to be gutters and downspouts by the architect (inside storm drainage is not anticipated)
- LEED design / documentation is excluded, however the project design will incorporate environmentally responsible, “green” aspects such as moving the building off of septic and onto sewer, stormwater management, highly-efficient HVAC system, and making the structure solar ready for future PV panels.
- Development of lighting layouts, power layout, duct and piping layout will occur after the architectural backgrounds are finalized
- NFPA 291 compliant hydrant flow data will be provided to KCI, free of charge, for use in determining adequate capacity of the sprinkler demand.
- Generator design is included in MEP design service cost.
- Lightning protection is excluded, it is not required by code.
- Fire protection design is assumed to be limited to admin bldg./vehicle bays. No high piled or rack storage protection is included in this scope of work.
- Network and security design will be limited to empty conduits and location of devices. Wiring, equipment, and control details will be by others. Locations of devices and conduit routings will be coordinated with owner.

Preliminary Design:

Upon the Owner’s issuance of a written consent to proceed, 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.

Design-Builder’s Proposal:

Upon the Owner’s Approval of the Preliminary Design, the Design-Builder shall prepare and submit the Design-Builder’s Proposal to the Owner. The Design-Builder’s Proposal shall include the following:

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



Design-Build Delivery and Team Members:

Our proposed Design-Build Team members as follows:

- Design-Builder Keller Construction Management
- Architect RRMM Architects
- Structural Engineer Columbia Engineering
- Civil Engineer KCI Technologies
- MEP Engineer KCI Technologies

Keller appreciates the opportunity to work with the Town of Cheverly Public Works on this exciting project. Please feel free to contact me if you have any questions or require additional information to assist in your review of this proposal. I can be reached directly at 240-405-2145 or by email at dtremblay@kellerbrothers.com.

Respectfully,

A handwritten signature in black ink that reads 'David Tremblay'.

David Tremblay
Director of Project Development
Keller Construction Management

DRAFT AIA® Document A141™ - 2014

Exhibit A

Design-Build Amendment

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

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

« »
« »

THE OWNER:
(Name, legal status and address)

« »
« »

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

« »
« »

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

TABLE OF ARTICLES

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

ARTICLE A.1 CONTRACT SUM

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

(Check the appropriate box.)

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

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

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

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

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

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

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

§ A.1.2 Stipulated Sum

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

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

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

<>

§ A.1.2.3 Unit prices, if any:

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

Item	Units and Limitations	Price per Unit (\$0.00)
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§ A.1.3 Cost of the Work Plus Design-Builder's Fee

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

§ A.1.3.2 The Design-Builder's Fee:

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

<>

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

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

§ A.1.4.2 The Design-Builder's Fee:

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

<>

§ A.1.4.3 Guaranteed Maximum Price

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

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

<>

§ A.1.4.3.2 Itemized Statement of the Guaranteed Maximum Price

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

(Provide information below or reference an attachment.)

<< >>

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

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

<< >>

§ A.1.4.3.4 Unit Prices, if any:

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

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

<< >>

§ A.1.5 Payments

§ A.1.5.1 Progress Payments

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

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

<< >>

§ A.1.5.1.3 Provided that an Application for Payment is received not later than the <> day of the month, the Owner shall make payment of the certified amount to the Design-Builder not later than the <> day of the <> month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than <> (<>) days after the Owner receives the Application for Payment.
(Federal, state or local laws may require payment within a certain period of time.)

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

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

§ A.1.5.1.6 In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have

made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections A.1.5.1.4 or A.1.5.1.5, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

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

§ A.1.5.2 Progress Payments—Stipulated Sum

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

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

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

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

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

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

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

« »

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

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

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

- .1 Take the Cost of the Work as described in Article A.5 of this Amendment;
- .2 Add the Design-Builder's Fee, less retainage of « » percent (« » %). The Design-Builder's Fee shall be computed upon the Cost of the Work described in the preceding Section A.1.5.3.2.1 at the rate stated in

- Section A.1.3.2; or if the Design-Builder's Fee is stated as a fixed sum in that Section, an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in that Section bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract retainage of « » percent (« » %) from that portion of the Work that the Design-Builder self-performs;
 - .4 Subtract the aggregate of previous payments made by the Owner;
 - .5 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section A.1.5.1.4 or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
 - .6 Subtract amounts, if any, for which the Owner has withheld or withdrawn a Certificate of Payment as provided in the Section 9.5 of the Agreement.

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

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

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

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

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

§ A.1.5.4.3 The Owner and Design-Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on agreements with the Architect, Consultants, and Contractors; and the Design-Builder shall execute agreements in accordance with those terms.

§ A.1.5.5 Final Payment

§ A.1.5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder not later than 30 days after the Design-Builder has fully performed the Contract and the requirements of Section 9.10 of the Agreement have been satisfied, except for the Design-Builder’s responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment.

§ A.1.5.5.2 If the Contract Sum is based on the Cost of the Work, the Owner’s auditors will review and report in writing on the Design-Builder’s final accounting within 30 days after the Design-Builder delivers the final accounting to the Owner. Based upon the Cost of the Work the Owner’s auditors report to be substantiated by the Design-Builder’s final accounting, and provided the other conditions of Section 9.10 of the Agreement have been met, the Owner will, within seven days after receipt of the written report of the Owner’s auditors, either issue a final Certificate for Payment, or notify the Design-Builder in writing of the reasons for withholding a certificate as provided in Section 9.5.1 of the Agreement.

ARTICLE A.2 CONTRACT TIME

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

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

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

<< >>

Portion of Work	Substantial Completion Date

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

<< >>

ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

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

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

Document	Title	Date	Pages

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

<< >>

Section	Title	Date	Pages

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

<< >>

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

§ A.3.1.4 The Sustainability Plan, if any:

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

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

Other identifying information:

<< >>

§ A.3.1.5 Allowances and Contingencies:

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

.1 Allowances

<< >>

.2 Contingencies

<< >>

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

<< >>

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

<< >>

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

<< >>

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

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

(Identify name, title and contact information.)

.1 Superintendent

<< >>

.2 Project Manager

<< >>

.3 Others

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

ARTICLE A.5 COST OF THE WORK

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

§ A.5.1.1 Labor Costs

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ A.5.1.5 Miscellaneous Costs

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

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

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

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

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

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

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

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

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

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

§ A.5.1.6 Other Costs and Emergencies

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

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

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

§ A.5.1.7 Related Party Transactions

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

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

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

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

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

§ A.5.3 Discounts, Rebates, and Refunds

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

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

§ A.5.4 Other Agreements

§ A.5.4.1 When the Design-Builder has provided a Guaranteed Maximum Price, and a specific bidder (1) is recommended to the Owner by the Design-Builder; (2) is qualified to perform that portion of the Work; and (3) has

submitted a bid that conforms to the requirements of the Design-Build Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Design-Builder may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Design-Builder and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

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

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

§ A.5.5 Accounting Records

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

§ A.5.6 Relationship of the Parties

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

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

OWNER *(Signature)*

« »« »

(Printed name and title)

DESIGN-BUILDER *(Signature)*

« »« »

(Printed name and title)

DRAFT AIA® Document A141™ - 2014

Standard Form of Agreement Between Owner and Design-Builder

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

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

« »
« »
« »
« »

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

« »
« »
« »
« »

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

« »
« »
« »

The Owner and Design-Builder agree as follows.

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

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

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

ELECTRONIC COPYING of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Owner's Criteria

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

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

§ 1.1.1 The Owner's program for the Project:

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

« »

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

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

<< >>

§ 1.1.3 The Project's physical characteristics:

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

<< >>

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

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

<< >>

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

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

<< >>

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

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

<< >>

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

.1 Design phase milestone dates:

<< >>

.2 Submission of Design-Builder Proposal:

<< >>

.3 Phased completion dates:

<< >>

.4 Substantial Completion date:

<< >>

.5 Other milestone dates:

<< >>

§ 1.1.8 The Owner requires the Design-Builder to retain the following Architect, Consultants and Contractors at the Design-Builder's cost:
(List name, legal status, address and other information.)

.1 Architect

<< >>

.2 Consultants

<< >>

.3 Contractors

<< >>

§ 1.1.9 Additional Owner's Criteria upon which the Agreement is based:
(Identify special characteristics or needs of the Project not identified elsewhere, such as historic preservation requirements.)

<< >>

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

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

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

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

§ 1.2 Project Team

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

<< >>

<< >>

<< >>

<< >>

<< >>

<< >>

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

<< >>

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

<< >>

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

<< >>
<< >>
<< >>
<< >>
<< >>
<< >>

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

§ 1.3 Binding Dispute Resolution

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

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

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

§ 1.4 Definitions

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS

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

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

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

« »

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

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

« »

Individual or Position

Rate

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

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

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

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

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

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

<< >> % << >>

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

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

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

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

§ 3.1 General

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

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

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

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

§ 3.1.3.2 Neither the Design-Builder nor any Contractor, Consultant, or Architect shall be obligated to perform any act which they believe will violate any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful

orders of public authorities. If the Design-Builder determines that implementation of any instruction received from the Owner, including those in the Owner's Criteria, would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner in writing. Upon verification by the Owner that a change to the Owner's Criteria is required to remedy the violation, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

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

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

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

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

§ 3.1.8 Progress Reports

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

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

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

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

§ 3.1.9 Design-Builder's Schedules

§ 3.1.9.1 The Design-Builder, promptly after execution of this Agreement, shall prepare and submit for the Owner's information a schedule for the Work. The schedule, including the time required for design and construction, shall not exceed time limits current under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

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

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

§ 3.1.11 Design-Builder's Submittals

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

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

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

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

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

§ 3.1.12 Warranty. 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.

§ 3.1.13 Royalties, Patents and Copyrights

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

§ 3.1.13.2 The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and its separate contractors and consultants harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or

manufacturers is required by the Owner, or where the copyright violations are required in the Owner's Criteria. However, if the Design-Builder has reason to believe that the design, process or product required in the Owner's Criteria is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner. If the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the Design-Builder, the Owner shall give prompt written notice to the Design-Builder.

§ 3.1.14 Indemnification

§ 3.1.14.1 To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, including the Owner's agents and employees, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, 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 a limitation on amount or type of damages, compensation, or benefits payable by or for Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them, under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.1.15 Contingent Assignment of Agreements

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

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

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

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

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

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

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

§ 4.1 General

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

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

§ 4.2 Evaluation of the Owner's Criteria

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

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

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

<< >>

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

§ 4.3 Preliminary Design

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

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

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

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

§ 4.4 Design-Builder's Proposal

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

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

- .4 An enumeration of any qualifications and exclusions, if applicable;
- .5 A list of the Design-Builder's key personnel, Contractors and suppliers; and
- .6 The date on which the Design-Builder's Proposal expires.

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

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

ARTICLE 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 5.1 Construction Documents

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

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

§ 5.2 Construction

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

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

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

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

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

§ 5.5 Permits, Fees, Notices and Compliance with Laws

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

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

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

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

§ 5.6 Allowances

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

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

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

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

§ 5.7 Key Personnel, Contractors and Suppliers

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

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

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

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

§ 5.8 Documents and Submittals at the Site

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

§ 5.9 Use of Site

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

§ 5.10 Cutting and Patching

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

§ 5.11 Cleaning Up

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

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

§ 5.12 Access to Work

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

§ 5.13 Construction by Owner or by Separate Contractors

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

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

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

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

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

§ 5.14 Mutual Responsibility

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

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

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

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

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

§ 5.15 Owner's Right to Clean Up

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

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 General

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

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

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

§ 6.2 Change Orders

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

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

§ 6.3 Change Directives

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

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

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

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

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

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

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

§ 6.3.7 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the method for adjustment in the Design-Builder's

compensation, the Owner shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 6.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section 6.3.7 shall be limited to the following:

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

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

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

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

ARTICLE 7 OWNER'S RESPONSIBILITIES

§ 7.1 General

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

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

§ 7.2 Information and Services Required of the Owner

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

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

describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site under the Owner's control.

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

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

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

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

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

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

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

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

§ 7.3 Submittals

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

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

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

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

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

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

§ 7.8 Owner's Right to Stop Work

If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section 11.2 or persistently fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity, except to the extent 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 ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

ARTICLE 8 TIME

§ 8.1 Progress and Completion

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

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

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

§ 8.2 Delays and Extensions of Time

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

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

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

ARTICLE 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION

§ 9.1 Contract Sum

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

§ 9.2 Schedule of Values

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

§ 9.3 Applications for Payment

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

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

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

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

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

§ 9.4 Certificates for Payment

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

§ 9.5 Decisions to Withhold Certification

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

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

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

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

§ 9.6 Progress Payments

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

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

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

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

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

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

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

§ 9.7 Failure of Payment

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

§ 9.8 Substantial Completion

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

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

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

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

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

shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

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

§ 9.9 Partial Occupancy or Use

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

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

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

§ 9.10 Final Completion and Final Payment

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

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

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of Change Orders affecting final completion, the Owner shall, upon application by the Design-Builder, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less

than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder to the Owner prior to issuance of payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

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

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

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

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

§ 10.2 Safety of Persons and Property

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

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

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

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

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

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

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

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

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

§ 10.3 Hazardous Materials

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

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

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

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

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

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

§ 10.4 Emergencies

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

ARTICLE 11 UNCOVERING AND CORRECTION OF WORK

§ 11.1 Uncovering of Work

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

§ 11.2 Correction of Work

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

§ 11.2.2 After Substantial Completion

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

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

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

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

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

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

the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

§ 11.3 Acceptance of Nonconforming Work

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

ARTICLE 12 COPYRIGHTS AND LICENSES

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

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

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

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

§ 12.3.2 In the event the Owner alters the Instruments of Service without the author's written authorization or uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all claims and causes of action arising from or related to such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service under this Section 12.3.2. The terms of this Section 12.3.2 shall not apply if the Owner rightfully terminates this Agreement for cause under Sections 13.1.4 or 13.2.2.

ARTICLE 13 TERMINATION OR SUSPENSION

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

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

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

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

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

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

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

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

§ 13.2.1 Termination by the Design-Builder

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

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

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

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

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

§ 13.2.2 Termination by the Owner For Cause

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

- .1 fails to submit the Proposal by the date required by this Agreement, or if no date is indicated, within a reasonable time consistent with the date of Substantial Completion;
- .2 repeatedly refuses or fails to supply an Architect, or enough properly skilled Consultants, Contractors, or workers or proper materials;
- .3 fails to make payment to the Architect, Consultants, or Contractors for services, materials or labor in accordance with their respective agreements with the Design-Builder;
- .4 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; 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 days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:

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

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

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

§ 13.2.3 Suspension by the Owner for Convenience

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

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

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

§ 13.2.4 Termination by the Owner for Convenience

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

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

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

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

ARTICLE 14 CLAIMS AND DISPUTE RESOLUTION

§ 14.1 Claims

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

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

§ 14.1.3 Notice of Claims

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

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

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

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

§ 14.1.6 Claims for Additional Time

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

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

§ 14.1.7 Claims for Consequential Damages

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

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

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

§ 14.2 Initial Decision

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

§ 14.2.2 Procedure

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

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

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

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

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

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

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

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

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

§ 14.3 Mediation

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

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

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

§ 14.4 Arbitration

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

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

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

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

§ 14.4.4 Consolidation or Joinder

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

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

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

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Governing Law

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

§ 15.2 Successors and Assigns

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

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

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

§ 15.3 Written Notice

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

§ 15.4 Rights and Remedies

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

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

§ 15.5 Tests and Inspections

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

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

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

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

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

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

§ 15.6 Confidential Information

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

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

§ 15.7 Capitalization

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

§ 15.8 Interpretation

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

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

ARTICLE 16 SCOPE OF THE AGREEMENT

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

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

<< >>

.6 Other:

<< >>

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

OWNER (Signature)

<< >><< >>

(Printed name and title)

DESIGN-BUILDER (Signature)

<< >><< >>

(Printed name and title)



MUNICIPAL PARTICIPATION AGREEMENT

THIS AGREEMENT made this _____ day of _____, 2021, by and between Prince George's County, Maryland, (hereinafter the "County") a body corporate and politic and the Town of Cheverly (hereinafter the "Town").

WHEREAS, the County has included funding in its FY 2022-2027 Capital Improvement Program for Municipal Participation Storm Drainage Improvement Projects and makes Three Hundred and Seventeen Thousand and Seventy-One Dollars and Fifty Cents (\$317,071.50) available to correct and improve the storm drains in and around Crestlawn Avenue and Parkway Street in Cheverly, MD and as described in the attached technical proposal found in Attachment A - (hereinafter called the "Project"), and

WHEREAS, the Project will consist of tasks or components including the installation and upgrading of public storm drain systems to County standards in and around the Crestlawn Avenue and Parkway Street and as described in Attachment A, and

WHEREAS, the Project has been accepted as a participation project by the County through adoption and approval by the Prince George's County Council of CB-35-2021 on May 27, 2021, in accordance with the qualifying guidelines listed in the guideline entitled October 1996, "Prince George's County Municipal Storm Drainage Participation Program Guidelines," dated October 1996

and revised April 2015 (hereinafter called Municipal Participation Guidelines), and

Whereas, the parties wish to define their responsibilities with respect to the design, construction and funding of the Project.

NOW, THEREFORE, the parties in consideration of the promises exchanged herein, the receipt and sufficiency of which are mutually acknowledged, agree as follows:

1. The Project will be designed and constructed according to County standards and as described in the technical proposal prepared by Ecosite, Inc., revised and dated September 1, 2021 and titled "Storm Drain Improvements: Crestlawn and Parkway Streets" found in Attachment A, including the storm drain verification correspondence from Ecosite, Inc. dated July 20, 2021.
2. Unless otherwise specified in this Agreement, the procedures and requirements for carrying out and funding the Project shall follow the provisions set forth in the revised April 2015, "Prince George's County Municipal Storm Drainage Participation Guidelines" attached hereto as Attachment B and specifically incorporated herein.
3. The Town agrees to submit to the County all plans, specifications and contract documents, including all

Federal and State permits for construction of the Project. The Town will obtain concept approval and project case number assignment from the Department of Permitting, Inspections and Enforcement (DPIE). The County's Department of the Environment (DoE) Project Manager will be responsible for the technical review of the plan.

4. The Town will prepare Schedule A, description of perpetual storm drain easement, and Schedule B, sketch of perpetual easement, for all easements required for construction, installation and future County maintenance of proposed storm drainage systems. Once Schedule A(s) and Schedule B(s) are prepared for all required easement(s), the Town shall submit to DoE for County Engineer to review. Once approved by the County Engineer, the County Engineer will provide through DoE the actual Storm Drainage Easement document to accompany each Schedule A and B to the Town. The Town will obtain signature and notary from property owner(s) for each required easement. The Town shall submit final, executed easement documents to County Engineer through DoE for recordation into County Land Records. Construction shall not be authorized until all easements have been obtained by the Town and

submitted to the County Engineer through DoE. Payment for any construction work will be denied by County until all required easements are provided by the Town. The Town agrees to perform and complete design, permit acquisition, obtain requisite approvals, and obtain any necessary easements, if any, for construction in accordance with the design and construction schedule included in Attachment A. The Town shall be responsible for the future maintenance of the public under drain system if included in the project.

5. This Agreement shall take effect upon execution and shall continue for three years from that date.
6. The Town shall obtain a minimum of three (3) certified quotations or bids to perform construction of the Project and shall follow the bid guidelines set forth in the attached Municipal Participation Guidelines. The Town shall award the bid to the lowest qualified bidder and shall present that bid to the Prince George's County Department of the Environment, Sustainability Division (formerly Sustainable Initiatives Division) for bid approval as required in the Municipal Participation Guidelines.
7. The Town shall provide for the payment of prevailing wages to all workmen and apprentices employed on the

construction of the Project. Prior to obtaining quotations or bids, the Town shall obtain from the County current applicable wage rates for the Project improvements and incorporate into each bid package the current version of the County's Wage Rates and Additional Clauses, for compliance by successful bidders when awarded contracts.

8. The Town shall provide for the utilization of State or County certified Minority Business Enterprises (hereinafter "MBE") to perform no less than Thirty (30%) of the total County funds committed by the County by utilizing the MBE utilization package. Additionally, the Town shall comply with Prince George's County Jobs First Act CB-17-2011 and meets the requirement of one hundred percent (100%) certified County based small business participation if the value of Agreement is below five hundred thousand (\$500,000.00) dollars in accordance with Section 10A-161.
9. The Town shall not engage in trade in contravention with County laws concerning embargoed nations or conduct business with person or firms which have been suspended or barred from participation in contract activities with any government.

10. Upon receipt of supporting documentation specified in the Municipal Participation Guidelines, the Department of the Environment agrees to reimburse the Town for a portion of the costs incurred in the design and construction of the Project, not to exceed Three Hundred and Seventeen Thousand and Seventy-One Dollars and Fifty Cents (\$317,071.50), unless otherwise agreed upon by the parties. The schedule and requirements for reimbursement shall follow the Municipal Participation Guidelines. The County retains the right to review and adjust the invoices where it believes that the amount of work performed has been less than the invoiced amount. Final approval and final payment will not be considered until the provisions set forth in the "Payment Schedule" and "Final Payment/Project Closeout" of the Municipal Participation Guidelines are met. Unless otherwise agreed to by the County, the County shall not be responsible for reimbursing the Town for costs after the termination date of this Agreement.
11. The Town shall submit and certify a final accounting of the costs of the Project which shall be the basis of the County's payment to the Town. This final accounting shall be audited by the County and shall

not exceed the total cost as provided in paragraph 10 herein.

12. The Town agrees up until the time the County accepts the Project to indemnify, save harmless and defend the County from and against any and all claims, demands, suits, liabilities, losses, damages, judgments, and payments including attorney fees claimed or made by persons not party to this Agreement.
13. The County warrants that it's participation in the Project is authorized and that it shall employ every effort to ensure the Project remains authorized in the Capital Improvement Program until the project is accepted.
14. This Agreement is subject to availability of County funds.
15. The terms and conditions of this Agreement shall be governed by the laws of the State of Maryland and Prince George's County Maryland.
16. The Town shall not discriminate in employment because of religion, race, sex, age, color, occupation, familar status, marital status, political opinion, personal appearance, sexual orientation, physical/mental handicaps or national origin.

17. The County shall have the right to terminate this Agreement upon (30) days written notice should the Town fail to abide by the terms of this Agreement, including the attached Municipal Participation Guidelines.
18. Failure of the County to enforce any provisions or terms of this Agreement and the attached Municipal Participation Guidelines shall not be deemed a waiver of said provisions and terms.
19. No changes, modifications or amendments shall be effective for any purpose without prior written approval of the County.
20. In the event that any provision of this Agreement shall be held invalid or not enforceable by any Court of competent jurisdiction, such provision shall not invalidate or render unenforceable any other provision hereof

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and date first written above.

TOWN OF CHEVERLY, MARYLAND

Witness

By: _____

Printed Name: _____

Title: _____

Employer ID# _____

PRINCE GEORGE'S COUNTY, MARYLAND

Witness

By: _____

Floyd E. Holt

Deputy Chief Administrative Officer
for Office of the County Executive

Reviewed & Recommend Approval:

Andrea L. Crooms, Director
Department of the Environment

Reviewed for legal sufficiency

Office of Law

Attachments:

- A - Technical Proposal of Ecosite, Inc. revised and dated September 1, 2021 titled Storm Drain Improvements: Crestlawn and Parkway Streets, including the storm drain verification correspondence from Ecosite, Inc. dated July 20, 2021.
- B - Prince George's County Municipal Storm Drainage Participation Guidelines

TOWN OF CHEVERLY
ORDINANCE No.: _____

**An Ordinance whereby the Mayor and Council of the Town of
Cheverly amend Chapter 8-9(f)(3) of the Town Code for the
purpose of creating right of special exceptions for corner lot properties.**

WHEREAS, pursuant to § C-23 of the Town's Charter, the Mayor and Council are vested with the authority to pass ordinances and take such measures as they may deem necessary for the good government and improvement of the Town; and

WHEREAS, the Mayor and Council have reviewed the Town Code and desires to amend Section 8-9 covering the review of Fence applications creating a right of special exceptions.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Town of Cheverly in regular session assembled, Chapter 8-9(f)(3) of the Town of Cheverly Code is hereby amended as follows:

(b) Section 8-9(f)(3) is hereby amended and changed to the following:

“(3) The Mayor and Town Council may grant a special exception for any fence that it finds meets the criteria as stated in this ordinance”, and the current language in that Section is hereby stricken.

AND BE IT FURTHER ORDAINED that this Ordinance shall take effect 30 days from the date of its adoption.

AND BE IT FURTHER ORDAINED that a fair summary of this Ordinance shall forthwith be published twice in a newspaper having general circulation in the Town and otherwise be made available to the public.

INTRODUCED by the Town Council of the Town of Cheverly, Maryland, at a regular public meeting on _____, 2021.

ADOPTED by the Town Council of the Town of Cheverly, Maryland, at a regular public meeting on _____, 2021.

ADOPTED: _____

Attest: _____

Mayor

Councilmember

Councilmember

Councilmember

Councilmember

Councilmember

Councilmember

CHARTER AMENDMENT RESOLUTION R-01-21
OF THE MAYOR AND COUNCIL OF THE TOWN OF CHEVERLY, MARYLAND
AMENDING SECTIONS C-6(A) AND C-6(B) OF THE CHARTER ADOPTED PURSUANT TO
THE AUTHORITY OF ARTICLE XI-E OF THE CONSTITUTION OF MARYLAND AND § 4-
304 OF THE LOCAL GOVERNMENT ARTICLE OF THE ANNOTATED CODE OF
MARYLAND (1957 EDITION, AS AMENDED), TO MODIFY BOUNDARIES OF THE
ELECTION WARDS TO ENSURE RESIDENTS ARE IN THEIR PROPER WARDS, ADDRESS
INCONSISTENT AND IMPRECISE BOUNDARY DESCRIPTIONS, AND CORRECT MINOR
DEFICIENCIES IN BOUNDARY DESCRIPTIONS AND IN THE LANGUAGE IN SECTION C-
6(B) REGARDING THE APPLICABLE ELECTION DATE.

WHEREAS, during the last election on May 3, 2021, there was confusion among some residents regarding ward assignments; and

WHEREAS, in researching this issue, it was discovered amendments were needed to boundary descriptions to ensure residents are in their proper wards, corrects incorrect and imprecise boundary descriptions, and correct minor deficiencies; and

WHEREAS, it has been confirmed by the Board of Elections that despite the issues contained in the Charter, the results of the May 3rd election were not impacted; and

WHEREAS, the Mayor and Council examined these issues in public and determined certain amendments are required; and

WHEREAS, a public hearing has been held on the proposed amendment to Section C-6(A) and 6(B) of the Charter as required by Section 4-304(a)(2) of the Local Government Article of the Annotated Code of Maryland before this Charter Amendment Resolution is considered for adoption;

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Town Council of the Town of Cheverly, Maryland, in regular session assembled:

Section 1: That Section C-6 of the Charter of the Town of Cheverly, Maryland, be repealed and reenacted as follows:

§ C-6. - Boundaries, election order and councilmembers holding over.

Section C-6. Boundaries; Election Order and Councilmembers Holding Over.

(A) The Town of Cheverly shall be divided into six (6) wards, which shall, respectively, comprise the territory contained within the boundaries of the town, the lot lines hereinafter set forth, and the center line of the streets named as follows:

First Ward: All that area lying north and west of a line beginning at the northern boundary and Cheverly Avenue and running south along Cheverly Avenue until the point where Forest Road crosses Cheverly Avenue and, then west southwest along Forest Road to Greenleaf Road and then running northwest along Greenleaf Road to Tremont Avenue, then north on Tremont Avenue to Inwood Street, then west on Inwood Street in a straight line until the line ends at the western boundary.

Second Ward: All that area lying south and west of a line beginning at the intersection of the western boundary and the extended centerline of Inwood Street, running east to Tremont Avenue, then south on Tremont Avenue to Greenleaf Road, then southeast on Greenleaf Road until it joins Forest Road and then east on Forest Road to Belleview Avenue, then southeast along Belleview Avenue to Cheverly Avenue, then south on Cheverly Avenue to Euclid Street then west to Lake Avenue and south along Lake Avenue to Benton Road, then west on Benton Road to Valley Way and south on Valley Way, until the line ends at the southwestern boundary.

Third Ward: All the area contained in a line beginning at the northern boundary and Cheverly Avenue and running south on Cheverly Avenue to where Forest Road crosses Cheverly Avenue, then east on Forest Road to 63rd Avenue to its intersection with 63rd Place, then north on 63rd Place to Inwood Street, then northwest on Inwood Street to 63rd Avenue, then north-northwest on 63rd Avenue until it changes its name to 62nd Place, then along 62nd Place until the northern boundary, and then west along the northern boundary to Cheverly Avenue.

Fourth Ward: All that area south and east of a line running from a point at the intersection of the eastern boundary and the rear lot line of 6435 Forest Road (Lot 19) along the northeast side lot line of the same lot, across Forest Road to the eastern side lot line of 6432 Forest Road, along the eastern side lot line of the same lot and running in a northwest direction along the rear lot lines of 6432, 6430, 6428[,] AND 6424[, and 6422] Forest Road and continuing along the northern side lot line of 2803 Hillside Avenue, running along Inwood Street west to 64th Avenue and then southwest along 64th Avenue to Forest Road, and running west on Forest Road to BELLEVIEW [Cheverly] Avenue, then [south]SOUTHEAST on BELLEVIEW AVENUE TO Cheverly Avenue, THEN SOUTH ON CHEVERLY AVENUE to Euclid Street then west to Lake Avenue and south along Lake Avenue to Benton Road, then west on Benton Road to Valley Way and South on Valley Way until the line ends at the southwestern boundary.

Fifth Ward: All that area east and north of a line beginning at the northern boundary of the town at Landover Road and 63rd Place and running south on 63rd Place for approximately one half block to the boundary of the town and then [west] EAST along the boundary of the town that runs along the south side of the Cheverly Station Apartments, then north on Kilmer Street for a short distance until a point between 6507 and 6513 Landover Road in the Cheverly Station Apartments, and then east along the south wall of 6507, 6509 and 6511 Landover Road (Cheverly Station Apartments), then north to the NORTHWEST [southeast] corner of 6505 Landover Road and [north along the west wall of 6505 Landover Road,] then east along the northern wall of 6505 Landover Road, then turning north at the northeast corner of 6505 Landover Road and running to Landover Road and then east to the boundary of the town.

Sixth Ward: All that area contained in a line beginning at the town boundary at Kilmer Street and Oak Street, then north on Kilmer Street for a short distance until a point between 6507 and 6513 Landover Road in the Cheverly Station Apartments and then east along the south wall of 6507, 6509 and 6511 Landover Road (Cheverly Station Apartments), then north to the NORTHWEST [southeast] corner of 6505 Landover Road, and [north along the west wall of 6505 Landover Road,] then east along the northern wall of 6505 Landover Road, then [turning][[turning]] TURNING north at the northeast corner of 6505 Landover Road and running to Landover Road and then east to the boundary of the town and continuing along the eastern boundary of the town south until a point at the intersection of the eastern boundary and the rear lot line of 6435 Forest Road (Lot 19) along to the northeast side lot line of the same lot, across Forest Road to the eastern side lot line of 6432 Forest Road, along the eastern side lot line of the same lot and running in a northwest direction along the rear lot lines of 6432, 6430, 6428[,] AND 6424[, and 6422] Forest Road and

continuing along the north side lot line of 2803 Hillside Avenue, running along Inwood Street to 64th Avenue, then south on 64th Avenue to Forest Road, then southwest on Forest Road to 63rd Avenue to its intersection with 63rd Place, then north on 63rd Place to Inwood and northwest along Inwood and then along 63rd **[Place]** AVENUE until it changes its name to 62nd Place, then along 62nd Place until the boundary of the town in the northwest corner of Gladys Noon Spellman Elementary School and from there in a northeasterly direction along the boundary of the town to the intersection of Oak Street and Kilmer Street.

(B) The first election under the wards as described in C-6(A), shall take place in May **[1993]** 2022. **[At that election]** **IN ALL REGULAR ELECTIONS**, **[c]**Councilmembers for all wards shall be elected for a two-year term. **[Thereafter]** **[e]**Elections shall be conducted according to the Charter and laws of the town of Cheverly.

Section 2: **BE IT FURTHER RESOLVED** that any provision of the Charter which is inconsistent with Section C-6 as amended is hereby repealed.

Section 3: **BE IT FURTHER RESOLVED** that the date of the adoption of this Resolution is October 29, 2021, and that the amendment to the Charter of the Town of Cheverly hereby proposed by this enactment, shall be and become effective on December 31, 2021 [50 days], unless a proper petition for a referendum hereon shall be filed by December 21, 2021 [40 days], and a fair summary of the Amendment shall be posted at Town Hall for forty days following its adoption and published in a newspaper having general circulation in the Town not less than four (4) times at weekly intervals by December 21, 2021 [40 days].

Section 4: **BE IT FURTHER RESOLVED** that as soon as the Charter Amendment hereby enacted becomes effective, either as herein provided or following a referendum, the Clerk shall send separately to the Department of Legislative Services, the following information concerning the Charter Amendment: (1) the complete text of this Resolution; (2) the date of referendum election, if any, held with respect thereto; (3) the number of votes cast for and against this Resolution by the Mayor and Council of the Town of Cheverly or in a referendum; and (4) the effective date of the Charter Amendment.

Section 5: **BE IT FURTHER RESOLVED** that the Clerk be, and he/she is specifically enjoined and instructed to carry out the provisions of Sections 3 and 4, and as evidence of compliance herewith the said Clerk shall cause to be affixed to the Minutes of this meeting (1) an appropriate certificate of publication of the newspaper in which the fair summary of the Amendment shall have been published; and (2) records of mailing referred to in Section 3, and shall further complete and execute a Certificate of Compliance.

Section 6: **BE IT FURTHER RESOLVED** that the title to this Charter Amendment Resolution is deemed a fair summary hereof.

INTRODUCED by the Mayor and Council of the Town of Cheverly, Maryland, at a Regular Meeting on October 29, 2021, at which meeting copies were available to the public for inspection.

ADOPTED by the Mayor and Council of the Town of Cheverly, Maryland, at a Regular Meeting on November 10, 2021, at which meeting copies were available to the public for inspection.

An aerial photograph of a city, likely Chicago, showing a river on the left, a dense urban area with various buildings, and a large green park area on the right. The image is slightly faded and serves as the background for the text.

Cherby

HOSPITAL SITE REDEVELOPMENT

Community Presentation | 12/16/2021



KAIROS DEVELOPMENT

the
NRP
group

Our Team

The Builders



KAIROS DEVELOPMENT



The Designers



symmetra design



ParkerRodriguez

BEN DYER ASSOCIATES, INC.
Engineers / Surveyors / Planners

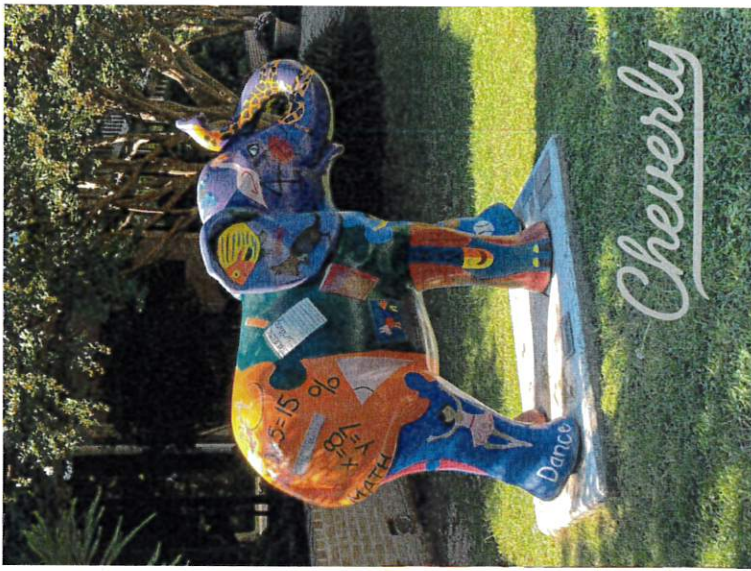
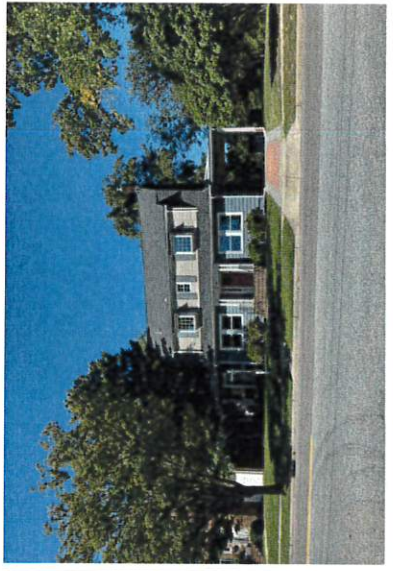
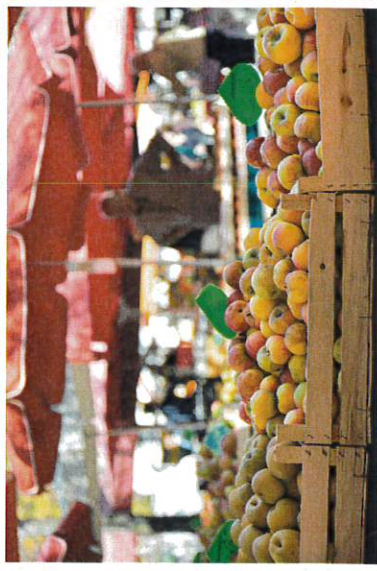
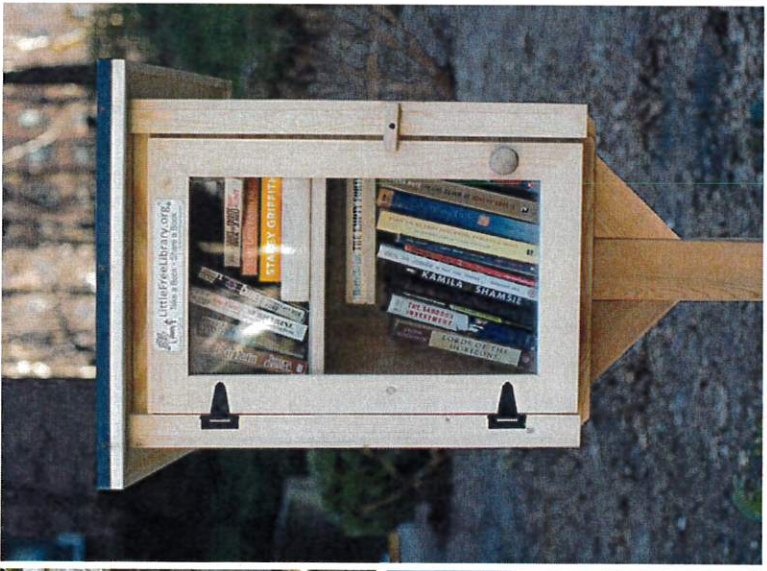
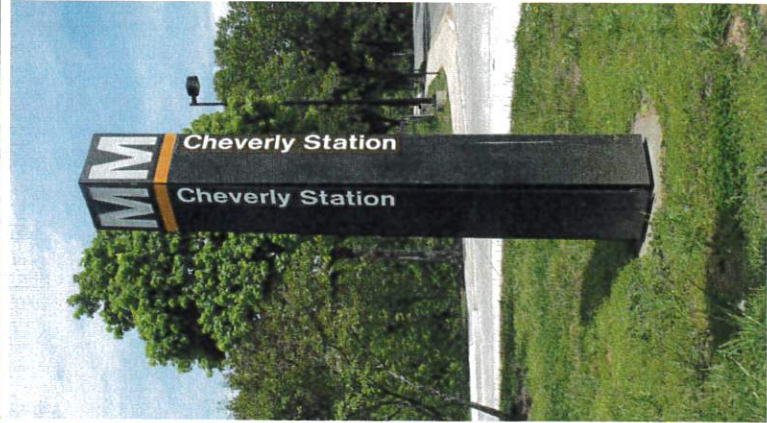
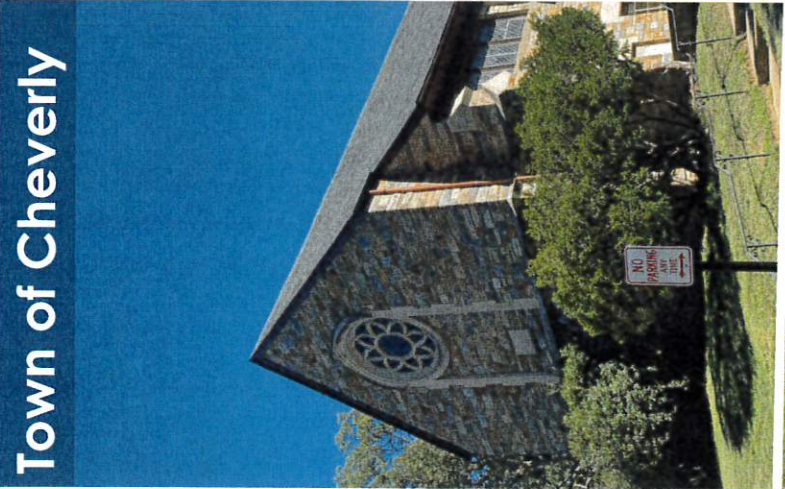


Highlights

- Incorporate design elements that replicates the look, feel and character of the Town of Cheverly.
- Reinforces environmental stewardship.
- Provides an appropriate mixes of uses.
- Is consistent the Greater Cheverly Sector Plan.
- A phased redevelopment approach to minimize impact on residents living adjacent to the Hospital site.
- Maximize the economic potential of the site to attract local businesses to the community and region.



Town of Cheverly



Our Plan



SHOPPING

STORMWATER
MANAGEMENT

ACTIVE
ADULT

CONDOS

TOWNHOMES

TOWN HALL +
COMMUNITY
CENTER

MIXED-USE

TOWN GREEN

TOWNHOMES

ASSISTED
LIVING

STORMWATER
MANAGEMENT

NATURE TRAILS

Cheverly

LOCKWOOD RD

TREMONT AVE

JASON ST

INWOOD ST

HAWTHORNE ST

Jason Street



Cheverly

Pocket Park



Cheverly

Town Green



Cheverly

Town Green



Cheverly

Hospital Drive



Chevrolet

Hospital Drive



Cheverly

Our Plan



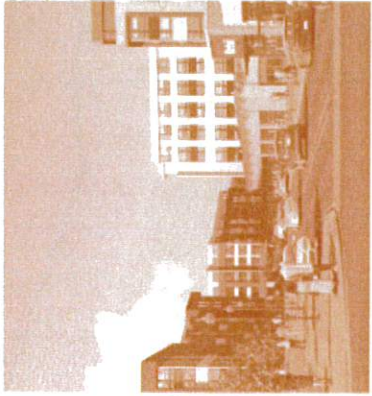
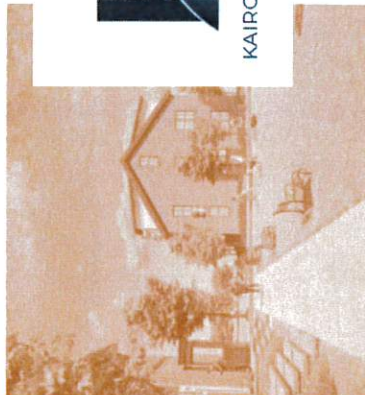
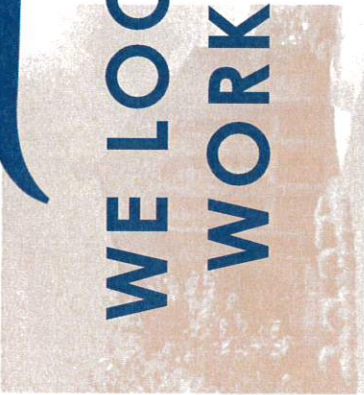
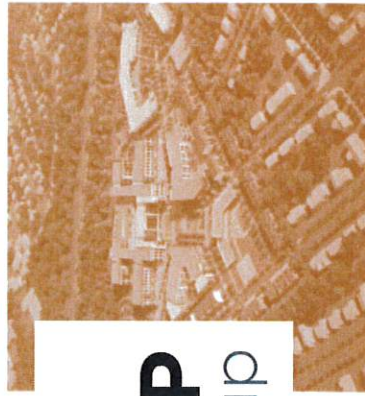
Cheverly

WE LOOK FORWARD TO
WORKING WITH YOU!



KAIROS DEVELOPMENT

the **NRP** group



Cheverly Hospital Redevelopment

December 16, 2021



Steve Proctor
Hometeamfive

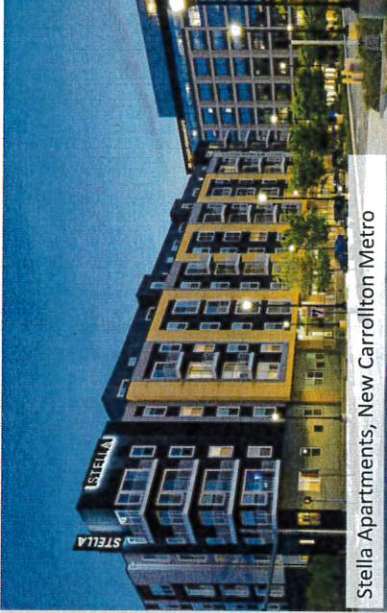


Caroline Kenney
Urban Atlantic



Our Team

- ❖ Committed partnership
- ❖ Demonstrated local & national experience
- ❖ Local & MBE participation



Stella Apartments, New Carrollton Metro



Parks at Walter Reed Community Event



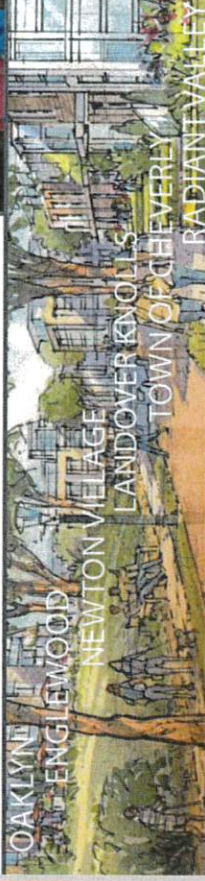
Parks at Walter Reed Whole-Foods anchored Marketplace, under construction



Project Partners	W/MBE	Local
Torti Gallas + Partners		
NVR		
Soltész Engineering		X
Blue Sky Housing	X	
Capstone Development	X	
Toole Design Group	X	
Bozzuto Construction		X
Three E	X	X
CJR	X	
Gingles, LLC	X	X
Thomas Michael		X
Bozzuto Management		X

Our Approach

- ❖ Honor existing planning work
- ❖ Focus on Town of Cheverly priorities
- ❖ Create the framework for collaborative partnership
- ❖ Execute RDA goals



Our Vision

- ❖ Local & regional destination
- ❖ Mixed uses: retail, food hall, co-working, homeownership and rental housing, senior living, hotel, medical
- ❖ Vibrant community: urban market, street level retail, village green & street art
- ❖ Model of sustainability, equity & accessibility



Concept Plan



Building retained for adaptive reuse.

Solar panels will be explored for multifamily.

The existing garage is retained.

A Linear Plaza, lined with ground floor activating uses, links Lockwood to the Community Square.

Lockwood Road extension creates strong connection to Cheverly.

The existing bed tower is converted to a hotel with food hall, grocery, and a sky terrace at the top of the building.

Pedestrian connections are provided at Jason St and Inwood St connecting directly to the Community Square.

The Community Square creates a central gathering place, lined with active uses and accommodating an expanded Cheverly Community Market.

A perimeter trail system creates active recreation opportunities and links to the regional trail system.

A new Dog Park is located along the trail system.

A Sledding Hill is maintained for winter activities.

Existing trees are retained.

Existing trees are retained.

Multifamily creates courtyards facing wooded parkway.

Existing road is retained minimizing site disturbance and reducing ecological impact of new road construction.

A Hamlet Green anchors the western side and brings together senior multifamily, multifamily, and town homes.

Senior multifamily capitalizes on the high point to provide scenic views.

An overlook is created at the high point of the site.

A separated bike trail along the steep road provides safe access for cyclists.

Existing trees are retained.

Bio-swales, Green Roofs, and Stormwater ponds treats and provides control of site runoff.

Road Infrastructure is minimized to reduce impervious surfaces, minimize resource consumption, and to maximize land dedicated to open space.

PROGRAM:

Residential Units:
1,300

Hotel Rooms:
150

Activation & Retail:
40,000 SF

Office:
70,000 SF

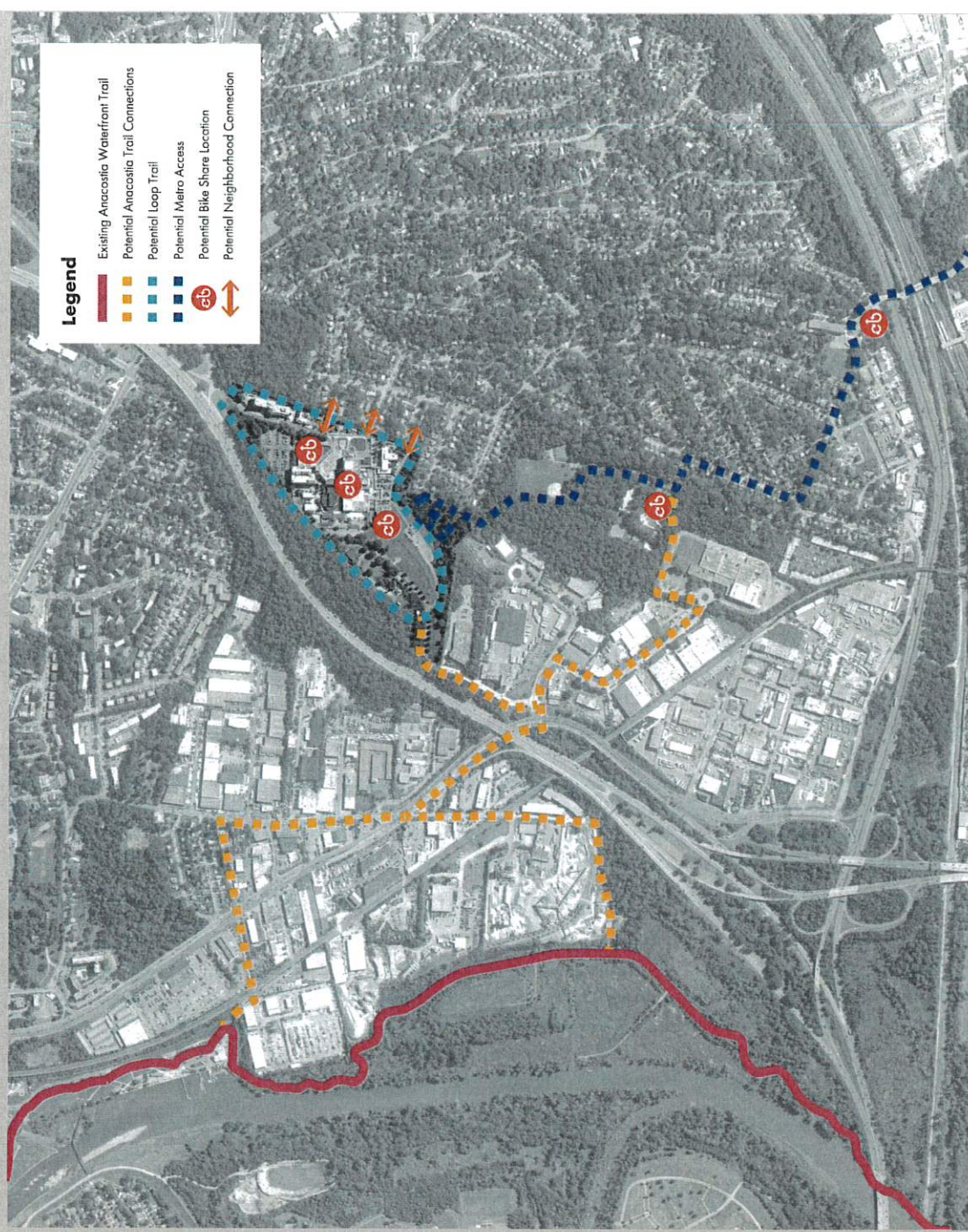
Circulation & Integration

- ❖ Primary welcoming gateways from Landover Road and Kenilworth
- ❖ Wayfinding to direct people to gateways
- ❖ Appropriate scale through a hierarchy of streets
- ❖ Safe, well-lit pedestrian paths
- ❖ Multimodal focus throughout the site – driving, walking, biking, e-biking, scooters
- ❖ Encouraging Bus and Metro



Trail Network

- ❖ “Missing link” to Anacostia Trail System
- ❖ Interim connection to Cheverly Metro
- ❖ Bike/E-Bike share



Sustainability

- ❖ Best-in-class model
- ❖ Stormwater management
- ❖ Solar and green roof
- ❖ Green transportation
- ❖ Native plantings
- ❖ LEED / Green Communities standards
- ❖ Low-energy, low-water building systems
- ❖ Re-use of existing buildings, recycling of materials
- ❖ Green open space





Village Green

Hotel & Rooftop Lounge

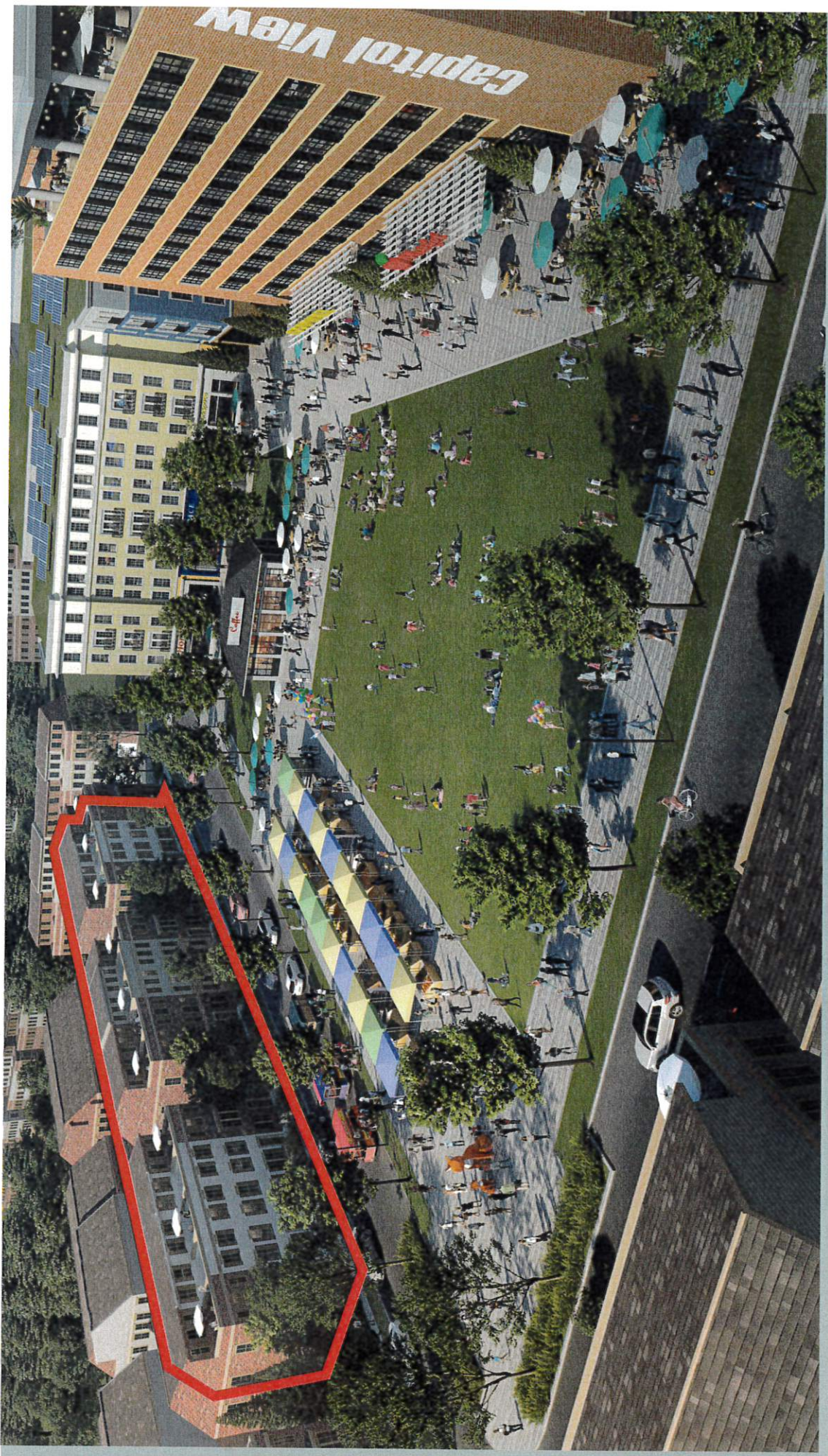


Food Hall & Urban Market





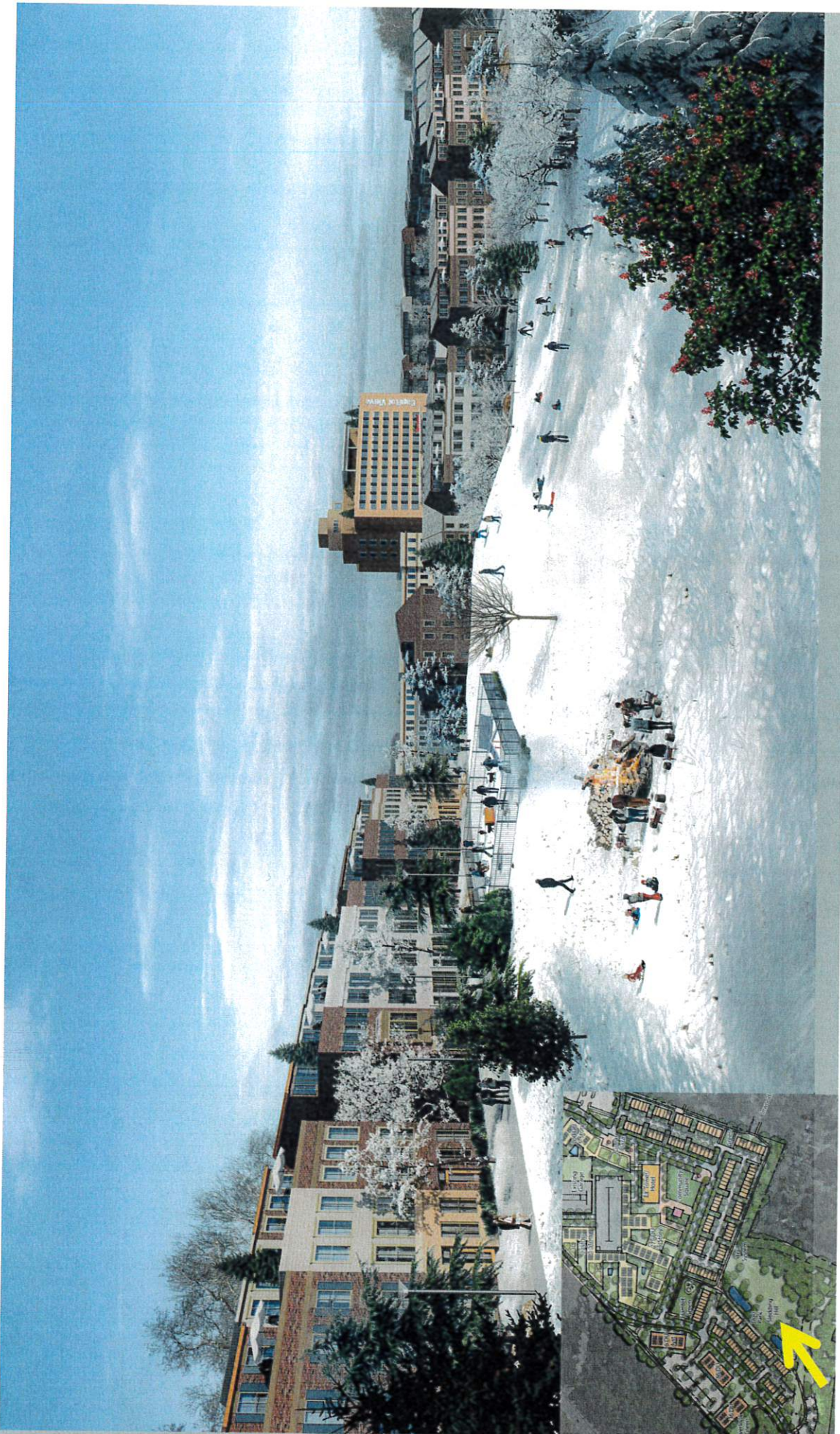
Cheverly Community Market



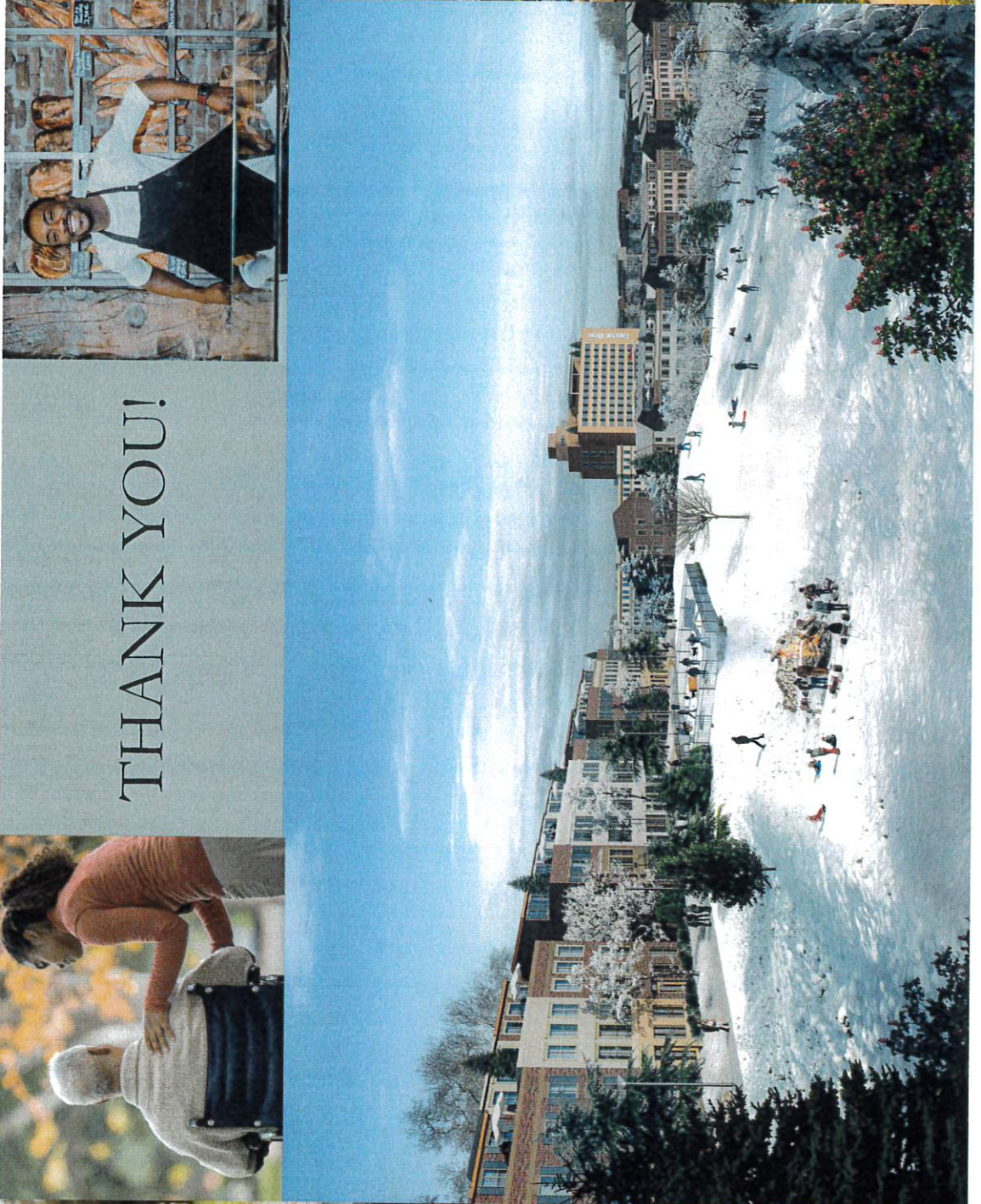
Townhomes

Main Street





Legacy



THANK YOU!