



AIA® Document A141® – 2024

Standard Form of Agreement Between Owner and Design-Builder for a Traditional Design-Build Project

AGREEMENT made as of the 12th day of May in the year 2025
(In words indicate day, month, and year)

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

County of Rutherford
A Political Subdivision of the State of North Carolina 289 N Main Street
Rutherfordton, NC 28139

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

Beam Construction Company, Inc
A North Carolina Corporation
601 E Main Street
Cherryville, NC 28021-3416

for the following Project
(Name, location, and detailed description)
Rutherford County Sheriff's Office Center Renovation
289 Day Break Drive (former 6th Grade Building at RS Middle School) and
293 Day Break Drive (former Cafeteria at RS Middle School)
Rutherfordton, NC 28139

The Owner and Design-Builder agree as follows

ADDITIONS AND DELETIONS.
The author of this document may have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added to or deleted from the original AIA text.

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

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

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Owner's Criteria

This Agreement is based on the Owner's Criteria set forth in this Section 1.1. The Owner's Criteria is fixed as of the date of this Agreement.

(For each item in Section 1.1.1 through 1.1.10, insert the information or a statement such as "not applicable" or "unknown at the time of execution.")

§ 1.1.1 The Owner's program for the Project.

(Identify below, or in an attached exhibit, the documentation in which the program is set forth, or state the manner in which the program will be developed.)

The Rutherford County Sheriff's Office will be relocating to the former RS Middle 6th Grade building and cafeteria. The 6th grade building will be converted into office space and the cafeteria will be converted to a secured storage facility

§ 1.1.2 The Owner's design requirements for the Project

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

The design requirements established to date, as noted in the RFQ dated 11-02-2024. All other design requirements will be established during the design and pre-construction phase

§ 1.1.3 The Project's physical characteristics:

(Identify or describe below, or in an attached exhibit, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical or environmental reports, site, boundary, topographic, or existing building surveys; traffic and utility studies, availability of public and private utilities and services, legal description of the site, Project and site requirements, etc.)

The former RS Middle 6th grade building located at 289 Day Break Drive, Rutherfordton, NC 28139 and the former RS Middle cafeteria building located at 293 Day Break Drive, Rutherfordton, NC 28139

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

(Identify below, or in an attached exhibit, the Owner's Sustainable Objective for the Project, such as Sustainability Certification, benefit to the environment, enhancement to the health and well-being of building occupants, or improvement of energy efficiency. If the Owner identifies a Sustainable Objective, incorporate AIA Document A141®-2024 Standard Form of Agreement between Owner and Design-Builder for a Traditional Design-Build Project, Exhibit C, Sustainable Projects Exhibit, into this Agreement to define the terms, conditions, and Work related to the Owner's Sustainable Objective.)

N/A

§ 1.1.5 The Owner's building information modeling requirements for the Project, if any

(Identify below, or in an attached exhibit, the Owner's building information modeling requirements for the Project, such as the requirement that the Design-Builder provide a model for subsequent use by the Owner or share models with the Owner's Consultants and Separate Contractors. If the parties agree upon protocols for transmission of, use of, and reliance on information or documentation in digital form, then identify and attach that document.)

N/A

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

(Provide the Owner's total budget for the Design Services, Construction Work, related services, and reasonable contingencies, required to fulfill the Design-Builder's obligations under the Design-Build Documents following execution of the Design-Build Amendment. If known, include a line-item breakdown of costs.)

\$1,400,000.00 (One Million, Four Hundred Thousand Dollars)

§ 1.1.7 The Owner's anticipated design and construction milestones

.1 Design Builder's Proposal submission date

The date that is 28 days after the date on which the programming is completed and/or the date on which the floor plan is accepted, whichever date is later in time

.2 Construction commencement date

Design Builder shall include proposed Construction commencement date in the submission of their Proposal per Section 1.1.7.1, which construction commencement date shall be agreed by the parties hereto through the acceptance of the Proposal by Owner

Construction commencement date as to the specific projects showing in Section B.1.2.4 as Roof Allowance #1, Roof Allowance #2, and Utility Allowance #3 on AIA Document A141-2024 Exhibit B Design-Build Amendment shall be

- 1 Roof Allowance #1 July 15, 2025
- 2 Roof Allowance #2 August 30, 2025
3. Utility Allowance #3 August 30, 2025

3 Substantial Completion date or dates

Design Building shall include proposed Substantial Completion date in the submission of their Proposal per Section 1.1.7.1, which Substantial Completion date shall be agreed by the parties hereto through the acceptance of the Proposal by Owner

4 Other milestone dates

(Include other dates, such as milestones for Evaluation of the Owner's Criteria, Preliminary Design, the anticipated start of construction, or phased completion dates.)

N/A

§ 1.1.8 In the event the Owner requires the Design-Builder to retain a specific person or entity to perform a portion of the Work, such as an architect, consultant, or subcontractor, those persons or entities shall be identified below *(List name, legal status, address and other information)*

N/A

§ 1.1.9 Additional Owner's Criteria upon which this Agreement is based *(Identify below, or in an attached exhibit, special characteristics or needs of the Project not identified elsewhere.)*

N/A

§ 1.1.10 The Owner's requirements for accelerated or fast track design and construction, multiple bid packages, or phased construction are set forth below *(Identify any requirements for fast-track scheduling, multiple bid packages, or phased construction)*

N/A

§ 1.2 Project Team

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

Aubrey Clay
272 North Toms Street
Rutherfordton, NC 28139
Aubrey clay@rutherfordcountync.gov

§ 1.2.2 The Owner will retain the following consultants and Separate Contractors *(List name, address, and other information)*

1 Land Surveyor

N/A

2 Geotechnical Engineer.

TBD

3 Other consultants:

(List any other consultants, e.g., Cost Consultant, Scheduling Consultant, to be retained by the

Owner)

4 Separate Contractors

(List any Separate Contractors to be retained by the Owner.)

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

(List name, address and other information)

Susie Lewis
Beam Construction Company, Inc
PO Box 129
Cherryville, NC 28021
sblewis@beamconstruction.com

§ 1.2.4 In addition to those persons or entities identified in Section 1.1.8, the Design-Builder shall retain the Architect, Consultants, Subcontractors, and suppliers, identified below

(List name, discipline, address, and other information)

CBSA Architects, Inc.
226 2nd Street NW
Hickory, NC 28601

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

§ 1.3 Dispute Resolution

§ 1.3.1 Initial Resolution of Claims. Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Construction Work set forth in Section 12.2.2, arising under Sections 10.3 and 10.4, shall be

(Check the appropriate box.)

☒ Subject to a Meet and Confer obligation in accordance with Section 15.2.1

☐ Referred to the following Project Neutral for an initial decision in accordance with Section 15.2.2

(Insert name, address, and contact information for Project Neutral)

If the Owner and Design-Builder do not select a Project Neutral above, the Parties shall meet and confer as a condition precedent to mediation pursuant to Section 15.3

§ 1.3.2 Binding Dispute Resolution. For any Claim subject to, but not resolved by, mediation pursuant to Section 15.3, the method of binding dispute resolution shall be the following

(Check the appropriate box)

☐ Arbitration pursuant to Section 15.4

☒ Litigation in a court of competent jurisdiction

☐ Other *(Specify)*

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

§ 1.4 Definitions

§ 1.4.1 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.

§ 1.4.2 Confidential Information. Confidential Information is information containing confidential or business proprietary information that is designated as "confidential."

§ 1.4.3 Consultant. A Consultant is a person or entity providing 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. If the Consultant provides professional services, the Consultant shall be lawfully licensed to provide such services, as required by the applicable jurisdiction.

§ 1.4.4 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.

§ 1.4.5 Contract Sum. The Contract Sum is the amount to be paid to the Design-Builder for performance of the Work after execution of the Design-Build Amendment, as set forth in the Design-Build Amendment.

§ 1.4.6 Contract Time. The Contract Time is the period of time identified in the Design-Build Amendment, measured from the date for commencement of the Construction Work, including authorized adjustments, established as the period for the Design-Builder to achieve Substantial Completion of the Work.

§ 1.4.7 Subcontractor. A Subcontractor is a person or entity performing all or a portion of the construction, required in connection with the Work, for the Design-Builder. Each Subcontractor shall be lawfully licensed, if required in the jurisdiction where the Project is located.

§ 1.4.8 Cost of the Work. The Cost of the Work includes all costs reasonably incurred by the Design-Builder in the proper performance of the Work as described in Article B.6 of the Design-Build Amendment.

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

§ 1.4.10 Design-Build Documents. The Design-Build Documents consist of this Agreement between Owner and Design-Builder (hereinafter, this Agreement), other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. A Modification is (1) a written amendment to the Contract signed by both parties, including the Design-Build Amendment, (2) a Change Order, or (3) a Change Directive. The Design-Build Documents will also include the Drawings, Specifications, and other documents listed in the Design-Build Amendment. If anything in the other Design-Build Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

§ 1.4.11 Design-Builder. The Design-Builder is the person or entity identified as such in this 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.

§ 1.4.12 Work. "Work" means the (a) services required of the Design-Builder prior to the execution of the Design-Build Amendment, (b) Design Services, and (c) Construction Work.

§ 1.4.12.1 Design Services. "Design Services" are the professional services, including those services that are rendered by architects and engineers, which are required to fulfill the Design-Builder's obligations under the Design-Build Documents. Design Services do not include professional or other services necessary to support Construction Work which are provided by Subcontractors engaged by the Design-Builder.

§ 1.4.12.2 Construction Work. "Construction Work" is the construction, and services to support construction, required by the Design-Build Documents, whether completed or partially completed, and includes all other labor, materials,

equipment, and services provided, or to be provided, by the Design-Builder to fulfill the Design-Builder's obligations under the Design-Build Documents

§ 1.4.13 Early Release Work. "Early Release Work" is a limited, predetermined portion of the Project or scope of the Work that the Owner authorizes the Design-Builder to commence before the parties execute the Design-Build Amendment

§ 1.4.14 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, Subcontractors, Architect, or Consultants under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.4.15 Notice

§ 1.4.15.1 Except as otherwise provided in Section 1.4.15.2, where the Design-Build Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission as set forth below:

(Insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission. If the parties agree upon protocols for electronic transmission of notice, identify and attach that document.)

Notice shall be sent by electronic mail, personal delivery, and/or by certified first-class U.S. mail, return receipt requested, to Representatives of each party and member of the Project Team as set forth in Section 1.2 hereinabove. In addition, any such notice shall also be sent to
Rutherford County, ATTN County Manager, Steve Garrison@RutherfordCountyNC.gov, 289 N. Main Street,
Rutherfordton, NC 28139

§ 1.4.15.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.4.16 Owner. The Owner is the person or entity identified as such in this 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.

§ 1.4.17 The Project. The Project is comprised of all 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.

§ 1.5 The Owner and Design-Builder may rely on the Owner's Criteria set forth in Article 1. If the Owner's Criteria materially changes after execution of this Agreement, the Owner and the Design-Builder shall execute a Modification to adjust the Project schedule, the Design-Builder's services, and the Design-Builder's compensation. The Owner shall adjust the Owner's budget in Section 1.1.6 and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Owner's Criteria.

ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS

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

§ 2.1.1 For the Design-Builder's performance of Work prior to the execution of the Design-Build Amendment, the Owner shall compensate the Design-Builder as follows:

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

See Exhibit C – Pre-construction and Design Services Fee Proposal and Scope

§ 2.1.2 The hourly billing rates for services of the Design-Builder and the Design-Builder's Architect, Consultants, and Subcontractors, if any, are set forth below. The rates shall be adjusted in accordance with the Design-Builder's, Architect's, Consultants', and Subcontractors' normal review practices.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Individual or Position	Rate
Principal/Project Executive	\$175.00/hr
Architect/Project Manager	\$145.00/hr
Intern Architect/Assistant Project Manager	\$120.00/hr
Drafter/Project Coordinator	\$95.00/hr
Clerical	\$55.00/hr

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

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

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

§ 2.1.3.2 For Reimbursable Expenses, the compensation shall be the expenses the Design-Builder and the Design-Builder's Architect, Consultants, and Subcontractors incurred, plus ten percent (10 %) of the expenses incurred.

§ 2.1.4 Additional Services. With the Owner's written approval, the Design-Builder shall provide services not included in Article 4 for additional compensation. Such services may include

1. services necessitated by a change in the Owner's Criteria, or previous instructions or approvals given by the Owner;
2. services necessitated by a material change in the Project made at the Owner's request, including (1) a change in Project size, quality, or complexity, or (2) a change in the Owner's schedule or budget,
3. changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations, or official interpretations, and
4. services necessitated by a failure to complete the services under Article 4 within twelve (12) months of the date of this Agreement through no fault of the Design-Builder

§ 2.1.4.5 Compensation for Additional Services. If the Owner authorizes the Design-Builder to perform additional services under Section 2.1.4, the Owner shall compensate the Design-Builder for such additional services as follows
(Insert amount of, or basis for, compensation)

As quoted at the time of the service or per 2.1.2

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

§ 2.1.5.1 Unless otherwise agreed, payments for Work prior to execution of the Design-Build Amendment shall be made monthly upon presentation of the Design-Builder's invoice

§ 2.1.5.1.1 Amounts unpaid Forty-Five (45) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof, at the legal rate prevailing from time to time at the principal place of business of the Design-Builder

(Insert rate of monthly or annual interest agreed upon)

2 %

§ 2.1.5.2 Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times for a period of two years following execution of the Design-Build Amendment or

termination of this Agreement, whichever occurs first.

§ 2.3 Compensation for Work Performed After Execution of Design-Build Amendment

§ 2.3.1 For the Design-Builder's performance of Work after execution of the Design-Build Amendment, the Owner shall pay to the Design-Builder the Contract Sum as set forth in Article 9 and the Design-Build Amendment

§ 2.3.2 Liquidated Damages

The Design-Builder's liability for liquidated damages resulting from the Design-Builder's failure to achieve Substantial Completion within the Contract Time shall be as follows

(For each item in Section 2.3.2.1 through 2.3.2.4, insert the information or a statement such as "not applicable".)

.1 Insert the monetary amount of liquidated damages, if any, to be assessed
(Identify the monetary amount of liquidated damages, the incremental period of time for each assessment, and whether that amount is uniform or variable over time.)

Five Hundred Dollars (\$500.00) for each calendar day after the Substantial Completion date as set forth in Section 1.1.7

.2 Insert the date(s) or event(s), if any, that triggers the commencement of the assessment of liquidated damages, if other than the date of Substantial Completion of the entire Project

N/A

.3 Insert the limit, if any, on the total amount of liquidated damages

N/A

.4 Insert any other terms for liquidated damages

N/A

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 shall have express authority to bind the Design-Builder with respect to all matters under this Agreement.

§ 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 its obligations to perform the Work in accordance with the Design-Build Documents by the activities, tests, inspections, or approvals of the Owner.

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

§ 3.1.4.1 Neither the Design-Builder nor any Subcontractor, 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 confirmation 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.

§ 3.1.5 The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Architect, Consultants, Subcontractors, and their agents and employees, and any other persons or entities performing

portions of the Work for, or on behalf of, the Design-Builder

§ 3.1.6 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

§ 3.1.7 The Design-Builder shall furnish the services of Architects, Consultants, Subcontractors, and suppliers identified in Article 1 or otherwise required to fulfill its obligations under the Design-Build Documents. The Owner understands and agrees that the services of such parties are performed in the sole interest of, and for the exclusive benefit of, the Design-Builder. When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified and licensed professionals.

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

§ 3.1.9 Progress Reports

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

1. Work completed for the period,
2. Project schedule status,
3. Submittal schedule and status report, including a summary of outstanding Submittals,
4. Requests for information to be provided by the Owner, including those that are outstanding,
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 submissions and approvals required by authorities having jurisdiction over the Project,
10. Status of Claims previously submitted in accordance with Article 15,
11. Cumulative total of the Cost of the Work to date including the Design-Builder's compensation and Reimbursable Expenses, if any,
12. Current Project cash-flow and forecast reports,
13. A cost summary, comparing actual costs to updated cost estimates, if the Contract Sum is the Cost of the Work with or without a Guaranteed Maximum Price, and
14. Additional information as agreed to by the Owner and Design-Builder.

§ 3.1.10 Design-Builder's Schedule

§ 3.1.10.1 The Design-Builder, as part of the Design-Builder's evaluation of the Owner's Criteria, shall prepare and submit for the Owner's acceptance a Project schedule, which shall provide for expeditious and practicable execution of the Work. The Project schedule shall (1) include the time required for design and construction, (2) not exceed time limits set forth under the Design-Build Documents, (3) be revised at appropriate intervals as required by the conditions of the Work and the Design-Build Documents, (4) include allowances for periods of time required for the Owner's review, and (5) include allowances for approval of submissions by authorities having jurisdiction over the Project.

§ 3.1.10.2 The Design-Builder shall perform the Work in general accordance with the most recent Project schedule accepted by the Owner.

§ 3.1.11 Standard of Care

The Design-Builder shall perform (a) services required of the Design-Builder prior to the execution of the Design-Build Amendment, and (b) Design Services consistent with the degree of skill and care ordinarily provided by Design-Builders performing the same services in the same or similar locality under the same or similar circumstances.

§ 3.1.12 Warranty

The Design-Builder warrants to the Owner that the Construction Work furnished under the Contract will be of good quality and new unless the Design-Build Documents require or permit otherwise. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The Design-Builder further warrants that the Construction Work will conform to the requirements of the Design-Build Documents and will be free from defects, except for those inherent in their quality or otherwise expressly permitted by the Design-Build Documents. Construction Work 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 materials, equipment, or

construction not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage

§ 3.1.13 Royalties, Patents and Copyrights

§ 3.1.13.1 The Design-Builder shall pay all royalties and license fees for designs, processes, or products, required by the Design-Build Documents

§ 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 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 contained in the Owner's Criteria. However, if an infringement of a copyright or patent is discovered by, or made known to, the Design-Builder, the Design-Builder shall be responsible for the 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 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, the Owner's consultants, and agents and employees of any of them, from and against third-party 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, a Subcontractor, Architect, consultant, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. 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. The Design-Builder's obligation to indemnify and hold the Owner, the Owner's consultants, and agents and employees of any of them, harmless does not include a duty to defend

§ 3.1.14.2 In claims against any person or entity indemnified under this Section 3.1.14 by an employee of the Design-Builder, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.1.14 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Design-Builder or a Subcontractor 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 14.1.4 or 14.2.2 and only for those agreements that the Owner accepts by notifying the Design-Builder and the Architect, Consultants, and Subcontractors 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 assignment to the Owner under this Section 3.1.15, the Owner may further assign the agreement to a successor design-builder or other entity. If the Owner assigns the agreement to a successor design-builder or other entity, the Owner shall nevertheless remain legally responsible for all of the successor design-builder's or other entity's obligations under the agreement.

§ 3.1.16 Design-Builder's Insurance and Bonds. The Design-Builder shall purchase and maintain insurance and provide bonds as set forth in Article 11 and AIA Document A141®-2024, Standard Form of Agreement Between Owner and Design-Builder for a Traditional Design-Build Project, Exhibit A, Insurance and Bonds.

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

§ 4.1 General

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

Builder execute a Modification

§ 4.1.2 The Design-Builder shall advise and make recommendations to the Owner on proposed site use and improvements, selection of materials, building systems, and equipment, and temporary Project facilities. 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 visit the Project site to become generally familiar with local conditions under which the Work is to be performed.

§ 4.2.2 The Design-Builder shall schedule and conduct meetings with the Owner and other necessary individuals or entities to discuss and review the Owner's Criteria as set forth in Section 1.1.

§ 4.2.3 The Design-Builder shall prepare and submit a written report to the Owner, summarizing the Design-Builder's evaluation of the Owner's Criteria. The report shall also include

1. A description of local conditions under which the Work is to be performed, including conditions that may affect performance of the Work;
2. Illustrations depicting the scale and relationship of the Project components, including possible alternative approaches to design and construction of the Project;
3. Allocations of program functions, detailing each function and their square foot areas, and, if necessary, recommendations to adjust the Owner's Criteria to conform to the Owner's program functions;
4. Recommendations, if any, with regard to accelerated or fast-track scheduling, procurement, or phased construction;
5. A preliminary estimate of the Contract Sum, and, if necessary, recommendations to adjust the Owner's Criteria to conform to the Owner's budget for the Work;
6. A preliminary estimate of the compensation for Design Services to be performed after execution of the Design Build Amendment;
7. An evaluation of the compliance of the Owner's Criteria with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, and, if necessary, recommendations to adjust the Owner's Criteria to conform with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities;
8. A Project schedule, which shall include proposed dates for (i) design milestones; (ii) receiving additional information from, or for work to be completed by, the Owner; (iii) submission of the Design-Builder's Proposal; (iv) the Owner's review and approval of Design Phase submissions; and (v) review and approval of submissions by authorities having jurisdiction;
9. If necessary, recommendations to adjust the Owner's Criteria to conform to the Owner's schedule; and
10. The following
(List additional information, if any, to be included in the Design-Builder's written report)

§ 4.2.4 The Owner shall review the Design-Builder's written report and, if acceptable, provide the Design-Builder with written consent to proceed to the development of the Preliminary Design as described in Section 4.3

§ 4.2.5 If the Owner's consent granted pursuant to Section 4.2.4 includes any changes to the Owner's Criteria, then the Owner and the Design-Builder shall execute a Modification pursuant to Article 6

§ 4.3 Preliminary Design

§ 4.3.1 Upon the Owner's issuance of a written consent to proceed under Section 4.2.4, 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 utilities relocation
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 with a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto;
- .2 A list of all Submittals that will be submitted to the Owner in accordance with Section 5.3.2,
- .3 A list of the clarifications and assumptions made by the Design-Builder in the preparation of the Design-Builder's Proposal,
- .4 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,
- .5 The Design-Builder's Project schedule for the Work, showing the anticipated date of Substantial Completion upon which the Design-Builder's Proposal is based,
- .6 A list of the Design-Builder's key personnel, Subcontractors, and suppliers, and
- .7 A date by which the Owner must accept the Design-Builder's Proposal.

§ 4.4.2 The Design-Builder shall meet with the Owner to review the Design-Builder's Proposal. In the event that the Owner discovers any inconsistencies or inaccuracies in the information presented, the Owner shall promptly notify the Design-Builder, who shall make appropriate adjustments to the Design-Builder's Proposal, its basis, or both.

§ 4.4.3 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.

§ 4.5 Design-Build Amendment

§ 4.5.1 If the Owner and Design-Builder agree on the Design-Builder's Proposal, the Owner and Design-Builder shall execute the Design-Build Amendment setting forth the Contract Sum with the information and assumptions upon which it is based, the Contract Time, and the terms of their agreement.

§ 4.5.2 The Design-Builder shall not incur any cost to be paid as part of the Contract Sum prior to the execution of the Design-Build Amendment, unless the Owner provides prior written authorization for such costs.

§ 4.5.3 Any agreement to commence Early Release Work shall not waive the Owner's right to reject the Design-Builder's Proposal.

ARTICLE 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 5.1 Construction Documents

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

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

§ 5.2 Construction Work

§ 5.2.1 Commencement. Except for any Early Release Work described in Section 5.2.2, the date of commencement of

the Construction Work shall be the date identified in the Design-Build Amendment

§ 5.2.2 Early Release Work

§ 5.2.2.1 The Design-Builder shall prepare, for the Owner's review and acceptance, a procurement proposal for Early Release Work which includes (a) portions of the Design Services or Construction Work that will be issued for procurement and construction in advance of the Design-Build Amendment, and (b) materials or equipment that must be procured prior to execution of the Design-Build Amendment

§ 5.2.2.2 If the Owner accepts the Design-Builder's procurement proposal for Early Release Work, the Design-Builder shall prepare, for the Owner's review and acceptance, an authorization to proceed with Early Release Work describing the scope, schedule for performance, compensation, payments, retainage, insurance and bonds, and other terms and conditions applicable to procurement and performance of the Early Release Work. The Design-Builder has no obligation to commence procurement and performance of Early Release Work until the Owner and Design-Builder execute such authorization

§ 5.2.2.3 Following execution of the authorization, the Design-Builder shall expedite and coordinate the procurement and performance of Early Release Work in accordance with this Agreement and such authorization. Following execution of the Design-Build Amendment, compensation for the Early Release Work shall be included in the Contract Sum and the time for performing the Early Release Work shall be included in the Contract Time

§ 5.2.2.4 Early Procurement of Materials or Equipment by Owner

§ 5.2.2.4.1 If the Owner agrees to procure any materials or equipment prior to execution of the Design-Build Amendment, the Owner shall procure the materials or equipment on terms and conditions acceptable to the Design-Builder. After execution of the Design-Build Amendment, the Owner shall assign all contracts for these materials or equipment to the Design-Builder and the Design-Builder shall thereafter accept responsibility for them

§ 5.2.3 Supervision. The Design-Builder shall supervise and direct the Construction 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 Construction Work under the Contract, unless the Design-Build Documents provide other specific instructions concerning these matters

§ 5.3 Submittals

§ 5.3.1 Submittals consist of Shop Drawings, Product Data, and Samples

- 1 Shop Drawings.** Shop Drawings are drawings, diagrams, schedules, calculations, and other data specially prepared for the Construction Work by the Design-Builder or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor, to illustrate some portion of the Construction Work
- 2 Product Data.** Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Design-Builder to illustrate materials or equipment for some portion of the Construction Work
- 3 Samples.** Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Construction Work will be judged.

§ 5.3.1.4 Submittals are not Design-Build Documents. Their purpose is to demonstrate how the Design-Builder proposes to conform to the information given and the design concept expressed in the Design-Build Documents for those portions of the Construction Work for which the Design-Build Documents require submittals. Review by the Owner is subject to the limitations of Section 5.3.1. Informational submittals upon which the Owner is not expected to take responsive action may be so identified in the Design-Build Documents. Submittals that are not required by the Design-Build Documents may be returned by the Owner without action

§ 5.3.1.5 Submittal Schedule. If the Design-Build Documents require the Design-Builder to submit Submittals to the Owner during performance of the Construction Work, the Design-Builder, prior to submitting any submittals, and thereafter as necessary to maintain a current submittal schedule, shall provide a submittal schedule for the Owner's approval. The Owner's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Design-Builder's construction schedule, and (2) allow the Owner reasonable time to review submittals. If the Design-Builder fails to submit a submittal schedule or fails to provide submittals in accordance with the approved submittal schedule, the Design-Builder shall not be entitled to any increase in the Contract Sum or extension of Contract Time based on the time required for review of submittals

Submittals

Anticipated

- 1 Roofing materials
- 2 Flooring materials
- 3 HVAC equipment
- 4 Paint colors and specifications
- 5 Lighting materials
- 6 Water and sewer pipe & valves
- 7 Miscellaneous electrical materials

§ 5.3.1.6 Documents and Submittals at the Site

The Design-Builder shall make available, at the Project site, the Design-Build Documents, including Change Orders, Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during performance of the Construction Work, and the approved Submittals. These shall be in electronic form or paper copy, available to the Owner, and delivered to the Owner upon completion of the Work as a record of the Construction Work as constructed

§ 5.3.2 Design-Builder's Submittal Responsibilities

§ 5.3.2.1 The Design-Builder shall review for compliance with the Design-Build Documents, approve, and submit to the Owner, Submittals required by the Design-Build Documents, in accordance with the submittal schedule approved by the Owner or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Construction Work or in the activities of the Owner or of Separate Contractors

§ 5.3.2.2 By submitting Submittals, the Design-Builder represents to the Owner that the Design-Builder 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 Construction Work and of the Design-Build Documents

§ 5.3.2.3 The Design-Builder shall perform no portion of the Construction Work for which the Design-Build Documents require submittal and review of Submittals, until the respective submittal has been approved by the Owner.

§ 5.3.2.4 The Construction Work shall be in accordance with approved submittals except that the Design-Builder shall not be relieved of responsibility for deviations from the requirements of the Design-Build Documents by the Owner's approval of Submittals, unless the Design-Builder has specifically notified the Owner of such deviation at the time of submittal and (1) the Owner has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Change Directive has been issued authorizing the deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in Submittals by the Owner's approval thereof.

§ 5.3.2.5 The Design-Builder shall direct specific attention, in writing or on resubmitted Submittals, to revisions other than those requested by the Owner on previous submittals. In the absence of such notice, the Owner's approval of a resubmission shall not apply to such revisions

§ 5.3.3 Owner's Submittal Responsibilities

§ 5.3.3.1 The Owner will review, approve, or take other appropriate action upon, the Design-Builder's Submittals, but only for the limited purpose of checking for conformance with the information and design concept expressed in 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 to permit adequate review. Review of such 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, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents. The Owner's review of the Design-Builder's Submittals shall not relieve the Design-Builder of the obligations under Sections 3.1.3, 3.1.11, and 5.3.2. 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

§ 5.3.3.2 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

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

(List name, address, and other information)

CBSA Architects, Inc
226 2nd Street NW
Hickory, NC 28601

§ 5.4 Services Necessary to Support Construction Work

§ 5.4.1 The Design-Builder shall provide the services required to complete the Construction Work including services required to carry out the Design-Builder's responsibilities for construction means, methods, techniques, sequences, and procedures. The Design-Builder shall perform such services in compliance with applicable law.

§ 5.4.2 If the Design-Build Documents require services, certifications, or approvals by a licensed design professional during Construction, the drawings, calculations, specifications, certifications, Shop Drawings, and other Submittals prepared under the Design-Build Documents shall be signed and sealed by such design professional.

§ 5.4.3 The Owner shall be entitled to rely upon the services, certifications, and approvals provided by the design professionals under Section 5.4.2. The Owner shall provide prompt notice to the Design-Builder if the Owner observes or otherwise becomes aware of any errors, omissions, or inconsistencies in such services or information. The Owner is not required to ascertain that the services, certifications, and approvals performed or provided by the Design-Builder or the licensed design professional in connection with the Construction Work are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Owner shall promptly report to the Design-Builder any nonconformity discovered by, or made known to, the Owner.

§ 5.5 Labor and Materials

§ 5.5.1 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 Construction Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the construction.

§ 5.5.2 When a material or system is specified in the Design-Build Documents, the Design-Builder may make substitutions only with the consent of the Owner and in accordance with a Change Order or Change Directive.

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

§ 5.6 Taxes

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

§ 5.7 Permits, Fees, Notices and Compliance with Laws

§ 5.7.1 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 Construction Work and Substantial Completion of the Project.

§ 5.7.2 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 Construction Work.

§ 5.7.3 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 14 days after the conditions are first observed. 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, the Contract Sum or Contract Time, or both, shall be equitably adjusted. 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, stating the reasons. If the Design-Builder disputes the Owner's determination, the Design-Builder

may submit a Claim as provided in Article 15

§ 5.7.4 If, in the course of the Construction 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 15.

§ 5.8 Allowances

§ 5.8.1 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.

§ 5.8.2 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 items, 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 5.8.2.1 and (2) changes in Design-Builder's costs under Section 5.8.2.2.

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

§ 5.9 Subcontracts and Other Agreements

§ 5.9.1 Those portions of the Construction Work that the Design-Builder does not customarily perform with the Design-Builder's own personnel shall be performed under subcontracts or other appropriate agreements with the Design-Builder. The Owner may designate specific persons from whom, or entities from which, the Design-Builder shall obtain bids. The Design-Builder shall obtain bids from subcontractors, and from suppliers of materials or equipment fabricated especially for the Construction Work, who are qualified to perform that portion of the Construction Work in accordance with the requirements of the Design-Build Documents. The Design-Builder shall deliver such bids to the Owner with an indication as to which bids the Design-Builder intends to accept. The Owner then has the right to review the Design-Builder's list of proposed subcontractors and suppliers and, subject to Section 5.9.1.1, to object to any subcontractor or supplier. Any approval or objection by the Owner shall not relieve the Design-Builder of its responsibility to perform the Construction Work in accordance with the Design-Build Documents. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has reasonable objection.

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

§ 5.9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Design-Builder shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Design-Builder in Article 9.

§ 5.10 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.

§ 5.11 Cutting and Patching

The Design-Builder shall not cut, patch, or otherwise alter fully or partially completed construction by the Owner or a Separate Contractor except with written consent of the Owner and Separate Contractor. Consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold, from the Owner or Separate Contractor, its consent to cutting or otherwise altering the Construction Work.

§ 5.12 Cleaning Up

§ 5.12.1 The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Construction 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.

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

§ 5.13 Access to Construction Work

The Design-Builder shall provide the Owner and its Separate Contractors and consultants with access to the Construction 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 Separate Contractors and consultants, shall comply with while at the site.

§ 5.14 Construction Work by Owner or by Separate Contractors

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

§ 5.14.1.1 The term "Separate Contractor(s)" shall mean contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under provisions substantially similar to those of this Agreement. The Owner will identify in the Design-Build Amendment the extent of construction or operations related to the Project that will be performed by Separate Contractors, and will notify the Design-Builder promptly after execution of any agreement with a Separate Contractor.

§ 5.14.1.2 The Owner shall coordinate the activities of the Owner's own forces, and of each Separate Contractor, with the Construction Work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate in a joint review of the construction schedules of the Owner and any Separate Contractors and after mutual agreement the Design-Builder shall revise its construction schedule. The construction schedules shall then constitute the schedules to be used by the Design-Builder, Separate Contractors, and the Owner until subsequently revised.

§ 5.14.1.3 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 with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Design-Builder has under the Contract.

§ 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 Mutual Responsibility

§ 5.16.1 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.

§ 5.16.2 If part of the Design-Builder's Construction Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Design-Builder shall, prior to proceeding with that portion of the Construction Work, promptly notify the Owner of 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 Construction Work. Failure of the Design-Builder to notify the Owner of apparent discrepancies or defects prior to proceeding with the Construction Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction or operations is fit and proper to receive the Design-Builder's Construction Work. The Design-Builder shall not be responsible for discrepancies or defects in the

construction or operations by the Owner or Separate Contractor that are not apparent

§ 5.16.3 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 Work. 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 Construction Work or defective Construction Work.

§ 5.16.4 The Design-Builder shall promptly remedy damage that the Design-Builder causes to completed or partially completed Construction Work or to property of the Owner or Separate Contractors as provided in Section 10.2.5.

§ 5.16.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching the Construction Work as the Design-Builder has with respect to the Construction Work of the Owner or Separate Contractors in Section 5.11.

§ 5.16.5.1 The Owner shall be responsible for failures by its Separate Contractors to comply with the obligations in this Agreement.

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. The Design-Builder shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order or Change Directive.

§ 6.2 Change Orders

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

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

§ 6.3 Change Directives

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

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

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

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation,
- .2 Unit prices stated in the Design-Build Documents or subsequently agreed upon,
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee. The Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data, or
- .4 As provided in Section 6.3.4.

§ 6.3.4 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the method for adjustment in the Design-Builder's compensation, the Owner shall determine the 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 this Agreement, or if no such amount is set forth in this Agreement, a reasonable amount. In such case, 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 6.3.4 shall be limited to the following:

1. Additional costs of professional services,
2. Costs of labor, applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Owner,
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, directly related to the change, and
6. Costs of supervision and field office personnel directly attributable to the change.

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

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

§ 6.3.7 If the Design-Builder disagrees with the adjustment in Contract Time, the Design-Builder may make a Claim in accordance with the applicable provisions of Article 15.

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

§ 6.3.9 Pending final determination of the total cost of a Change Directive to the Owner, the Design-Builder may request payment for Work completed under the Change Directive in Applications for Payment. The Owner will make an interim determination for purposes of certification for payment for those costs deemed to be reasonably justified. The Owner's interim determination of cost shall adjust the Contract Sum or, if prior to execution of the Design-Build Amendment, the Design-Builder's compensation, on the same basis as a Change Order, subject to the right of Design-Builder to disagree and assert a Claim in accordance with Article 15.

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

ARTICLE 7 OWNER'S RESPONSIBILITIES

§ 7.1 General

§ 7.1.1 The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all 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. 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.

§ 7.1.3 The Owner shall furnish and coordinate the services of the Owner's consultants and Separate Contractors with those services provided by the Design-Builder. Upon the Design-Builder's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants or Separate Contractors. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 7.1.4 The Owner shall furnish the services of consultants required by a material change in the Owner's Criteria or authorize the Design-Builder to furnish them pursuant to a Change Order or Change Directive.

§ 7.1.5 If the Owner identifies a Sustainable Objective, the Owner shall fulfill its responsibilities as required in AIA Document A141-2024 Exhibit C, attached to this Agreement.

§ 7.1.6 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, including the Architect and Subcontractors.

§ 7.1.7 The Owner shall purchase and maintain insurance as set forth in Article 11 and AIA Document A141-2024 Exhibit A.

§ 7.1.8 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 not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences, or procedures, or for the safety precautions and programs in connection with the Work.

§ 7.1.9 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, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 7.1.10 The Owner may reject Work that does not conform to the Design-Build Documents. The Owner may require inspection or testing of the Construction Work in accordance with Section 16.5.2, whether or not the Construction 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.

§ 7.1.11 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.

§ 7.1.12 The Owner acknowledges that accelerated or fast-track design and construction, or phased construction, provides a benefit, but also carries with it associated risks. Such risks include the Owner incurring costs for the Design-Builder to coordinate and redesign portions of the Project affected by procuring or installing elements of the Project prior to the completion of all relevant Design-Build Documents, and costs for the Design-Builder to remove and replace previously installed Construction Work. If the Owner approves accelerated or fast-track design and construction, or phased construction, the Owner agrees to include in the budget for the Work sufficient contingencies to cover such costs.

§ 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

§ 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. 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 on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services, information, surveys, and reports furnished by the Owner

§ 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 notice thereof to the Design-Builder

§ 7.2.7 Evidence of the Owner's Financial Arrangements

§ 7.2.7.1 Prior to execution of the Design-Build Amendment, the Design-Builder may request that the Owner furnish reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract

§ 7.2.7.2 Following the execution of the Design-Build Amendment and upon written request by the Design-Builder, the Owner shall furnish to the Design-Builder reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Design-Builder as the Design-Build Documents require, (2) the Design-Builder identifies in writing a reasonable concern regarding the Owner's ability to make payment when due, or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Design-Builder's request, the Design-Builder may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Design-Builder may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 7.2.7, 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 shutdown, delay and start-up, plus interest as provided in the Design-Build Documents

§ 7.2.7.3 After the Owner furnishes evidence of financial arrangements under this Section 7.2.7, the Owner shall not materially vary such financial arrangements without prior notice to the Design-Builder

§ 7.2.7.4 Where the Owner has designated information furnished under this Section 7.2.7 as "confidential," the Design-Builder shall keep the information confidential as set forth in Article 16

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

§ 7.2.9 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements, and adjoining property and structures, designated wetlands, adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning or deed restrictions, and boundaries and contours of the site, locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees, and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark

§ 7.2.10 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 other consultants 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 identify the services required.

§ 7.2.11 The Owner shall furnish all legal, insurance, and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 7.3 Owner's Right to Stop Construction Work

If the Design-Builder fails to correct Construction Work which is not in accordance with the requirements of the Design-Build Documents as required by Section 12.2 or persistently fails to carry out Construction Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder to stop the Construction Work, or any portion thereof, until the cause for such order has been eliminated, however, the right of the Owner to stop the Construction 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 5.14.1.2.

§ 7.4 Owner's Right to Carry Out the Construction Work

If the Design-Builder defaults or neglects to carry out the Construction Work in accordance with the Design-Build Documents and fails within a ten-day period after receipt of 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 default or neglect. The Owner may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies. If current and future payments are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner. If the Design-Builder disagrees with the actions of the Owner, or the amounts claimed as costs to the Owner, the Design-Builder may file a claim pursuant to Article 15.

ARTICLE 8 TIME

§ 8.1 Progress and Completion

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

§ 8.1.2 The Design-Builder shall 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 (1) an act or neglect of the Owner or consultant, or of a Separate Contractor, (2) changes ordered in the Work, (3) labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, unusual delays by public authorities related to permits, licenses, and inspections, or other causes beyond the Design-Builder's control, (4) delay authorized by the Owner pending mediation and binding dispute resolution, or (5) other causes that the Owner determines justify delay, then the Contract Time shall be extended 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 15.

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

ARTICLE 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION

§ 9.1 Contract Sum

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

§ 9.1.1 If unit prices are stated in the Design-Build Amendment or subsequently agreed upon, and if quantities set forth in the Design-Build Amendment are materially changed in a proposed Change Order or Change Directive, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values or Cost Estimate

Where the Contract Sum is based on a stipulated sum or Guaranteed Maximum Price, the Design-Builder shall submit a schedule of values to the Owner prior to the first Application for Payment after execution of the Design-Build Amendment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be

prepared in the form, and supported by the data to substantiate its accuracy, required by the Owner. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment. Any changes to the schedule of values shall be submitted to the Owner and supported by such data to substantiate its accuracy as the Owner may require, and unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's subsequent Applications for Payment.

§ 9.2.1 Where the Contract Sum is the Cost of the Work plus the Design-Builder's Fee without a Guaranteed Maximum Price, the Design-Builder shall prepare and submit to the Owner a Control Estimate within 14 days of executing this Agreement. The Control Estimate shall include the estimated Cost of the Work plus the Design-Builder's Fee.

§ 9.2.2 The Control Estimate shall include:

1. The documents enumerated in Article 17, including all Modifications thereto;
2. A list of the assumptions made by the Design-Builder in the preparation of the Control Estimate to supplement the information provided by the Owner and contained in the Design-Build Documents;
3. A statement of the estimated Cost of the Work organized by trade categories or systems and the Design-Builder's Fee;
4. A project schedule upon which the Control Estimate is based, indicating proposed architects, subcontractors, and consultants, activity sequences and durations, milestone dates for receipt and approval of pertinent information, schedule of shop drawings and samples, procurement and delivery of materials or equipment, the Owner's occupancy requirements, and the date of Substantial Completion; and
5. A list of any contingency amounts included in the Control Estimate for further development of design and construction.

§ 9.2.3 When the Control Estimate is acceptable to the Owner, the Owner shall acknowledge it in writing. The Owner's acceptance of the Control Estimate does not imply that the Control Estimate constitutes a Guaranteed Maximum Price.

§ 9.2.4 The Design-Builder shall develop and implement a detailed system of cost control that will provide the Owner with timely information as to the anticipated total Cost of the Work. The cost control system shall compare the Control Estimate with the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes. This information shall be reported to the Owner, in writing, no later than the Design-Builder's first Application for Payment and shall be revised and submitted with each Application for Payment.

§ 9.2.5 The Owner shall authorize the Design-Builder to prepare revisions to the Design-Build Documents that incorporate the agreed-upon assumptions contained in the Control Estimate. Based upon the Owner's authorization, the Design-Builder shall revise the Design-Build Documents to incorporate the agreed-upon assumptions contained in the Control Estimate.

§ 9.3 Applications for Payment

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

§ 9.3.1.1 As provided in Section 6.3.9, Applications for Payment may include requests for payment on account of changes in the Work that have been properly authorized by Change Directives, or by interim determinations of the Owner, but not yet included in Change Orders. As provided in Section 2.1, compensation for Work prior to execution of the Design-Build Amendment may include 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, a Consultant, a Subcontractor, or a supplier, 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, Subcontractors, suppliers, or any other persons or entities that 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, either (1) issue to the Design-Builder a Certificate for Payment in the full amount of the Application for Payment, (2) issue to the Design-Builder a Certificate for Payment for such amount the Owner determines is properly due, and notify the Design-Builder of the Owner's reasons for withholding certification in part as provided in Section 9.5.1, or (3) withhold certification of the entire Application for Payment, and notify the Design-Builder of the Owner's reason for withholding certification in whole 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 for Payment, 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 Failure to perform Work in accordance with the Design-Build Documents,
- .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, Subcontractors, suppliers, 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; or
- .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

§ 9.5.2 If the Design-Builder disputes the Owner's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, the Design-Builder may submit a Claim in accordance with Article 15

§ 9.5.3 When the above reasons for withholding certification are removed, the Owner shall certify amounts previously withheld

§ 9.5.4 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 any other persons or entities providing 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 In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder, and such action shall not be deemed to be a representation that (1) the Owner has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 9.3.1 or other supporting data, (2) that the Owner has made exhaustive or continuous on-site inspections, or (3) that the Owner has made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid on account of the Contract. Such examinations, audits,

and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner

§ 9.6.3 The Design-Builder shall pay each person or entity providing Work for the Design-Builder, no later than seven days after receipt of payment from the Owner. Payment shall be the amount to which the person or entity providing 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 person or entity. The Design-Builder shall, by appropriate agreement with each person or entity providing Work for the Design-Builder, require each person or entity providing Work for the Design-Builder to make payments to subconsultants and subcontractors in a similar manner.

§ 9.6.4 The Owner will, on request and if practicable, furnish to the person or entity providing 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 person or entity providing Work for the Design-Builder.

§ 9.6.5 The Owner has the right to request written evidence from the Design-Builder that the Design-Builder has properly paid any other persons or entities providing 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 other person or entity providing Work for the Design-Builder 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 any other person or entity providing services or Work for the Design-Builder, except as may otherwise be required by law.

§ 9.6.6 The Design-Builder's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.3, 9.6.4 and 9.6.5.

§ 9.6.6.1 Except with the Owner's prior written approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment.

§ 9.6.7 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.

§ 9.6.8 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, Subcontractors, and other persons or entities providing Work for the Design-Builder, shall be held by the Design-Builder for the Architect and those Consultants, Subcontractors, or other persons or entities. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Design-Builder, create any fiduciary liability or tort liability on the part of the Design-Builder for breach of trust, or entitle any person or entity to an award of punitive damages against the Design-Builder for breach of the requirements of this provision.

§ 9.6.9 Provided the Owner has fulfilled its payment obligations under the Design-Build Documents, the Design-Builder shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Architect, Consultant, Subcontractor, or any other person or entity providing Work for the Design-Builder. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Design-Builder. If approved by the applicable court, when required, the Design-Builder may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

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

§ 9.7 Failure of Payment

If, through no fault of the Design-Builder, the Owner fails to issue a Certificate for Payment or make payment of the certified amount within the time required by the Design-Build Documents, then the Design-Builder may, upon seven additional days' 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 shutdown, 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 Construction Work when the Construction Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Construction Work for its intended use. The date of Substantial Completion is the date certified by the Owner in accordance with this Section 9.8.

§ 9.8.2 When the Design-Builder considers that the Construction 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 Construction 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 Construction 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 Construction Work or designated portion thereof is substantially complete, the Design-Builder will prepare for the Owner's signature a Certificate of Substantial Completion that shall, upon the Owner's signature, establish the date of Substantial Completion; establish responsibilities of the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Construction 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 Construction 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 Construction 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 Construction 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 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 Construction 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 Construction 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 Construction Work to be used, in order to determine and record the condition of the Construction Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Construction Work shall not constitute acceptance of Construction 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 notice that the Construction 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 Construction Work acceptable under the Design-Build Documents and the Contract fully performed, the Owner will, subject to Section 9.10.2 and 9.10.3, promptly issue a final Certificate for Payment.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Construction 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 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) an as-constructed record copy of the Construction Documents marked to indicate field changes and selections made during construction, (6) documentation of any special warranties, such as 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, and 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, Consultant, Subcontractor, or any other person or entity providing services, labor, materials, or equipment relating to the Construction Work, 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 a lien, claim, security interest, or encumbrance 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 Construction 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 Construction Work fully completed, corrected, and accepted. If the estimated cost to complete or correct the Construction Work is less than retamage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Construction Work fully completed and accepted shall be submitted by the Design-Builder to the Owner prior to issuance of payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

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

1. liens, Claims, security interests or encumbrances arising out of the Contract and unsettled,
2. failure of the Work to comply with the requirements of the Design-Build Documents,
3. terms of special warranties required by the Design-Build Documents, or
4. audits performed by the Owner, if permitted by the Design-Build Documents, after final payment.

§ 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 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.
(Insert rate of interest agreed upon, if any.)

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 Construction Work.

§ 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 and persons performing the Construction Work and others who may be affected thereby,

- .2 the Construction 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, a Subcontractor, or any other person or entity, 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 the 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 notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods, are necessary for execution of the Construction 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 Subcontractor, 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. The Design-Builder may make a Claim for the cost to remedy damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner, or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section 3.1.14.

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

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

§ 10.2.8 **Injury or Damage to Person or Property.** If the Owner or Design-Builder suffers injury or damage to person or property because of an act or omission of the other, or of others for whose acts such party is legally responsible, 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 or substances. 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 Construction Work in the affected area and notify the Owner of the condition.

§ 10.3.2 Upon receipt of the Design-Builder's 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 the material or substance or who are to perform the task of removal or safe containment of the 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, Construction 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 by the amount of the Design-Builder's reasonable additional costs of shutdown, 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 Subcontractors, 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 Construction 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 Construction 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 hazardous 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 hazardous 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 reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances 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 Construction Work as required by the Design-Build Documents, the Owner shall reimburse 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 INSURANCE AND BONDS

§ 11.1 Design-Builder's Insurance and Bonds

§ 11.1.1 The Design-Builder shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in this Agreement or elsewhere in the Design-Build Documents, including AIA Document A141-2024, Exhibit A. Insurance and Bonds, attached hereto. Prior to commencement of the Work, the Design-Builder shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner shall be named as an additional insured under the Design-Builder's commercial general liability policy or as otherwise described in the Design-Build Documents

§ 11.1.2 The Design-Builder shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Design-Build Documents. The Design-Builder shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Design-Build Contract, the Design-Builder shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished

§ 11.1.4 Notice of Cancellation or Expiration of Design-Builder's Required Insurance. Within three (3) business days of the date the Design-Builder becomes aware of an impending or actual cancellation or expiration of any insurance required by the Design-Build Documents, the Design-Builder shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Design-Builder, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Design-Builder. The furnishing of notice by the Design-Builder shall not relieve the Design-Builder of any contractual obligation to provide any required coverage

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in this Agreement or elsewhere in the Design-Build Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in this Agreement or elsewhere in the Design-Build Documents, the Owner shall inform the Design-Builder in writing prior to commencement of the Construction Work. Upon receipt of notice from the Owner, the Design-Builder may delay commencement of the Construction Work and may obtain insurance that will protect the interests of the Design-Builder, Subcontractors, and Sub-Subcontractors in the Construction Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Design-Builder, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Design-Builder is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Design-Builder for all reasonable costs and damages attributable thereto.

§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Design-Build Documents, the Owner shall provide notice to the Design-Builder of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Design-Builder: (1) the Design-Builder, upon receipt of notice from the Owner, shall have the right to stop the Construction Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Design-Builder; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Design-Builder, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Design-Builder purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Design-Builder waive all rights against (1) each other and any of their consultants, subcontractors, sub-subcontractors, agents, and employees, each of the other; and (2) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by this Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Design-Builder, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Separate Contractors, consultants, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise; (2) even though that person or entity did not pay the insurance premium directly or indirectly; or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 If, during construction of the Project, the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Design-Builder for loss of use of the Owner's property, due to fire or other hazards however caused.

§ 11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by this Agreement shall be adjusted by the Owner as

fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Design-Builder its just share of insurance proceeds received by the Owner, and by appropriate agreement the Design-Builder shall make payments to its consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Design-Builder of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Design-Builder shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Design-Builder does not object, the Owner shall settle the loss, and the Design-Builder shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Design-Build Contract for convenience, the Owner and Design-Builder shall execute a Change Order for reconstruction of the damaged or destroyed Construction Work in the amount allocated for that purpose. If the Design-Builder timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Design-Builder arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Change Directive for the reconstruction of the damaged or destroyed Construction Work.

ARTICLE 12 UNCOVERING AND CORRECTION OF CONSTRUCTION WORK

§ 12.1 Uncovering of Construction Work

The Owner may request to examine a portion of the Construction Work that the Design-Builder has covered to determine if the Construction Work has been performed in accordance with the Design-Build Documents. If such Construction Work is in accordance with the Design-Build Documents, the Design-Builder shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Construction Work is not in accordance with the Design-Build Documents, the costs of uncovering the Construction Work, and the cost of correction, shall be at the Design-Builder's expense and shall not result in a change in the Contract Time except as otherwise permitted in this Agreement.

§ 12.2 Correction of Construction Work

§ 12.2.1 Before Substantial Completion. The Design-Builder shall promptly correct Construction 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 Construction Work, including additional testing and inspections and the cost of uncovering and replacement, and compensation for any consultant employed by the Owner whose expenses and compensation were made necessary thereby, shall be at the Design-Builder's expense and shall not result in a change in the Contract Time except as otherwise permitted in this Agreement.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 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 Construction Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Design-Build Documents, any of the Construction Work is discovered not to be in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of 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 Construction Work, if the Owner fails to notify the Design-Builder of the condition 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 and breach of the standard of care for that condition. If the Design-Builder fails to correct nonconforming or defectively designed Construction Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 7.4.

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

§ 12.2.2.3 The one-year period for correction of Construction Work shall not be extended by corrective Construction Work performed by the Design-Builder pursuant to this Section 12.2.

§ 12.2.3 The Design-Builder shall remove from the site portions of the Construction 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

§ 12.2.4 The Design-Builder shall be liable for 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 Construction Work that is not in accordance with the requirements of the Design-Build Documents except as otherwise permitted in this Agreement.

§ 12.2.5 Nothing contained in this Section 12.2 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 Construction Work as described in Section 12.2.2 relates only to the specific obligation of the Design-Builder to correct the Construction 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 Construction Work.

§ 12.3 Acceptance of Nonconforming Construction Work

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

ARTICLE 13 COPYRIGHTS AND LICENSES

§ 13.1 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, Subcontractors, and any other person or entity providing 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 Subcontractors, and any other person or entity providing Work for any of them.

§ 13.2 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.

§ 13.3 The Design-Builder grants to the Owner a nonexclusive license to use the Design-Builder's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering, and adding to the Project. The license granted in this Section 13.3 shall terminate only if (1) the Design-Builder terminates this Agreement in accordance with Sections 14.1.1, 14.1.3, 14.1.4, or 14.2.1 or (2) the Owner terminates this Agreement for convenience as provided in Section 14.1.5 and does not compensate the Design-Builder as required under Sections 14.1.6 and 14.1.7. The license granted under this section permits the Owner to authorize the Owner's consultants to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.1.5, solely and exclusively for use in performing services for the Project.

§ 13.3.1 In the event the Owner uses the Instruments of Service (1) for purposes inconsistent with Section 13.3, (2) after completion of the Project for purposes of altering or adding to the Project without retaining the authors of the Instruments of Service for such purposes, (3) after the Owner terminates this Agreement for convenience, or (4) after the Design-Builder terminates this Agreement in accordance with Sections 14.1.1, 14.1.3, 14.1.4, or 14.2.1, the Owner releases the Design-Builder from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Design-Builder 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 use of the Instruments of Service under this Section 13.3.1. The terms of this Section 13.3.1 shall not apply if the Owner terminates this Agreement for cause under Section 14.1.4 or 14.2.2. The payment of a Termination Fee or Licensing Fee under Section 14.1.7 shall not relieve the Owner of the release or indemnity obligations of this Section 13.3.1.

§ 13.3.2 The Design-Builder shall obtain non-exclusive licenses from the Architect, Consultants, and Subcontractors, that will allow the Design-Builder to satisfy its obligations to the Owner under this Article 13. The Design-Builder's licenses from the Architect and its Consultants and Subcontractors 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 Subcontractors terminate their agreements with the Design-Builder for cause, to obtain a 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 Subcontractor all amounts due, and (2) provides the Architect, Consultant or Subcontractor with the Owner's written agreement to indemnify and hold harmless the Architect, Consultant, or Subcontractor 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

§ 13.3.3 Except as otherwise stated in this Section 13.3, the provisions of this Article 13 shall survive the termination of this Agreement

ARTICLE 14 TERMINATION OR SUSPENSION

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

§ 14.1.1 If the Owner fails to make payments to the Design-Builder for Work prior to execution of the Design-Build Amendment in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination under Section 14.1.4 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' 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.

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

§ 14.1.3 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' notice.

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

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

§ 14.1.6 In the event of termination not the fault of the Design-Builder, the Design-Builder shall be compensated for Work performed prior to termination, together with Reimbursable Expenses then due and any other expenses directly attributable to termination for which the Design-Builder is not otherwise compensated. In no event shall the Design-Builder's compensation under this Section 14.1.6 be greater than the compensation set forth in Section 2.1.

§ 14.1.7 In addition to any amounts paid under Section 14.1.6, if the Owner terminates this Agreement for its convenience pursuant to Section 14.1.5, or the Design-Builder terminates this Agreement pursuant to Sections 14.1.3 or 14.1.4, the Owner shall pay to the Design-Builder the following fees:

(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)

1. Termination Fee

N/A

2. Licensing Fee if the Owner intends to continue using the Design-Builder's Instruments of Service

N/A

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

§ 14.2.1 Termination by the Design-Builder

§ 14.2.1.1 The Design-Builder may terminate this Agreement if the Work is stopped for a period of 30 consecutive days through no act or fault of the Design-Builder, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped,
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped,
- .3 Because 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 reasonable evidence as required by Section 7.2.7.

§ 14.2.1.2 The Design-Builder may terminate this Agreement if, through no act or fault of the Design-Builder, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.2.3, 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.

§ 14.2.1.3 If one of the reasons described in Section 14.2.1.1 or 14.2.1.2 exists, the Design-Builder may, upon seven days' notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, or the Design-Builder's Fee on Work not executed if the Contract Sum is based upon the Cost of the Work plus a Fee with or without a Guaranteed Maximum Price, and costs incurred by reason of such termination.

§ 14.2.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder, or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon seven additional days' notice to the Owner, terminate the Contract and recover from the Owner as provided in Section 14.2.1.3.

§ 14.2.2 Termination by the Owner for Cause

§ 14.2.2.1 The Owner may terminate this Agreement if the Design-Builder:

- .1 fails to submit the Proposal by the date required by this Agreement, or if no date is indicated, within a reasonable time consistent with the date of Substantial Completion,
- .2 repeatedly refuses or fails to supply enough properly skilled workers or proper materials,
- .3 repeatedly refuses or fails to supply a qualified architect, consultant, or subcontractor, where required,
- .4 fails to make payment to the Architect, Consultants, Subcontractors, or suppliers in accordance with their respective agreements with the Design-Builder,
- .5 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority, or
- .6 is otherwise in breach of a material provision of the Design-Build Documents.

§ 14.2.2.2 When any of the reasons described in Section 14.2.2.1 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' notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:

- 1 Exclude the Design-Builder from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder,
- 2 Accept assignment of the Architect, Consultant, and Subcontractor 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.

§ 14.2.2.3 When the Owner terminates this Agreement for one of the reasons stated in Section 14.2.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished.

§ 14.2.2.4 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 this Agreement.

§ 14.2.3 Suspension by the Owner for Convenience

§ 14.2.3.1 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.

§ 14.2.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.2.3.1. 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

§ 14.2.4 Termination by the Owner for Convenience

§ 14.2.4.1 The Owner may, at any time, terminate this Agreement for the Owner's convenience and without cause

§ 14.2.4.2 Upon receipt of 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, Subcontractors, and purchase orders, and enter into no further Project agreements and purchase orders

§ 14.2.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Design-Builder for Work properly executed, Termination and Licensing Fees set forth in Section 14.1.7; and any other costs incurred by reason of the termination, including costs attributable to termination of Subcontracts

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, 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. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents

§ 15.1.2 Time Limits on Claims. The Owner and Design-Builder shall commence all claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in Section 1.3, within the time period specified by applicable law, but, in any case, not more than 10 years after the date of Substantial Completion of the Work. The Owner and Design-Builder waive all claims and causes of action not commenced in accordance with this Section 15.1.2

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Prior To Final Payment. Prior to final payment, Claims by either the Owner or Design-Builder must be initiated by 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.

§ 15.1.3.2 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 notice to the other party. The notice requirement in Section 15.1.3.1 and the provisions for Initial Resolution of Claims in Section 15.2 shall not be required as a condition precedent to mediation in Section 15.3

§ 15.1.4 Continuing Contract Performance. Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, 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

§ 15.1.5 Claims for Additional Cost. If the Design-Builder wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property

arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Design-Builder wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Design-Builder's Claim shall include an estimate of cost and of the probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 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.

§ 15.1.7 Waiver of Claims for Consequential Damages

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

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

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Design-Build Documents.

§ 15.2 Initial Resolution of Claims

§ 15.2.1 Meet and Confer

§ 15.2.1.1 If the parties select Meet and Confer as the initial method of dispute resolution, the Owner and Design-Builder shall endeavor to resolve Claims subject to the meet and confer session. The meet and confer session shall be attended by representatives who have the authority to bind the Owner and Design-Builder. The Owner or Design-Builder may request senior representatives from the Architect, Subcontractors, or other interested parties to attend the meet and confer session. The meet and confer session shall take place within thirty (30) days after a request by either party to this Agreement unless the parties mutually agree otherwise.

§ 15.2.1.2 Discussions held during the meet and confer process shall be treated as settlement discussions and, as such, will be confidential.

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

§ 15.2.1.4 If the Owner and Design-Builder cannot reach a mutually acceptable resolution at the meet and confer session, or if the meet and confer session does not take place within the time specified in Section 15.2.1, either party may proceed to mediation in accordance with Section 15.3.

§ 15.2.2 Project Neutral

§ 15.2.2.1 If the parties select a Project Neutral to serve as an initial decision maker of Claims, the Owner and Design-Builder shall share the expense of the Project Neutral.

§ 15.2.2.2 The Project Neutral will review Claims and, within ten days of the receipt of a Claim, take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim in whole or in part, (4) suggest a compromise, or (5) advise the parties that the Project Neutral is unable to resolve the Claim if the Project Neutral lacks sufficient information to evaluate the merits of the Claim or if the Project Neutral concludes that, in the Project Neutral's sole discretion, it would be inappropriate for the Project Neutral to resolve the Claim.

§ 15.2.2.3 In evaluating Claims, the Project Neutral may, but shall not be obligated to, consult with or seek information from persons with special knowledge or expertise who may assist the Project Neutral in rendering a decision. The retention of such persons shall be a shared expense of the Owner and Design-Builder.

§ 15.2.2.4 If the Project Neutral requests either party to provide a response to a Claim or to furnish additional supporting data, such party shall respond within ten days after receipt of the request and shall either (1) provide a response or the requested supporting data, (2) advise the Project Neutral when the response or supporting data will be furnished or (3) advise the Project Neutral that no response or supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Project Neutral will take one of the actions described in Section 15.2.2 2(2)-(5).

§ 15.2.2.5 Pursuant to Sections 15.2.2.2 through 15.2.2.4 the Project Neutral will render an initial decision approving or rejecting the Claim in whole or in part or indicating that the Project Neutral is unable to resolve the Claim. The initial decision shall (1) be in writing, (2) state the reasons therefore, and (3) identify any change in the Contract Sum or Contract Time or both. The initial decision shall be binding on the parties, but subject to mediation in accordance with the process set forth in Section 15.3 and, if the parties fail to resolve their dispute through mediation, subject to binding dispute resolution in accordance with Section 15.4.

§ 15.2.2.5.1 If an initial decision has not been rendered within 30 days after the Claim has been referred to the Project Neutral, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Project Neutral and all affected parties agree, the Project Neutral will not decide disputes between the Design-Builder and persons or entities other than the Owner.

§ 15.2.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.3.

§ 15.2.2.7 Either party may, within 30 days from the date of a Project Neutral's 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.

§ 15.2.3 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.

§ 15.2.4 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.

§ 15.3 Mediation

§ 15.3.1 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, 15.1.7, and 15.2.2.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 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 this 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 15.3.2, the Parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 Either Party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the Party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both Parties waive their rights to binding dispute resolution proceedings with respect to the initial decision rendered by the Project Neutral or with respect to Claims that were the subject of the Meet and Confer process.

§ 15.3.4 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.

§ 15.4 Arbitration

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

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

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

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

§ 15.4.4 Consolidation or Joinder

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

§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either Party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the Party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Design-Builder grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Design-Builder under this Agreement.

§ 15.5 The provisions of this Article 15 shall survive the termination of this Agreement.

ARTICLE 16 MISCELLANEOUS PROVISIONS

§ 16.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 16.2 Successors and Assigns

§ 16.2.1 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 16.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 16.2.2 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 the assignment.

§ 16.2.3 Certifications. If the Owner requests the Design-Builder to execute certificates, the proposed language of such

certificates shall be submitted to the Design-Builder for review at least 21 days prior to the requested dates of execution. If the Owner requests the Design-Builder to execute consents reasonably required to facilitate assignment to a lender, the Design-Builder shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Design-Builder for review at least 21 days prior to execution. The Design-Builder shall not be required to execute any certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 16.3 The Design-Builder, Architect, Consultants, Subcontractors, or their agents, or any other persons or entities performing portions of the Work, shall have the right to include video, photographic, or artistic representations of the design of the Project among their respective promotional and professional materials. The Design-Builder, Architect, Consultants, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work, shall be given reasonable access to the completed Project to make such representations. However, such material shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Design-Builder in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Design-Builder, Architect, Consultants, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work, in the Owner's promotional materials for the Project. This Section 16.3 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 14.2.2.

§ 16.4 Rights and Remedies

§ 16.4.1 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.

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

§ 16.5 Tests and Inspections

§ 16.5.1 Tests, inspections, and approvals of portions of the Construction 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, unless otherwise provided in the Design-Build Amendment. 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 tests, inspections, or approvals that do not become requirements until after execution of the Design-Build Amendment. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 16.5.2 If the Owner determines that portions of the Construction Work require additional testing, inspection, or approval not included under Section 16.5.1, 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 16.5.3, shall be at the Owner's expense, unless otherwise provided in the Design-Build Amendment.

§ 16.5.3 If procedures for testing, inspection, or approval under Sections 16.5.1 and 16.5.2 reveal failure of the portions of the Construction 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, unless otherwise provided in the Design-Build Amendment.

§ 16.5.4 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.

§ 16.5.5 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.

§ 16.5.6 Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid

unreasonable delay in the Work

§ 16.6 Confidential Information

§ 16.6.1 If the Design-Builder or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 16.6.2. The obligations in this Section 16.6 shall survive the termination of this Agreement

§ 16.6.2 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, contractors, or subcontractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants, contractors, and subcontractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 16.6. In the event either party knows or reasonably believes that "confidential" or "business proprietary" information received from the other party has been subject to any circumstance where the security, integrity, or confidentiality of any of the "confidential" or "business proprietary" information has been compromised, damaged, lost, corrupted, destroyed, or the "confidential" or "business proprietary" information has been accessed, acquired, modified, used, disclosed, or rendered inaccessible, by any unauthorized person, by any person in an unauthorized manner, or for an unauthorized purpose, the party experiencing the breach will provide written notice to the other party as soon as reasonably possible after it becomes aware of any breach.

Notwithstanding any other provision herein, the parties acknowledge that Owner is a political subdivision of the State of North Carolina and subject to the public records laws under Chapter 132 of the North Carolina General Statutes, and any "confidential" or "business proprietary" information must be deemed an exception to disclosure as a public record in order to withhold such information from the public. Design-Builder may assert such exception for any "confidential" or "business proprietary" information but shall have the burden of defending such assertion and shall indemnify and hold Owner harmless from any claim of violation of the public records laws for any such assertion by Design-Builder.

§ 16.6.3 "Confidential" or "business proprietary" information shall not include information

1. in the public domain, or which later enters the public domain, through no action on the receiving party's part in violation of this Agreement;
2. already in the receiving party's possession and not marked as "confidential" or "business proprietary" when received;
3. obtained by the receiving party on a non-confidential basis from a third party not known by the receiving party to be under an obligation of confidentiality, or
4. that is independently developed by the receiving party without access to, or use of, any "confidential" or "business proprietary" information

§ 16.7 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 AIA Contract Documents

§ 16.8 Interpretation

§ 16.8.1 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.

§ 16.8.2 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.

§ 16.9 The invalidity of any provision of this Agreement shall not invalidate this Agreement or its remaining provisions. If it is determined that any provision of this Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case this Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing this Agreement.

§ 16.10 In accordance with Section 1.1.5, the Design-Builder shall coordinate with the Owner in establishing building information modeling and digital data protocols for the Project governing the development, use, transmission, and exchange of, and reliance on, digital data.

§ 16.10.1 Any use of, or reliance on, all or a portion of a building information model without agreement to written protocols governing the use of, and reliance on, the information contained in the model shall be at the using or relying party's sole risk and without liability to the other party and its subcontractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees

ARTICLE 17 SCOPE OF THIS AGREEMENT

§ 17.1 This Agreement is comprised of the following documents.

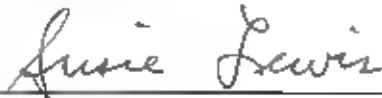
- 1 AIA Document A141®-2024, Standard Form of Agreement Between Owner and Design-Builder for a Traditional Design-Build Project
- 2 AIA Document A141®-2024, Exhibit A, Insurance and Bonds
- 3 AIA Document A141®-2024, Exhibit B, Design-Build Amendment, if executed
- 4 Exhibit C - Pre-Construction and Design Services Fee Proposal and Scope
- 5 Other documents, if any, listed below

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

OWNER (Signature)

BY Steve Garrison, County Manager

(Printed name and title)



DESIGN-BUILDER (Signature)

BY Susie Lewis, CEO

(Printed name and title)

Additions and Deletions Report for AIA® Document A141® – 2024

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 15:20:46 EDT on 06/11/2025.

Changes to original AIA text

PAGE 1

~~A Political Subdivision of the State of North Carolina~~

County of Rutherford

A Political Subdivision of the State of North Carolina 289 N. Main Street

Beam Construction Company, Inc.

A North Carolina Corporation

601 E. Main Street

Cherryville, NC 28021-3416

~~A North Carolina corporation~~ 601 E. Main Street

Rutherfordton, NC 28139

PAGE 2

C SUSTAINABLE PROJECTS EXHIBIT PRE-CONSTRUCTION AND DESIGN SERVICES FEE PROPOSAL AND SCOPE

PAGE 3

The former RS Middle 6th grade building located at 289 Day Break Drive, Rutherfordton, NC 28139 and the former RS Middle cafeteria building located at 293 Day Break Drive, Rutherfordton, NC 28139

The date that is 28 days after the date on which the programming is completed and/or the date on which the floor plan is accepted, whichever date is later in time.

PAGE 4

3. Utility Allowance #3 August 30, 2025

Design Building shall include proposed Substantial Completion date in the submission of their Proposal per Section 1.1.7.1, which Substantial Completion date shall be agreed by the parties hereto through the acceptance of the Proposal by Owner

N/A

TBD

PAGE 5

226 2nd Street NW

Hickory, NC 28601

[] Other (Specify)

PAGE 8

Individual or Position	Rate
Principal/Project Executive	\$175.00/hr
Architect/Project Manager	\$145.00/hr
Intern Architect/Assistant Project Manager	\$120.00/hr
Drafter/Project Coordinator	\$95.00/hr
Clerical	\$55.00/hr

§ 2.1.3.2 For Reimbursable Expenses, the compensation shall be the expenses the Design-Builder and the Design-Builder's Architect, Consultants, and Subcontractors incurred, plus ten percent (10 %) of the expenses incurred

As quoted at the time of the service or per 2.1.2

PAGE 9

§ 2.2 Payment for Early Release Work

~~For the Design-Builder's performance of Early Release Work, the Owner shall pay the Design-Builder in accordance with the authorization for the Early Release Work, unless otherwise agreed to by the parties.~~

PAGE 12

.2 Site plan, utilities relocation

PAGE 14

Submittals

PAGE 15

Anticipated

- 1 Roofing materials
- 2 Flooring materials
- 3 HVAC equipment
- 4 Paint colors and specifications
- 5 Lighting materials
6. Water and sewer pipe & valves
- 7 Miscellaneous electrical materials

PAGE 28

%

PAGE 30

§ 11.1.1 The Design-Builder shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in this Agreement or elsewhere in the Design-Build Documents, including AIA Document A141-2024, Exhibit A, Insurance and Bonds, attached hereto. Prior to commencement of the Work, the Design-Builder shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner shall be named as an additional insured under the Design-Builder's commercial general liability policy or as otherwise described in the Design-Build Documents.

PAGE 34

§ 14.1.3 If the Owner suspends the Project for more than 90 ~~cumulative~~ 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' notice.

PAGE 41

Notwithstanding any other provision herein, the parties acknowledge that Owner is a political subdivision of the State of North Carolina and subject to the public records laws under Chapter 132 of the North Carolina General Statutes, and any "confidential" or "business proprietary" information must be deemed an exception to disclosure as a public record in order to withhold such information from the public. Design-Builder may assert such exception for any "confidential" or "business proprietary" information but shall have the burden of defending such assertion and shall indemnify and hold Owner harmless from any claim of violation of the public records laws for any such assertion by Design-Builder.

PAGE 42

- 4 AIA Document A141-2024, Exhibit C, Sustainable Projects Exhibit, if completed Exhibit C – Pre-Construction and Design Services Fee Proposal and Scope

Variable Information

PAGE 1

AGREEMENT made as of the 12th day of May in the year 2025
(In words indicate day, month, and year)

Rutherfordton, NC 28139

Rutherford County Sheriff's Office Center Renovation

289 Day Break Drive (former 6th Grade Building at RS Middle School) and
293 Day Break Drive (former Cafeteria at RS Middle School)

Rutherfordton, NC 28139

PAGE 3

The Rutherford County Sheriff's Office will be relocating to the former RS Middle 6th Grade building and cafeteria. The 6th grade building will be converted into office space and the cafeteria will be converted to a secured storage facility.

The design requirements established to date, as noted in the RFQ dated 11-02-2024. All other design requirements will be established during the design and pre-construction phase.

The former RS Middle 6th grade building located at 289 Day Break Drive, Rutherfordton, NC 28139 and the former RS Middle cafeteria building located at 293 Day Break Drive, Rutherfordton, NC 28139.

N/A

N/A

\$1,400,000.00 (One Million, Four Hundred Thousand Dollars)

The date that is 28 days after the date on which the programming is completed and/or the date on which the floor plan is accepted, whichever date is later in time.

PAGE 4

Design Builder shall include proposed Construction commencement date in the submission of their Proposal per Section 1.1.7.1, which construction commencement date shall be agreed by the parties hereto through the acceptance of the Proposal by Owner.

Construction commencement date as to the specific projects showing in Section B 1.2.4 as Roof Allowance #1, Roof Allowance #2, and Utility Allowance #3 on AIA Document A141-2024 Exhibit B Design-Build Amendment shall be

1. Roof Allowance #1 July 15, 2025

2. Roof Allowance #2 August 30, 2025

Design Building shall include proposed Substantial Completion date in the submission of their Proposal per Section 1.1.7.1, which Substantial Completion date shall be agreed by the parties hereto through the acceptance of the Proposal by Owner.

N/A

N/A

N/A

N/A

Aubrey Clay

272 North Toms Street

Rutherfordton, NC 28139

Aubrey clay@rutherfordcountync.gov

N/A

TBD

PAGE 5

Susie Lewis

Beam Construction Company, Inc.

PO Box 129

Cherryville, NC 28021

sblewis@beamconstruction.com

CBSA Architects, Inc.

☒ Subject to a Meet and Confer obligation in accordance with Section 15.2.1

☒ Litigation in a court of competent jurisdiction

•

PAGE 7

Notice shall be sent by electronic mail, personal delivery, and/or by certified first-class U.S. mail, return receipt requested, to Representatives of each party and member of the Project Team as set forth in Section 1.2 hereinabove. In addition, any such notice shall also be sent to:
Rutherford County, ATTN County Manager, Steve Garrison@RutherfordCountyNC.gov, 289 N. Main Street,
Rutherfordton, NC 28139

See Exhibit C – Pre-construction and Design Services Fee Proposal and Scope

PAGE 8

§ 2.1.3.2 For Reimbursable Expenses, the compensation shall be the expenses the Design-Builder and the Design-Builder's Architect, Consultants, and Subcontractors incurred, plus ~~ten~~ percent (10 %) of the expenses incurred.

4 services necessitated by a failure to complete the services under Article 4 within twelve (12) months of the date of this Agreement through no fault of the Design-Builder

As quoted at the time of the service or per 2.1.2

§ 2.1.5.1.1 Amounts unpaid Forty-Five (45) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof, at the legal rate prevailing from time to time at the principal place of business of the Design-Builder

(Insert rate of monthly or annual interest agreed upon)

2 % Two Percent

PAGE 9

Five Hundred Dollars (\$500.00) for each calendar day after the Substantial Completion date as set forth in Section 1.1.7.

N/A

N/A

N/A

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CB&A Architects, Inc
226 2nd Street NW
Hickory, NC 28601

PAGE 34

N/A

N/A

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 15:20:46 EDT on 06/11/2025 under Order No. 20240090459 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A141™ - 2024, Standard Form of Agreement Between Owner and Design-Build for a Traditional Design-Build Project, other than those additions and deletions shown in the associated Additions and Deletions Report.

Julie Lewin
(Signed)

CEO
(Title)

6-16-25
(Dated)



AIA

Document A141® – 2024 Exhibit A

Insurance and Bonds

This Exhibit dated the 12th day of May in the year 2025 (the "Exhibit") is incorporated into AIA Document A141®-2024, Standard Form of Agreement Between Owner and Design-Build for a Traditional Design-Build Project dated the 12th day of May in the year 2025 (the "Agreement")
(In words, indicate day, month, and year.)

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

Rutherford County Sheriff's Department Renovation
289 Day Break Drive
Rutherfordton, NC 28139

THE OWNER:
(Name, legal status, and address)

County of Rutherford
A Political Subdivision of the State of North Carolina
289 N. Main Street
Rutherfordton, NC 28139

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

Beam Construction Company, Inc.
A North Carolina corporation
601 E. Main Street
Cherryville, NC 28021-3416

TABLE OF ARTICLES

A.1 GENERAL

A.2 OWNER'S INSURANCE

A.3 DESIGN-BUILDER'S INSURANCE AND BONDS

A.4 SPECIAL TERMS AND CONDITIONS

ARTICLE A.1 GENERAL

The Owner and Design-Build shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term Agreement refers to AIA Document A141®-2024, Standard Form of Agreement between Owner and Design-Build for a Traditional Design-Build Project

ARTICLE A.2 OWNER'S INSURANCE

§ A.2.1 General

The Owner shall secure the insurance, and provide evidence of the coverage, required under this Article A.2

§ A.2.2 Liability Insurance

Prior to commencement of the Work, the Owner shall be responsible for purchasing

ADDITIONS AND DELETIONS:

The author of this document may have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added to or deleted from the original AIA text.

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

This document is intended to be used in conjunction with AIA Document A141®-2024, Standard Form of Agreement Between Owner and Design-Build for a Traditional Design-Build Project. Article 11 of A141-2024 contains additional insurance provisions.

and maintaining the Owner's usual general liability insurance

§ A.2.3 Required Property Insurance

§ A.2.3.1 Prior to commencement of the Construction Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Section A.2.3 and, upon the Design-Builder's request, provide a copy of the property insurance policy or policies. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements. Unless this obligation is placed on the Design-Builder pursuant to Section A.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials supplied or installed by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section A.2.3.1.3, unless otherwise provided in the Design-Build Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Design-Builder, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

§ A.2.3.1.1 Causes of Loss. The insurance required by this Section A.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows.

(Indicate below the cause of loss and any applicable sub-limit.)

Cause of Loss

Sub-Limit

§ A.2.3.1.2 Specific Required Coverages. The insurance required by this Section A.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Design-Builder's services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:

(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)

Coverage

Sub-Limit

§ A.2.3.1.3 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section A.2.3.1 or, if necessary, replace the insurance policy required under Section A.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Construction Work set forth in Section 12.2.2 of the Agreement.

§ A.2.3.1.4 Deductibles and Self-Insured Retentions. If the insurance required by this Section A.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

§ A.2.3.2 Occupancy or Use Prior to Substantial Completion. The Owner's occupancy or use of any completed or partially completed portion of the Construction Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section A.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Design-Builder shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

§ A.2.3.3 Insurance for Existing Structures

If the Construction Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Construction Work as set forth in Section 12.2.2 of the Agreement, "all-risks" property insurance, on a replacement cost basis, if commercially available, or otherwise on an actual cost value basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section A.2.3.1.1, notwithstanding the undertaking of the Construction

Work The Owner shall be responsible for all co-insurance penalties

§ A.2.4 Optional Extended Property Insurance.

The Owner shall purchase and maintain the insurance selected and described below

(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)

- ☐ **§ A.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.
- ☐ **§ A.2.4.2 Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project
- ☐ **§ A.2.4.3 Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property
- ☐ **§ A.2.4.4 Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred
- ☐ **§ A.2.4.5 Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance
- ☐ **§ A.2.4.6 Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage
- ☐ **§ A.2.4.7 Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Construction Work, arising out of physical loss or damage covered by the required property insurance including construction loan fees, leasing and marketing expenses, additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction, and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses

§ A.2.5 Other Optional Insurance.

The Owner shall purchase and maintain the insurance selected below

(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance)

- ☐ **§ A.2.5.1 Cyber Security Insurance** for first party loss due to data security and privacy breach, including coverage of losses for business interruption, cyber-extortion, breach of privacy, and identity theft. The Cyber Security Insurance coverage shall include costs of notifying affected parties, credit monitoring, recovery of compromised data, and forensic investigation of the potential or actual breach. The Cyber Security Insurance shall be subject to the following limits of coverage and other conditions.
(State applicable limits of coverage, including aggregate limits and sub-limits, and other conditions)

[] § A.2.5.2 Other Insurance

(List below any other insurance coverage to be provided by the Owner and any applicable limits)

Coverage

Limits

ARTICLE A.3 DESIGN-BUILDER'S INSURANCE AND BONDS

§ A.3.1 General

§ A.3.1.1 Certificates of Insurance. The Design-Builder shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article A.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance, and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section A.3.2.1 and Section A.3.3.1. The certificates will show the Owner as an additional insured on the Design-Builder's Commercial General Liability and excess or umbrella liability policy or policies.

§ A.3.1.2 Deductibles and Self-Insured Retentions. The Design-Builder shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Design-Builder.

§ A.3.1.3 Additional Insured Obligations. To the fullest extent permitted by law, the Design-Builder shall cause the commercial general liability coverage to include: (1) the Owner as an additional insured for claims caused in whole or in part by the Design-Builder's negligent acts or omissions during the Design-Builder's operations, and (2) the Owner as an additional insured for claims caused in whole or in part by the Design-Builder's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04.

§ A.3.2 Design-Builder's Required Insurance Coverage

§ A.3.2.1 Prior to commencement of the Work, the Design-Builder shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Design-Builder shall maintain the required insurance until the expiration of the period for correction of Construction Work as set forth in Section 12.2.2 of the Agreement, unless a different duration is stated below.

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

§ A.3.2.2 Commercial General Liability

§ A.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of One Million Dollars (\$ 1,000,000.00) each occurrence, Two Million Dollars (\$ 2,000,000.00) general aggregate providing coverage for claims including:

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

§ A.3.2.2.2 The Design-Builder's Commercial General Liability policy under this Section A.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

- 1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- 2 Claims for property damage to the Design-Builder's Construction Work arising out of the products-completed operations hazard where the damaged Construction Work or the Construction Work out of which the damage

arises was performed by a Subcontractor.

- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under Section 3.1.14 of the Agreement arising out of injury to employees of the insured
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Construction Work is to be performed on such a project
- .8 Claims related to roofing, if the Construction Work involves roofing
- .9
- .10 Claims related to earth subsidence or movement.
- .11 Claims related to explosion, collapse, and underground hazards, where the Construction Work involves such hazards

§ A.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Design-Builder, with policy limits of One Million Dollars (\$ 1,000,000.00) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance, and use of those motor vehicles along with any other statutorily required automobile coverage.

§ A.3.2.4 The Design-Builder may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers

§ A.3.2.5 Workers' Compensation at statutory limits

§ A.3.2.7 Professional Liability insurance covering performance of professional services, with policy limits of One Million Dollars (\$ 1,000,000.00) per claim and One Million Dollars (\$ 1,000,000.00) in the aggregate. The Professional Liability insurance shall be effective from the earliest date that the design services of the Design-Builder, the Architect, or Consultants commenced for the Project until completion of the period for correction of the Construction Work. The coverage required by this Section is in addition to any professional liability coverage the Design-Builder requires of the Architect, Consultants, or Subcontractors

§ A.3.2.9 Cyber Security Insurance for first- and third-party loss due to data security and privacy breach, including coverage of losses for business interruption, cyber-extortion, breach of privacy and identity theft. The Cyber Security Insurance coverage shall include costs of notifying affected parties, credit monitoring, recovery of compromised data, and forensic investigation of the potential or actual breach. The Cyber Security Insurance shall be subject to the following limits of coverage and other conditions

(State applicable limits of coverage, including aggregate limits and sub-limits, and other conditions)

§ A.3.3 Design-Builder's Other Insurance Coverage

§ A.3.3.1 Insurance selected and described in this Section A.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Design-Builder shall maintain the required insurance until the expiration of the period for correction of the Construction Work as set forth in Section 12.2.2 of the Agreement, unless a different duration is stated below:

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

No different duration

§ A.3.3.2 The Design-Builder shall purchase and maintain the following types and limits of insurance in accordance with Section A.3.3.1.

(Select the types of insurance the Design-Builder is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)

- ☐ **§ A.3.3.2.1** Property insurance of the same type and scope satisfying the requirements identified in Section A.2.3, which, if selected in this Section A.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section A.2.3.1.3 and Section A.2.3.3. The Design-Builder shall comply with all obligations of the Owner under Section A.2.3 except to the extent provided below. The Design-Builder shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Design-Builder shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the Agreement unless otherwise set forth below.

(Where the Design-Builder's obligation to provide property insurance differs from the Owner's obligations as described under Section A.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the Agreement, indicate the responsible party below.)

- ☐ **§ A.3.3.2.2** Railroad Protective Liability Insurance, with policy limits of (\$) per claim and (\$) in the aggregate, for Construction Work within fifty (50) feet of railroad property.
- ☐ **§ A.3.3.2.3** Asbestos Abatement Liability Insurance, with policy limits of (\$) per claim and (\$) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.
- ☐ **§ A.3.3.2.4** Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all-risks" completed value form.
- ☐ **§ A.3.3.2.5** Property insurance on an "all-risks" completed value form, covering property owned by the Design-Builder and used on the Project, including scaffolding and other equipment.
- ☐ **§ A.3.3.2.6** Other Insurance
(List below any other insurance coverage to be provided by the Design-Builder and any applicable limits.)

Coverage

Limits

§ A.3.4 Insurance Coverage Required of Design-Builder's Architect, Consultants, and Subcontractors

The Design-Builder shall require the Architect, Consultants, and Subcontractors to purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Design-Builder shall obligate the Architect, Consultants, and Subcontractors to maintain the required insurance until the expiration of the period for correction of the Construction Work as set forth in Section 12.2.2 of the Agreement, unless a different duration is stated below.

(List below the types of insurance required of the Design-Builder's Architect, Consultants, and Subcontractors and any applicable limits. In addition, if the Design-Builder is to obligate the Architect, Consultants, or Subcontractors to maintain any of the types of insurance indicated below for a duration other than the expiration of the period for correction of the Construction Work, state the duration.)

§ A.3.5 Performance Bond and Payment Bond

The Design-Builder shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:

(Specify type and penal sum of bonds.)

Type	Penal Sum (\$0.00)
Payment Bond	100%
Performance Bond	100%

Payment and Performance Bonds shall be AIA Document A312®, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312, current as of the date of this Agreement

ARTICLE A.4 SPECIAL TERMS AND CONDITIONS

§ A.4.1 The Owner and Design-Builder waive all rights against (1) each other and any of their consultants, subcontractors, sub-subcontractors, agents, and employees, each of the other, and (2) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for losses to the extent those losses are covered by cyber-insurance required by this Agreement, except such rights as they have to proceeds of such insurance. The Owner or Design-Builder, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Separate Contractors, consultants, subcontractors, and sub-subcontractors

§ A.4.2 Other special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows.

Additions and Deletions Report for AIA® Document A141® – 2024 Exhibit A

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 15:50:28 EDT on 06/11/2025.

Changes to original AIA text

PAGE 5

~~9. Claims related to exterior insulation finish systems (EIFS), synthetic stucco, or similar exterior coatings or surfaces, if the Construction Work involves such coatings or surfaces.~~

~~§ A.3.2.6 Employers' Liability with policy limits of (\$) each accident, (\$) each employee, and (\$) policy limit.~~

~~§ A.3.2.8 Pollution Liability insurance with policy limits of (\$) per claim and (\$) in the aggregate covering the transportation, dissemination, use, or release of pollutants.~~

~~§ A.3.2.10 Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Construction Work involves hazards arising from work on or near navigable waterways, including vessels and docks.~~

~~§ A.3.2.11 Insurance for maritime liability risks associated with the operation of a vessel, if the Construction Work requires such activities, with policy limits of (\$) per claim and (\$) in the aggregate.~~

~~§ A.3.2.12 Insurance for the use or operation of manned or unmanned aircraft, including drones, if the Construction Work requires such activities, with policy limits of (\$) per claim and (\$) in the aggregate.~~

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Type	Penal Sum (\$0.00)
Payment Bond	<u>100%</u>
Performance Bond	<u>100%</u>

Variable Information

PAGE 1

This Exhibit dated the 12th day of May in the year 2025 (the "Exhibit") is incorporated into AIA Document A141®-2024, Standard Form of Agreement Between Owner and Design-Build for a Traditional Design-Build Project dated the 12th day of May in the year 2025 (the "Agreement")
(In words, indicate day, month, and year.)

Rutherford County Sheriff's Department Renovation
289 Day Break Drive
Rutherfordton, NC 28139

County of Rutherford
A Political Subdivision of the State of North Carolina
289 N. Main Street
Rutherfordton, NC 28139

Beam Construction Company, Inc.
A North Carolina corporation
601 E. Main Street
Cherryville, NC 28021-3416

PAGE 4

§ A.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of One Million Dollars (\$ 1,000,000.00) each occurrence, Two Million Dollars (\$ 2,000,000.00) general aggregate providing coverage for claims including

PAGE 5

§ A.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Design-Builder, with policy limits of One Million Dollars (\$ 1,000,000.00) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance, and use of those motor vehicles along with any other statutorily required automobile coverage.

§ A.3.2.7 Professional Liability insurance covering performance of professional services, with policy limits of One Million Dollars (\$ 1,000,000.00) per claim and One Million Dollars (\$ 1,000,000.00) in the aggregate. The Professional Liability insurance shall be effective from the earliest date that the design services of the Design-Builder, the Architect, or Consultants commenced for the Project until completion of the period for correction of the Construction Work. The coverage required by this Section is in addition to any professional liability coverage the Design-Builder requires of the Architect, Consultants, or Subcontractors

PAGE 6

No different duration



AIA®

Document A141® – 2024 Exhibit B

Design-Build Amendment

This Amendment dated the 12th day of May in the year 2025 (the “Amendment”) is incorporated into, and amends, AIA Document A141®–2024, Standard Form of Agreement Between Owner and Design-Builder for a Traditional Design-Build Project dated the 12th day of May in the year 2025 (the “Agreement”) *(In words, indicate day, month, and year)*

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

Rutherford County Sheriff's Department Renovation
289 Day Break Drive
Rutherfordton, NC 28139

THE OWNER:
(Name, legal status, and address)

County of Rutherford
A Political Subdivision of the State of North Carolina
289 N Main Street
Rutherfordton, NC 28139

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

Beam Construction Company, Inc
A North Carolina corporation
601 E. Main Street
Cherryville, NC 28021-3416

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

TABLE OF ARTICLES

B.1 CONTRACT SUM

B.2 CONTRACT TIME

B.3 INFORMATION UPON WHICH AMENDMENT IS BASED

B.4 DESIGN-BUILDER'S KEY PERSONNEL, CONSULTANTS, SUBCONTRACTORS, AND SUPPLIERS

B.5 OWNER'S SEPARATE CONTRACTORS

B.6 COST OF THE WORK

ARTICLE B.1 CONTRACT SUM

§ B.1.1 The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Agreement after the execution of this Amendment. The Contract Sum shall be the amount to be paid to the Design-Builder for performance of the Work after execution of the Design-Build Amendment. The

ADDITIONS AND DELETIONS.

The author of this document may have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added to or deleted from the original AIA text.

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

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

Contract Sum shall include Early Release Work but shall not include any other compensation the Owner paid the Design-Builder for Work performed prior to execution of this Amendment. The Contract Sum shall be one of the following:

(Check the appropriate box.)

- ☒ [X] Stipulated Sum, in accordance with Section B.1.2 below
- ☐ [] Cost of the Work plus the Design-Builder's Fee, in accordance with Section B.1.3 below
- ☐ [] Cost of the Work plus the Design-Builder's Fee with a Guaranteed Maximum Price, in accordance with Section B.1.4 below

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

§ B.1.2 Stipulated Sum

§ B.1.2.1 The Stipulated Sum shall be (\$ 340,600.00), subject to authorized adjustments as provided in the Design-Build Documents.

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

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

Pre-Construction Services per Exhibit C \$115,600.00

Roof Allowance #1 \$ 75,000.00

Roof Allowance #2 \$125,000.00

Utility Allowance #3 \$25,000.00

§ B.1.2.3 Unit prices, if any:

(Identify the item and state the unit price, and the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
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§ B.1.2.4 Allowances, if any, included in the stipulated sum:

(Identify each allowance.)

Item	Price
Remove Existing Roof on former 6 th Grade Building at 289 Day Break Drive and Replace with 30 year Architectural Shingle	\$75,000.00
Remove Existing Roof on former Cafeteria building at 293 Day Break Drive down to vapor barrier, including gutter, downspouts and sheet metal trim. Replace with Tapered insulation 1 1/2" minimum thickness, install 0.060 TPO membrane fully adhered system, all flashings, 24 ga. prefinished galvanized gutter, eave and downspouts.	\$125,000.00
Utility work to separate water and gas from RCS systems	\$25,000.00

§ B.1.5 Payments

§ B.1.5.1 Progress Payments

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

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

§ B.1.5.1.3 Provided that an Application for Payment is received not later than the 1st day of the month, the Owner shall make payment of the amount certified to the Design-Builder not later than the 15 day of the same month in which Application for Payment is received month. If an Application for Payment is received by the Owner after the application date fixed above, payment of the amount certified shall be made by the Owner not later than thirty (30) days after the Owner receives the Application for Payment.
(Federal, state or local laws may require payment within a certain period of time)

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

§ B.1.5.1.5 With each Application for Payment where the Contract Sum is based upon a Stipulated Sum or Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among (1) the various portions of the Work, (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order, and (3) the Design-Builder's Fee

§ B.1.5.1.6 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. The schedule of values shall be used as a basis for reviewing the Design-Builder's Applications for Payment

§ B.1.5.1.7 The allocation of the Guaranteed Maximum Price under this Section B.1.5.1 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ B.1.5.1.8 When the Design-Builder allocates costs from a contingency to another line item in the schedule of values, the Design-Builder shall submit supporting documentation to the Owner

§ B.1.5.1.9 In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections B.1.5.1.4 or B.1.5.1.5, or other supporting data, to have made exhaustive or continuous on-site inspections, or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ B.1.5.1.10 Except with the Owner's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ B.1.5.2 Progress Payments—Stipulated Sum

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

§ B.1.5.2.2 In accordance with AIA Document A141®–2024, Standard Form of Agreement Between Owner and Design-Builder for a Traditional Design-Build Project, and subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

§ B.1.5.2.2.1 The amount of each progress payment shall include:

1. That portion of the Contract Sum properly allocable to completed Work;
2. That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
3. That portion of Change Directives that the Owner determines to be reasonably justified.

§ B.1.5.2.2.2 The amount of each progress payment shall be reduced by:

1. The aggregate of any amounts previously paid by the Owner;
2. The amount, if any, for Work that remains uncorrected and for which the Owner has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A141–2024;
3. Any amount for which the Design-Builder does not intend to pay a Subcontractor, sub-subcontractor, or material supplier, unless the Work has been performed by others the Subcontractor intends to pay;
4. Any amount for which the Owner may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A141–2024; and
5. Retainage withheld pursuant to Section B.1.5.2.3.

§ B.1.5.2.3 Retainage

§ B.1.5.2.3.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

5% of the progress payment

§ B.1.5.2.3.2 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as Design Services, general conditions, bonds, insurance, etc.)

NOT APPLICABLE

§ B.1.5.2.3.3 Reduction or limitation of retainage, if any, shall be as follows:

(If the retainage established in Section B.1.5.2.3.1 is to be modified prior to Substantial Completion of the entire Work including modifications for Substantial Completion of portions of the Work as provided in Section B.1.5.2.3.4, insert provisions for such modifications.)

When the project reaches Fifty (50%) completion, as established to the satisfaction of the owner in accordance with the most recent schedule of values, retainage shall be reduced to two and one half percent (2 ½%).

§ B.1.5.2.3.4 Upon Substantial Completion of the Work, the Design-Builder may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment, except as follows
(Insert any conditions precedent to the release of all or a portion of the retainage, such as correction of the Construction Work, consent of surety, etc.)

When the project reaches Substantial Completion, retainage shall be reduced to one hundred fifty percent (150%) of the reasonable value of all remaining work to be completed, as determined by the Design-Builder and the Owner

§ B.1.5.2.3.5 Except with the Owner's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site

§ B.1.5.5 Final Payment

§ B.1.5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder not later than 30 days after

- 1 the Design-Builder has fully performed the Agreement, except for the Design-Builder's responsibility to correct Construction Work as provided in Article 12 of AIA Document A141-2024, and to satisfy other requirements, if any, which extend beyond final payment,
- 2 the Design-Builder has submitted a final Application for Payment and, if the Contract Sum is based on the Cost

- of the Work, a final accounting for the Cost of the Work;
- 3 a final Certificate for Payment has been issued by the Owner in accordance with Article 9 of AIA Document A141-2024,
- 4 other conditions precedent to the Owner's obligations to issue final payment to the Design-Builder:
(Insert any other conditions precedent to final payment.)

§ B.1.5.5.3 If, subsequent to final payment, and at the Owner's request, the Design-Builder incurs costs, described in Sections B 6 2, and not excluded by Section B 6 3, to correct defective or nonconforming Construction Work, the Owner shall reimburse the Design-Builder for such costs, and the Design-Builder's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price, if the Contract Sum is based on the Cost of the Work subject to a Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section B 1 4, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section B 1 5 5 3 in determining the net amount to be paid by the Owner to the Design-Builder.

ARTICLE B.2 CONTRACT TIME

§ B.2.1 The date of commencement of the Construction Work shall be.
(Check one of the following boxes)

☐ The date of execution of this Amendment.

☐ Established as follows

(Insert a date or a means to determine the date of commencement of the Construction Work)

If a date of commencement of the Construction Work is not selected, then the date of commencement of the Construction Work shall be the date of execution of this Amendment.

§ B.2.1.1 Unless otherwise provided, the Contract Time is the period of time, including authorized adjustments, allotted in the Design-Build Documents for Substantial Completion of the Work. The Contract Time shall be measured from the date of commencement of the Construction Work.

§ B.2.2 Substantial Completion

§ B.2.2.1 Subject to adjustments of the Contract Time as provided in the Design-Build Documents, the Design-Builder shall achieve Substantial Completion of the entire Work.

(Check one of the following boxes and complete the necessary information)

☐ Not later than () calendar days from the date of commencement of the Work

☐ By the following date

§ B.2.2.2 Subject to adjustments of the Contract Time as provided in the Design-Build Documents, if portions of the Work are to be Substantially Complete prior to Substantial Completion of the entire Work, the Design-Builder shall achieve Substantial Completion of such portions by the following dates

Portion of Work

New shingle roof on former 6th grade bldg

New TPO roof on former cafeteria bldg

Substantial Completion Date

No later than August 15, 2025

No later than September 15, 2025

§ B.2.2.3 Other:

(Insert provisions for bonus, shared savings, cost savings, or other incentives, if any, that might result in a change to the Contract Sum or Guaranteed Maximum Price)

ARTICLE B.3 INFORMATION UPON WHICH AMENDMENT IS BASED

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

§ B.3.1.1 The following Supplementary and other Conditions of the Agreement

Document	Title	Date	Pages
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§ B.3.1.2 The following Specifications

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

Section	Title	Date	Pages
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§ B.3.1.3 The following Drawings

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

Number	Title	Date
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§ B.3.1.4 The Sustainability Plan, if any

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

Title	Date	Pages
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Other identifying information:

§ B.3.1.5 Assumptions and clarifications, if any:

(Identify each assumption and clarification.)

§ B.3.1.6 Deviations from the Owner's Criteria as adjusted by a Modification

§ B.3.1.7 To the extent the Design-Builder shall be required to submit any Submittals to the Owner for review, indicate any such submissions below

(List any Submittals that the Design-Builder is required to submit to the Owner for review)

Submittals Anticipated

1. Roofing materials
2. Flooring materials

3. HVAC equipment
4. Paint colors and specifications
5. Lighting materials
6. Water and sewer pipe & valves
7. Miscellaneous electrical materials

ARTICLE B.4 DESIGN-BUILDER'S KEY PERSONNEL, CONSULTANTS, SUBCONTRACTORS, AND SUPPLIERS

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

(Identify name, title, and contact information)

- .1 Superintendent
- .2 Project Manager
- .3 Others

§ B.4.2 In addition to the persons or entities identified in the Agreement, the Design-Builder shall retain the following Consultants, Subcontractors, and suppliers, identified below

(List name, discipline, address, and other information.)

ARTICLE B.5 OWNER'S SEPARATE CONTRACTORS

§ B.5.1 The Owner shall retain the following Separate Contractors to perform construction or operations related to the Project

(List name, discipline, address, and other information for each Separate Contractor and identify the construction or operations to be performed by such Separate Contractor)

ARTICLE B.6 COST OF THE WORK

§ B.6.1 The term Cost of the Work shall mean costs necessarily incurred by the Design-Builder in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Section B 6 2

§ B.6.1.2 Where, pursuant to the Design-Build Documents, any cost is subject to the Owner's prior approval, the Design-Builder shall obtain such approval in writing prior to incurring the cost

§ B.6.1.3 Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the Owner

§ B 6 2 Cost to Be Reimbursed as Part of the Contract

§ B.6.2.1 Labor Costs

§ B.6.2.1.1 Wages or salaries of construction workers directly employed by the Design-Builder to perform the Construction Work at the site or, with the Owner's prior approval, at off-site workshops

§ B.6.2.1.2 Wages or salaries of the Design-Builder's supervisory and administrative personnel when stationed at the site and performing Construction Work, with the Owner's prior approval

§ B.6.2.1.3 Wages or salaries of the Design-Builder's supervisory and administrative personnel when performing Construction Work and stationed at a location other than the site, but only for that portion of time required for the Construction Work, and limited to the personnel and activities listed below:

(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Construction Work.)

§ B.6.2.1.4 Wages and salaries of the Design-Builder's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Construction Work, but only for that portion of their time required for the Construction Work

§ B.6.2.1.5 Costs paid or incurred by the Design-Builder, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations, and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Section B 6 2.1

§ B.6.2.1.6 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

§ B.6.2.2 Consultant and Subcontract Costs. Payments made by the Design-Builder to the Architect, Consultants, Subcontractors, and suppliers in accordance with the requirements of their subcontracts or similar agreements

§ B.6.2.3 Costs of Materials and Equipment Incorporated in the Completed Construction

§ B.6.2.3.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction

§ B.6.2.3.2 Costs of materials described in the preceding Section B 6 2 3 1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Construction Work or, at the Owner's option, shall be sold by the Design-Builder. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work

§ B.6.2.4 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ B.6.2.4.1 Costs of transportation, storage, installation, maintenance, dismantling, and removal of materials, supplies, temporary facilities, machinery, equipment, and costs of hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site and fully consumed in the performance of the Construction Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Design-Builder shall mean fair market value

§ B.6.2.4.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site, and costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Design-Builder, or a related party as defined in Section B 6 2.7 shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item

§ B.6.2.4.3 Costs of removal of debris from the site of the Construction Work and its proper and legal disposal

§ B.6.2.4.4 Costs of the Design-Builder's site office, including general office equipment and supplies

§ B.6.2.4.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, with the Owner's prior approval

§ B.6.2.5 Miscellaneous Costs

§ B.6.2.5.1 Premiums for that portion of insurance and bonds required by the Design-Build Documents that can be directly attributed to the Contract.

§ B.6.2.5.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Design-Build Documents, with the Owner's prior approval

§ B.6.2.5.1.2 Costs for insurance through a captive insurer owned or controlled by the Design-Builder, with the Owner's prior approval.

§ B.6.2.5.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Design-Builder is liable.

§ B.6.2.5.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Design-Builder is required by the Design-Build Documents to pay

§ B.6.2.5.4 Fees of laboratories for tests required by the Design-Build Documents, except those related to defective or nonconforming Construction Work for which reimbursement is excluded under Article 12 of the Agreement or by other provisions of the Design-Build Documents, and which do not fall within the scope of Section B 6 2 6 3

§ B.6.2.5.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Design-Build Documents

§ B.6.2.5.5.1 The cost of defending suits or claims for infringement of patent rights arising from Owner-imposed requirements in the Design-Build Documents, payments made in accordance with legal judgments against the Design-Builder resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Design-Builder had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Design-Builder failed to promptly furnish such information to the Owner as required by Article 3 of AIA Document A141-2024. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Design-Builder's Fee or subject to the Guaranteed Maximum Price

§ B.6.2.5.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval

§ B.6.2.5.7 Costs of document reproductions and delivery charges

§ B.6.2.5.8 Deposits lost for causes other than the Design-Builder's negligence or failure to fulfill a specific responsibility in the Design-Build Documents.

§ B.6.2.5.9 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Design-Builder, reasonably incurred by the Design-Builder after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld

§ B.6.2.5.10 Expenses incurred in accordance with the Design-Builder's standard written personnel policy for relocation and temporary living allowances of the Design-Builder's personnel required for the Work, with the Owner's prior approval

§ B.6.2.5.11 That portion of the reasonable expenses of the Design-Builder's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ B.6.2.6 Other Costs and Emergencies

§ B.6.2.6.1 Other costs incurred in the performance of the Work, with the Owner's prior approval

§ B.6.2.6.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A141-2024

§ B.6.2.6.3 Costs of repairing or correcting damaged or nonconforming Construction Work executed by the Design-Builder, Subcontractors, or suppliers, provided that such damaged or nonconforming Construction Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Design-Builder, and only to the extent that the cost of repair or correction is not recovered by the Design-Builder from insurance, sureties, Subcontractors, suppliers, or others

§ B.6.2.6.4 Costs of implementation of, and compliance with, protective safeguards that may be required under the Design-Builder's or Owner's builder's risk policy

§ B.6.2.7 Related Party Transactions

§ B.6.2.7.1 For purposes of this Section B 6 2 7, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or

other entity having common ownership of, or sharing common management with, the Design-Builder, (2) any entity in which any stockholder in, or management employee of, the Design-Builder holds an equity interest in excess of ten percent in the aggregate, (3) any entity which has the right to control the business or affairs of the Design-Builder, or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Design-Builder.

§ B.6.2.7.2 If any of the costs to be reimbursed arise from a transaction between the Design-Builder and a related party, the Design-Builder shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Design-Builder shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Section B 6 5. If the Owner fails to authorize the transaction in writing, the Design-Builder shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Section B 6 5.

§ B.6.3 Costs Not to Be Reimbursed as Part of this Contract

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

- .1 Salaries and other compensation of the Design-Builder's personnel stationed at the Design-Builder's principal office or offices other than the site office, except as specifically provided in Section B 6.2.1 or as may be provided elsewhere in the Agreement,
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Design-Builder or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Design-Builder's principal office and offices other than the site office,
- .4 Overhead and general expenses, except as may be expressly included in Section B 6.2,
- .5 The Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work;
- .6 Except as provided in Section B.6.2.6.3 of this Amendment, costs due to the negligence of, or failure to fulfill a specific responsibility of the Agreement by, the Design-Builder, Contractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable,
- .7 Any cost not specifically and expressly described in Section B 6.2, and
- .8 Costs, other than costs included in Modifications approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded

§ B.6.4 Discounts, Rebates, and Refunds

§ B.6.4.1 Cash discounts obtained on payments made by the Design-Builder shall accrue to the Owner if (1) before making the payment, the Design-Builder included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Design-Builder with which to make payments, otherwise, cash discounts shall accrue to the Design-Builder. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Design-Builder shall make provisions so that they can be obtained.

§ B.6.4.2 Amounts that accrue to the Owner in accordance with Section B 6.4.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ B.6.5 Other Agreements

§ B.6.5.1 Those portions of the Construction Work that the Design-Builder does not customarily perform with the Design-Builder's own personnel shall be performed under subcontracts or other appropriate agreements with the Design-Builder. The Owner may designate specific persons from whom, or entities from which, the Design-Builder shall obtain bids. The Design-Builder shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Construction Work, who are qualified to perform that portion of the Construction Work in accordance with the requirements of the Design-Build Documents. The Design-Builder shall deliver such bids to the Owner with an indication as to which bids the Design-Builder intends to accept. The Owner then has the right to review the Design-Builder's list of proposed Subcontractors and suppliers and, subject to Section 5.9.1.1 of the Agreement, to object to any Subcontractor or supplier. Any approval or objection by the Owner shall not relieve the Design-Builder of its responsibility to perform the Construction Work in accordance with the Design-Build Documents. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has reasonable objection.

§ B.6.5.1.1 When a specific Subcontractor or supplier (1) is recommended to the Owner by the Design-Builder; (2) is

qualified to perform that portion of the Construction Work, and (3) has submitted a bid that conforms to the requirements of the Design-Build Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Design-Builder may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Design-Builder and the amount of the Subcontract or other agreement actually signed with the person or entity designated by the Owner

§ B.6.5.2 Subcontracts or other agreements shall conform to the applicable payment provisions of the Design-Build Documents and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Design-Builder shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Design-Builder in this Amendment

§ B.6.6 Accounting Records

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

§ B.6.7 Relationship of the Parties

If the basis of payment to the Design-Builder is the Cost of the Work plus a Fee without a Guaranteed Maximum Price or the Cost of the Work plus a Fee with a Guaranteed Maximum Price, the Design-Builder accepts the relationship of trust and confidence established by the Agreement and covenants with the Owner to exercise the Design-Builder's skill and judgment in furthering the interests of the Owner, to furnish efficient business administration and supervision, to furnish at all times an adequate supply of workers and materials, and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Design-Builder and to make payments to the Design-Builder in accordance with the requirements of the Design-Build Documents.

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

OWNER (Signature)

BY: Steve Garrison, County Manager

(Printed name and title)



DESIGN-BUILDER (Signature)

BY: Susie Lewis, CEO

(Printed name and title)

Additions and Deletions Report for
AIA® Document A141® – 2024 Exhibit B

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 15:00:13 EDT on 06/11/2025.

Changes to original AIA text

PAGE 1

~~County of Rutherford~~

-

County of Rutherford

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Pre-Construction Services per Exhibit C \$115,600.00

Roof Allowance #1 \$ 75,000.00

Roof Allowance #2 \$125,000.00

Utility Allowance #3 \$25,000.00

Item	Price
Remove Existing Roof on former 6 th Grade Building at 289 Day Break Drive and Replace with 30 year Architectural Shingle	\$75,000.00
Remove Existing Roof on former Cafeteria building at 293 Day Break Drive down to vapor barrier, including gutter, downspouts and sheet metal trim. Replace with Tapered insulation 1.5" minimum thickness, install 0.060 TPO membrane fully adhered system, all flashings, 24 ga prefinished galvanized gutter, eave and downspouts	\$125,000.00
Utility work to separate water and gas from RCS systems	\$25,000.00

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

~~§ B.1.3.1 The Cost of the Work is as defined in Article B-6, Cost of the Work.~~

~~§ B.1.3.2 The Design-Builder's Fee~~

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

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

~~§ B.1.4.1 The Cost of the Work is as defined in Article B-6, Cost of the Work.~~

~~§ B.1.4.2 The Design-Builder's Fee~~

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

~~§ B.1.4.3 Guaranteed Maximum Price~~

~~§ B.1.4.3.1 The sum of the Cost of the Work and the Design-Builder's Fee is guaranteed by the Design-Builder not to exceed (\$), subject to additions and deductions by changes in the Work as provided in the Design-Build Documents. This maximum sum is referred to in the Design-Build Documents as the Guaranteed Maximum Price. The Guaranteed Maximum Price shall include all sales, consumer, use and similar taxes for the Work provided by the Design-Builder that are legally enacted, whether or not yet effective, at the time this Amendment is executed. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner.
(Insert specific provisions if the Design-Builder is to participate in any savings.)~~

~~§ B.1.4.3.2 Itemized Statement of the Guaranteed Maximum Price~~

~~Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the Design-Builder's Fee, and other items that comprise the Guaranteed Maximum Price, including Design Services to be performed after execution of the Design-Build Amendment and Early Release Work.~~

~~(Provide itemized statement below or reference an attachment.)~~

~~§ B.1.4.3.3 Alternates~~

~~§ B.1.4.3.3.1 Alternates, if any, included in the Guaranteed Maximum Price.~~

~~§ B.1.4.3.3.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Exhibit B. Upon acceptance, the Owner shall issue a Modification to the Agreement.
(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)~~

~~§ B.1.4.3.4 Unit prices, if any~~

~~(Identify the item and state the unit price and the quantity limitations, if any, to which the unit price will be applicable.)~~

~~§ B.1.4.3.5 Allowances, if any~~

~~(Identify each allowance.)~~

~~§ B.1.4.3.6 Assumptions and clarifications, if any, on which the Guaranteed Maximum Price is based.~~

(Identify each assumption and clarification.)

~~§ B.1.4.3.7 To the extent that the Design-Build Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Design-Build Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.~~

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

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

~~§ B.1.5.3.2 In accordance with AIA Document A141-2024, and subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:~~

~~§ B.1.5.3.2.1 The amount of each progress payment shall include:~~

- ~~1 The Cost of the Work as described in Article B.6;~~
- ~~2 That portion of Change Directives that the Owner determines to be reasonably justified; and~~
- ~~3 The Design-Builder's Fee computed upon the Cost of the Work described in Section B.1.5.3.2.1.1 at the rate stated in Section B.1.3.2, or if the Design-Builder's Fee is stated as a fixed sum in Section B.1.3.2 an amount which bears the same ratio to that fixed sum Fee as the Cost of the Work included in Section B.1.5.3.2.1.1 bears to a reasonable estimate of the probable Cost of the Work upon its completion.~~

~~§ B.1.5.3.2.2 The amount of each progress payment shall be reduced by:~~

- ~~1 The aggregate of any amounts previously paid by the Owner;~~
- ~~2 The amount, if any, for Work that remains uncorrected and for which the Owner has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A141-2024;~~
- ~~3 Any amount for which the Design-Builder does not intend to pay a Subcontractor, sub-subcontractor, or material supplier, unless the Work has been performed by others the Design-Builder intends to pay;~~
- ~~4 Any amount for which the Owner may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A141-2024;~~
- ~~5 The shortfall, if any, indicated by the Design-Builder in the documentation required by Section B.1.5.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and~~
- ~~6 Retainage withheld pursuant to Section B.1.5.3.3.~~

§ B.1.5.3.3 Retainage

~~§ B.1.5.3.3.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:
(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)~~

~~§ B.1.5.3.3.2 The following items are not subject to retainage:~~

~~(Insert any items not subject to the withholding of retainage such as Design Services, general conditions bonds, insurance, etc.)~~

~~§ B.1.5.3.3.3 Reduction or limitation of retainage, if any, shall be as follows:~~

~~(If the retainage established in Section B.1.5.3.3.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section B.1.5.3.3.4 insert provisions for such modification.)~~

~~§ B.1.5.3.3.4 Upon Substantial Completion of the Work, the Design-Builder may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment except as follows:
(Insert any conditions precedent to the release of all or a portion of the retainage, such as correction of the~~

~~Construction Work, consent of surety, etc.)~~

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

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

~~§ B.1.5.4.2 In accordance with AIA Document A141–2024, and subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:~~

~~§ B.1.5.4.3 The amount of each progress payment shall include:~~

- ~~1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;~~
- ~~2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;~~
- ~~3 That portion of Change Directives that the Owner determines to be reasonably justified; and~~
- ~~4 The Design Builder's Fee, computed upon the Cost of the Work described in Sections B.1.5.4.3.1 and B.1.5.4.3.2 at the rate stated in Section B.1.4.2 or, if the Design Builder's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed sum fee as the Cost of the Work included in Sections B.1.5.4.3.1 and B.1.5.4.3.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.~~

~~§ B.1.5.4.4 The amount of each progress payment shall be reduced by:~~

- ~~1 The aggregate of any amounts previously paid by the Owner;~~
- ~~2 The amount, if any, for Work that remains uncorrected and for which the Owner has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A141–2024;~~
- ~~3 Any amount for which the Design Builder does not intend to pay a Subcontractor, sub-subcontractor, or material supplier, unless the Work has been performed by others the Design Builder intends to pay;~~
- ~~4 Any amount for which the Owner may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A141–2024;~~
- ~~5 The shortfall, if any, indicated by the Subcontractor in the documentation required by Section B.1.5.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and~~
- ~~6 Retainage withheld pursuant to Section B.1.5.4.5.~~

~~§ B.1.5.4.5 Retainage~~

~~§ B.1.5.4.5.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:
(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)~~

~~§ B.1.5.4.5.2 The following items are not subject to retainage:~~

~~(Insert any items not subject to the withholding of retainage, such as Design Services, general conditions bonds, insurance, etc.)~~

~~§ B.1.5.4.5.3 Reduction or limitation of retainage, if any, shall be as follows:~~

~~(If the retainage established in Section B.1.5.4.5.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section B.1.5.4.5.4, insert provisions for such modification.)~~

~~§ B.1.5.4.5.4 Upon Substantial Completion of the Work, the Design Builder may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment, except as follows:~~

(Insert any conditions precedent to the release of all or a portion of the retainage, such as completion of the Construction Work, consent of surety, etc.)

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~~§ B.1.6.5.2 If the Contract Sum is based on the Cost of the Work, within 30 days of the Owner's receipt of the Design-Builder's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Design-Builder that it will not conduct an audit.~~

~~§ B.1.6.5.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Design-Builder.~~

~~§ B.1.6.5.2.2 Within seven days after receipt of the written report described in Section B-1.5.5.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section B-1.5.5.1 have been met, the Owner will either issue a final Certificate for Payment to the Design-Builder, or notify the Design-Builder in writing of the Owner's reasons for withholding a certificate. The time periods stated in this Section B-1.5.5.2.2 supersede those stated in Article 9 of AIA Document A141-2024. The Owner is not responsible for verifying the accuracy of the Design-Builder's final accounting.~~

~~§ B.1.6.5.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Design-Builder's final accounting, is less than the amount claimed by the Design-Builder, the Design-Builder shall be entitled to request mediation of the disputed amount pursuant to Article 15 of the AIA Document A141-2024, without seeking an initial resolution of the claim pursuant to Article 15 of AIA Document A141-2024. A request for mediation shall be made by the Design-Builder within 30 days after the Design-Builder's receipt of a copy of the Owner's final Certificate for Payment. Failure to request mediation within the 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Design-Builder. Pending a final resolution of the disputed amount, the Owner shall pay the Design-Builder the amount substantiated by the Owner's auditors within 30 days or such shorter period required by law.~~

Portion of Work

New shingle roof on former 6th grade bldg
New TPO roof on former cafeteria bldg

Substantial Completion Date

No later than August 15, 2025
No later than September 15, 2025

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§ B.3.1.7 To the extent the Design-Builder shall be required to submit any Submittals to the Owner for review, indicate any such submissions below

(List any Submittals that the Design-Builder is required to submit to the Owner for review.)

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Submittals Anticipated

1. Roofing materials
2. Flooring materials
3. HVAC equipment
4. Paint colors and specifications
5. Lighting materials
6. Water and sewer pipe & valves
7. Miscellaneous electrical materials

§ B.3.1.8 Owner's Intended BIM Uses

The Owner intends to utilize Building Information Modeling ("Model") on the Project for the following post-

~~construction uses. Any use in addition to those identified below shall be at the Owner's sole risk. (Examples include building system maintenance, building system analysis, asset management, space management, and tracking, disaster planning, and record modeling.)~~

~~§ B.3.1.8.1 The Owner agrees that the extent of its reliance on any Model, or a portion thereof, shall be in accordance with a BIM Execution Plan agreed to by the Parties. If the Parties do not agree to a BIM Execution Plan, the Owner's reliance on any Model shall be at the Owner's sole risk.~~

Variable Information

PAGE 1

This Amendment dated the 12th day of May in the year 2025 (the "Amendment") is incorporated into, and amends, AIA Document A141®-2024, Standard Form of Agreement Between Owner and Design-Builder for a Traditional Design-Build Project dated the 12th day of May in the year 2025 (the "Agreement")

Rutherford County Sheriff's Department Renovation

289 Day Break Drive
Rutherfordton, NC 28139

A Political Subdivision of the State of North Carolina
289 N. Main Street
Rutherfordton, NC 28139

Beam Construction Company, Inc.
A North Carolina corporation
601 E. Main Street
Cherryville, NC 28021-3416

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☒ [X] Stipulated Sum, in accordance with Section B.1.2 below

§ B.1.2.1 The Stipulated Sum shall be (\$ 340,600.00), subject to authorized adjustments as provided in the Design-Build Documents

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§ B.1.5.1.3 Provided that an Application for Payment is received not later than the 1st day of the month, the Owner shall make payment of the amount certified to the Design-Builder not later than the 15 day of the same month in which Application for Payment is received month. If an Application for Payment is received by the Owner after the application date fixed above, payment of the amount certified shall be made by the Owner not later than thirty (30) days after the Owner receives the Application for Payment

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5% of the progress payment

NOT APPLICABLE

When the project reaches Fifty (50%) completion, as established to the satisfaction of the owner in accordance with the most recent schedule of values, retainage shall be reduced to two and one half percent (2 ½%)

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When the project reaches Substantial Completion, retainage shall be reduced to one hundred fifty percent (150%) of the reasonable value of all remaining work to be completed, as determined by the Design-Builder and the Owner.

Certification of Document's Authenticity
AIA® Document D401™ – 2003

I, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 15:00:13 EDT on 06/11/2025 under Order No. 20240090459 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A141™ - 2024 Exhibit B, Design-Build Amendment, other than those additions and deletions shown in the associated Additions and Deletions Report

Susie Lewis

(Signed)

CEO

(Title)

6-16-25

(Dated)



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
6/16/2025

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER James A. Scott & Son dba Scott Insurance 521 East Morehead St., Ste 300 Charlotte NC 28202		CONTACT NAME Tambri Doby CIC PHONE (A/C No. Ext.) 704-644-8984 E-MAIL ADDRESS Idoby@scottins.com FAX (A/C No.) 434-455-8892	
INSURED Beam Construction Co. Inc. PO Box 129 Cherryville NC 28021		INSURER(S) AFFORDING COVERAGE INSURER A Travelers Property Casualty Company of America (A+) NAIC # 25674 INSURER B Zurich American Insurance Company (A+) 16535 INSURER C INSURER D INSURER E INSURER F	

COVERAGES

CERTIFICATE NUMBER: 680669416

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR	TYPE OF INSURANCE	ADDL	SUM	POLICY NUMBER	POLICY EFF	POLICY EXP	LIMITS
LTB		INSR	WVD		(MM/DD/YYYY)	(MM/DD/YYYY)	
B	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> GEN'L AGGREGATE LIMIT APPLIES PER <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC <input type="checkbox"/> OTHER			GLO 9282343-04	3/1/2025	3/1/2025	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$100,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS COMP/OP AGG \$2,000,000 \$
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			BAF 9282344-04	3/1/2025	3/1/2025	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$10,000			CUP-9T502885	3/1/2025	3/1/2025	EACH OCCURRENCE \$10,000,000 AGGREGATE \$10,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input checked="" type="checkbox"/> N	N/A	WC 9282342-04	3/1/2025	3/1/2025	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
A	Bldgs Risk Dedl. Applies - \$5,000			QT-660-5H612319	3/1/2025	3/1/2025	JRAFrame MNC/Renovation New MNC 2,500,000 10,000,000 31,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Certificate Holder is additional insured as respects General Liability for ongoing and completed operations and on a primary, non-contributory basis and auto liability if required by written contract. A waiver of subrogation as respects General Liability applies in favor of the certificate holder if required by written contract. 30-day notice of cancellation will be provided to the certificate holder except for nonpayment of premium on the General Liability policy.

CERTIFICATE HOLDER

County of Rutherford
A Political Subdivision of the State of North Caro
289 N Main Street
Rutherfordton NC 28139

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

[Signature]



Exhibit C

May 12, 2025

Aubrey Clay
County of Rutherford
272 North Toms Street
Rutherfordton, NC 28139

RE: Rutherford County Sheriff's Office Renovations - Pre-Construction and Design Services Fee Proposal and Scope - Exhibit C

Dear Aubrey,

BEAM Construction is pleased to provide this proposal for design and pre-construction services to Rutherford County for the Sheriff's Office Renovations. This proposal details the cost associated with getting the project to the construction phase. As provided with the contract information, this outlines the cost as part of the AIA-141 Design Build Agreement, once the design is complete and final budget determined the Construction Amendment would be executed to outline the final construction cost and construction schedule.

These are percentage-based fees based on the final construction contract, they are currently based on the \$1.4 Million dollar budget. Final fee cost would be adjusted in the Construction Amendment.

Rutherford County Sheriff

Design Fee	Total Project Budget	\$	1,400,000.00	
	Pre-Design Evaluations	\$	8,800.00	0.6%
	Programming	\$	5,600.00	0.4%
	Design Development	\$	32,300.00	2.3%
	Construction Drawings	\$	29,300.00	2.1%
	Bidding	\$	3,600.00	0.3%
	Interior Design	\$	1,000.00	0.1%
	Total Base Fee	\$	80,600.00	5.8%

Pre-Construction Services - BEAM Construction	\$	35,000.00	3%
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Total Pre-Construction Services	\$	115,600.00	8.3%
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Additional Supplemental Cost - To be Included in the Cost of Work

Initial Site Survey	\$	-	0.0%
Submittal Review/Const. Admin	\$	8,100.00	0.6%
Furnishings (Design)	\$	-	0.0%
Reimbursables Budget	\$	5,000.00	0.4%
Total Supplemental Fee	\$	13,100.00	0.9%

Scope of Work – Detailed Breakdown

Pre-Design

- Structural Evaluations
- Mechanical Evaluations
- Measure and draw existing Cafeteria building
- Draw Classroom building

Programming

- Staff Interviews
- Operational Requirements
- Space Needs Analysis
- Adjacency Requirements
- Publish Program for Review/Approval

Design Development

- Develop Preliminary Floor Plan based upon Program Requirements
- Scope Structural Modification Design – if required
- Floor Plan Definitions
- Reflected Ceiling Plan Layouts
- Site Plan Layout
- Utility Layout
- Scope of Demolition
- Furnishings Layout
- Identify Building Materials
- Identify Interior Finish Materials
- Building System Selections/Layout
 - Structural
 - HVAC
 - Electrical
- Budget Validation

○ Construction Drawings

- Detail Construction Drawings
 - Architectural
 - Interior Finishes
 - Structural
 - HVAC
 - Electrical
- Complete Product, Material, & System Specifications for Construction on the drawings
- Finishes/Doors/Frames/Hardware
- Submit Construction Drawings for Permit Review

○ Bidding

- Comprehensive Budget Review
- Respond to Sub-Contractor Questions
- Publish Addenda and Drawing Revisions
- Drawing/Specification Clarifications

- Interior Design
 - Identify Interior Finishes
 - Specify Interior Finishes
 - Develop Color Schemes for Interior Finishes
 - Prepare Color Boards for Owner Approval
- Pre-Construction Services - BEAM
 - Drawing coordination reviews
 - Design constructability reviews
 - Coordinate with Utility providers for new taps and tie-ins
 - Coordinate with Structural Engineer for existing conditions survey
 - Budget pricing
 - Initial Budget
 - Review/Scope Roof Replacement & Quote
 - Design Development Budget
 - Final Budget
 - Alternate Pricing – Quoting options
 - Subcontractor pre-qualification
 - Site coordination – Existing Conditions review
- Initial Site Survey – Provided by Owner
 - Property Boundaries
 - Full Site Topography
 - Streets
 - Utilities
 - Structures
 - Identify Existing Conditions
- Reimbursables – As Required
 - Printing, reproductions, plots, standard form documents.
 - Outside consultant work not included above – including Asbestos Survey and Hazardous Material Removal.
 - Architect, Consultant Mileage
 - Fees for Authority Having Jurisdiction
 - Legal Advertising
 - Expense of overtime work if authorized in advance by the owner.

If you have any questions at all, we are available to meet and discuss in further detail the specifics of each area of scope or cost associated.

We appreciate the opportunity to provide this proposal and look forward to working with you and the town on this project.

Thank you.

Sincerely,
BEAM Construction Company, Inc.

Susie Lewis, CEO

Request for Qualifications – Rutherford County Sheriff's Office Center Renovation



Rutherford County Planning/Maintenance Department
272 N. Toms Street Rutherfordton, NC 28139
828.287.6052 |

www.rutherfordcountync.gov

Request for Qualifications

Issued: November 22, 2024

Rutherford County Sheriff's Office Center Renovation

Pursuant to N.C. Statute Sec. 143-128.1.A., the County of Rutherford is soliciting proposals from qualified design-build teams interested in providing professional design and construction services for the renovation of the former RS Middle 6th Grade building and cafeteria building located at 289 Day Break Drive. Rutherfordton, NC 28139. This RFQ provides complete information on the services being sought, the submittal requirements and timeline.

The complete Request for Qualifications (RFQ) may be viewed at <http://www.rutherfordcountync.gov> . Copies may be downloaded directly from this site which is the only official source for this document. Acquiring from a different source could mean that this document has been superseded by a later version. The County is not responsible for any reader's failure to heed this notice.

Sealed proposals must be received by 4:00PM on February 3, 2024

Late qualifications, amendments and/or responses received after the time and date listed above shall not be considered for evaluation and will be returned to the Respondent unopened.

Rutherford County reserves the right to reject any and all submittals. This RFQ does not obligate the County to pay any cost incurred by respondents in the preparation and submission of a response nor does it obligate the County to accept or contract for any expressed or implied services.

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**SECTION ONE-
DEFINITIONS**

1.01 Definitions of Terms in RFQ

Unless the context suggests otherwise, the terms "Firm/team", "Contractor", "Proposer", "Bidder", "Submitter", "Consultant", or "Vendor" as used in this RFQ (whether capitalized or not) shall refer to the same legal entity that submits qualifications and is responsible for responding to this RFQ.

Whenever the term "County" is used, it means the County of Rutherford, North Carolina.

Similarly, unless the context suggests otherwise, the terms "Bid", "Qualification", or "Bid/Qualification" shall refer to the formal response given to this RFQ by the submitting entity incorporating all required elements of this RFQ necessary for the County to determine whether the submitting entity is a responsible, responsive Firm/team.

Whenever the term "RFQ," is used, the reference is to this Request for Qualifications or portions thereof, together with any exhibits, attachments, or addenda it may contain.

1.01.1. Whenever the terms "shall," "will," "must," or "is required" are used in the RFQ, the referenced task is a mandatory requirement of this RFQ. Failure to meet any mandatory requirement will be cause for rejection of a submittal.

1.01.2 Whenever the terms "can," "may," or "should" are used in the RFQ, the referenced specification is discretionary. Therefore, though the failure to provide any items so termed will not be cause for rejection, the Selection Committee may consider such failure in evaluating the quality of the submittal.

1.01.3 Whenever the terms "apparent successful" or "top-ranked" or "highest ranking" firm/company or offeror are used in this document, the reference is to the firm that the Selection Committee ultimately judges to have submitted the case best satisfying the needs of the Owner in accordance with the RFQ. The selection of an apparent successful firm/company does not necessarily mean the Selection Committee accepts all aspects of the firm's submittal or proposal.

1.01.4 Whenever the term "submittal" is used in the RFQ, the reference is to the response offered by a firm, person or corporation in accordance with the RFQ. The submittal responds only to the RFQ.

1.01.5 Whenever the term "Selection Committee" or "Review Committee" is used in the RFQ, the reference is to the Owner's representatives responsible for administering and conducting the evaluation and selection process of the RFQ.

1.01.6 "Design-Build" refers to the construction project delivery method in which, among other things, the Owner holds a single contract with a business entity that has responsibility both to design and to construct a project, and that holds the trade contracts.

1.01.7 "Lead Design-Builder" refers to the design-build team member that will contract with the Owner for all work and holds all responsibility of project success, performance, and completion.

1.01.8 "Design Professional" (an inclusive term for all licensed building professionals), "Architect of Record," an/or "Engineer of Record" all refer to the project's architect(s) and/or engineer(s), whose responsibilities generally include programming, design, code compliance, and detailing of the facility. Under the Design-Build delivery methodology, the Design Professional is an integral part of the

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Design-Builder entity under single contract with the Owner. These entities also operate under legal definitions of the State of North Carolina with statutory liability and responsibility.

1.01.9 “Building Commissioning” refers to a formal and systematic process of documentation, adjustment, testing, verification, and training, focused on quality assurance and performed specifically to ensure that the finished facility operates in accordance with the Owner’s documented project requirements and the construction documents.

1.01.10 “Commissioning Provider” refers to the entity or person providing building commissioning services for a project.

1.01.11 “Owner’s Criteria” is a written document that details the specific and functional requirements of a project, sustainable objectives and the expectations of how the project will be used and operated.

1.01.12 “Qualifications Submittal” and “Initial Written Submittal” both refer to a firm’s response to the RFQ.

1.01.13 “Qualifications-Based Selection” and “QBS” both refer to a procurement process for the selection of professional construction services for public projects. It is a competitive contract procurement process whereby consulting firms submit qualifications to a procuring entity (Owner) who evaluates and selects the most qualified firm, and then negotiates the project scope of work, schedule, budget, and price.

1.01.14 “Firm” shall be interpreted as referencing the design entity, the construction entity, or the combined (e.g., joint venture) entity, as is reasonable.

1.01.15 “Fixed Fee” shall be proposed by the Design Builder and shall be defined as a specific dollar amount (stated as a lump sum) and agreed upon by all parties at the time of Contract Negotiation. This fee shall not be a percentage of the cost of the work.

*****End of Section One*****

**SECTION TWO-
BACKGROUND INFORMATION**

2.01 Project Background, Goals and Objectives

The Rutherford County's Sheriff's Office will be relocating to the former RS Middle 6th Grade building and cafeteria located at 289 Day Break Drive, Rutherfordton NC 28139. This project is in support of the renovation that will be taking place at the Rutherford County Detention Center. It will be critical for this project to move quickly in order to begin construction at the Rutherford County Detention Center.

Currently, the multiple departments that make up the Sheriff's Office are scattered across the County, the goal of this project is to consolidate and to have all the departments that make up the Sheriff's office under one roof. This project will include two buildings, the 6th grade building and the cafeteria.

The 6th grade building will be converted to office space, while the cafeteria will be converted to a secure storage facility. The 6th grade building is an approximate 18,000 square foot facility. The intent is to utilize the classroom layout for the different departments within the Sheriff's office, with the construction of partition walls. This portion of the project will also include: a secure entrance/lobby, new flooring, paint throughout, restroom fixture replacement, HVAC system upgrade, new roof, and fencing.

The cafeteria will be converted to secure storage. This portion of the project will include: secure entrance/lobby, partition walls, blocking up/securing windows, HVAC system upgrade, and roof evaluation/possible replacement.

With the design and construction of the renovated Rutherford County Sheriff's Office Center the County has the following goals:

1. Incorporates the necessary program elements to prepare, operate, house, the Sheriff's Office.
2. Complete the project in a timely manner without undue delays and within the County's funding resources available for the project.
3. In new construction, incorporate high performance, energy efficient HVAC, plumbing, electrical, exhaust, mechanical, security and fire alarm systems and controls that will allow all staff to work in a safe, comfortable, operational facility.
4. Design a facility that is practical, functional and meets the Rutherford County Sheriff's Office.
5. Design and construct a facility that responds to the County's available maintenance resources and long-term maintenance funding by minimizing operating and maintenance cost, maximizing energy efficiency and utilizing materials that will prolong the life of the facility.

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6. The County of Rutherford intends to utilize best commercial practices to accomplish the goals of this project, expects the Design-Builder to proactively address risks and challenges in the process and participate in improvement activities to achieve project success. The County also expects to work with the Design-Builder to devise and implement appropriate processes for this project that will maximize efficiency, overall quality and cost savings.

End of Section Two

**SECTION THREE-
SCOPE OF WORK**

3.01 Purpose of the RFQ and Lead Design-Builder Responsibilities

The County of Rutherford is soliciting Qualifications for Design-Build project delivery services for a renovated Sheriff's Office and secure storage.

The lead Design-Builder will be expected to provide concurrent design and construction turnkey activities for this project resulting in a finished, fully usable facility that satisfies all project requirements and contract terms. The Design-Builder, as the sole responsible source for total project compliance and construction related performance (including architectural programming, design, and construction services) will hold all design professionals, testing services, trade contractors and trade supplier contracts.

3.02 Location of the Project

The location of the work is the Old RS Middle School 6th Grade Building and the cafeteria building, 289 Day Break Drive., Rutherfordton, North Carolina, 28139

3.03 Scope of Work

The following is a preliminary scope of work that may be modified during contract negotiations with the selected Design-Build Team.

Site Inventory and Evaluation of Owner's Criteria Confirmation

1. Site investigations, including survey, subsurface utility investigations, geotechnical investigations, environmental engineering, to verify existing conditions if necessary.
2. Preliminary evaluation of proposed site use, material selection, building systems and equipment and provide recommendations on constructability, time, labor and scheduling factors related to project cost.
3. Prepare written report summarizing Owner's Criteria.

Schematic / Preliminary Design (SD)

1. Prepare site, architectural, structural, mechanical, plumbing and electrical schematic design plans based on Criteria document and prototype information for County staff consideration.
2. SD Phase plans and Preliminary Design report will minimally include:
 - a. Site Development and Design criteria including site access, easements, circulation and vehicular access, setback requirements, area of safe refuge, parking areas, general landscape concept, lighting areas, utility routing and connections and storm water measure locations.
 - b. Building Design information including: reconfirming building prototype program and design intent, space requirements and planning criteria, preliminary selection of building systems and materials, utility load review, code compliance, security plan expectations, building

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system integration with storm water plans and outline specification to integrate systems, products and procedures for architectural, civil and landscape.

3. Develop preliminary estimate of construction cost setting forth in detail quantities of materials, labor, profit, overhead, insurance etc. for the project including all site work.
4. Attend owner and user meetings to coordinate and resolve value engineering, constructability, construction phasing and scheduling issues in the preliminary design.
5. Prepare Preliminary Design Report (PDR) confirming design criteria, agreed upon program elements, alternative schemes, recommended scheme with construction phasing options and cost model.
6. Develop Design-Builders Proposal detailing contract sum, estimated trade costs, proposed date of substantial completion and list of key Design-Build personnel and suppliers.
7. Conduct regular, monthly design meetings.
8. Update the design schedule.
9. Present to required departments/agencies for review; Responsible for all State, County, and City permit applications and approvals.

Design Development (DD)

1. Based on the approved SD plans, satisfactorily resolve all review comments from prior design phases and further refine the design to include the following revised and additional information:
 - a. Site Design: demolition and clearing plans, grading and drainage plans, sedimentation and erosion control plans, layout and staking plans, elevations and sections, construction details, lighting and signage, planting plans and details.
 - b. Building Design: review and confirm building plan configuration and elevation elements including exterior building skin materials and colors, foundation, roof and structural systems, building fenestration and openings, overall dimensions, materials testing requirements, review MEP design including systems, equipment and calculations, prepare energy and performance modeling, review and coordinate systems integration to include all utilities and controls and submittals.
2. Expand outline specification to Design Development level and integrate systems, controls, products and procedures for architectural, civil and landscape
3. Conduct regular, monthly design meetings.
4. Review and confirm total original budget from Schematic Design phase review. Review any proposed value engineering items, final strategy and reconcile variances.
5. Review, update and confirm project schedule.
6. Attend owner and user meetings to coordinate and resolve value engineering, constructability, construction phasing and scheduling issues in the preliminary design.

Permitting, Reviews and Approvals

1. Review and / or present design concepts to the Rutherford County Planning Department and any other regulatory agencies whose approval is necessary for the development of the site.
2. Submit plans and applications to regulatory agencies
3. Secure approvals from all other local and state agencies as required for the site development.
4. Coordinate the construction or relocation of privately owned utilities if necessary.
5. Attend meetings as necessary for all approvals. Provide responses and modifications to regulatory comments.

Construction Documents (CD)

1. Based on the approved DD plans, satisfactorily resolve all review comments from prior design phases and prepare and finalize all construction drawings and specifications to minimally

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include: building systems, site utilities and components that will form the basis for the project's Construction Documents sufficiently complete to support the prepared budget and obtain necessary permits and construct the project.

2. Documents produced in digital format: AutoCAD or Building Information Modeling (BIM) software.
3. Prepare a construction documents level cost estimate and updated project schedule; reconcile cost estimate with construction estimate.
4. Incorporate bid alternates as necessitated by the project budget.
5. Conduct regular, monthly design meetings.

Construction Administration

1. Provide construction administration and observation associated with the site improvements including a preconstruction conference, weekly site observation and meetings for processing pay requests.
2. Provide interpretations of prepared drawings and specifications, shop drawing review and approval as well as preparation of change orders and construction change directives.

Construction

1. Site work to include but not be limited to:
 - a. Clearing and rough grading with excess dirt and material removed from the site. Erosion control measures to be immediately put into place.
 - b. Site utilities including fire line and domestic water, sewer, natural gas and electrical service and site lighting.
 - c. Concrete paving, walkways, utilities, landscaping and storm water retention system.
2. Building construction to include but not be limited to:
 - a. Concrete slab on grade foundations with reinforced concrete footings
 - b. Exterior bearing walls consisting of reinforced and grouted CMU walls and metal stud framing with brick veneer to match the design of the previous additions.
 - c. Roof structure, corrugated metal deck and standing seam metal roof with matching fascia, rakes gutters and downspouts to match the existing.
 - d. Interior and exterior signage.
 - e. Mechanical and electrical systems and controls.

Post Construction Phase/Deliverables

1. Prepare as-built documents based on information received from the contractor in such other format as the owner requires.
2. Prepare a Facility Maintenance Plan in a format selected by Owner.
3. Assist in project closeout, establishment of warranties and guaranties.
4. Present to required departments/agencies for review; Responsible for all State, County, and City permit applications and approvals.

3.04 Project Budget

The County estimates an approximate construction budget of **\$1.4 million** dollars for completion of this project including all costs and fees. Total costs include construction related expenses; architectural

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programming, design and construction related services; testing services; public jurisdiction fees and charges; permits; and other building related professional service fees necessary to fully complete the project.

3.05 Anticipated Schedule

The County reserves the right to make adjustments to this schedule as necessary.

Preliminary Project Schedule:	Date	Time
Issue/Advertise RFQ	November 22, 2024	
Deadline for submission of Statement of Qualifications	February 3, 2025	4:00 p.m.
Owner completes qualification evaluation to establish a shortlist of firms remaining. Owner notifies shortlisted firms and schedules interviews (if required.)	February 10, 2025	
Complete interviews of short-listed firms	March 3, 2025	
Notify selected Design-Build firm, begin contract negotiations	March 5, 2025	
Complete contract negotiations with selected firm	March 24, 2025	
Board of Commissioners award of contract	April 7, 2025	
Notice to Proceed	April 2025	
Project Completion – 6 th Grade Building	November, 2025	
Project Completion – Secure Storage	January 2026	

3.06 Pre-Construction Project Planning

The Design-Builder, as a part of its design and its preconstruction services, will assist with developing a strategy for the best approach for the successful completion of the project including guidance and assistance in the preparation of a schedule and a reliable, preliminary cost estimate along with evaluations of any value engineering measures. At an appropriate point during the project the Owner will ask the Design-Builder to commit to a guaranteed maximum price (GMP) for all its design and construction services. A contract amendment will be executed once the Design-Builder is able to establish a GMP to include construction costs.

3.07 Project Delivery and Objectives

At all times and project stages the Design-Builder shall act in the best interests of the Owner and use their best efforts to deliver the project in an expeditious and cost-effective manner consistent with the Owner's project requirements, time constraints and budget. The Design-Builder shall develop a contractually obligated overall project schedule and will be responsible for methods of construction, safety, scheduling and coordination of all construction work in addition to miscellaneous contracts required for completion of the project within its predetermined budget limits and schedule.

The Owner expects all parties to this project to work closely together and deal appropriately with project conditions to finish the job successfully. **A spirit of cooperation, collaboration and a commitment among professional design and construction services providers to work in the best interests of the project as well as cost effectiveness are of the utmost importance.**

End of Section Three

SECTION FOUR-
DESIGN-BUILDER EVALUATION AND SELECTION CRITERIA

4.01 Design-Build Team Experience Requirements and Capabilities

Responders should identify their Team's experience with public or privately bid public safety and law enforcement facility design-build projects and specifically describe those projects that best characterize the proposers' capabilities including work quality and cost control measures. These projects must have included the completion of construction drawings, technical specifications and construction estimates that led to a complete constructed project currently in operation. Completed public sector projects and experience with the public bidding process is preferred.

At a minimum, successful submittals shall demonstrate experience and technical competence with the following requirements:

1. Responsively and successfully designing to a user compliant program employing a prototype basis of design.
2. Demonstrated history of successful collaboration constructing complex facilities utilizing a Design-build methodology.
3. Obtaining permits through a public entity's permitting processes and/or Inspections/Building Permit Department.
4. Incorporating energy efficient building practices where cost effective.
5. Effectively providing contract and construction administration services utilizing effective team communication and working methods.

4.02 Project Team Selection

Each design-builder shall submit in its response to this Request for Qualifications an explanation of its project team selection, which shall consist of either of a list of the licensed contractors, licensed subcontractors, and licensed design professionals whom the design-builder proposes to use for the project's design and construction.

By submitting a Statement of Qualification, the Responder certifies to the County that each licensed design professional who is a of the design-build team, including subconsultants, was selected based upon demonstrated competence and qualifications in the manner provided in N.C. Gen. Stat. 143-64.31.

4.03 Design-Build Team Minimum Qualifications

Firms must meet the criteria in the bullet points immediately below. Firms that do not meet these criteria are automatically disqualified.

1. Firm's "Designer(s) of Record" MUST have a current North Carolina Architectural and/or Engineering license(s) as appropriate for their portion of the design work.
2. Firm's "Builder" MUST have a current North Carolina Contractor's license with an unlimited building classification.
3. Lead Design-Build firm MUST have bonding capacity to provide a Labor and Material Payment and Performance bonds with coverage each equal to the total cost of the project.
4. Lead Design-Build firm MUST be able to get a Builder's Risk Insurance Policy for this project with coverage equal to the total cost of the project.
5. Lead Design-Build firm MUST agree to keep and maintain insurance for the duration of this Agreement including but not limited to commercial general liability, automobile liability, workers' compensation, professional liability, and umbrella coverage with at least the minimum limits

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shown below. The Contractor shall furnish the County with certificates of insurance for each type of insurance described herein. The Owner reserves the right to negotiate different limits and coverage in the final contract.)

Commercial General Liability:	\$2,000,000 per occurrence
Commercial Auto Liability:	\$2,000,000 combined single limit
Excess (Umbrella) Liability:	\$1,000,000
Workers' Compensation:	Statutory

Professional Liability (Errors & Omissions) coverage for Architect of Record and Engineer(s) of Record shall provide coverage not less than \$1 million per claim. (The Owner reserves the right to negotiate different limits and coverage in the final contract.)

All insurance companies must be authorized to do business in North Carolina with a Best rating A-VIII or higher.

4.04 Statement of Qualifications (SOQ) Evaluation Criteria and Scoring (100 Total Points)

Submitting Design-Build Teams' responses to this RFQ will be evaluated and ranked by an RFQ Evaluation Team comprised of County of Rutherford employees appointed to assess submitted qualifications. Each submitter will be evaluated and short-listed based on their SOQ score (100 points maximum) as determined through the qualification review process and criteria noted in this section.

Design-Build Team Experience and Qualifications - 25 Points

Points for this criterion will be awarded based on an evaluation of the qualifications and experience of the proposed lead Design-Builder and Design-Builder's General Contractor/Builder (if a different entity.) Evaluation criteria will focus on the submittals' clear identification of each proposed Firm/Company, the expertise each will bring to the Design-Build process, their track record with 'on-time and on budget' projects and achieving acceptable levels of quality, any current, pending or past project legal matters or litigation and submitting Firm/Company professional reputation credentials.

Proposed Design & Engineering Professionals' Experience and Qualifications - 25 Points

Evaluation points for this criterion will be awarded based on the qualifications, experience and demonstrated availability of the proposed Project Personnel. Responses should have identified each key individual, their experience with the overall Design-Build process (including specific experience with the team's lead General Contractor) as well as experience with similar projects. Also of importance are individuals' litigation and/or arbitration records and the design/engineering professionals'/firms' reputation, references and referrals. Submittals should also have included a listing of other firms proposed Personnel have worked for along with specific project phases, tasks and activities they are expected to contribute to this project.

Project Understanding and Approach - 20 Points

This criterion will award points for the Firm/team's understanding of the goals and objectives for the project and their proposed methodology for meeting those goals and objectives. Firm/teams must have provided a comprehensive narrative statement illustrating their clear and concise understanding of the requirements of the project, potential issues (and proposed solutions) and a preliminary overall project schedule.

The Team should also have clearly addressed their approach to dealing with key tasks, activities and issues (including the permitting process) required to complete each project phase including deliverables, proposed construction schedule and project coordination issues.

Statement of WHY the Design-Build Team should be selected- 20 Points

Points for this criterion will be awarded based on an evaluation of the Design-Builder's statement indicating why they should be selected, which should illustrate specific professional capacities or

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unique qualifications relating to this project that differentiates the Design-Builder from other qualified submitters.

Deliverable Quality, Project Schedule and Safety Controls - 5 Points

Points for this criterion will be awarded based on the Firm/team's proposed approach to project controls including milestone scheduling, quality control and management for deliverables and the design and construction processes and submitted cost budgets and safety plans.

SOQ Quality and Responsiveness – 5 Points

Points for this criterion will be awarded based on the extent to which the RFQ instructions were followed and qualities including accuracy, responsiveness, organization, clarity and completeness of the submitted Statement of Qualifications. Respondents are encouraged to prepare high quality documents that make it clear to the Evaluation Team what value their Firm/team/Products have to offer the County.

4.05 Clarifying Qualification During Evaluation

During the evaluation process, the County has the right to require any clarification it needs in order to understand the Firm/team's view and approach to the project and scope of the work. Any clarifications to the Qualification made before executing the contract will become part of the final Firm/team contract.

4.06 Short List Ranking

After evaluating the responses to this RFQ, the County will rank the most highly qualified candidates for ranking and these short-listed teams may be asked to interview to help determine final ranking.

4.05 Interviews of Short-listed Firms/Teams

Prior to ranking the short-listed Firms/Teams for final selection, the County may elect to interview those short-listed teams. The purpose of this interview will be to meet the proposed Project team (if applicable), become familiar with key personnel and/or with the selection strategy proposed by the submitter and to understand the Firm/team's project approach and ability to meet stated objectives for the project. Short Listed Firms/Teams should be prepared to discuss with specificity their capacity to conduct this work in compliance with the project timeframe, budget and good-faith obligations. The County will notify each short-listed firm to schedule individual times for the interviews.

4.05 Design-Build Firm/team Final Selection

After making final Team selection and taking into consideration quality, performance, cost-effectiveness and the time specified in the Qualifications for performance of the contract [G.S. 143-129 (b)] the County will begin contract negotiations with the selected responsible, responsive Firm/team. If successful, the Firm/team and County will enter into a design-build professional services contract for the work.

All respondents are considered fully informed as to intentions of County regarding the timeframe to prepare and complete contract negotiations. Respondents should be prepared to provide a detailed, written Proposal to include scope of work, staffing plans, action plan, CPM Schedule and fee proposal during negotiations.

The County may withdraw this RFQ, reject qualifications or any portion thereof at any time prior to an award, and is not required to furnish a statement of the reason why a particular qualification was not deemed to be the most advantageous to the County.

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4.06 E-Verify Compliance

The design-build contract will require that the design-build team and its subcontractors comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (NCGS) consistent with state law requirements for municipal contracts.

4.07 Iran Divestment Act Certification

The design-build contract will require that the design-build team and its subcontractors comply with the requirements NC General Statutes 147-86.58.

4.08 Companies Boycotting Israel Divestment Act Certification

The design-build contract will require that the design-build team and its subcontractors comply with the requirements NC General Statutes 147-86.81.

End of Section Four

SECTION FIVE
QUALIFICATIONS SUBMITTAL REQUIREMENTS AND FORMAT

5.01 Physical Submittal: Department Contact, Deadline for Receipt of Qualifications, Format

Submitters must submit four (4) total copies of their written Qualification in a sealed package (including one (1) unbound original suitable for photocopying) to the Rutherford County Administration Office, located at 289 N. Main St. Rutherfordton NC 28139 by the submission deadline noted in this RFQ. The name and address of the submitter should appear on the outside of the submittals and the package should include the RFQ title and reference the project; i.e. "RFQ for Design-Build Services for Rutherford County Sheriff's Office Center Renovation."

5.01.1 Each submittal copy shall be identical in content. Submitters shall follow in their responses the checklist outlined in this RFQ. Responses should be concise, clear, and relevant. Submitter's cost incurred in responding to this RFQ is the submitter's alone and the Owner does not accept liability for any such costs. The Owner will not and shall not be required to return any item submitted.

5.01.2 In order for the County to evaluate Qualifications fairly and completely, Firm/teams should concisely follow the format set out herein and provide all of the information requested:

- a. SOQ's shall be bound, numbered consecutively, double-sided, on 8-1/2" x 11" sheets with maximum of 30 pages {not including the coversheet, back cover, cover letter, Table of Contents, resumes and other County required attachments.
- b. Up to a maximum of two (2) sheets may be 11" x 17" for schedules or other information necessary to depict the proposed project approach/action plan.

5.02 Statement of Qualifications Provisions

The Owner intends to limit the cost that submitters incur to respond to this solicitation, therefore, submitters are encouraged to be brief and succinct. Thick volumes of background and general marketing material are not desired. Instead, submitters should highlight their responsiveness to the evaluation criteria. If multiple firms are proposed as one team, each component firm should describe its own relevant qualifications within the same submittal.

5.03 Minimum Number of Responses

In order to consider proposals the County must receive at least three (3) responses to its RFQ. If the County receives fewer than three (3) responses, it will re-advertise the RFQ in accordance with General Statute requirements. After the second solicitation, the County may consider proposals even if three (3) are not received and will follow the same procedures used for the initial solicitation.

The County will be intentional in its efforts to be fair and equitable in its dealings with all candidates for selection. If, however, the County should determine that none of the Design-Build teams submitting are advantageous to the County of Rutherford, **the County reserves the right to accept or reject any or all Statement(s) of Qualifications with or without cause.** Issuance of this Request for Qualifications does not commit the County of Rutherford to award a contract, to pay any costs incurred in preparation of a proposal or to procure or contract for related services or supplies.

End of Section Five

SECTION SIX -
CHECKLIST FOR QUALIFICATIONS SUBMISSION

6.01 Required Statement of Qualifications (SOQ) Items

Submitters must include the following mandatory checklist items (1) as part of their SOQ:

1 **Cover Letter** – 1 page

Qualifications must include a Cover Letter with the complete name and address of the prime firm/company and the name, mailing address, and telephone number of the person the County should contact regarding the qualifications. If there are multiple firms proposed as one team, each firm must describe itself accordingly in the RFQ submittal. **Indicate on the first page of the submittal which firm company is the lead Design-Builder.**

1 **Table of Contents** – 1-2 pages

Must include corresponding tabs/dividers in the body of the submittal to identify each section. Placing multiple tabs on a single page is perfectly acceptable. If more than one item in the table of contents can be started on the same page then place all corresponding tabs on that page.

1 **Executive Summary** – 1 page

A brief narrative statement of understanding of the scope of work, key challenges and the submitter's overall vision and approach for the successful development of a high quality project consistent with the minimum criteria requirements outlines in this RFQ.

1 **Project Background and Understanding** – 1 page

Include a brief description of the Firm/team's knowledge of the project background and context.

1 **Project Approach and Action Plan** – 2-3 pages

Provide a detailed statement of the firm/team's proposed approach and action plan to successfully complete the work. The firm/team's plan of action should include both functional and personnel organization which indicates the Firm/team's specific approach to accomplishing the project scope. Describe the challenges anticipated for performing the requested services that may impact the scope, schedule or budget and the proposed solutions to address these concerns. Include references where such solutions were utilized in the past.

1 **Firm/team Qualifications and Experience** – 4-6 pages

Section shall include a brief description and history for each firm/company on the proposed team including number of years the firm/company has been in business and its growth history, experience in projects with the County of Rutherford and any past or current experience with the proposed Design-Build team. Indicate:

1. Company / Firm name.
2. Physical address- and if different, mailing address & zip code.
3. E-mail address and name of primary contact at each company/firm.
4. Main telephone number and direct telephone number for contacts.

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5. Number of years in business for each company/firm.
6. Form of firm/company ownership including state of residency or incorporation. Include description of the submitter/s company structure: i.e. sole proprietorship, partnership, corporation, Limited Liability Company (LLC), joint venture or other structure.
7. Also briefly describe projects that your firm/company has completed in the past five (5) years that also required design-build services and were valued at or above \$3,000,000. Also briefly describe the largest project your firm/company has completed within the past five (5) years and indicate the delivery method used on that largest project. These projects may also be described in further detail in related experience section. (See following section below for additional information.)
8. List any active or pending litigation with owners, subcontractors and other construction-related entities and explain. List and briefly describe any and all legal actions for the past three (3) years in which respondent has been a debtor in bankruptcy, a defendant in a lawsuit for deficient performance under a contract or agreement; a respondent in an administrative action for deficient performance, or a defendant in a criminal action.
Failure to fully comply with this item will be grounds for elimination from the RFQ process.
9. Has the firm/company ever failed to complete any work awarded to it or has it been removed from any project awarded to the firm? If so, explain.

1 Related Design-Build Project Experience – 3 pages

Provide 1/2 page descriptions for five (5) reference projects for which the firm/team has provided professional design and construction services of a nature, quality, size and scope specifically similar to those required in this RFQ. Include:

1. Name of the organization to which services were provided.
2. Project location.
3. Start and complete dates during which services were performed.
4. Brief description of the project.
5. Cost description (which at a minimum must include: original project budget, final project cost and an explanation of any difference in original and final costs if applicable, construction value, fee for professional services)
6. Proposed team members that worked on the projects including their title and role on that project.
7. Identification of a current contact reference including organizational title, address, telephone numbers and e-mail address for each project.
8. List five (5) major trade contractor references (5 total not 5 per project.) Include company name, contact name, e-mail address and telephone number.

1 Proposed Personnel – 6-8 pages

Provide general information about personnel capability and a list of qualified and available staff and resources including classifications, numbers of employees, respondent's ability to provide sufficient qualified personnel to this project upon award, the locations and staffing of relevant offices and an organizational chart of staff including the percentage of time they will be assigned to the project. Describe specific roles and responsibilities identifying experience and ability for key personnel and the intended interface between the design-build team, County staff and any other potential consultants involved in this

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project. (Note: any proposed subcontractor personnel must also include additional submitted resume and/or project experience information per the requirements listed in this section for similar disciplines/trades.)

1. Provide a list of licensed design professionals and, if already selected, the licensed contractors and licensed subcontractors whom the Design-Build team proposes to use for the project's design and construction including a detailed list of key personnel as noted below.
2. The key personnel, at a minimum, are the proposed Designer(s) of Record, supporting project architects and engineers, project superintendent, Design-Builder's project manager, project director, estimator, preconstruction manager and the executive in charge and their relevant educational and work experience information.

Project Experience of the Designer should include:

Relevant experience on other Design-Build projects as designer especially with buildings comparable to this project in directly applicable ways. **If the designer claims experience acquired by hiring of or participation by personnel who were members of other firm(s) at the time of the experience, please express that fact and disclose the name of the other firm(s).** Describe no fewer than five projects in order of most relevant to least relevant that demonstrate the designer/team's capabilities to provide design services for the project at hand. Identify whether the projects involved any of the firms/companies included in responder's submittal for this RFQ. For each project, the following information should be provided:

1. Project name.
2. Project location.
3. Dates during which services were performed.
4. Physical description (e.g., square footage, number of stories, site area).
5. Cost description (this description, at a minimum, must include: original project budget; final project cost and explanation of any differences in the original and final costs, if applicable)
6. Brief description of project.
7. Services performed as Designer.
8. Statement of performance versus owner expectations in the areas of cost, quality, and schedule.
9. Owner reference(s).

Relevant Project Experience of the Builder should include:

Description of project experience with similar building types and Design-Build delivery method or performing as a general contractor on comparable types and sizes of projects. If the builder claims experience acquired by hiring of or participation by personnel who were members of other firm(s) at the time of the experience, please express that fact and disclose the name of the other firm(s). Describe no fewer than five (5) projects in order of most relevant to least relevant that demonstrate the builder/team's capabilities to perform the project at hand. Identify whether the projects involved any of the firms/companies included in responder's submittal for this RFQ. For each project, the following information should be provided:

1. Project name.
2. Project location.
3. Dates during which services were performed.
4. Physical description (e.g. square footage, number of stories, site area)

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5. Brief description of project.
6. Cost description (this description, at a minimum, must include: original project budget; final project cost; and why there exists a difference in the original and final costs, if any).
7. Services performed as builder.
8. Statement of performance versus owner expectations in the areas of cost, quality, and schedule.
9. Owner reference(s).

1 Firm/team Financial Responsibility Information – 1 page

1. List total annual billings for each of the past three (3) calendar years. If forming a partnership, list separately by company/firm.
2. List the contact persons, addresses, and telephone numbers for your insurance carrier and agent.
3. List the contact persons, addresses, and telephone numbers for the company/firm's bonding company and agent.
4. What percentage of your company/firm's work has been negotiated during the past five (5) years?
5. Supply firm's current ratio (current assets / current liabilities) experience for the last five years.

1 Project Controls / Deliverables - Quality and Schedule – 2-3 pages

Provide information on managing the quality of proposed deliverables including a proposed milestone schedule that illustrates total project time (in weeks) from award of contract through project completion and a quality assurance plan that identifies how quality control will be implemented throughout the design and construction process.

1 Conclusion and Statement of Why the Proposing Firm Should Be Selected – 1 page

This section provides each firm/team the opportunity to provide specific information that may differentiate them from others in the RFQ process.

*****End of Section Six*****

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7.01 Submittals and Clarifications

It is the responsibility of each submitter to examine the entire RFQ, seek clarifications in writing, and review their submittal for accuracy before submitting their qualifications. Once submission deadlines have passed, all submissions will be final. The Owner will not request clarification from any individual submitter relative to their submission, but reserves the right to ask for additional information from all parties that have submitted qualifications.

- 7.01.1** The County will be intentional in its efforts to be fair and equitable in its dealings with all candidates for selection. If, however, the County should determine that none of the Design-Build teams submitting are advantageous to the County of Rutherford, the County reserves the right to accept or reject any or all Statement(s) of Qualifications with or without cause. Issuance of this Request for Qualifications does not commit the County of Rutherford to award a contract, to pay any costs incurred in preparation of a proposal or to procure or contract for related services or supplies.

*****End of Section Seven*****

**SECTION EIGHT –
DESIGN-BUILD TEAM DECLARATION STATEMENT**

(Include a signed copy of this form in the submitted Statement of Qualifications appendix section)

1. *We certify that our Design-Build entity's "Designer(s) of Record" have current North Carolina Architectural and/or Engineering license(s) as appropriate for their portion of the design work.*
2. *We certify that our Design-Build entity's "Builder" has a current North Carolina Contractor's unlimited license.*
3. *We certify that our firm/company will have and maintain liability insurance coverage for a total of \$2 million/occurrence & \$2 million/general aggregate for commercial general liability, and not less than \$2 million per claim for commercial business automobile liability.*
4. *We certify that we will have coverage for professional liability and errors and omissions by all Designer(s) of Record / Design Professionals of not less than \$1 million per claim.*
5. *We certify that our firm has sufficient bonding capacity to provide Labor and Material Payment and Performance bonds with coverage of each equal to the total cost of the project.*
6. *We certify that our firm can and will obtain a Builder's Risk Insurance Policy for this project with coverage equal to the total cost of the project.*
7. *We certify that our firm/company/personnel have/has no potential or actual conflict of interest to report and that no relationships, transactions, circumstances or positions held are believed to contribute to any such conflict of interest.*
8. *I hereby certify that the information set forth in this declaration is true and complete to the best of my knowledge.*

(Authorized Signature, Title, Design-Build Entity Name and Date)

By signature on this Qualification, responders certify that they comply with:

- a. The laws of the State of North Carolina.
- b. The Equal Employment Opportunity Act and the regulations issued there under by the federal government.
- c. The Americans with Disabilities Act of 1990, and the regulations issued thereunder by the federal government.
- d. All terms and conditions set out in this RFQ.

*****End of Section Eight*****

SECTION NINE
EQUAL EMPLOYMENT OPPORTUNITY (EEO) PROVISIONS AND ADA NOTICE

9.01 Non-Discrimination Provision

The County of Rutherford does not discriminate against any employee or applicant for employment because of age, sex, race, color, creed, national origin (including limited English Proficiency), disability, or familial status.

The selected Firm/team shall take action to ensure applicants are employed and that employees are treated during employment without regard to their age, sex, race, color, creed, national origin (including limited English Proficiency), disability, or familial status. In the event the Firm/team is determined by the final order of an appropriate agency or court to be in violation of any non-discrimination provision of Federal, State or local law or this provision, any contract with the County of Rutherford may be cancelled, terminated or suspended in whole or in part by the County, and the Firm/team may be declared ineligible for further contracts with the County of Rutherford.

End of Section Nine

SECTION TEN
Appendices

10.01 Appendix A - Trade Secrets and Confidentiality

Appendix A – Trade Secrets and Confidentiality

As a general rule, all submissions to the County are available to any member of the public. However, if materials qualify as provided in this section, the County will take reasonable steps to keep Trade Secrets confidential.

(a) Designation of Confidential Records. The terms “Trade Secrets” and “record” are defined in (a)(1) (Definitions). To the extent that the Firm/team wishes to maintain the confidentiality of Trade Secrets contained in materials provided to the County that will or may become a record, the Firm/team shall prominently designate the material as “Trade Secrets” at the time of its initial disclosure to the County. The Firm/team shall not designate any material provided to the County as Trade Secrets unless the Firm/team has a reasonable and good-faith belief that it contains a Trade Secret. When requested by the County, the Firm/team shall promptly disclose to the County the Firm/team’s reasoning for designating individual materials as Trade Secrets. In providing materials to the County, the Firm/team shall make reasonable efforts to separate those designated as Trade Secrets from those not so designated, both to facilitate the County’s use of records and to minimize the opportunity for accidental disclosure. For instance, if only a sentence or paragraph on a page is a Trade Secret, the page must be marked clearly to communicate that distinction. To avoid mistake or confusion, it is generally best to have only Trade Secret information on a page and nothing else on that page. To the extent authorized by applicable state and federal law, the County shall maintain the confidentiality of records designated “Trade Secrets” in accordance with this section. Whenever the Firm/team ceases to have a good-faith belief that a particular record contains a Trade Secret, it shall promptly notify the County.

(1) Definitions.

“Trade secret” means business or technical information, including but not limited to a formula, pattern, program, device, compilation of information, method, technique, or process that:

- a. Derives independent actual or potential commercial value from not being generally known or readily ascertainable through independent development or reverse engineering by persons who can obtain economic value from its disclosure or use; and
- b. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The existence of a trade secret shall not be negated merely because the information comprising the trade secret has also been developed, used, or owned independently by more than one person, or licensed to other persons.

“Record” means all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, received by the County of Stanly in connection with the Firm/team’s SOQ.

(b) Request by Public for Access to Record. When any person requests the County to provide access to a record designated as Trade Secrets in accordance with subsection (a), the County may

- (1) decline the request for access,
- (2) notify the Firm/team of the request and that the County intends to provide the person access to the record because applicable law requires that the access be granted, or
- (3) notify the Firm/team of the request and that the County intends to decline the request.

City of Durham

SDBE Listings for Construction Services

Before declining the request, the County may require the Firm/team to give further assurances so the County can be certain the Firm/team will comply with subsection (c) (Defense of County).

- (c) Defense of County.** If the County declines the request for access to a record designated as Trade Secrets in accordance with subsection (a), the Firm/team shall defend, indemnify, and save harmless Indemnitees from and against all charges that arise in any manner from, in connection with, or out of the County's non-disclosure of the records. In providing that defense, the Firm/team shall at its sole expense defend Indemnitees with legal counsel. The legal counsel shall be limited to attorneys reasonably acceptable to the County Attorney.

Definitions as used in this subsection (c), "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, fines, penalties, settlements, expenses, attorneys' fees, and interest. "Indemnitees" means the County, and officers, officials, independent contractors, agents, and employees, of the County. "Indemnitees" does not include the Firm/team. The County may require the Firm/team to provide proof of the Firm/team's ability to pay the amounts that may reasonably be expected to become monetary obligations of the Firm/team pursuant to this section. If the Firm/team fails to provide that proof in a timely manner, the County shall not be required to keep confidential the records whose non-disclosure gives rise to the potential monetary obligation. Nothing in this agreement shall require the County to require any natural person to be imprisoned or placed in substantial risk of imprisonment as a result of alleged nondisclosure of records or for alleged noncompliance with a court order respecting disclosure of records. This subsection (c) is separate from and is to be construed separately from any other indemnification and warranty provisions in the contract between the County and the Firm/team.