

# AIA<sup>®</sup> Document A141<sup>™</sup> – 2014

## *Standard Form of Agreement Between Owner and Design-Builder*

**AGREEMENT** made as of the 8<sup>th</sup> day of October in the year 2020.

**BETWEEN** the Owner:

*(Name, legal status, address and other information)*

Dade County Bar Association, Inc. a Florida not for profit corporation (“DCBA”)  
123 NW First Avenue, Suite 214  
Miami, Florida 22128

and the Design-Builder:

J Stephens Construction, LLC, a Florida limited liability company (“JSC”)  
2010 Scott Street  
Hollywood, Florida 33020

for the following Project: Design, Renovation and Construction requirements necessary at the Dade County Bar Association’s building located at 123 NW First Avenue, Miami, Florida 22128, including, without limitation: exterior and interior renovations to update/create 21,800 SF of commercial retail and office space; replacing the elevators and raising the elevator shaft to reach floor 5; replacing all plumbing, electrical and HVAC systems; interior demolition and modernizing and improving 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> floor offices; replacing fire alarm and sprinkler systems; installing systems for communications and security; repairing and replacing other non-functioning building systems; removing and replacing the facade as well as removing old windows and doors and installing new impact windows and doors (the “Project”).

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## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 Owner's Criteria

This Agreement is based on the DCBA Request for Proposals ("RFP") for the Design-Build Project issued January 27, 2020, incorporated and attached hereto as **Exhibit A** and Design-Builder's submission to the Dade County Bar Association Board on February 29, 2020 DCBA for the design, renovation and construction requirements necessary at the Dade County Bar Association's building located at 123 NW First Avenue, Miami, Florida 22128, incorporated and attached hereto as **Exhibit B**.

The DCBA authorizes Design-Builder to engage appropriate design professionals as subcontractors to the Design-Builder consistent with the Design-Builder's bid submission. The costs of the Design-Builder to subcontract such design professionals to develop a Design in accordance with its Bid Proposal and to allow the parties to assess the

necessary permitting costs of the project are not to exceed the initial design phase loan absent agreement by the parties.

This Agreement is further contingent upon the Owner's procurement of construction financing. Should the Owner fail to procure appropriate financing as provided in the project budget, or the DCBA board of directors decides not to go forward with the project, this Agreement shall be void and Design-Builder's duties described herein shall terminate.

**§ 1.1.1 The Owner's program for the Project:**

**The Services.** The Design-Builder agrees to furnish or arrange for the architectural, engineering and construction services set forth herein and required for completion of the Project. The parties will mutually agree upon a Designer who will be a subcontractor to Design-Builder and who will prepare the conceptual and detailed designs upon which the Design-Builder will base its revised submission, while seeking to maintain all fees, costs and expenses within the \$2 Million Total Contract Price ("TCP") for the Project. The DCBA will seek additional funding if the DCBA's design requirements cannot be completed by the Design-Builder within that TCP, or the parties will meet and agree mutually in writing on what portions of the Design will be eliminated to maintain the project budget within the TCP.

Design-Builder represents that it is thoroughly familiar with and understands the requirements of the Project scope and is experienced in the administration and construction/rehabilitation of building projects of the type and scope contemplated by the Owner for the Project. Design-Builder represents to Owner that Design-Builder has all necessary engineering and construction education, skill, knowledge and experience required for the Project, and will maintain at all times during the term of this Agreement such personnel on its staff or partners to provide the services contemplated within the time periods required hereby. In addition, Design-Builder represents that it or its subcontractors performing services under this Agreement have all applicable licenses required by the State of Florida to perform such services.

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

Design-Builder shall select appropriate design professionals for the Project who will be subcontractors to Design-Builder and will prepare conceptual renderings. Upon approval in concept by DCBA, Design-Builder shall develop design documents sufficient to allow for permitting by the City of Miami and any other relevant Authority Having Jurisdiction ("AHJ") over the Project.

**§ 1.1.3 The Project's physical characteristics:**

The Project consists of the design, renovation and construction requirements necessary at the Dade County Bar Association's building located at 123 NW First Avenue, Miami, Florida 22128 to complete the Project. JSC agrees it will pay the utilities during construction, which consist of Water & Sewer and Electric during construction until issuance of Temp for Test approval from AHJ or the issuance of the Certificate of Completion allowing DCBA to utilize the Project for the purpose for which it is intended, whichever is later, at which time DCBA will resume responsibility for all utilities for its use of the premises.

**§ 1.1.4 The Owner's anticipated Sustainable Objective for the Project, if any: N/A.**

**§ 1.1.5** The Parties have agreed that there are no incentives associated with the project, there are also no liquidated or other delay damages included in this Agreement.

**§ 1.1.6** The Owner's budget for the entirety of the Work to be provided by the Design-Builder is attached and incorporated herein as **Exhibit "C."** In no event will the Total Contract Price including all design, permitting, insurance, bond, contingencies and all other related costs and expenses that need to be incurred to fully and properly complete the Project, exceed \$2 million.

**DCBA and Design-Builder acknowledge and agree that the Design-Builder's bid submission is subject to modification following execution of the design and approval of the design by DCBA by governmental or other authority. The DCBA will seek additional funding if AHJ requirements or DCBA's design requirements cannot be completed by the Design-Builder within that TCP, or the parties will meet and agree mutually in writing on what portions of the Design will be eliminated to maintain the project budget within the TCP.**

**Upon approval of a final design by DCBA, Design-Builder will have 30 days to provide an updated construction budget. If the updated construction budget exceeds the anticipated financing, the parties shall meet within 14 days of the Design-Builder's revised submission to modify the design and value engineer in order to meet the DCBA's anticipated budget.**

§ 1.1.7 The Owner's design and construction milestone dates: shall be based on the final Design and the City of Miami construction requirements and will be included in the Amendment.

§ 1.1.9 Additional Owner's Criteria upon which the Agreement is based: The Design-Builder's Proposal based upon the Owner's requirements is incorporated by reference and shall serve as the basis of the Design-Builder's expectations in agreeing to undertake the Project.

§ 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 the AHJ.

§ 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:

Jane Muir  
President, Dade County Bar Association  
123 NW First Avenue, Suite 214  
Miami, Florida 22128

And this representative is the only person authorized to bind the DCBA or give any direction, approval or other authorization to the Design-Builder.

§ 1.2.3 The Owner will retain the following consultants and separate contractors:

Movers to remove all decorations, archives, furniture, equipment, signage and any other movable articles from the facility in order for Design-Builder to execute its obligations to the Project.

As part of the demolition, Design-Builder will remove certain fixtures that are not readily removable by Owner's movers and are not intended to be part of the completed Project.

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

Jeff Stephens  
2010 Scott Street  
Hollywood, Florida 33020

§ 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:



- [ ] Arbitration pursuant to Section 14.4
- [ X ] Litigation in a court of competent jurisdiction, except the Parties agree that before entering into Litigation, they will exercise best efforts to resolve any disputes, including negotiation between the identified representatives in 1.2.1 and 1.2.4 and the use of Alternative Dispute Resolution alternatives, such as Mediation, before commencing Litigation.
- [ ] 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 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 of specific materials/equipment to be used in the construction of the project. 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 Amendment for Substantial Completion of the Work following Design approval by the Owner and permitting of the Project by the City of Miami.

**§ 1.4.14 Day.** The term “day” as used in the Design-Build Documents shall mean calendar days 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 Amendment, as identified in Article A.1 of the Amendment, which together with the Design Fee, the Pre-Construction Costs, and the Construction Inspection Fee shall not exceed the TCP.

**§ 1.4.16 Design Fee.** The amount for all design-related services for the Project, which together with the Pre-Construction Costs, Contract Sum and Construction Inspection Fee shall not exceed the Total Contract Price.

**§ 1.4.17 Pre-Construction Costs.** The amount for all pre-construction related costs and services expended by Design-Builder, except for the Design Fee, for the Project, which together with the Design Fee, Contract Sum and Construction Inspection Fee shall not exceed the Total Contract Price.

**§ 1.4.18 Construction Inspection Fee.** The costs of reviews, inspection and supervision services needed by the Lender during the Construction Phase of the Project, if any, together with the Design Fee, the Pre-Construction Costs and Contract Sum shall be included in the project budget within the Total Contract Price unless otherwise agreed.

**§ 1.4.19 Total Contract Price.** The not to exceed amount of \$2 million for all Services and Work for the Project, comprised of the sum of the Design Fee, the Pre-Construction Costs, the Contract Sum and the Construction Inspection Fee as detailed in the Total Contract Price Budget included as **Exhibit C** to this Contract.

## **ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS**

### **§ 2.1 Compensation for Work Performed Prior To Execution of Amendment**

**§ 2.1.1** Unless otherwise agreed, payments for Work performed prior to Execution of the Amendment shall be made monthly. For the Design-Builder’s performance of Work prior to the execution of the Amendment, the Owner shall compensate the Design-Builder, within the Total Contract Price budget line items for Pre-Construction Costs and Design Fee as follows:

Through Monthly draw requests for work in place, stored materials, long lead items and the Design team’s specific requirements of the Contractor submitted on AIA G-701 and G-702. Once the Total Contract Price budget line item for Pre-Construction Costs has been expended, the Design-Builder will not be further compensated for any Pre-Construction Work, unless a mutually agreed upon written Modification/Change Order modifies that budget line item.

**§ 2.1.2** The compensation for services of the Design-Builder’s Architect, Consultants or other design professionals, if any, shall not exceed the Total Contract Price budget line item for the Design Fee. Once the Total Contract Price budget line item for Design Fee has been expended, the Design-Builder will not be further compensated for any Design Services, including those required during the construction phase of the Project, unless such services are required for a Modification/Change Order requested solely by the Owner or required by an AHJ and such services would not otherwise be required at all for the Project to be fully and properly completed.

### **§ 2.1.3 Compensation for Reimbursable Expenses Prior To Execution of Amendment: N/A**

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

**§ 2.1.4.1** Payments are due and payable upon presentation of the Design-Builder's invoice and approval of it by DCBA. Amounts approved by DCBA and unpaid 30 calendar days after the invoice date shall bear interest at the rate of 3.5% per annum or the statutory interest rate, whichever is greater.

#### **§ 2.2 Contract Sum and Payment for Work Performed After Execution of Amendment**

For the Design-Builder's performance of the Work after execution of the Amendment, the Owner shall pay to the Design-Builder the Contract Sum in current funds as agreed in the Amendment. The Contract Sum agreed to in the Amendment shall in no event exceed the Contract Sum listed in the Contract Sum Line Item of the Total Contract Price Budget. The Design-Builder shall also be paid, during the construction phase of the Work, the Construction Inspection Fee for all reviews, inspections and supervision by all design professionals needed for full and proper completion of the Project.

#### **§ 2.3 Total Contract Price**

The Total Contract Price shall in no event exceed the (1) Design Fee, (2) Pre-Construction Costs, (3) Contract Sum and (4) Construction Inspection Fee, for a Total Contract Price of \$2 million unless otherwise agreed by the Parties.

### **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.

**§ 3.1.3.3** Liability for use of Work for Intended Purpose. As an inducement for the DCBA to enter into this Agreement, the Design-Builder has represented an expertise in the construction of major exterior and interior renovation projects of a similar type and scope as contemplated herein. In reliance upon those representations, DCBA hired the Design-Builder to provide professional design services through licensed architects and/or engineers and construction services. The Design-Builder shall be liable for any defective or negligent design, whether patent or latent, and/or any negligence, or breach of other legal duty to the extent and in the manner as hereafter set forth.

**§ 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.

#### **§ 3.1.4.1 Design Professional Standard of Care**

The Design-Builder shall perform all Work, with respect to the design portion of the Project, in accordance with the standard of professional skill and care required for architects and other design professionals retained to design,

document, coordinate, assist with and inspect from commencement to finish the design, documentation, permitting, field inspection and provide all other architectural and design professional services that may be provided for design-build projects of a similar nature.

#### **§ 3.1.4.2 Construction Standard of Care**

Design-Builder shall construct the Project as described in the Design-Build Documents, meeting all required standards of construction as set forth in the Design-Build Documents. The Design-Builder shall perform all Work required under the Design-Build Documents, with commercially reasonable skill and care as is consistent with the orderly progress of the Project.

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

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

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

#### **§ 3.1.8 Progress Reports**

Any information submitted by the Design-Builder, and any interim decisions made by the DCBA, shall be for the purpose of facilitating the design process and shall not modify the DCBA's Criteria as set forth in **Exhibit A** absent agreed modifications in writing.

#### **§ 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, may be modified as reasonably necessary based upon the design and any requirements of AHJ. The Schedules shall be further 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 below and attach insurance certificates and payment and performance bonds as part of Exhibit D.

## **BONDS AND INSURANCE** – parties need to discuss funding of bonds and insurance and renewal fees

### § 3.1.16.1 Bonds

Prior to the DCBA's issuance of the Notice to Proceed after the execution of the Amendment, the Design-Builder shall deliver to the DCBA the Bonds required to be provided by Design-Builder hereunder (the bonds referenced in this Section are collectively referred to herein as the "Bonds").

The Design-Builder shall obtain and thereafter at all times during the performance of the Work maintain a separate performance bond and labor and material payment bond for the Work as may be required by the DCBA or its lender, each in an amount equal to one hundred percent (100%) of the Contract Sum and each in the form satisfactory to and approved in writing by the DCBA and executed by a surety of recognized standing with a rating of B+ or better or all subcontractors performing work in excess of \$250,000 shall provide bonding acceptable to Design-Builder and DCBA. The surety providing such Bonds must be licensed, authorized and admitted to do business in the State of Florida and must be listed in the Federal Register (Dept. of Treasury, Circular 570). All associated costs of the Bonds, including, without limitation, premiums and recording fees are included in the Contract Sum.

If notice of any change affecting the Scope of the Work, the Contract Sum, Contract Time or any of the provisions of the Design-Build Documents is required by the provisions of any bond to be given to a surety, the giving of any such notice shall be Design-Builder's sole responsibility, and the amount of each applicable bond shall be adjusted accordingly.

If the surety is declared bankrupt or becomes insolvent or its right to do business in Florida is terminated or it ceases to meet applicable law or regulations, the Design-Builder shall, within sixty (60) days of any such event, substitute another bond (or Bonds as applicable) and surety, all of which must be satisfactory to the DCBA.

### § 3.1.16.2 Insurance

**UPON EXECUTION OF THE AGREEMENT, THE DESIGN-BUILDER SHALL SUBMIT CERTIFICATE(S) OF INSURANCE EVIDENCING THE REQUIRED COVERAGES AND SPECIFICALLY PROVIDING THAT THE DCBA IS AN ADDITIONAL NAMED INSURED BY**

**ENDORSEMENT WITH RESPECT TO THE REQUIRED COVERAGE AND THE OPERATIONS OF THE DESIGN-BUILDER UNDER THE AGREEMENT.** The certificates of insurance shall not only name the types of policies provided, but shall also specifically refer to this Agreement and shall state that such insurance is as required by Article 3 and its subparts of this Agreement. Design-Builder shall not commence work under this Agreement until after Design-Builder has obtained all of the minimum insurance herein described and the policies of such insurance detailing the provisions of coverage have been received and approved by DCBA. Design-Builder shall not permit any subcontractor to begin work until after similar minimum insurance to cover subcontractor has been obtained and approved. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the term of this Agreement, then, in that event, Design-Builder shall furnish, at least thirty (30) calendar days prior to expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage and extension thereunder is in effect. Design-Builder shall not continue to perform the Work required by this Agreement unless all required insurance remains in full force and effect.

**§ 3.1.16.2.1** Insurance Companies selected must be acceptable to the DCBA. All of the policies of insurance so required to be purchased and maintained shall contain a provision or endorsement that the coverage afforded shall not be canceled, materially changed or renewal refused until at least thirty (30) calendar days written notice has been given to DCBA by certified mail.

The Design-Builder shall procure and maintain as a reimbursable expense and keep in effect during the full term of the Agreement a policy or policies of insurance which must include the following coverage and minimum limits of liability:

a. Professional Liability (Errors and Omissions) Insurance for architectural and engineering services and the services of any other professional used in the performance of the work of this Agreement in the amount of \$1,000,000 with a deductible (if applicable) not to exceed \$5,000 per claim. The certificate of insurance for professional liability shall reference any applicable deductible and the work of this Agreement.

b. Worker's Compensation Insurance for statutory obligations imposed by Worker's Compensation or Occupational Disease Laws, including, where applicable, the United States Longshoremen's and Harbor Worker's Act, the Federal Employers' Liability Act and the Homes Act. Employer's Liability Insurance shall be provided with a minimum of One Hundred Thousand and xx/100 dollars (\$100,000.00) per accident. Design-Builder agrees to be responsible for the employment, conduct and control of its employees and for any injury sustained by such employees in the course of their employment.

c. Automobile Liability Insurance for all owned and hired automobiles and other vehicles used by the Design-Builder in the performance of the work with the following minimum limits of liability:

- \$1,000,000 Combined Single Limit, Bodily Injury and Property Damage Liability, per occurrence

d. Commercial General Liability Insurance (occurrence form) with the following minimum limits of liability:

- \$1,000,000 Combined Single Limit, Bodily Injury and Property Damage Liability, per occurrence

Coverage must be offered in a form no more restrictive than the latest edition of the Commercial General Liability Policy without restrictive endorsements, as filed by the Insurance Services Office and shall specifically include the following with minimum limits not less than those required for Bodily Injury Liability and Property Damage Liability:

- Premises and Operations;
- Independent Contractors;
- Product and Completed Operations Liability for one (1) years;

- Broad Form Property Damage;
- Broad Form Contractual Coverage applicable to the Agreement and specifically confirming the indemnification and hold harmless agreement in this Agreement; and
- Personal Injury coverage with employment contractual exclusions removed and deleted.
- Explosion, collapse, underground coverage (XC-U)

§ 3.1.16.2.2 Design-Builder shall furnish DCBA with certificates of insurance for all policies applicable to the Project upon issuance.

§ 3.1.16.2.3 The required insurance coverage shall be issued by an insurance company authorized and licensed to do business in the State of Florida, with a minimum rating of B+, in accordance with the latest edition of A.M. Best's Insurance Guide.

§ 3.1.16.2.4 All required insurance policies shall preclude any underwriter's rights of recovery or subrogation against DCBA with the express intention of the parties being that the required insurance coverage protect both parties as the primary coverage for any and all losses covered by the above-described insurance.

§ 3.1.16.2.5 The Design-Builder shall make whatever payment or premium required by any company issuing insurance to cover the requirements contained in this Agreement, which shall be reimbursed to Design-Builder pursuant to the project budget.

§ 3.1.16.2.6 The Design-Builder shall not commence performance of its obligations under this Agreement until after it has obtained all of the minimum insurance herein described and the same has been approved by the DCBA.

§ 3.1.16.2.7 The Design-Builder shall require each of its subcontractors of any tier to maintain the insurance required herein for each category, and Design-Builder shall provide verification thereof to DCBA upon request of DCBA.

§ 3.1.16.2.8 Design-Builder's failure to provide and maintain the insurance required by this Contract shall be grounds for immediate termination, and Design-Builder shall be liable for all losses, damages, costs and expenses associated with the failure to maintain the required insurance.

§ 3.1.16.2.9 Except to the extent covered by and paid by insurance, Design-Builder shall be responsible for all loss or damage Design-Builder or its Subcontractors cause to the Work.

§ 3.1.16.2.10 The Design-Builder shall secure, pay for, and maintain whatever insurance they may deem necessary for protection against loss of owned or rented capital equipment and tools, including any tools owned by mechanic, any tools, equipment, staging, towers and forms owned or rented by its subcontractors or agents under this Contract. Failure of the Design-Builder to secure such insurance or to maintain adequate levels of coverage shall not obligate the DCBA or its agents and employees for any losses of owned or rented equipment or for any Work damaged. If the Design-Builder secures such insurance, the insurance policy shall include a waiver of subrogation as follows: "It is agreed that in no event shall this insurance company have any right of recovery against the DCBA." The Design-Builder agrees to cooperate fully with the insurance company or companies in carrying out the provisions and conditions of all policies applicable to Work to be done, as well as all rules and recommendations of such company or companies in regard to accident prevention, reports and audits. The Design-Builder further agrees to report immediately to the DCBA and such insurance company or companies, in writing, notice of every accident on Site or otherwise related to the Work.

#### § 3.1.16.3 DCBA's Liability and Insurance

Except for purchasing and maintaining a Builder's Risk Insurance Policy for the Project, DCBA shall not be responsible for purchasing and maintaining any other insurance to protect the interests of Design-Builder, subcontractors or others on the Work. DCBA specifically reserves all statutory and common law rights.



## ARTICLE 4 WORK PRIOR TO EXECUTION OF THE 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 regular 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 and **Exhibit A**. 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 report to the Owner, summarizing the Design-Builder's evaluation of the Owner's Criteria. The parties agree to hold monthly meetings. The minutes from that meeting will serve as the monthly project report. The meetings shall address, at a minimum, the following areas:

- .1 allocation(s) of program functions, detailing each function and their square foot areas;
- .2 a preliminary estimate/update 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/updated 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

§ 4.2.3 The Owner shall review the Design-Builder's 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 Amendment setting forth the terms of their agreement.

#### **ARTICLE 5 WORK FOLLOWING EXECUTION OF THE AMENDMENT**

##### **§ 5.1 Construction Documents**

**§ 5.1.1** Upon the execution of the 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 DCBA for the DCBA's information at intervals appropriate to the progress of the Construction Documents Phase. The Design-Builder further agrees that the DCBA will be allowed to review the Construction Documents at intervals no less than at the thirty percent, fifty percent, and ninety percent development stages. At each such stage, the Design-Builder shall consult with the DCBA and provide documents for the DCBA's review and comment, which will be made within 5 days of receipt of such interim Construction Documents so as to cause no delay to the Design-Builder, and Design-Builder shall promptly incorporate agreed changes within 5 days of receipt of such comments so as to cause no delay to the Project. Upon the Design-Builder's completion of the ninety percent development stage, the Design-Builder shall deliver to Owner a list of all tests, inspections, or reports that are required by the Construction Documents, including, but not limited to those to be provided by the Design-Builder. This list of tests, inspections or reports must be approved by DCBA, in writing, before any of them are performed.

**§ 5.1.3** If the DCBA discovers any deviations between the Construction Documents and the previously approved Design-Build Documents, the DCBA shall promptly notify the Design-Builder of such deviations in writing. The Construction Documents shall not modify the Design-Build Documents except by agreement. The failure of the DCBA 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 including modifications by agreement.

##### **§ 5.1.4 Certifications**

Upon the DCBA's written request, the Design-Builder shall obtain from the Architect, Consultants, and Contractors, and furnish to the DCBA, 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 DCBA 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

##### **§ 5.1.5 Record Sets of Final Construction Documents**

Design-Builder shall issue an electronic version of the Final Construction Documents. Should DCBA desire hard copies, they will be responsible for costs of printing.

## **§ 5.2 Construction**

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

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

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

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

### **§ 5.2.5 Progress Meetings During The Construction Phase**

During the Construction Phase, 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 Parties agree to hold a project update meeting that will address, at a minimum, 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 not previously provided in accordance with the timeline set out in Article 5.1.2 \_\_\_\_\_;
- .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 Review of Total Contract Price Budget and Current Project cash-flow and forecast reports; and
- .12 Additional information as agreed to in writing by the Owner and Design-Builder.

## **§ 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 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 retain discretion over selection of key personnel, contractors and suppliers within the project budget.

**§ 5.7.2** If the Design-Builder changes any of the personnel, Contractors or suppliers identified in the 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 Amendment, the Design-Builder, as soon as practicable after execution of the 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 be authorized to cut, patch or otherwise alter partially completed construction as reasonably necessary to complete the project.

## **§ 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.

## **§ 5.16 Design-Builder’s Submittals**

§ 5.16.1 Prior to submission of any Submittals, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the DCBA’s approval. The DCBA’s approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (1) be coordinated with the Design-Builder’s schedule, (2) allow the DCBA 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.

§ 5.16.2 By providing Submittals the Design-Builder represents to the DCBA 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.

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

§ 5.16.4 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 DCBA in writing of a deviation from the Design-Build Documents at the time of the Submittal and a written Modification(s)/Change Order is executed authorizing the identified deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in Submittals by the DCBA's approval of the Submittals.

§ 5.16.5 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 DCBA 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.

## § 5.17 Warranty

§ 5.17.1 The Design-Builder warrants to the DCBA 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 DCBA under a warranty claim, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 5.17.2 Any material or equipment warranties required by the Design-Build Documents shall be issued in the name of the DCBA, or shall be transferable to the DCBA, and shall commence in accordance with the terms of this Agreement.

§ 5.17.3 The Design-Builder represents and warrants that the construction means, methods, procedures and techniques necessary to perform the Work will be executed in accordance with: (1) good and sound practices within the construction industry; (2) generally prevailing and accepted industry standards applicable to the Work; (3) requirements of any warranties applicable to the Work; and (4) applicable laws, codes, orders and ordinances which bear upon the Design-Builder's performance of the Work. The Design-Builder will not warranty work for consultants or subcontractors hired by Owner.

§ 5.17.4 Design-Builder represents and warrants to DCBA that all labor, materials and/or services furnished, and all Work performed by the Design-Builder, will be free of defects for a period of one (1) year, unless otherwise provided herein for a longer period, from the date of Final Completion. The Design-Builder represents and further warrants it will perform an inspection of the completed project eleven (11) months following turnover and to perform any repairs required to comply with the warranty provision, at no cost to the DCBA, provided however that any damage is not the result of intentional acts, improper use, improper maintenance, normal wear and tear, fire, flood, acts of God, terrorism or other exigent circumstances exceeding the builder's reasonable responsibility to warrant its Work. These warranties are not in lieu of, but are in addition to any other warranties, express or implied, which may be provided by law and by manufacturers, Subcontractors, and suppliers. Design-Builder shall provide to DCBA all original warranties and guarantees from all Subcontractors, suppliers, manufacturers of equipment and materials installed in connection with the Project, together with any other warranties and guarantees required by the Design-Build Documents.

§ 5.17.5 All material, equipment, or other special warranties required by the Design-Build Documents shall be issued in the name of the DCBA, or shall be transferable to the DCBA, and shall commence as of the date of Final Completion.

§ 5.17.6 The Design-Builder shall obtain warranties, for a period of one (1) year, from all subcontractors.

§ 5.17.7 Design-Builder shall provide to the DCBA a bound hard-cover book and one (1) electronic copy of same containing the following information:

- .1 All Subcontractor and manufacturers' warranties fully executed in a form approved by the DCBA;
- .2 The Design-Builder's warranty;
- .3 All Extended Warranties required by the Design-Build Documents;
- .4 A list of all Subcontractors, Sub-subcontractors and suppliers who performed work on the Project or who furnished materials for use in the Project, such list to include the name, address, telephone number and responsible person at all such entities;

The delivery, endorsement or assignment of such warranties shall not release the Design-Builder from obligations pursuant to the Design-Build Documents.

§ 5.17.8 If the Design-Builder fails to commence to correct defective or nonconforming Work within thirty (30) calendar days from written notice to Design-Builder, the DCBA may correct such defective or nonconforming Work. If the Design-Builder commences to correct such defective or nonconforming Work but fails to diligently and continuously work on such correction, the DCBA may upon an additional three (3) business days' notice to Design-Builder, correct such item at Design-Builder's sole cost and expense. DCBA may deduct such costs from any monies due Design-Builder. If the defective or nonconforming Work is discovered after Final Completion, then Design-Builder shall pay such cost and expense, including attorney's fees incurred. The Design-Builder shall bear all costs of correcting such defective Work.

§ 5.17.9 The warranty obligations of this Article shall survive completion and final payment or termination of this Contract for the Work performed to the date of termination. DCBA reserves the right to notify applicable licensing authorities regarding any failure of Contractor to perform its contractual duties.

§ 5.17.10 In the case of an emergency, Design-Builder, within twenty four (24) hours of written notice by DCBA, shall diligently and continuously pursue any necessary repairs or replacements of defects until corrected and will restore the Work to the condition required by the Design-Build Documents. Design-Builder shall restore surface, subsurface, collateral and primary conditions disturbed during warranty work to their prior condition. Design-Builder agrees that if Design-Builder fails to diligently pursue correction of any deficiency in a continuous and expeditious manner until completion, DCBA may correct such deficiencies at Design-Builder's sole and exclusive expense and that such action shall not invalidate any conditions of the Design-Build Documents. Design-Builder shall indemnify and hold DCBA harmless from any claims, loss, damage or expense due to defects in the Work.

§ 5.17.11 The Design-Builder shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the DCBA or separate contractors caused by the Design-Builder's correction or removal of Work which is not in accordance with the requirements of the Design-Build Documents without reimbursement from the DCBA.

§ 5.17.12 If the DCBA prefers to accept Work which is not in accordance with the requirements of the Design-Build Documents, the DCBA may do so in writing 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 Completion has been achieved.

§ 5.17.13 Prior to Substantial Completion, Design-Builder shall obtain all required inspections or other required documentation by the suppliers and Manufacturers' representatives for equipment and supplies during the course of performing the Work and during the warranty period, in order to ensure that all Manufacturer warranties will be honored throughout the Manufacturer's entire warranty period.



## § 5.18 Shop Drawings and Samples

§ 5.18.1 The Design-Builder shall prepare and submit any shop drawings required for permitting to the authority having jurisdiction, and shall furnish a copy to the DCBA.

§ 5.18.2 The Design-Builder shall prepare and maintain all other shop drawings, samples and submittals and make them available for review by the DCBA.

§ 5.18.3 Review of the shop drawings and samples by the DCBA shall be general and shall not relieve the Design-Builder of the responsibility for the accuracy of such drawings, nor for the proper fitting and construction of the Work, nor for the furnishing of material or Work required by the Agreement and not indicated on the drawings.

## § 5.19 Use of Premises

§ 5.19.1 The Design-Builder shall confine equipment, the storage of materials, equipment, and the operations of workers to the project site and areas identified in and permitted by the Design-Build Documents, and shall not unreasonably encumber the premises with equipment or other materials. The Design-Builder shall assume full responsibility for any damage to any such land or area, or to the DCBA or occupant thereof or of any land or areas contiguous thereto, resulting from the performance of the Work. Should any claim be made against the DCBA by any such owner or occupant because of the performance of the Work, the Design-Builder shall promptly attempt to settle with such other party by agreement or otherwise resolve the claim. The general indemnification provided elsewhere in this Agreement specifically applies to claims arising out of Design-Builder's use of the premises.

§ 5.19.2 The Design-Builder shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Design-Builder subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

## § 5.20 Access to Work

The Design-Builder shall provide the DCBA, the DCBA's consultants, representatives and personnel, independent testing laboratories and governmental agencies with jurisdictional interests with access to the work at reasonable times for their observation, inspection and testing. The Design-Builder shall provide them proper and safe conditions for such access and advise them of Design-Builder's site safety procedures and programs so that they may comply therewith.

## 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 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 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 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 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 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 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 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 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 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 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 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.

### **§ 7.3 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 this Contract. The Owner's review shall not constitute approval of safety precautions or 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 Amendment the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work. Once the Permit is issued, the construction schedule referenced supra at paragraph 3.1.9 shall be revised as reasonably necessary and provided by the Design-Builder to the Owner. Upon approval it shall be attached as an Exhibit to the Amendment to this Agreement. The Work shall be commenced upon the date specified in the final schedule (the "Date of Commencement") and, subject to authorized adjustments or temporary extensions, the Design-Builder shall achieve Substantial Completion of the Work no later than the number of consecutive calendar days after the Date of Commencement (the "Contract Time"). The Design-Builder agrees that all Work shall be prosecuted regularly, diligently and uninterrupted at such rate of progress as will ensure completion of it within the time specified.

**§ 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 the DCBA under other provisions of the Design-Build Documents.

### **§ 8.2.4 Change of Contract Time/No Damage For Delay**

The Project schedule shall be reasonably adjusted by agreement in the event of delay due to acts of God, extreme weather, or other exigent circumstances. Costs for delays that are not due to the fault or the negligence of the Design Builder shall be reimbursable to the Designer Builder by the DCBA.

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### **§ 8.2.5 No Recovery for Early Completion**



Should the Design-Builder submit a schedule or express an intention to complete the Work earlier than any required milestone or completion date, the DCBA shall not be liable to the Design-Builder for any compensation in excess of the project budget.

## **ARTICLE 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION**

### **§ 9.1 Contract Sum**

The Contract Sum is stated in the Amendment.

### **§ 9.2 Schedule of Values**

The Contract Sum is based on a stipulated sum with a contingency for all Work needed to meet the requirements of the Contract Documents. The Contract Sum agreed to in the Amendment shall in no event exceed the Contract Sum listed in the Contract Sum Line Item of the Total Contract Price Budget. , Design-Builder, prior to the first Application for Payment after execution of the Amendment shall submit to the Owner a schedule of values allocating the entire Contract Sum to the various portions of the Work including a line item contingency 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** Design-Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work no later than the 25<sup>th</sup> of each month and the Owner shall make payment upon such Application within 14 calendar days of submission. 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 a 10% retainage.

**§ 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. Specifically, in order to achieve Substantial Completion for this Project, Design-Builder must achieve the following minimum requirements:

1. Site cleanup and restoration of all exterior elements including ledges, gutters, windows, exterior facades (including without limitation removal of all excess materials, debris, supplies, equipment, temporary structures, ladders, scaffolding, staging and/or trailers) has been completed;
2. all exterior building finishes, all interior building finishes, all interior spaces, all structural, mechanical, and technical systems required by the Design-Build Documents, all fire and life safety systems, are completed and ready for use or occupancy;
3. The Work is ready for occupancy, completed in accordance with the Drawings and Specifications and the Contract Documents including, but not limited to: (1) low voltage system, if any; (2) MEP trim out; (3) security systems; (4) finish painting; (5) designated flooring; (6) millwork; and (7) cabinets; all as applicable, are complete.
4. The Design-Builder's and DCBA's agreed list of items needed to achieve Substantial Completion as set forth below, have been completed, inspected and approved by the DCBA as to scope, number, quality and content;
5. The Work is ready for occupancy, completed in accordance with the Final Construction Documents and the Design-Build Documents and all persons or entities having jurisdiction over the Project have issued the appropriate permits, and authorizations for the construction and use of the Work and the Work has received a temporary or final Certificate of Occupancy; and
6. Design-Builder has complied with the turnover obligations set forth in Article 11 below.

**§ 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, air-conditioning and 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) a contractor's final affidavit stating 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.

**§ 9.10.3.1** Final payment, constituting the entire unpaid balance of the Contract Sum including any retainage, shall be paid by the DCBA to the Design-Builder when the following express conditions precedent to Final Payment have been met:

- .1 the DCBA has issued a Certificate of Final Completion;
- .2 all "punch list" items have been fully completed to the reasonable satisfaction of DCBA;
- .3 the final certificate of occupancy and all final governmental and utility authority permits have been issued, unless the final certificate of occupancy is delayed for reasons that are beyond the control of the Design-Builder and those for whom the Design-Builder is responsible;
- .4 Design-Builder has fully cleaned and restored the site with respect to all of the final punch list work; and
- .5 all temporary utilities are disconnected;

**§ 9.10.3.2** In addition to the above, Design-Builder shall have performed and or submitted (as applicable) to the DCBA the following:

- .1 an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the DCBA or the DCBA's property might be responsible or encumbered (less amounts withheld by DCBA) have been paid or otherwise satisfied, or shall be paid out of Design-Builder's final payment;
- .2 consent of surety, if any, to final payment;
- .3 documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties;
- .4 all previously undelivered manufacturer and Subcontractor guarantees, warranties and manuals and documents;
- .5 final and or conditional releases of lien, waivers of claim, satisfactions of liens or claims, and such other affidavits as may be reasonably required by the DCBA; Where Design-Builder is in a dispute with a Subcontractor and or supplier, consent of surety, if any, to Final Payment is acceptable.
- .6 To the extent DCBA is missing any shop drawings and or submittals, Design-Builder will provide any such items requested in writing;
- .10 Design-Builder has complied with all partial occupancy or Turnover obligations set forth in Article 11; and

.11 Design-Builder has complied with all other requirements of the Design-Build Documents

### **§ 9.10.3.3 DCBA's Right to Withhold Payment**

The DCBA may withhold in whole or in part, final payment or any progress payment to such extent as may be necessary to protect itself from loss on account of:

- .1 Defective designs or Work not remedied;
- .2 Failure of the Design-Builder to make payment to Subcontractors or Suppliers for materials or labor;
- .3 Damage not remedied; or
- .4 Failure of the Design-Builder to carry out the Work in accordance with the Design-Build Documents.

When the above grounds are removed or resolved or the Design-Builder provides a letter of credit satisfactory to the DCBA which will protect the DCBA in the amount withheld, payment may be made in whole or in part.

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

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

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

### **§ 9.11 Payment of the Construction Inspection Fee**

The costs of reviews or inspection services during the Construction Phase of the Project, if any, shall be paid directly by the DCBA's lender from the applicable budget line item unless otherwise agreed.

## **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 solely 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 and all subsections.

**§ 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 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 discovered before 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 agreement to do so shall be in writing, signed by both Parties and the Parties will endeavor to agree to a fair reduction in the Contract Sum as appropriate and equitable. Such adjustment shall be effected whether or not final payments has been made.

### **§ 11.4 Turnover of the Project – Operation & Maintenance Instructions**

Upon Substantial Completion of the Project and prior to Final Acceptance and Final Payment by the DCBA, the Design-Builder shall meet the following minimum requirements regarding operation and maintenance instruction for the DCBA:

#### **§ 11.4.1 Instruction and Training**

Design-Builder's installers and operation and regular maintenance personnel shall have met with the individuals as may be designated by the DCBA, at the Project Site, to provide complete instructions and training needed for proper start-up, operation, shut-down and maintenance of those parts of the Work requiring such maintenance. Instructions by manufacturer's representatives are required where installers are not experts in operating/maintenance procedures, or as specified in the Design-Build Documents. For operational equipment, installers shall demonstrate startup, shut-down, emergency operations, noise and vibration adjustments, safety, economy/efficiency adjustments, and other applicable operations, and shall review maintenance and operating instructions which are required to be performed in order to maintain in force applicable warranties, guaranties and bonds.

**§ 11.4.2** Design-Builder shall have provided DCBA with Three (3) heavy duty, bound, hard-cover books and one (1) electronic copy of same, properly identified on both the front and the spine of each binder and indexed, in suitable sets of manageable size, containing the following information related to all equipment and systems on the Project:

1. Training, maintenance and operating manual information;
2. emergency instructions;
3. spare part listings;
4. wiring diagrams;
5. recommended "turn around" cycles;
6. inspections procedures;
7. shop drawings, product data, and any other applicable information;
8. detailed information and records for maintenance performed on all equipment and systems on the Project, operated and maintained by Design-Builder prior to Final Completion.

**§ 11.4.3** Design-Builder shall have provided DCBA with one (1) heavy duty, bound, hard-cover books and one (1) electronic copy of same, properly identified on both the front and the spine of each binder and indexed, in suitable sets of manageable size, containing the following information:

1. All Subcontractor warranties fully executed in the form approved by the DCBA;
2. All Extended Warranties required by the Design-Build Documents;
3. The Design-Builder's warranty; and

4. A list of all Subcontractors, Sub-subcontractors and suppliers who performed Work on the Project or who furnished equipment or materials for use in the Project, such list to include the name, address, email address, and telephone number of the responsible person at all such entities.

The delivery, endorsement or assignment of such warranties shall not release the Design-Builder from obligations pursuant to the Design-Build Documents.

## **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 Amendment**

§ 13.1.1 If the Owner fails to make payments within thirty (30) days after such payments are due and owing to the Design-Builder for Work prior to execution of the 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 for more than 30 consecutive days, 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 consecutive 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. 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.

**§ 13.1.5** 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 Amendment**

### **§ 13.2.1 Termination by the Design-Builder**

**§ 13.2.1.1** The Design-Builder may terminate the Contract if the Owner fails to make payments as required by this Agreement, and as a result Work is stopped for a period of ninety (90) 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, or 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 and costs incurred by reason of such termination.

### **§ 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 refuses or fails to supply an Architect, or enough properly skilled Consultants, Contractors, or workers or proper materials;
- .3 fails to make payment to the Architect, Consultants, or Contractors for services, materials or labor in accordance with their respective agreements with the Design-Builder;
- .4 disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .5 is otherwise guilty of substantial breach of a material 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, Not 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 be compensated for all work properly completed up to the date of termination less all expenses incurred by Owner to effectuate the termination for cause, including the costs and expenses associated with the need for a replacement Design-Builder.

**§ 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, inclusive of substantiated costs incurred for specially fabricated pre-paid supplies and materials.

## 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. 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.

### § 14.2 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, 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 resolution of dispute consistent with the elections made in paragraph 1.3.

§ 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 resolution of a dispute consistent with the elections made in paragraph 1.3

§ 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: N/A

## ARTICLE 15 MISCELLANEOUS PROVISIONS

### § 15.1 Governing Law, Venue And Prevailing Party Attorney's Fees

The Contract shall be governed by the law of the State of Florida.

Venue for litigation of any claim, objection or dispute arising out of this Agreement shall be in a court of competent jurisdiction in Miami-Dade County, Florida.

In the event of any controversy, claim, dispute or litigation between the parties arising from or relating to this Agreement (including, but not limited to, the enforcement of any indemnity provisions), the prevailing party shall be entitled to recover reasonable costs, expenses and attorneys' fees, paralegals' fees and experts' fees through all trial and appellate levels.

## **§ 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. The Parties also hereby consent to delivery of notices required under the Contract via email to the designated Representative for the respective Party as named within this Agreement.

## **§ 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.

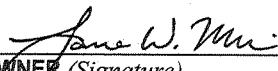
## ARTICLE 16 SCOPE OF THE AGREEMENT

§ 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, as modified and all Exhibits A-D
- .2 And any other Exhibits later attached hereto in accordance with the terms of this Agreement.




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

  
OWNER (Signature)

Jane Muir, President, Dade County Bar Association,  
Inc.

(Printed name and title)

  
DESIGN-BUILDER (Signature)

Jeff Stephens, Manager – J STEPHENS  
CONSTRUCTION, LLC

(Printed name and title)

Exhibit “A”

DCBA RFP for the Project



# **Request for Proposals Invitation to Bid**

Dade County Bar Association Headquarters

Project Owner: The Dade County Bar Association, Inc.

123 NW 1<sup>st</sup> Avenue

Miami, Florida 33128



## PROJECT

Renovation of the current free-standing structure located at 123 NW 1<sup>st</sup> Avenue, Miami, FL 33128. (Additional pictures attached as (the “Renovation Project” or “Project”) Appendix A.)



## GOALS

- Ground Floor:
  - To be leased in part for retail use, triple net;
  - To accommodate separate entrances for Dade Legal Aid and Dade County Bar Offices;
  - Lobby for elevator.
- Second Floor:
  - Office space to accommodate 39 employees of Dade Legal Aid;
  - Kitchen, bathroom, and conference room facilities appropriate to Dade Legal Aid's needs.
- Third and Fourth Floor:
  - Flexible office space for shared work environment;
  - Administrative offices;
  - Conference rooms.
- Fifth Floor:
  - Lounge/ Coffee Bar;
  - Outdoor terrace.

## SCOPE/DESIGN CRITERIA

Request for a budget proposal for the full design and construction for the Renovation Project which is composed of 21,800 SF of commercial retail and office property. as follows:

- Fully coordinated and completed set of construction drawings and specifications (“Design-Build Documents”) ready for submission to the Building Department, permitting and then construction and construction administration in accordance with the Design-Build Documents for the following Project items:

- Replace the elevators and raise the elevator shaft to reach floor 5;
  - Replace all plumbing, electrical, and HVAC systems;
- Interior demolition;
- Replace fire alarm and sprinkler systems;
- Install systems for communications and security;
- Repair or replacement of other non-functioning building systems;
- Remove and replace façade;
  - Interior to a modern and improved design and improvement for 2, 3, and 4<sup>th</sup> floor office accommodations;
  - Removal of old windows and doors and Installation of new impact windows and doors.

## **DOCUMENTS PROVIDED**

- Building plans

## **DUE DATE**

February 29, 2020

## **INVITATION TO BID**

Your company ("Bidder") is invited to submit a bid for the design and construction of the Renovation Project which is the headquarters of The Dade County Bar Association ("Owner"). Proposals will be received from invited Bidders to Owner at [jane@jmuirandassociates.com](mailto:jane@jmuirandassociates.com) up to 3:00 p.m. EST on or before February 29, 2020 (Bid Day). Project commencement date is projected for 06/01/2020, pending all permit approvals, and turnkey budget to design and build the Project is not to exceed \$2 million. Owner invites Bidder to include suggestions in excess of budget pursuant to Paragraph 2.2.

Each Bidder shall present on the attached Bid Form, the design fee to complete the Design-Build Documents as a lump sum and shall provide lump sum line items for permitting, contingency, construction administration and a breakdown of the construction budget in excel in the MasterFormat as follows:

- Division 01 - General Requirements
- Division 02 - Existing Conditions
- Division 03 - Concrete
- Division 04 - Masonry
- Division 05 - Metals
- Division 06 - Wood, Plastics, Composites
- Division 07 - Thermal and Moisture Protection
- Division 08 - Openings
- Division 09 - Finishes
- Division 10 - Specialties
- Division 11 - Equipment
- Division 12 - Furnishings



- Division 13 - Special Construction
- Division 14 - Conveying Equipment
- Division 21 - Fire Suppression
- Division 22 - Plumbing
- Division 23 - Heating, Ventilating, and Air Conditioning (HVAC)
- Division 26 - Electrical
- Division 27 - Communications
- Division 28 - Electronic Safety and Security
- Division 31 - Earthwork
- Division 32 - Exterior Improvements
- Division 33 – Utilities

Bids will be reviewed privately, and the successful Bidder will be notified within 2 weeks of bid issuance. The Owner reserves the right to reject any or all bids and waives all formalities. Prospective bidders should read these entire Instructions to Bidders including referenced sections to prevent bid forfeiture and to successfully bid this project.

## **1. BIDDER'S REPRESENTATIONS**

1.1. The Bidder by making a Bid represents that:

- 1.1.1. The Bidders and all of Bidder's subcontractors hold active and valid insurance and licensure, including, without limitation, design professional liability insurance and licensure and general contractor and specialty contractor licensure in the state of Florida, applicable to the project location and type of work being bid. The Bidder must have a principal who is a Florida Licensed Certified General Contractor.
- 1.1.2. The Bidder has read and understands the scope/design criteria for the work.
- 1.1.3. The Bidder has visited the site, become familiar with local conditions under which the Work is to be performed and has correlated the Bidder's personal observations with the requirements of the proposed scope/design criteria. Failure to make such investigation shall not relieve the successful Bidder from fulfilling all terms of the contract.
- 1.1.4. The Bid is based upon the full design and construction of the Renovation Project, including the materials, equipment and systems required by the scope/design criteria without exception.
- 1.1.5. The Bidder has the bonding capacity to provide a Payment and Performance Bond as may be required by Owner's lender.

## **2. BIDDING DOCUMENTS**

2.1. Bidders shall submit a full set of proposed preliminary design drawings with their bid package.

2.1.1. Bidders shall submit a budget, in excel as identified above, an estimated construction milestone schedule from start to finish, along with the estimated

design fee draw requests, permitting fee draw requests, construction administration draw requests and the estimated construction draw requests.

2.2.2. Interpretations, corrections and changes of the Bidding Documents will be made by Addendum. Interpretations, corrections and changes of the Bidding Documents made in any other manner will not be binding, and Bidders shall not rely upon them.

2.2.3. Bidders are welcome to visit the site and discuss questions with Owner's representative on January 31, 2020 at 2 PM or February 7, 2020 at 10 AM in person at the site or via telephone conference [Dial in number: 213-493-0375](tel:213-493-0375) [PIN: 48440](tel:213-493-0375). Any and all questions must be submitted in advance in writing to [jane@jmuirandassociates.com](mailto:jane@jmuirandassociates.com). No verbal/oral interpretation will be binding to the construction contract.

## 2.2. SUBSTITUTIONS

2.2.1. We encourage the Bidder to make lower cost suggestions or value engineering in the form of alternates to the bid. All alternative suggestions must be in complete compliance with all local codes. All alternates must be fully disclosed by the Bidder with written request for approval provided to Jane Muir at [jane@janemuirassociates.com](mailto:jane@janemuirassociates.com) at least 5 days prior to receipt of Bids. Furthermore, the Bidder assumes the liability for all required research and documentation to bring the alternate suggestion to the attention of all concerned parties, unless otherwise agreed to by all parties. Alternates will become part of the contract only when accepted by the owner in writing prior to the contract execution. The Owner's decision of approval or disapproval of a proposed substitution shall be final. There will be no deviation from the scope/design criteria allowed in the base bid.

## 3. BIDDING PROCEDURES

### 3.1. PREPARATION OF BIDS

3.1.1. Each copy of the Bid shall state the legal name of the Bidder and the nature of the legal form of the Bidder.

3.1.2 Each copy shall be signed by the person or persons legally authorized to bind the Bidder to a contract.

### 3.2. SUBMISSION OF BIDS

3.2.1. Bids received after the time and date for receipt of Bids will not be accepted.

3.2.2. The Bidder shall assume full responsibility for timely delivery at the location designated for receipt of Bids.

3.2.3. All bid proposals shall be submitted on the attached Bid Form. A complete copy of the bid package must be emailed to Jane Muir via email at [jane@jmuirandassociates.com](mailto:jane@jmuirandassociates.com) by the time and date listed above.

3.2.4. The following documents must be received from all the bidders by the bid submittal date:

1. Bid shall be on the Bid Form attached below covering the full scope of work and all related work to fully complete the Renovation Project.
2. Bidder's Qualification & Clarification Statement on Bidder's Letterhead.
3. Instructions to Bidder (this form) signed and dated.
4. Project schedule demonstrating maximum of 180 day construction duration.

3.2.5. A responsive bid includes but is not limited to all design services, labor, materials, tools, equipment, other services, management and supervision required to complete permitted Design-Build Documents and all Work described therein, in the specified timeframe (duration).

### 3.3. MODIFICATION OR WITHDRAWAL OF BID

3.3.1. A Bid may not be modified, withdrawn or canceled by the Bidder for a period of thirty (30) days following the time and date designated for the receipt of Bids, and each Bidder so agrees in submitting a Bid.

3.3.2. Prior to the time and date designated for receipt of Bids, a Bid submitted may be modified or withdrawn by notice to the party receiving Bids at the place designated for receipt of Bids. Such notice shall be in writing over the signature of the Bidder.

3.3.3. Withdrawn Bids may not be resubmitted.

## 4. CONSIDERATION OF BIDS

### 4.1. OPENING OF BIDS

The opening of Bids will be at the discretion of the Owner. Opening of Bids will be done privately at the Owner's convenience.

### 4.2. REJECTION OF BIDS

The Owner shall have the right to reject any or all Bids. A Bid not accompanied by the required documents or a bid which is in any way incomplete or irregular is subject to rejection.

### 4.3. ACCEPTANCE OF BID (AWARD)

4.3.1. It is the intent of the Owner to award a Contract to the most qualified Bidder provided the Bid has been submitted in accordance with the requirements of the Scopescope/design criteria and does not exceed the funds available. The Owner shall have the right to waive informalities and irregularities in a Bid

received and to accept the Bid which, in the Owner's judgment, is in the Owner's own best interests.

4.3.2. The Owner shall have the right to accept Alternates in any order or combination, unless otherwise specifically provided in the Bidding Documents.

## **5. FORM OF AGREEMENT BETWEEN OWNER AND BIDDER**

The Bidder agrees by submitting a proposal for the project that they will enter into an agreement with Owner, using Owner's AIA A141-2014 standard form 151 – 2007 of Agreement Between Owner and Design-Builder Where the Basis of Payment Is a Stipulated Sum ("Construction Agreement"), with negotiated modifications.

The Bidder agrees to provide a sworn statement with a list of all subcontracts including contact names, addresses, telephone numbers, and subcontract totals.

## **6. ACCESS TO SITE**

Bidders are welcome to visit the site and discuss questions with Owner's representative on January 31, 2020 at 2 PM or February 7, 2020 at 10 AM in person at the site or via telephone conference [Dial in number: 213-493-0375](tel:213-493-0375) PIN: 48440. Any and all questions must be submitted in advance in writing to [jane@jmuirandassociates.com](mailto:jane@jmuirandassociates.com). No verbal/oral interpretation will be binding to the construction contract.

The site can be accessed and available for a job-walk by Bidders at other convenient times, by request to Shay Garcia at [sgarcia@dadecountybar.org](mailto:sgarcia@dadecountybar.org).

## **7. GENERAL**

7.1. The awarded Bidder is responsible for delivering a completed Project; all items not specifically identified to the contrary are the sole responsibility of and will be provided by the Bidder.

7.2. The awarded Bidder agrees to provide a close out package per the contract agreement within 45 days of project completion.

7.3. Each Bidder shall indicate on the Bid Form:

7.3.1.1. A total weekly rate at which general conditions and supervision shall accrue (should the project extend beyond the duration at no fault of the Bidder)

7.3.1.2. The total markup, reflected as a percentage of cost, for profit, overhead, insurance or any other fee the Bidder requires as necessary for managing all change order directives. This markup will apply to all change order directives as described in the contract.

BID FORM

DESIGN FEE: \$ \_\_\_\_\_

PERMITTING: \$ \_\_\_\_\_

CONSTRUCTION ADMINISTRATION: \$ \_\_\_\_\_

CCONTINGENCY: \$ \_\_\_\_\_

TOTAL CONSTRUCTION COST: \$ \_\_\_\_\_

BREAKDOWN:

Division 01 - General Requirements \$ \_\_\_\_\_

Division 02 - Existing Conditions

\$ \_\_\_\_\_

Division 03 - Concrete \$ \_\_\_\_\_

Division 04 - Masonry \$ \_\_\_\_\_

Division 05 - Metals \$ \_\_\_\_\_

Division 06 - Wood, Plastics, Composites \$ \_\_\_\_\_

Division 07 - Thermal and Moisture Protection \$ \_\_\_\_\_

Division 08 - Openings \$ \_\_\_\_\_

Division 09 - Finishes \$ \_\_\_\_\_

Division 10 - Specialties \$ \_\_\_\_\_

Division 11 - Equipment \$ \_\_\_\_\_

Division 12 - Furnishings \$ \_\_\_\_\_

Division 13 - Special Construction \$ \_\_\_\_\_

Division 14 - Conveying Equipment \$ \_\_\_\_\_

Division 21 - Fire Suppression \$ \_\_\_\_\_

Division 22 - Plumbing \$ \_\_\_\_\_

Division 23 Heating, Ventilating, and Air Conditioning (HVAC) \$ \_\_\_\_\_

Division 26 - Electrical \$ \_\_\_\_\_

Division 27 - Communications \$ \_\_\_\_\_

Division 28 - Electronic Safety and Security \$ \_\_\_\_\_

Division 31 - Earthwork \$ \_\_\_\_\_

Division 32 - Exterior Improvements \$ \_\_\_\_\_

Division 33 – Utilities \$ \_\_\_\_\_

**TOTAL BID AMOUNT \$ \_\_\_\_\_**



## 8. ACCEPTANCE OF BID CONDITIONS

By signing below the contactor accepts the above conditions and guidelines and acknowledges that this document will be incorporated as part of the final Construction Agreement.

Signature: \_\_\_\_\_

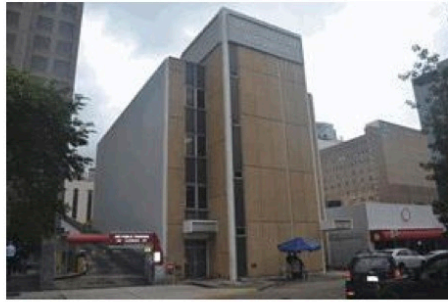
Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company: \_\_\_\_\_

## Appendix A – Pictures



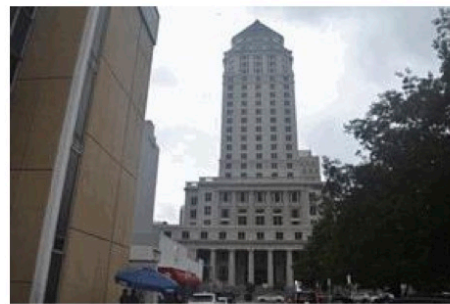
Exterior View of Subject Building



Exterior View of Subject Building



Exterior View of Subject Building



View of County Courthouse from Subject



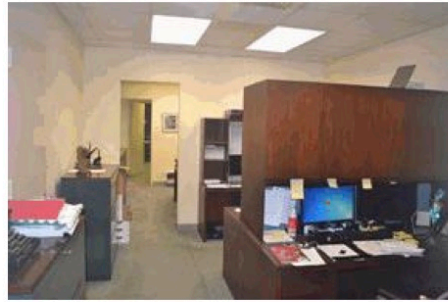
Lobby Dade County Bar



Lobby of Legal Aid



Meeting Room



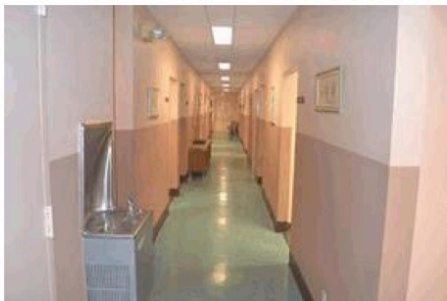
Interior View of Office Area



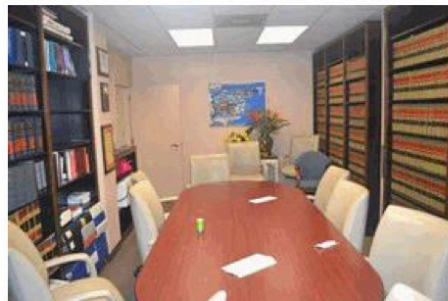
Interior Hallway



Typical Restroom



Interior Hallway



Conference Room/Library



View of 5th Floor



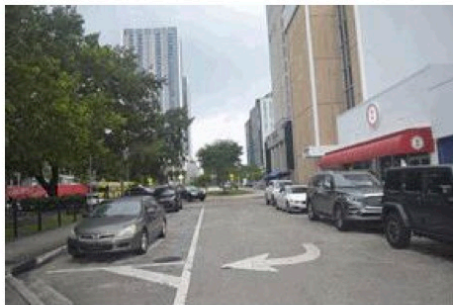
View of 4th Floor



View of Roof



View of Roof

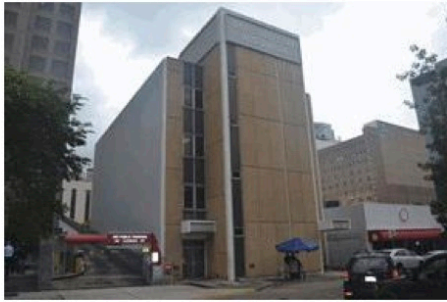


NW 1st Avenue Facing North



NW 1st Avenue Facing South





Exterior View of Subject Building



Exterior View of Subject Building



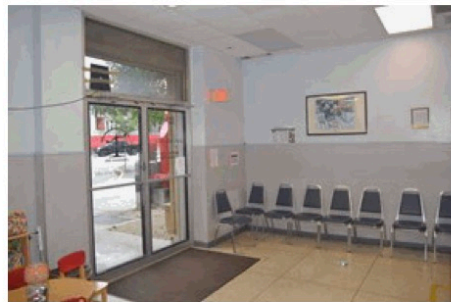
Exterior View of Subject Building



View of County Courthouse from Subject



Lobby Dade County Bar

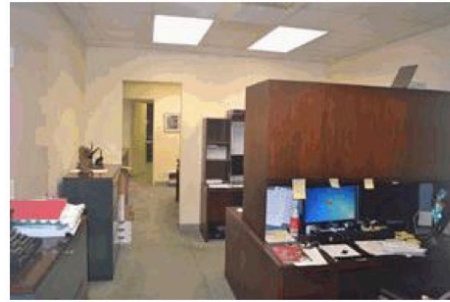


Lobby of Legal Aid





Meeting Room



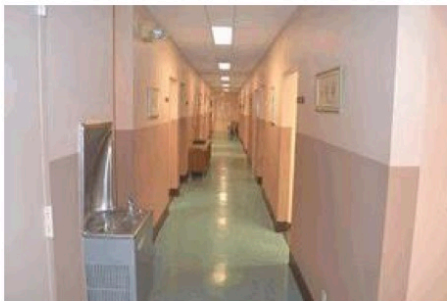
Interior View of Office Area



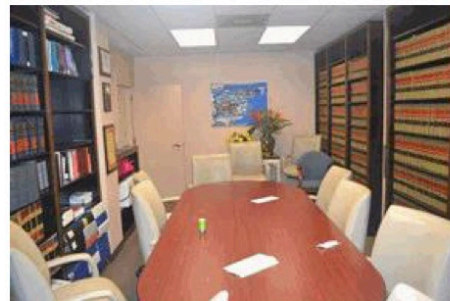
Interior Hallway



Typical Restroom



Interior Hallway



Conference Room/Library



View of 5th Floor



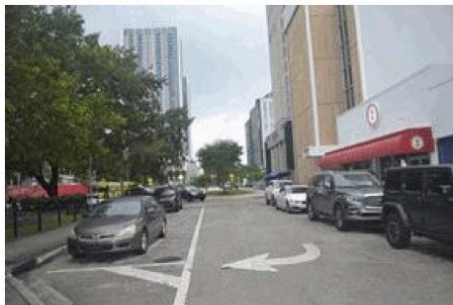
View of 4th Floor



View of Roof



View of Roof

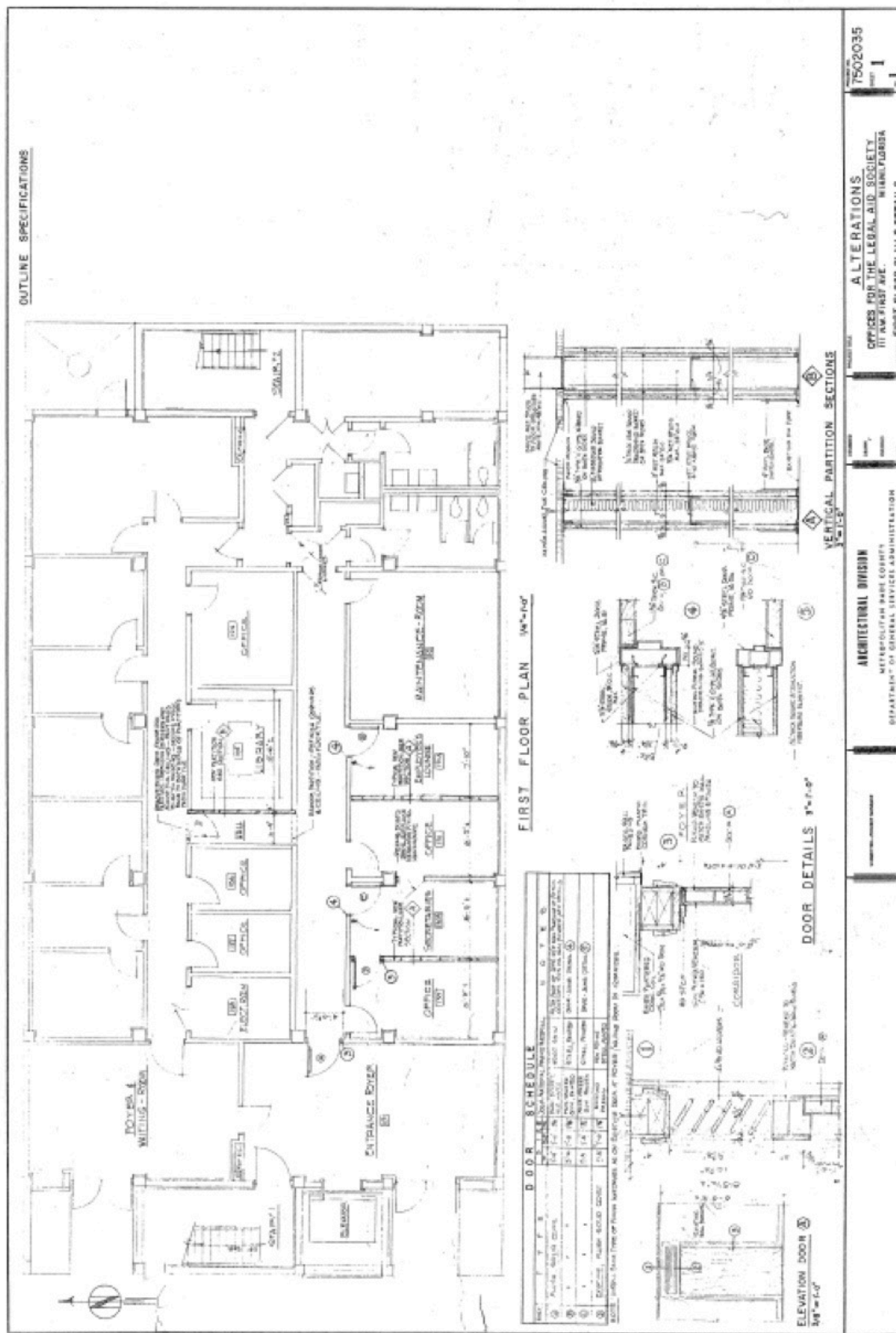


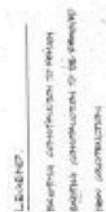
NW 1st Avenue Facing North



NW 1st Avenue Facing South

## Appendix B – Floor Plans



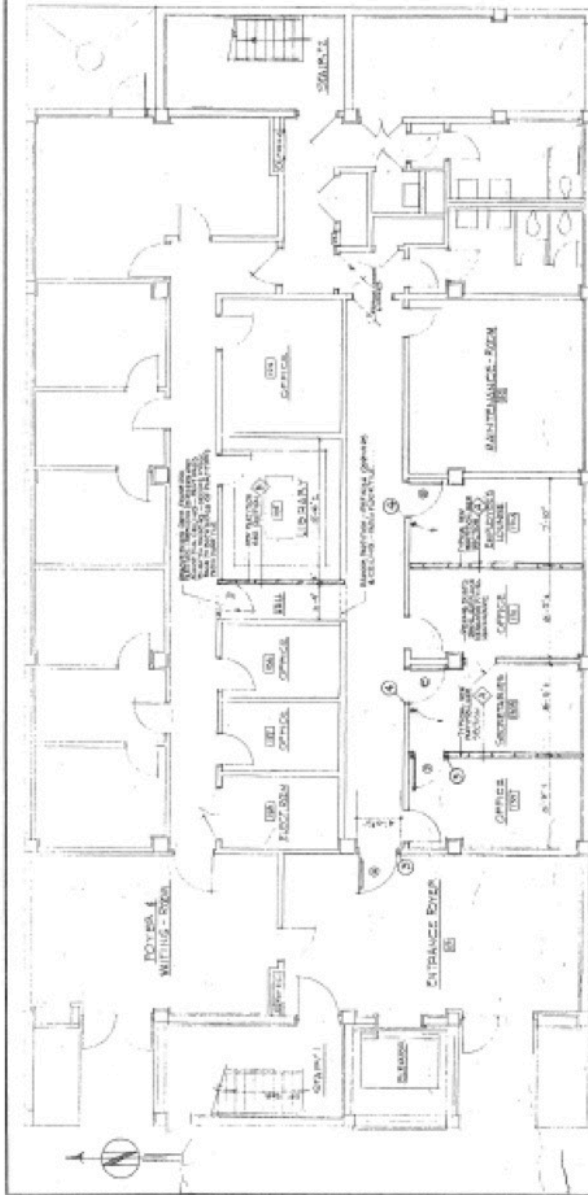


① SECOND FLOOR PLAN  
10/10/00





OUTLINE SPECIFICATIONS



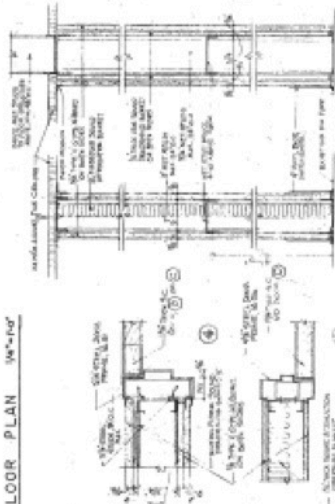
FIRST FLOOR PLAN 1/4" = 1'-0"

**DOOR SCHEDULE**

NO.	TYPE	LOCATION	REMARKS
1	ALUMINUM	ENTRANCE	6'-0" x 8'-0"
2	ALUMINUM	RECEPTION ROOM	6'-0" x 8'-0"
3	ALUMINUM	OFFICE	6'-0" x 8'-0"
4	ALUMINUM	OFFICE	6'-0" x 8'-0"
5	ALUMINUM	OFFICE	6'-0" x 8'-0"
6	ALUMINUM	OFFICE	6'-0" x 8'-0"
7	ALUMINUM	OFFICE	6'-0" x 8'-0"
8	ALUMINUM	OFFICE	6'-0" x 8'-0"
9	ALUMINUM	OFFICE	6'-0" x 8'-0"
10	ALUMINUM	OFFICE	6'-0" x 8'-0"
11	ALUMINUM	OFFICE	6'-0" x 8'-0"
12	ALUMINUM	OFFICE	6'-0" x 8'-0"
13	ALUMINUM	OFFICE	6'-0" x 8'-0"
14	ALUMINUM	OFFICE	6'-0" x 8'-0"
15	ALUMINUM	OFFICE	6'-0" x 8'-0"
16	ALUMINUM	OFFICE	6'-0" x 8'-0"
17	ALUMINUM	OFFICE	6'-0" x 8'-0"
18	ALUMINUM	OFFICE	6'-0" x 8'-0"
19	ALUMINUM	OFFICE	6'-0" x 8'-0"
20	ALUMINUM	OFFICE	6'-0" x 8'-0"



DOOR DETAILS 1/4" = 1'-0"

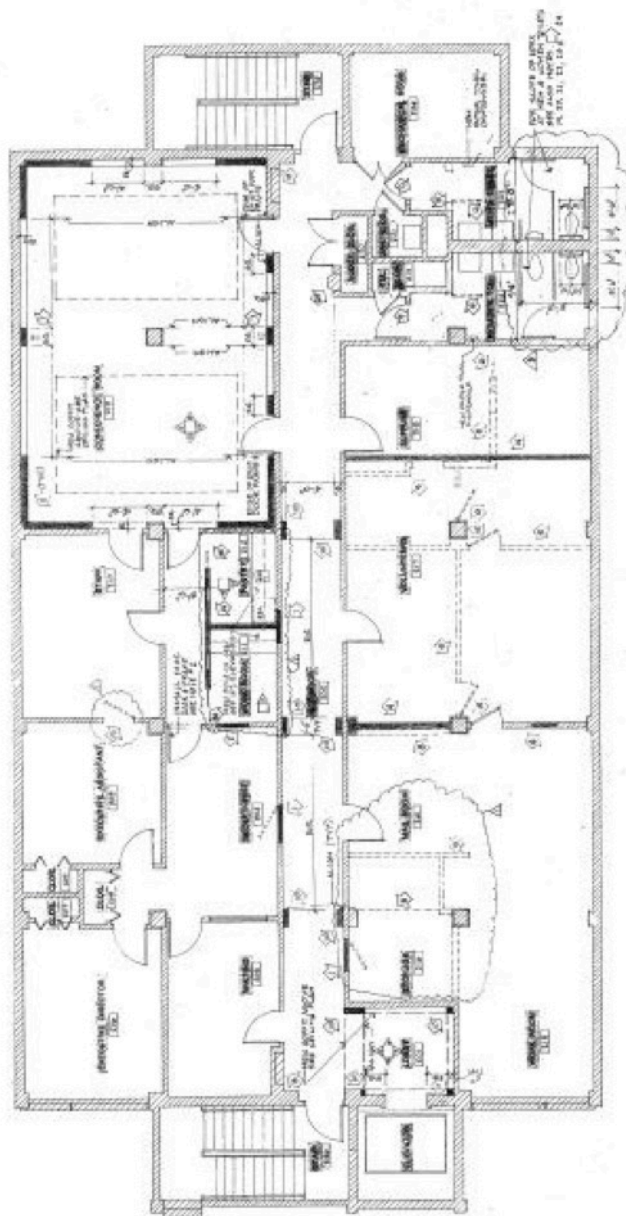


VERTICAL PARTITION SECTIONS 1/4" = 1'-0"

**ARCHITECTURAL DIVISION**  
 METROPOLITAN PARK COMPLEX  
 DEPARTMENT OF GENERAL SERVICES ADMINISTRATION

**ALTERATIONS**  
 OFFICES FOR THE LEGAL AID SOCIETY  
 111 AND 112 P.W.C.  
 7502035  
 SHEET 1  
 FIRST FLOOR PLAN & DETAILS





① SECOND FLOOR PLAN  
10/24/2008

## LEADING

INSTRUMENTAL ANALYSIS  
DEVELOPMENT OF A POLYMERIZATION METHOD  
FOR THE POLYMERIZATION OF VINYL MONOMERS



Exhibit “B”  
Design-Builder’s Submission in Response to RFP



**JSC – JStephens Construction**

**Proposal for Design/Build Services for**

**Dade County Bar Association**

**CONTENTS:**

- Bid Form
- Floor plans
- Preliminary Schedule
- JSC – itemized Bid
- Graph of project costs
- Contractor Qualification Statement

**2010 Scott Street Hollywood Florida 33020 (954) 983-4165**

**CGC-1512250**

**[www.JSCSF.com](http://www.JSCSF.com)**



## BID FORM

DESIGN FEE: \$ 182,596.00

PERMITTING: \$ NIC

CONSTRUCTION ADMINISTRATION: \$ 152,554.00

CONTINGENCY: \$22,824.00

TOTAL CONSTRUCTION COST: \$ 1,948,396.00

### BREAKDOWN:

Division 01 - General Requirements \$ 152,554.00

Division 02 - Existing Conditions \$ 50,000.00

Division 03 - Concrete \$ 70,000.00

Division 04 - Masonry \$ 32,000.00

Division 05 - Metals \$ 9,500.00

Division 06 - Wood, Plastics, Composites \$ 42,000.00

Division 07 - Thermal and Moisture Protection \$ 130,250.00

Division 08 - Openings \$ 115,437.00

Division 09 - Finishes \$ 291,080.00

Division 10 - Specialties \$ 31,250.00

Division 11 - Equipment \$ NIC

Division 12 - Furnishings \$ NIC

Division 13 - Special Construction \$ NIC

Division 14 - Conveying Equipment 95,000.00

Division 21 - Fire Suppression \$ 111,060.00

2010 Scott Street Hollywood Florida 33020 (954) 983-4165

CGC-1512250

[www.JSCSF.com](http://www.JSCSF.com)



Division 22 - Plumbing \$ 95,000.00

Division 23 Heating, Ventilating, and Air Conditioning (HVAC) \$ 233,000.00

Division 26 - Electrical \$ 192,000.00

Division 27 - Communications \$ NIC

Division 28 - Electronic Safety and Security \$ 14,000.00

Division 31 - Earthwork \$ NIC

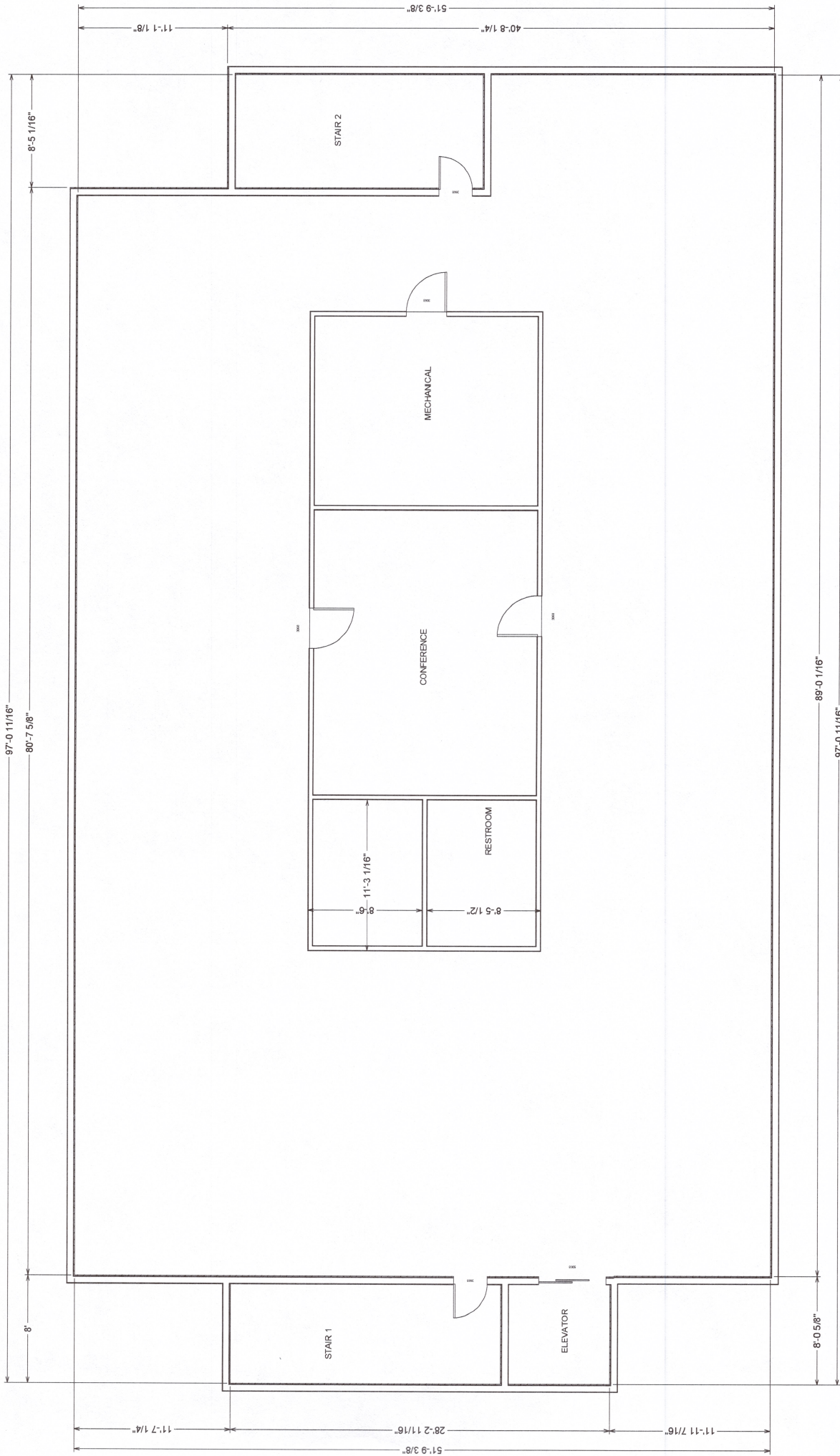
Division 32 - Exterior Improvements \$ NIC

Division 33 – Utilities \$ NIC

**TOTAL BID AMOUNT \$ 1,948,396.00**

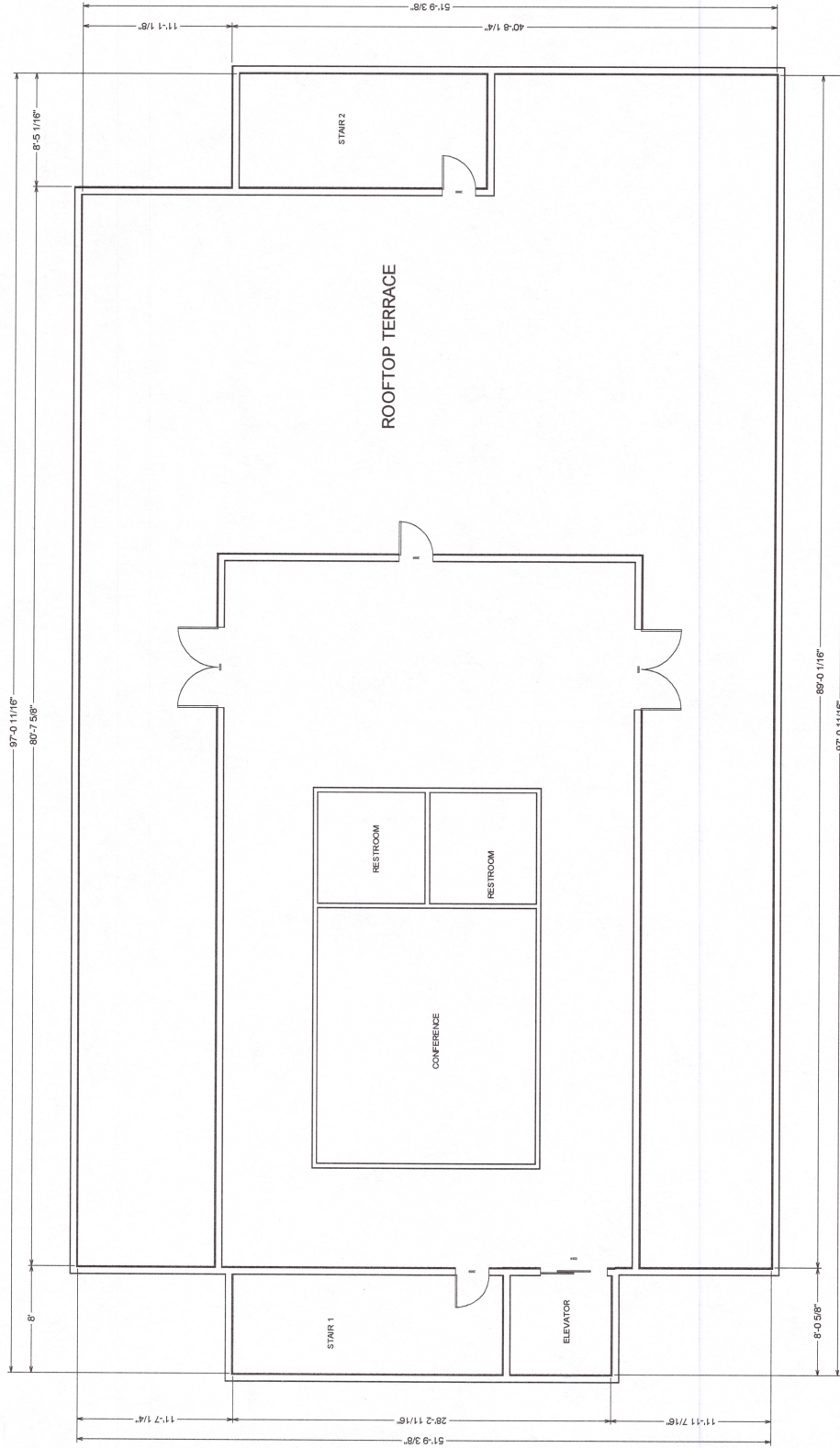






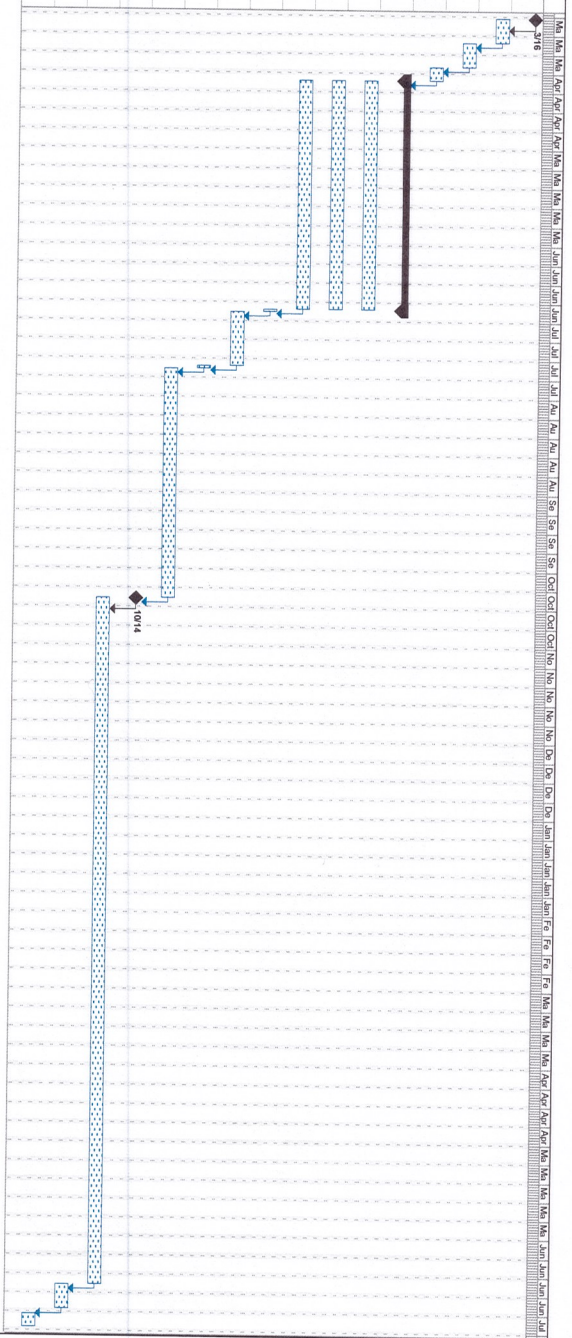
LLEX SPACE 3RD & 4TH FLOORS





DETAILED OUTDOOR AREA 5TH FLOOR

ID	Task Name	Duration	Start	Finish	Predecessors
1	NOTICE TO PROCEED	0 days	Mon 3/16/20	Mon 3/16/20	
2	CONTRACT NEGOTIATION	7 days	Mon 3/16/20	Tue 3/24/20	1
3	A/E CONTRACTED	7 days	Wed 3/25/20	Thu 4/2/20	2
4	PRE DESIGN MEETING	3 days	Fri 4/3/20	Tue 4/7/20	3
5	DESIGN PHASE	60 days	Wed 4/8/20	Tue 6/30/20	4
6	ARCHITECTURAL	60 days	Wed 4/8/20	Tue 6/30/20	5
7	M/E/P	60 days	Wed 4/8/20	Tue 6/30/20	5
8	STRUCTURAL	60 days	Wed 4/8/20	Tue 6/30/20	5
9	DESIGN PRESENTATION	1 day	Wed 7/1/20	Wed 7/1/20	8
10	FINAL CDS	14 days	Thu 7/2/20	Tue 7/27/20	9
11	SUBMIT PACKAGE TO OWNERS EXPEDITER	1 day	Wed 7/22/20	Wed 7/22/20	10
12	CITY OF MAMA REVIEW	60 days	Thu 7/23/20	Wed 10/14/20	11
13	PERMIT ISSUANCE	0 days	Wed 10/14/20	Wed 10/14/20	12
14	CONSTRUCTION PHASE	180 days	Thu 10/15/20	Wed 6/23/21	13
15	FINAL INSPECTIONS	7 days	Thu 6/24/21	Fri 7/2/21	14
16	TURNOVER	5 days	Mon 7/5/21	Fri 7/9/21	15





**JSC - Jstephens Construction****Proposal**

Project Estimate Proposal

**DCBA**123 NW 1st Avenue  
Miami

Building Renovation

Area : 25,000 SF

**Date:** 2.19.2020**To:** Jane Muir  
Dade County Bar Assn.**Prepared by:** Jeff Stephens**Description:** Base Bid

CODE	DESCRIPTION	BID AMOUNT	TOTAL
------	-------------	------------	-------

We are pleased to quote the following labor, equipment, and materials subject to qualifications and requirements of the Architect and design Engineers. This proposal is based on current material, labor, equipment, subcontractor, and servicing pricing.

Scope of work for the project is based on similar projects, AHJ and A/E requirements will drive final cost.

**Proposal Details:**

<b>GENERAL REQUIREMENTS</b>		<b>\$152,554.00</b>
<b>010000 - GENERAL REQUIREMENTS</b>		<b>\$152,554.00</b>
013000	Administrative Requirements	106,944.00
	<i>Supervision and project management.</i>	
015000	Temporary Facilities and Controls	28,910.00
	<i>Miscellaneous general construction facilities and operations.</i>	
017000	Execution and Closeout Requirements	16,700.00
	<i>Construction general labor, misc. escorting and punchout.</i>	
<b>FACILITY CONSTRUCTION</b>		<b>\$771,517.00</b>
<b>020000 - EXISTING CONDITIONS</b>		<b>\$50,000.00</b>
024000	Demolition ( Building )	50,000.00
	<i>Demolition ( Building) Furniture by owner</i>	
<b>030000 - CONCRETE</b>		<b>\$70,000.00</b>
031000	Concrete Shell	65,000.00
	<i>Shell</i>	
036000	Grouting in Masonry	5,000.00
	<i>Grouting in Masonry</i>	
<b>040000 - MASONRY</b>		<b>\$32,000.00</b>
042000	Masonry Block	32,000.00
	<i>Masonry Block</i>	
<b>050000 - METALS</b>		<b>\$9,500.00</b>
055000	Hand rails	9,500.00
	<i>Hand rails</i>	
<b>060000 - WOOD, PLASTICS AND COMPOSITES</b>		<b>\$42,000.00</b>
061000	Rough Carpentry (Blocking )	12,500.00
	<i>Rough Carpentry</i>	
064000	Trellis @ roof	29,500.00
<b>070000 - THERMAL AND MOISTURE PROTECTION</b>		<b>\$130,250.00</b>
071000	Waterproofing	41,500.00
	<i>Waterproofing at Window frames and storefront</i>	
074000	TPO Roofing and Sheet Metal	37,500.00
	<i>TPO Roofing and Sheet Metal</i>	
075000	Roof Protection	18,500.00
	<i>Walk pads for roof area</i>	
079000	Thermal Protections	32,750.00
	<i>Insulation</i>	
<b>080000 - OPENINGS</b>		<b>\$115,437.00</b>
081000	Doors/ Frames/ Hardware/ Installation	44,500.00
	<i>Doors/ Frames/ Hardware/ Installation</i>	
083000	Fire Proofing	26,587.00
	<i>Fire caulking</i>	
084000	Glass & Glazing	28,500.00
	<i>Storefronts and entry Doors</i>	
087000	Glazing	15,850.00
<b>090000 - FINISHES</b>		<b>\$291,080.00</b>
092100	Drywall	83,500.00
	<i>Drywall walls and Ceilings</i>	
093000	Tile and Flooring	86,000.00
	<i>Tiling Installation-Labor,</i>	
095000	Acoustical Ceilings ( All C-1 )	26,580.00
	<i>Per plans and specs</i>	
096000	Stucco	25,000.00

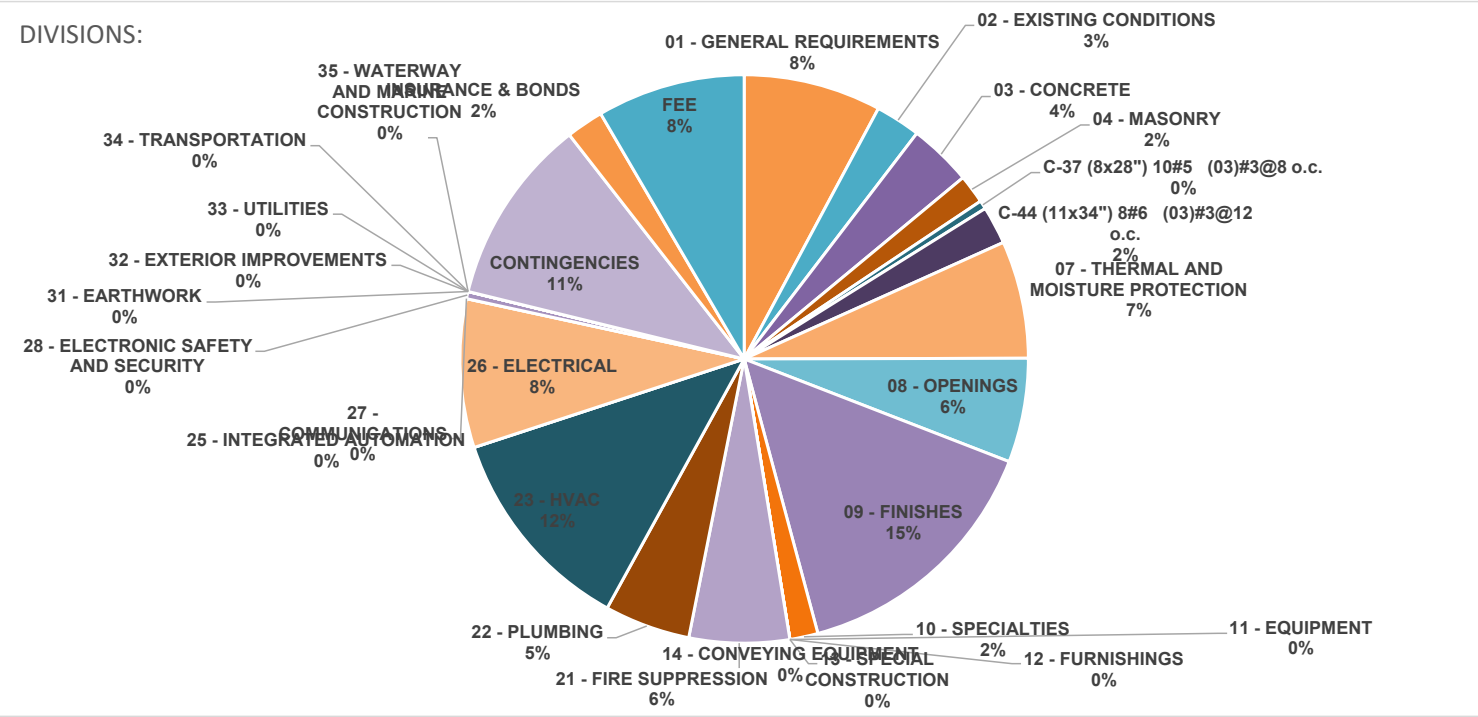
<b>DCBA</b>		
123 NW 1st Avenue Miami		
Building Renovation		
Area :	25,000	SF

<b>Date:</b>	2.19.2020
<b>To:</b>	Jane Muir Dade County Bar Assn.
<b>Prepared by:</b>	Jeff Stephens
<b>Description:</b>	Base Bid

CODE	DESCRIPTION	BID AMOUNT	TOTAL
	<i>Stucco</i>		
099000	Painting	70,000.00	
	<i>Interior and Exterior</i>		
<b>100000 - SPECIALTIES</b>			<b>\$31,250.00</b>
108000	Toilet Accessories	31,250.00	
	<i>Toilet Accessories</i>		
<b>FACILITY SERVICES</b>			<b>\$611,560.00</b>
<b>210000 - FIRE SUPPRESSION</b>			<b>\$111,060.00</b>
211000	Fire Sprinkler System	109,500.00	
	<i>Per plans and specs.</i>		
212000	Fire-Extinguishers ABC and K	1,560.00	
	<i>Fire-Extinguishers ABC</i>		
<b>220000 - PLUMBING</b>			<b>\$95,000.00</b>
221000	Plumbing	95,000.00	
	<i>Based on 4 stalls per floor 2 - 4 2 stalls on 5</i>		
<b>230000 - HVAC</b>			<b>\$233,000.00</b>
233000	HVAC Air Distribution	138,000.00	
	<i>New equipment</i>		
233800	Elevator	95,000.00	
	<i>Cab remails new rails</i>		
<b>260000 - ELECTRICAL</b>			<b>\$164,500.00</b>
262000	Electrical	109,000.00	
	<i>Per plans and specs.</i>		
265000	Lighting, Communication & security	55,500.00	
	<i>Allowance</i>		
<b>SUBTOTAL</b>			<b>\$1,535,631.00</b>
<b>CONTINGENCIES</b>			<b>\$207,310.00</b>
	Contingency 1 - Windows	\$15,356.00	
	Contingency 2 - Access control	\$7,678.00	
	Contingency 3 - Architectural & Engineering	\$184,276.00	
<b>INSURANCE &amp; BONDS</b>			<b>\$41,304.70</b>
	General Liability & Umbrella - Per Project	\$15,739.70	
	Builder's Risk Insurance - NIC	\$0.00	
	Payment/Performance Bond - Design Build may have a 50% increase	\$25,565.00	
<b>FEE</b>			<b>\$164,150.60</b>
	Overhead	\$89,212.29	
	Profit	\$74,938.32	
<b>TOTAL BASE ESTIMATE</b>			<b>\$1,948,396.31</b>

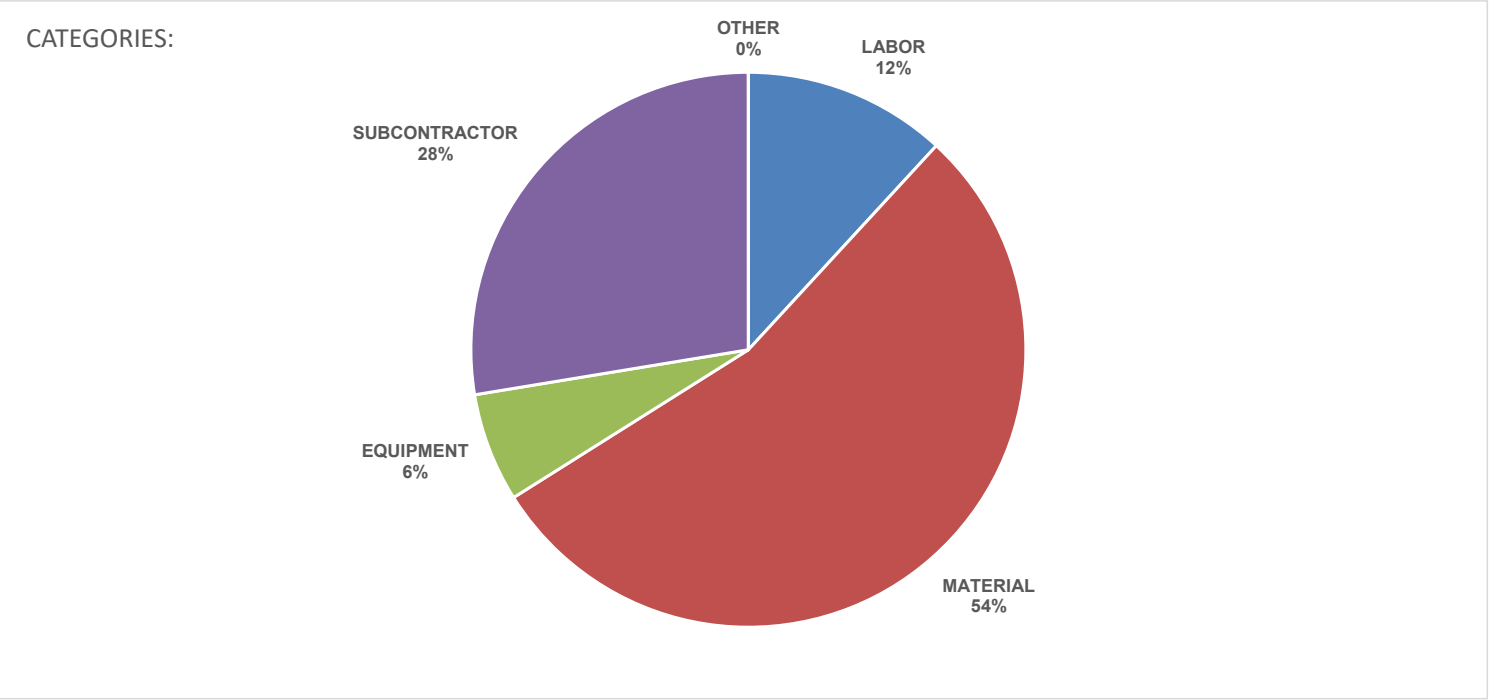


Project Breakdown Graph			JSC - Jstephens Construction	
DCBA			Date:	2.19.2020
123 NW 1st Avenue Miami			To:	Jane Muir Dade County Bar Assn.
Building Renovation			Prepared by:	Jeff Stephens
Area :	25,000	SF	Description:	Base Bid



Divisions:			Sub-division	Division
01 - GENERAL REQUIREMENTS				\$152,554.00
02 - EXISTING CONDITIONS				\$50,000.00
03 - CONCRETE				\$70,000.00
04 - MASONRY				\$32,000.00
C-37 (8x28")	\$	3.00 EA		\$9,500.00
C-44 (11x34")	\$	- EA		\$42,000.00
07 - THERMAL AND MOISTURE PROTECTION				\$130,250.00
08 - OPENINGS				\$115,437.00
09 - FINISHES				\$291,080.00
10 - SPECIALTIES				\$31,250.00
11 - EQUIPMENT				\$0.00
12 - FURNISHINGS				\$0.00
13 - SPECIAL CONSTRUCTION				\$0.00
14 - CONVEYING EQUIPMENT				\$0.00
21 - FIRE SUPPRESSION				\$111,060.00
22 - PLUMBING				\$95,000.00
23 - HVAC				\$233,000.00
25 - INTEGRATED AUTOMATION				\$0.00
26 - ELECTRICAL				\$164,500.00
27 - COMMUNICATIONS				\$0.00
28 - ELECTRONIC SAFETY AND SECURITY				\$8,000.00
31 - EARTHWORK				\$0.00
32 - EXTERIOR IMPROVEMENTS				\$0.00
33 - UTILITIES				\$0.00
34 - TRANSPORTATION				\$0.00
35 - WATERWAY AND MARINE CONSTRUCTION				\$0.00
CONTINGENCIES				\$207,310.00
INSURANCE & BONDS				\$41,304.70
FEE				\$164,150.60

Project Breakdown Graph			JSC - Jstephens Construction	
DCBA			Date:	2.19.2020
123 NW 1st Avenue			To:	Jane Muir
Miami			Dade County Bar Assn.	
Building Renovation			Prepared by:	Jeff Stephens
Area :	25,000	SF	Description:	Base Bid
TOTAL BASE ESTIMATE				\$1,948,396.31



Categories:		
LABOR		37,618.71
MATERIAL		172,141.82
EQUIPMENT		20,150.00
SUBCONTRACTOR		87,615.25
OTHER		9.60

# AIA<sup>®</sup> Document A305<sup>™</sup> – 1986

## *Contractor's Qualification Statement*

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

**CONTRACTOR: J Stephens Construction**

**ADDRESS: 2010 Scott Street  
Hollywood, Florida 33020**

**SUBMITTED BY: Eric Toth CFO**

**BUSINESS ENTITY:**

☒ Limited Liability Corporation

**TYPE OF WORK:**

☒ General Construction

☒ Other:

- Structural Concrete
- Masonry
- Carpentry
- Roof Truss Systems

### **§ 1 ORGANIZATION**

**§ 1.1** How many years has your organization been in business as a Contractor? **9 Years**

**§ 1.2** How many years has your organization been in business under its present business name? **5 Years**

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

**§ 1.3.1** Date of incorporation: **4/25/2015**

**§ 1.3.2** State of incorporation: **Florida**

**§ 1.3.3** President's name: **Jeffrey N. Stephens**

**§ 1.3.4** Vice-president's name(s)

- **Eric Toth – Vice President and CFO**
- **Leos Furch – Vice President of Operations**

**§ 1.3.5** Secretary's name: **Ivana Stephens**

**§ 1.3.6** Treasurer's name: **Eric Toth**

### **§ 2 LICENSING**

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

Florida GC License # **CGC-1512250**

# AIA<sup>®</sup> Document A305<sup>™</sup> – 1986

## *Contractor's Qualification Statement*

### § 3 EXPERIENCE

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

Project Management and Supervision, Concrete, Masonry and Roof Truss Systems

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

No

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

No

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

See attached list

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

\$9,057,934.00 as of 1/30/2020

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

See attached list

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

\$6,624,000.00 per year

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

Jeff Stephens – CEO

Eric Toth – CFO

Pete Cowden – Director Business Development

Ivana Stephens – Office Manager

Leos Furch – Director Field Operations

Cesar Flores – Project Management

Oswaldo Aristeguieta – Chief Estimator

Leonel Martinez – Field Supervision

### § 4 REFERENCES

§ 4.1 Trade References:

- G Prolux 1001 Jupiter Dr. #108, Jupiter FL 33108. Gina Anocento 561-745-5292

# AIA<sup>®</sup> Document A305<sup>™</sup> – 1986

## *Contractor's Qualification Statement*

- Cemex 3125 S. Andrews Ave, Ft. Lauderdale, FL 33316 Diana Vargas 954-922-1615
- Supermix 4300 SW 74<sup>th</sup> Avenue, Miami, FL 33155 Manuel Sanchez 305-264-5334

### § 4.2 Bank References:

Alberto DeAbru  
Ocean Bank

303-373-3379

### § 4.3 Surety:

#### § 4.3.1 Name of bonding company:

FCCI Insurance Group

#### § 4.3.2 Name and address of agent:

Dan Rojas - Risk Strategies  
3350 S. Dixie Highway  
Miami, FL 33133

## § 5 FINANCING

### § 5.1 Financial Statement.

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

Hernandez & Tacoronte, PA  
Certified Public Accountants  
8500 West Flagler Street, Suite B-208  
Miami, FL 33144

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

Yes

## § 6 SIGNATURE

### § 6.1 Dated at this 15<sup>th</sup> day of February 2020

Name of Organization: J Stephens Construction

By: Eric Toth

Title: CFO

## J Stephens Construction Project Experience

### Current w/Contracts over \$1M

Project Name	Contract Amount	Architect	Reference	Phone
Regal Cinema	\$ 1,636,200.00	Rodney Sartain	Deborah Clark	205-661-3040
Essig Self Storage	\$ 1,627,175.00	Kenneth R Carlson	Kurt Langford	561-988-8505

### Recent Project History w/Contracts over \$200K

Project Name	Contract Amount	Architect	Reference	Phone
Burtens	\$ 206,433.00	Jon Sammer Architect	Arling Murrano	305-443-5808
Twin Peaks - Plantation	\$ 224,570.00	GHA Architecture	Nick Willet	214-551-7726
Twin Peaks Pembroke Pines	\$ 232,544.00	GHA Architecture	Eric Perschietti	804-897-0900
Chuys	\$ 260,300.00	PKWY architects	Nick Willet	214-551-7726
Parc Lofts Interiors	\$ 265,400.00	NA	NA	NA
FSL Sale Center	\$ 280,000.00	NA	NA	NA
24 Hour Fitness	\$ 281,400.00	SMA Architects	Eric Perschietti	804-897-0900
Magic City Retail	\$ 285,985.00	Gilber Atick	Harold Sanchez	786-298-0980
Aldi #10 Miami Gardens	\$ 308,673.00	APD Engineering & Architecture	NA	NA
CVS west Miami	\$ 325,400.00	NA	NA	NA
American Airlines	\$ 389,450.00	Bermello Ajamil & Partners	Peter Cowden	850-368-2441
Coco Bambu	\$ 394,440.00	Jose L. Gomez	Walter Miller	954-540-5471
Allapatta Center	\$ 410,773.00	Gilber Atick	Harold Sanchez	786-298-0980
Century Village (4 project)	\$ 412,588.00	Kobi Karp	Michael Siracusa	954-312-2410
Aldi Dania	\$ 421,000.00	Cuhaci & Peterson	Kris Ibramin	352-243-3720
Parc Lofts Unit 607	\$ 485,000.00	Bermello Ajamil & Partners	Jeff Stephens	954-983-4165
Pet Paradise	\$ 512,673.00	Gutierrez & Lozano Architects	Shawn Boyle	561-988-8505
Morrisons Meat	\$ 544,900.00	CCA Design+Arch	Bruce Daniel	NA
Pawnshop Lounge	\$ 654,255.00	NA	NA	NA
Pembroke Center	\$ 662,445.00	Modis Architects	Keith Douffet	NA
Chabad of Parkland	\$ 732,799.00	Kobi Karp	Michael Siracusa	954-312-2410
23rd Street Mall	\$ 790,715.00	Carl Levin	Peter Cowden	850-368-2441
VSI Storage	\$ 1,213,521.00	Kenneth R Carlson	Jeannette Rivera	305-370-3988
Fairfield Inn & Suites	\$ 1,350,252.00	Anderson Architecture	Michael Siracusa	954-312-2410

### Major Project History by Key Management Staff

Project Name	Contract Amount	Project Type	Location
Dragon Club	\$ 650,000.00	Restaurant/Club	Deerfield Beach, FL
Shooters on the water	\$ 320,000.00	Restaurant/Club	Boynton Beach, FL
Marina 1	\$ 2,500,000.00	Boat Storage	Deerfield Beach, FL
Winn Dixie	\$ 450,000.00	Retail	Deerfield, Sunrise, FL
BJ's Wholesale	\$ 1,200,000.00	Retail	Pembroke Pines, FL
Uconn Student housing	\$ 876,000.00	Housing	Storrs, CT
Mansfield Supply	\$ 500,000.00	Warehouse	Storrs, CT
Mainstay Suites	\$ 2,300,000.00	Hotel	Jacksonville, FL
Mainstay Suites	\$ 1,700,000.00	Hotel	Greenville, SC
Mainstay Suites	\$ 1,600,000.00	Hotel	Tempe, AZ
Mainstay Suites	\$ 1,800,000.00	Hotel	Miami Springs, FL
Sleep Inn	\$ 2,200,000.00	Hotel	Miami Springs, FL
Clairion Inn & Suites	\$ 500,000.00	Hotel	Miami Springs, FL
Candlewood Suites	\$ 3,000,000.00	Hotel	Miami, FL
Hampton Inn & Suites	\$ 6,000,000.00	Hotel	Miami, FL
Renaissance Hotel	\$ 3,800,000.00	Hotel	Fort Lauderdale, FL
Comfort Inn	\$ 3,200,000.00	Hotel	Deerfield Beach, FL
Comfort Suites	\$ 4,100,000.00	Hotel	Deerfield Beach, FL
Mainstay Suites	\$ 2,200,000.00	Hotel	Lake Mary, FL
Extended Stay	\$ 800,000.00	Hotel	Pompano Beach, FL
Venice Condo	\$ 7,500,000.00	Multi Family	Miami, FL
Pointe	\$ 1,300,000.00	Multi Family	Jupiter, FL
Admiral	\$ 4,500,000.00	Multi Family	Jupiter, FL
Mariner	\$ 4,500,000.00	Multi Family	Jupiter, FL
Meridian Condominium	\$ 9,000,000.00	Multi Family	Miami Beach, FL
Parc Lofts	\$ 11,000,000.00	Multi Family	Miami, FL
Filling Station	\$ 1,300,000.00	Multi Family	Miami, FL
Guaranty Bank & Trust	\$ 4,300,000.00	Bank Headquarters	Merrifield, VA
Mayflower Hotel	\$ 45,000,000.00	Hotel Renovation & Additions	Washington, DC
Arthur Young Building	\$ 4,400,000.00	Office Building & Studio	Reston, VA
Naval South Parking & Support Facility	\$ 11,000,000.00	Parking Sturcture & Offices	Bethesda, MD
Naval Engineering Management Bldg.	\$ 22,000,000.00	Office Building & Renovations	Philidelphia, PA
Mideast Distribution Center	\$ 1,200,000.00	Warehouse	Baltimore, MD
Forward Operating Base	\$ 6,700,000.00	Military Base	Logar, Afghanistan
Rotary Wing Parking	\$ 1,500,000.00	Airfield	Jalalabad, Afghanistan
Police Headquarters	\$ 1,900,000.00	Police Headquarters	Gorzargi Noor, Afghanistan
Police Headquarters	\$ 2,600,000.00	Police Headquarters	Hazrate Sultan, Afghanistan
Police Headquarters	\$ 2,600,000.00	Police Headquarters	Char Bulk, Afghanistan
Command Center	\$ 15,400,000.00	Police Headquarters	Gardez, Afghanistan
Garrison Upgrades	\$ 5,000,000.00	Support Facilities	Heret, Afghanistan
Afgan Woman's Economic Center	\$ 3,700,000.00	University Facility	Kubal, Afghanistan





## ***J Stephens Construction Corporate Profile***



***Exceeding Expectations***

***info@jscgc.com***

***954-983-4165***

# ***About J Stephens Construction***



JSC is a general contractor with its roots firmly planted in the trades. We are not just construction managers providing management and administrative services to Owners, we are also the “hands-on” experts building projects. Our crews, supervisors and project managers have all “come up from the ranks” and share a common understanding of superior quality and timeliness, first. Given that background, we excel in fulfilling our clients goals. We strive to provide the seamless connection between project design professionals and the construction process. We have the highest respect for architects and engineers and work tirelessly to achieving their design objectives.

JSC’s approach to project management, from preconstruction to delivery, often circumvents the unforeseen issues most general contractors miss.

Give us a call at (954) 983-4165, tell us your project goals and we’ll make it happen.



***Exceeding Expectations***

# Why Choose J Stephens Construction



- JSC is focused on **Best Practices** both on-site and off-site.
- **JSC Builds Teams** with our clients and the design professionals.
- JSC has **Scheduling Expertise** providing great planning and timely results
- JSC has very **Loyal Staff** dedicated to building your project right, the first time.
- JSC takes **Safety First** seriously.
- JSC has **Relevant Experience** in subcontractor management and construction logistics.
- JSC is **Goal-Oriented**; we see each project as a challenge to provide better services.
- JSC uses **Qualified Subcontractors** minimizing project “hiccups”.
- JSC wants your **Best Reference** for our future.



**Exceeding Expectations**



# ***J Stephens Construction Market***



## **Commercial**

From high-end retail construction to intricate government facilities and office space, we have the experienced construction teams and techniques to help you meet your goals. We combine our in-depth knowledge of all aspects of construction with a unique sensitivity to the programming and function of your facility while minimizing the effects of construction so your operations stay on track.

### **Experience**

- Mixed-use Development
- Multi-family Residential
- Class A Office Buildings
- Corporate Interiors
- Specialty Retail & Banks
- Storage Facilities
- Public & Community Facilities
- Government & Military Facilities
- Parking Structures

## **Educational**

Whether a single-floor dormitory renovation or athletic facility, we carefully plan the logistics of every task, take a focused approach to safety and communicate daily with appropriate facilities and administration personnel to control costs and minimize disruption. Our responsiveness to the needs of faculty, staff, students and visitors has led to long, successful relationships.

### **Experience**

- Student Life Facilities
- Field Houses and Athletic Facilities
- Recreation and Fitness Centers
- Campus Infrastructure
- Secondary Education
- IT Infrastructure
- Private Learning Centers



***Exceeding Expectations***

## ***The J Stephens Team***

Jeff Stephens and key members of JSC's staff have been personally involved numerous projects ranging from \$50,000 to \$50,000,000.



***Exceeding Expectations***

# ***J Stephens Construction Market***



## **Hospitality**

When we work in places where people go to enjoy themselves, we handle all aspects of the construction process so you are able to focus on your customers and your business. That might mean changing work hours so your customers are not disturbed, adapting construction plans to avoid peak business times or handling environmental permitting issues that are crucial to your project's success.

### **Experience**

- Hotels and Inns
- Fine and Casual Dining
- Resort Residences
- Airport Concessions
- Conference and Meeting Facilities
- Adventure and Entertainment Centers
- Site Work and Infrastructure

## **Industrial**

With our experience in manufacturing and industrial construction market, we understand that project delays mean lost revenue for our clients. Whether your project is ground-up or build-out we expertly manage the unique requirements associated with highly sophisticated systems and processes during construction so clients can focus on operationalizing their new or upgraded facility.

### **Experience**

- High-level Cleanroom Space
- Production Facilities
- IT and Telecommunications Facilities
- Research and Development Facilities
- Telecommunications Facilities
- Tool Relocations and Installations



***Exceeding Expectations***



## ***Past Projects by J Stephens' Management Team***



***Exceeding Expectations***



## ***J Stephens Construction***

***Exceeding Expectations***

**2010 Scott Street**

**Hollywood, FL 33020**

***info@jscgc.com***

**954-983-4165**

***www.JSCGC.com***

## EXHIBIT D

### INSURANCE AND BOND REQUIREMENTS