

**REQUEST FOR PROPOSALS FOR
DESIGN AND CONSTRUCTION SERVICES
TO REPAIR AND RENOVATE THE TANANA
VILLAGE HEALTH CLINIC
FOR ADMINISTRATIVE OFFICE USE**

ISSUED BY:

**NATIVE VILLAGE OF TANANA
(Hohudodetlaatl Denh)**



"Strengthening Family Unity"

Date Issued: March 4, 2026.

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List of Attachments:

Attachment A: Modified AIA Document A141-2014 Standard Form of Agreement Between Owner and Design-Builder

Attachment B: BEMAR Project Scope of Work Descriptions for Four Renovations Tasks

Attachment C: Project Floorplan

Attachment D: Site Photos and Aerial Site Map (with Facility Identified by Number)

INSTRUCTIONS TO OFFERORS

I. Solicitation

The Native Village of Tanana (hereafter referred to as the “Tribe” or “Owner”)—a federally recognized Tribal Government located in Tanana, Alaska—is seeking proposals from firms qualified and interested in providing design-build general contractor services for the rehabilitation, renovation of the Tribe’s health care clinic facility. (hereafter referred to as the “Project”). The Project has four distinct tasks which may require coordination with the owner if the project requires the facility to be unstaffed during renovations. The four tasks are described in more detail below, and the project is funded from Indian Health Service (IHS)-Backlog of Essential Maintenance, Alteration, and Repair (BEMAR) funds under a Cooperative Agreement between the Tribe and the Alaska Native Tribal Health Consortium (ANTHC). The selected Design-Builder firm is expected to oversee the development of final design documents, and once approved by the Tribe, successfully complete the construction of each of the four BEMAR renovation tasks, on time and within the Tribe’s Project budget. The Selected Design-Builder firm is expected to perform pre-construction, design assistance, construction-phase, and project close-out services, in accordance with the terms and conditions of the Owner’s Modified A141 Standard Form of Agreement between Owner and Design-Builder (hereafter referred to as the “Agreement”) and included as Attachment A of the RFP.

II. Submittals

To be considered, Offerors must deliver submittals to the email address below, on or before the deadline, and in the number of copies indicated below.

Deadline: Proposals will be accepted until: **5:00 p.m. Alaska Standard Time (AKST) on March 18, 2026.**

Address Proposals To:

Victor Joseph, Executive Director
Tanana Tribal Council
P.O. Box 130
Tanana, AK 99777
Telephone: (907) 966-8409
Email: rfpproposal@tananatribe.org

Mark Submittals as Follows:

Native Village of Tanana Health Clinic Repair

Required Number of Copies: **1**

By submitting a proposal, each Offeror represents that the Offeror has visited the site(s) where the work is to be performed and/or has become familiar with local conditions and has correlated that

knowledge with the requirements in this request for proposals (“RFP”). Should an Offeror choose to make a site visit, please contact:

Victor Joseph, Executive Director
Tanana Tribal Council
P.O. Box 130
Tanana, AK 99777
Cell: (907) 388-9830
Email: executivedirector@tananatribe.org or TEXT

Proposals shall remain valid for at least forty-five (45) days after the closing date for receipt of proposals. The Tribe may allow for changes to or the withdrawal of the proposal only if the request is made in writing and received prior to the deadline for receipt of proposals. No changes to or withdrawal of a submitted proposal is permitted after the deadline for receipt of proposals.

III. Project Description

Project Site: As shown in Attachments B-D, the health clinic facility is located at P.O. Box 130 or 40 River St. Tanana Ak, 99777. The square footage is approximately 4000 square feet.

Key Tribal Personnel: The Native Village of Tanana is the “Owner” of the Project. The Owner’s “Authorized Representative” is Victor Joseph, the Tribal Executive Director.

Summary of Services: As described above, the Tribe is currently seeking proposals to renovate Tanana’s current clinic. While the Project involves renovations rather than new construction, so stamped Construction Documents may not be needed, the roofing renovation, grading and pipe replacement work do require the development of sufficient plans and specifications to ensure that the Work meets are required building codes and standards to ensure high-quality construction work. The Tribe requires the services of a Design-Builder firm to complete basic design documents and renovation services for the former health clinic facility. The services will consist of the following four subcomponents:

(1) Roof Replacement and Entrance Reconfiguration: The roof of the former health clinic facility is nearing the end of its natural life. Snow slides off the roof and impedes access to the building. The existing gutter system is frequently ripped off by shedding snow and ice. The building entrances do not comply with 2010 ADA Standards for Accessible Design, including the requirements that headroom clearance over stairs exceeds six feet; that stairs have continuous handrails on both sides; that building entrances, exterior doors, and interior vestibules offer adequate clearance; and that ramped access is provided to both front and rear entrances. The selected Design-Builder firm will replace the existing metal roof system, install snow guards, reconfigure the canopy covers, and make additional modifications to the building entrances to address these deficiencies.

(2) Cabinet Repair and Replacement: The Selected Design-Builder firm will remove and replace all permanently mounted casework and workstations at the former Tanana Health Center to allow for the facility to be converted to administrative uses. The work will involve replacing all cabinets

in the facility and procuring the materials, cabinetry, project control, shipping, delivery and installation of all furnishings for a fully functional administration offices workspace.

(3) Grading: Grading and drainage are inadequate at multiple locations around the former health clinic facility. Water ponds in low spots, including at both facility entrances, and at times, water flows into the basement. Plywood and planks are currently being used to bridge a low spot required to access the facility wheelchair ramp. Water sheds directly off the roof, including in front of the entrances. The Selected Design-Builder firm will regrade the entire perimeter area around the facility to promote drainage away from the facility, especially away from the entryways. The finished grade must have a minimum 2% slope away from the building for a minimum of 10 feet.

(4) Piping Replacement: Elevated levels of dissolved copper have been detected in the domestic water at the former health clinic facility. The Selected Design-Builder firm will remove all existing copper piping in the domestic water distribution system at the facility. New PEX piping will be installed, as well as new faucets and fixtures. Trap and supply protective covers and code-required ASSE 1070 thermostatic mixing valves will be installed for all faucets and fixtures, including restroom lavatories and hand-wash sinks. The Selected Design-Builder firm will also replace the current, inoperable drinking fountain with a single height, stainless steel, non-refrigerated, ADA-compliant drinking fountain connected to the revised plumbing and piping system.

Design-Build Methodology: The Tribe has elected to complete the Project using the design-build project delivery method because the Tribe anticipates that the Roof Replacement and Entrance Reconfiguration, Cabinet Repair and Replacement, and Grading subcomponents of the Project will require design services. During the initial preconstruction/design phase of the Project, the Selected Design-Builder firm will develop final Project design documents for the Tribe's review and approval. Following review of the Selected Contractor's Design-Build Proposal and contingent upon the Tribe's acceptance of the Proposal and execution of a Design-Build Amendment, the Selected Design-Builder firm will construct the Project. The Project's timeline is accelerated because the Tribe wishes to transition the former Tribal Health Center to be used as Tribal Administrative Offices near the same time as the new Tribal Health Clinic is completed and in operation, which is expected to occur at the end of June 2026.

Potential Additional Scope of Work: In addition to the above-referenced Project scope, the Tribe is also planning the repair and renovation of an existing Greenhouse located next to the Tribal Health Clinic. The scope of work will include the following: (1) remove existing climate control system and install a new system; (2) connect Greenhouse plumbing/piping system to nearby water-sewer system; (3) complete all electrical repairs and bring the entire electrical and plumbing system up to current building codes and specifications. This additional scope of work will not be included with the selected Design-Builder's first Design-Build Proposal, but the Tribe reserves the right to add require this additional scope of work at a future date.

IV. Compensation

Payment for these Design-Build services shall be divided into: (1) preconstruction/design services, which shall be compensated based on the selected firm's hourly rates up to a proposed maximum not-to-exceed ("NTE") amount; and (2) construction-phase services, which shall be based upon a

mutually agreeable “Contract Sum,” to be negotiated in good faith through “open book” pricing discussion following submission of the selected firm’s Design-Build Proposal. Offerors must provide hourly rates, and The Tribe is also open to considering alternative compensation models, including but not limited to, a flat fee for all preconstruction/design work. However, all Offerors must provide their standard hourly rates and their proposed NTE amount for the preconstruction/design services phase of the Project.

V. Schedule

Interested Offerors are requested to carefully consider their workload and capability of meeting the Project schedule. Subject to the requirements and constraints outlined in the paragraph below, the Owner anticipates that the selected Offeror shall complete its construction work on the following schedule:

1. Request for Proposal (RFP) published	March 4, 2026
2. Deadline for requests for additional information	March 10, 2026
3. Responses to information requests issued	March 13, 2026
4. Proposals due	March 18, 2026
5. Initial Screening and Interviews (if desired by the Tribe)	March 20, 2026
6. Final selection and notification	March 25, 2026
7. Agreement executed	March 27, 2026
8. Pre-design meeting and scope verification	March 31, 2026
9. Long lead time materials and supplies are ordered	April 10, 2026
10. Design-Build Proposal submitted	April 17, 2026
11. Design-Build Amendment executed	May 1, 2026
12. Municipal Fire Marshal Design Set/Permit application	May 8, 2026
13. Pre-construction meeting and scope verification	May 11, 2026
14. Roof Replacement and Entrance Reconfiguration	TBD, 2026
15. Grading and Water Diversion	TBD, 2026
16. Piping/Faucet/Fitting Replacement	TBD, 2026
17. Cabinet Repair and Replacement	TBD, 2026
18. Substantial Completion Date	TBD, 2026
19. Final Completion Date	September 30, 2026

The Selected Design-Builder firm should be prepared to begin preconstruction/design work immediately after the Agreement is executed. If necessary, Offerors may propose an alternative Project schedule based on their individual capacity, which may include a phased approach to completion that enables Tribal staff to begin occupying the building while some of the renovation work is still being completed. The alternative schedule will be evaluated by the Owner’s selection team to determine the overall best value for Owner. The submission of an alternative Offeror schedule will not make the proposal non-responsive, but the Owner reserves the right to consider this scheduling issue as part of its “Capacity” scoring criteria.

VI. Questions and Clarifications

Questions regarding this RFP must be directed in writing to Tribal Executive Director Victor Joseph, at executivedirector@tananatribe.org. The Tribe shall determine, in its sole discretion, if

the question requires a response, and the responses to any questions submitted shall be issued through addenda provided to all Offerors.

Offerors must read the RFP thoroughly. Any ambiguity, conflict, discrepancy, omission, or other errors in this RFP must be reported in writing. Any changes or corrections to the RFP will be made only by written addendum issued by the Tribe. Failure to report ambiguities, conflicts, discrepancies, omissions, or other errors in a timely manner prior to submission of the proposals will result in waiver of those issues.

VII. Type of Agreement

Given the expedited Project schedule, the selected Design-Builder firm will be expected to sign the Tribe's Standard Form of Agreement, Attachment A, only a few days after being notified of its selection. Offerors are expected to carefully review the Agreement and advise the Tribe in their proposal if any of the terms or conditions of the Agreement are objectionable. If any provisions are objectionable, the Offeror must provide in redline format alternative terms and conditions which are acceptable to it, along with side comment notes explaining the reasons for each of the proposed redline changes. These pages will not count against the proposal page limit. The Tribe reserves the right to reject any proposal that fails to indicate that the Offeror is willing to execute the Tribe's Agreement "as is" or fails to propose alternative terms and conditions that are acceptable to the Tribe.

VIII. Scope of Work

The selected Design-Builder firm will provide, or cause to be provided, the services set out in Section III above. The Tribe has not yet finalized all elements of the scope of work for the Project; after selection of a Selected Design-Builder firm but prior to execution of the Agreement, a final scope of work will be developed jointly between the Tribe and the selected firm, and the Agreement will be updated accordingly.

IX. Insurance, Bonding, Certifications, and Other Requirements

Insurance: The Selected Design-Builder firm is expected to maintain the level of insurance coverage specified in Agreement Section 3.1.16 and the performance and payment bonds required in Agreement Section 3.1.16.5 throughout the design and construction of the Project. If an Offeror wishes to propose an alternative level of insurance coverage to reduce Project costs, while still ensuring adequate risk protection for the Owner, the Offeror, and the Project as a whole, the Offeror must provide a rationale for the alternative level of insurance coverage and the proposed substitute levels of insurance coverage as part of its proposal. The selected Design-Builder firm will be required to provide proof of insurance coverage and certificates of additional insured status prior to execution of the Agreement.

Certifications: By submitting a proposal, each Offeror certifies that it is not listed on the governmentwide exclusions in the System for Award Management ("SAM"). By submitting a proposal, each Offeror certifies, to the best of its knowledge and belief, that no federal funds have been paid or will be paid, by or on behalf of the undersigned firm, to any person for influencing or

attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

To the extent required by applicable law and consistent with the obligations contained in the Agreement, Offerors are advised that prior to the execution of the Agreement, the Selected Design-Builder firm may be required to submit certain additional certifications, including but not limited to: (1) a certification regarding compliance with Worker's Compensation and other applicable labor requirements; and (2) any additional certifications required by applicable federal law.

License: The Selected Design-Builder firm must hold a valid Alaska business license and any other professional licenses required to perform the services at the time proposals are due. For more information, Offerors may contact the Department of Commerce, Community, and Economic Development, Division of Occupational Licensing, P.O. Box D—LIC, Juneau, Alaska 99811, www.commerce.alaska.gov/web/cbpl/businesslicensing.aspx, (907) 465-2534.

Additional Funding Requirements: As noted above, the Tribe is funding the Project using IHS Maintenance and Improvement (M&I) BEMAR funding received pursuant to Cooperative Agreement Sub-Awards entered into between the Tribe and ANTHC. Development of the Project must comply with all applicable terms and conditions of these Cooperative Agreement Sub-Awards for the use of these BEMAR funds, as enumerated in the Agreement. ANTHC, in turn, received the funds from the IHS under its Self-Governance Compact entered into under the authority of Title V of the Indian Self-Determination and Education Assistance Act (ISDEAA), P.L. 93-638. Among other things, the Selected Design-Builder firm agrees to: (1) pay prevailing wage rates in accordance with the Davis-Bacon Act, 40 U.S.C. §§ 3141–3148; (2) pay wages not less than once a week; and (3) comply with all applicable Buy American requirements applicable to ISDEAA funding under 2 C.F.R. Part 200.

X. Selection Process

Proposals will be reviewed by a selection team appointed by the Tribe. In evaluating Proposals, the Tribe places high value on the following factors.

Project Approach/Project Management Plan 25 POINTS

- Demonstrated understanding of the Project site and the Project requirements;
- Efficient approach to performing the Project;
- Clear and concise Project management plan;
- Proven ability to meet deadlines, with specific examples provided in Proposal;
- Proven ability to establish quality control program; and
- Proven policies, procedures, or systems for cost control and schedule control.

Key Project Personnel Qualifications & Experience 20 POINTS

- Experienced Project manager and staff;

- Demonstrated ability of Project manager and staff to address all Project needs, indicate which members will participate in which area of work; and
- Demonstrated availability of Project manager and staff throughout duration of Project.

Firm Qualifications and Experience 25 POINTS

- Demonstrated ability to successfully complete design-build projects of comparable design, scope, and complexity;
- Listing of key staff who have worked on firm’s representative projects;
- Depth of Proposer’s resources to perform required services;
- Ability and capacity to design and construct Solar Facilities of the size and scall of this Project; and
- Any other information that Proposer believes would make its work on the Project superior to that of other firms.

Hourly Rates, Mark-Up Rates and Not to Exceed (NTE) Price Proposal 25 POINTS

- Reasonableness of Hourly Rates, Proposed Mark-up Rates and NTE Amount, in relation to the firm’s overall qualifications and experience; and
- Alternative compensation approaches, if the Proposer wishes to provide an alternative pricing proposal (Offerors DO NOT need to include alternative compensation approaches to be considered for selection).

Alaska Native/American Indian Employment 5 POINTS

- Demonstrated commitment to providing employment and contracting opportunities to Native Village of Tanana Tribal Members, Alaska Natives and American Indians; and
- Demonstrated ability to provide a preference for Alaska Native and American Indian employees and subcontractors for work on the Project.

TOTAL POSSIBLE SCORE: 100 POINTS MAXIMUM

These criteria are intended to describe the qualities the Tribe is looking for in the selected firm but are not intended to constrain the Tribe’s discretion in selecting the firm it determines will provide the best overall value to the Tribe in carrying out the Project. Additional information on the referenced criteria is summarized below.

1. Demonstrated Ability: Identify projects similar to the Project in size, scope and complexity that your firm has begun or completed over the last five (5) years. For each project listed, provide the following information:

- The type of project, price or budget range, name and locations.
- The original bid/proposal price and the final contract price; if the project is ongoing, provide the projected final price.
- The original date scheduled for each project’s completion and the actual completion dates; if the projects are on-going, provide the projected final completion date compared to the original date.

2. **Experience on Similar Projects:** Provide a summary of recent experience on site development and utility location/installation projects, if any, including any problems encountered, means of overcoming the problem, and any claims or disputes encountered by or pursued by Proposer or the owners of the representative projects.
3. **References:** Include contact information (name, address and current phone numbers and email addresses) for the owner on the three most recent or most relevant projects your firm has completed.
4. **Management Plan:** Briefly summarize in three (3) pages or less how your firm will staff and organize the Project.
5. **Alaska Native/American Indian Employment Initiatives:** Describe, in reasonable detail, if and how you plan to promote the development and hiring of the Alaska Native and American Indian workers for this Project. Credit will be given to those firms that offer mentorship programs to train our local Alaska Native workforce.
6. **Other Information:** Briefly describe in two pages or less, any other information that you believe makes the Proposer's work on the Project superior to that of other firms.

XI. Proposal Content and Format

Proposals should only address the selection criteria listed above. Submittals should include all of the following and adhere to the specified criteria:

1. Cover letter that includes the following:
 - a) Statement that the signing individual has the authority to bind the Offeror to the proposal.
 - b) Name and contact information of the individual who is authorized to make representations and commitments for the Offeror.
 - c) Confirmation that any addenda have been received and considered.
 - d) Statement that the Offeror agrees to the contract terms and conditions identified in Attachment A of this RFP or an explanation that the Offeror has provided specific redline edits to the Agreement sufficient to allow it to execute the Agreement without further negotiation.
2. Narrative that addresses the selection criteria listed above.
3. Resumes of team members who will substantially participate in the Project. Do not include principals' resumes unless they will substantially and directly develop the Offeror's scope of work and not just perform quality reviews (this applies to subconsultants as well). Offeror shall have discretion on which team members' resumes to include, but primary subcontractors and consultants (civil, structural, mechanical, electrical, cost estimator) are desired. Resumes shall be no longer than two (2) pages each.
4. Rate sheet that includes the following:
 - a) The Offeror's federally approved overhead rate; rates per labor category for surveyors, superintendents, engineers, architects, or any other labor categories the Offeror

- anticipates being used for the preconstruction/design phase of the Project; and categories of reimbursable expenses, if any, that the Offeror anticipates charging during this initial phase of the Project.
- b) Hourly rates for all staff who will work on the Project and for use if any Change Order work required, as well as a maximum markup rate percentages for supplier, materials, and subcontractor costs.
 - c) A proposed maximum not-to-exceed (“NTE”) amount for preconstruction/design phase services.
5. Organization chart.

Proposals must be limited to twenty (20) pages, not inclusive of the rate sheet, resumes, and (if applicable) the redlined Agreement. One page is defined as one side of a standard 8 ½" x 11" sheet of paper.

XII. Other

Offerors should be aware that the Project information presented in this document is preliminary. Descriptions of the Project and proposed schedule are subject to refinement and change to meet the ongoing needs of the Project.

The issuance of this RFP, the submission of a proposal by any Offeror, and the acceptance of such proposal do not obligate the Tribe in any manner, prior to the award and execution of an Agreement to the Selected Design-Builder firm selected as a result of the RFP process. The Tribe is not liable for any costs incurred by any Offerors, including the Selected Contractor. All proposal preparation costs shall be the sole responsibility of the Offerors.

The Tribe reserves the right to waive any formalities in the selection process and may make its selection based on any factors deemed to serve its own best interest. This includes the right to reject any or all proposals and the right to proceed utilizing a different procurement process.

The Tribe may require, seek, and use all information it deems appropriate to assess the qualifications of individual Offerors. Unless otherwise specified by an Offeror in writing, all proposal information submitted in response to this RFP shall be considered public information and may, at the Tribe’s sole discretion, be released to the public at the conclusion of the procurement process, except for the rate information submitted in response to the pricing criteria. Any other information related to pricing or capacity that Offerors consider confidential or proprietary must be clearly identified in writing, as part of the response.

**NATIVE VILLAGE OF TANANA
(Hohudodetlaatl Denh)**



"WHERE THE TWO RIVERS MEET"

Attachment A

DRAFT AIA® Document A141™ - 2014

Standard Form of Agreement Between Owner and Design-Builder

AGREEMENT made as of the [] day of March in the year 2026

BETWEEN the Owner:

Native Village of Tanana
P.O. Box 130
Tanana, AK 99777

and the Design-Builder:

[Insert name and address of Design-Builder]

Tax Identification Number (TIN): []

Contractor Licensing No.: State of Alaska # []

for the following Project:

BEMAR Repair/Renovation to Convert the Tanana Health Center Facility for use as an Administrative Office Building

The Owner and Design-Builder agree as follows.

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

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

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

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- B APPROVED SCHEDULE OF VALUES (Add as Part of Design-Build Amendment)
- C DESIGN-BUILDER PERSONNEL AND RATE SHEET
(Finalize based on Selected Design-Builder proposal)
- D EXECUTED DESIGN-BUILD AMENDMENT (Add When Completed)
- E PROJECT SCHEDULE **(Final Schedule/Order of Construction Tasks to be Add as Part of Design-Build Amendment)**
- F FINAL DESIGN-BUILD CONSTRUCTION DOCUMENTS (Add as Part of Design-Build Amendment)

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Owner's Criteria

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

§ 1.1.1 The Owner's program for the Project:

Renovation and repair of the Owner's health clinic facility for use as Tribal administrative offices. The Project will consist of the following four subcomponents:

- (1) **Roof Replacement and Entrance Reconfiguration:** The roof of the health clinic facility is nearing the end of its natural life. Snow slides off and impedes access to the building. The existing gutter system is frequently ripped off by shedding snow and ice. The building entrances do not comply with 2010 ADA Standards for Accessible Design, including but not limited to the requirements that headroom clearance over stairs exceeds six feet; that stairs have continuous handrails on both sides; that building entrances, exterior doors, and interior vestibules offer adequate clearance; and that ramped access is provided to both front and rear entrances. The Design-Builder will replace the existing metal roof system, install snow guards, reconfigure the canopy covers, and make additional modifications to the building entrances to address these deficiencies.
- (2) **Cabinet Repair and Replacement:** The Design-Builder will remove and replace the all permanently-mounted casework and workstations at the Tanana Health Center to allow the facility to be converted to administrative uses. The work will involve replacing all cabinets in the facility and procuring the materials, cabinetry, project control, shipping, delivery and installation of all furnishings for a fully functional administration offices workspace.
- (3) **Grading:** Grading and drainage are an issue at multiple locations around the health clinic facility. Water ponds in low spots, including at both facility entrances, and at times flows into the basement. Plywood and planks are currently being used to bridge a low spot required to access the facility wheelchair ramp. Water sheds directly off the roof, including in front of the entrances. The Design-Builder will regrade the entire perimeter area around the facility to promote drainage away from the facility, especially from the entryways. The finished grade will have a minimum 2% slope away from the building for a minimum of 10 feet.
- (4) **Piping Replacement:** Elevated levels of dissolved copper have been detected in the domestic water at the health clinic facility. The Design-Builder will remove all existing copper piping in the domestic water distribution system at the facility. New PEX piping will be installed, as well as new and compatible faucets and fixtures. Trap and supply protective covers and code-required ASSE 1070 thermostatic mixing valves will be installed for all faucets and fixtures, including restroom lavatories and hand-wash sinks. The Design-Builder will also replace the current, inoperable drinking fountain with a single height, stainless steel, non-refrigerated, ADA-compliant drinking fountain connected to the revised plumbing and piping system.

Prior to execution of the Design-Build Amendment, the Design-Builder will develop final Design-Build documents and a firm-fixed "Contract Sum pricing proposal to complete construction of the Project. The Design-Builder Following review of the Design-Build Proposal and contingent upon the Owner's acceptance of the Proposal and execution of a Design-Build Amendment, the Design Builder will construct the Project.

Additional information regarding the Project program is included in the Scope of Work set forth in Exhibit A.

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

The Project shall be designed to comply with all applicable tribal, state, federal, and local building codes and standards for a facility of this type. The final Design-Build Documents shall satisfy all the design requirements set forth herein and any other design requirements that the Owner and the Design-Builder identify during the design process as materially improving the facility while remaining within the Project budget. The final design shall be incorporated into the Owner-approved Final Design-Build Construction Documents, as set forth in Exhibit F.

§ 1.1.3 The Project's physical characteristics:

The health care facility is located at P.O. Box 130 or 40 River St. Tanana Ak, 99777. The square footage is approximately 4000 square feet.

§ 1.1.4 Intentionally omitted.

§ 1.1.5 Intentionally omitted.

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

The Owner and the Design-Builder have agreed to compensation for design-phase work based on the Design-Builder's hourly rates and reimbursable expenses as set forth in Exhibit C, up to a maximum not-to-exceed ("NTE") amount for all design-phase Work, which shall be [redacted] DOLLARS (\$ [redacted]). The Owner and the Design-Builder will agree to a firm-fixed price for the construction-phase Work, which shall be established and set forth in the Design-Build Amendment. The total Contract Sum for all Work completed under this Contract, including the design-phase Work and construction-phase Work, shall be an aggregate firm fixed price which shall be established and set forth in the Design-Build Amendment. The total Contract Sum shall be inclusive of all reimbursable expenses, profit, overhead, and general and administrative expenses of the Design-Builder. The Design-Builder's progress of the Work and Applications for Payment for work following execution of the Design-Build Amendment shall be based on the approved Schedule of Values to be set forth in Exhibit B.

§ 1.1.7 The Owner's design and construction milestone dates: [Finalize based on Selected Design-Builder proposal]

- | .1 Design phase milestone dates: | <u>Anticipated Date</u> |
|---|-------------------------|
| 35% Schematic Design Submittal | [add date] |
| 65% Design Development "over-the-shoulder" | [add date] |
| 95% Construction Document Submittal | [add date] |
| 100% "For Construction" Documents stamped and signed | [add date] |
| .2 Submission of Design-Builder's Proposal for Design-Build Amendment: [Finalize or remove based on Selected Design-Builder proposal] | |
| | [add date] |
| .3 Phased completion dates: [Finalize or remove based on Selected Design-Builder proposal] | |
| | [add date] |
| .4 Substantial Completion date: | |
| .5 Final Completion Date: | |
| September 30, 2026 | |

§ 1.1.8 The Owner requires the Design-Builder to retain the following Architect, Consultants, and subcontractors at the Design-Builder's cost: [Finalize or remove based on Selected Design-Builder proposal]

- .1 Architect
TBD
- .2 Civil Engineering
TBD
- .3 Structural Engineering
TBD
- .4 Mechanical Engineering
TBD

.5 Electrical Engineering

TBD

.6 Other Consultants

TBD

.7 Mechanical Subcontractor

TBD

.8 Electrical Subcontractor

TBD

.9 Other Major Suppliers/Subcontractors

TBD

§ 1.1.9 Funding Information and Requirements

§ 1.1.9.1 The Owner is an Alaska Native Tribal Health Consortium (“ANTHC”) Maintenance and Improvement (“M&I”) Backlog of Essential Maintenance, Alteration, and Repair (“BEMAR”) Project Pool participant. The Owner is funding the Project pursuant to cooperative agreement sub-awards (“Funding Agreements”) with ANTHC. ANTHC entered into the Funding Agreements pursuant to its Title V Construction Project Agreement (“TVCPA”) with the Indian Health Service (“IHS”) for the funding and performance of M&I BEMAR projects of tribes and tribal organizations, including the Owner. The Design-Builder is required to comply with all applicable laws and regulations specified in the Funding Agreements; Title V of the ISDEAA, 25 U.S.C. §§ 5381–5399, and any of its amendments; and 42 C.F.R. Part 137, Subpart N, including but not limited to the laws and regulations identified in this Section 1.1.9.

§ 1.1.9.2 During the performance of this Agreement, the Design-Builder agrees to comply with all applicable provisions of 41 C.F.R. § 60–1.4(b) relating to non-discrimination in the Design-Builder’s employment and subcontracting practices. The Design-Builder will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers’ representative of the Design-Builder’s commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. In the event of the Design-Builder’s non-compliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations, or orders, this Agreement may be canceled, terminated or suspended in whole or in part, and the Design-Builder may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, or as otherwise provided by law. The Design-Builder shall include similar non-discrimination provisions in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor.

§ 1.1.9.3 The Design-Builder agrees to comply with and pay prevailing wage rates under the Davis-Bacon Act, 40 U.S.C. §§ 3141–3148. The Design-Builder will also comply with the Copeland “Anti-Kickback” Act, 40 U.S.C. § 3145, and is therefore prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public Work, to give up any part of the compensation to which he or she is otherwise entitled. The Design-Builder shall pay employees on a weekly basis and in cash or a negotiable instrument payable on demand and, upon request by the Owner, provide certified payroll reports of the wages paid to their laborers and mechanics during the preceding payroll period. The Design-Builder will ensure that any subcontracts the Design-Builder enters to complete the Work also contain this provision.

§ 1.1.9.4 The Design-Builder agrees to comply with all applicable provisions of 41 U.S.C. Chapter 83, 2 C.F.R. Part 184, and 2 C.F.R. § 200.322.

§ 1.1.9.5 The Project is subject to the requirements of the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321–4370h, the National Historic Preservation Act (NHPA), 54 U.S.C. §§ 300101–320303, and related environmental requirements as provided in the TVCPA. ANTHC has determined that no negative impacts have been identified that may occur as a result of the project and that neither an Environmental Impact Statement nor an Environmental Assessment are needed for the proposed action. ANTHC has further determined that the project has no potential to impact cultural resources.

§ 1.1.9.6 The Design-Builder agrees to comply with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. part 5). Under 40 U.S.C. 3702 of the Act, The Design-Builder must compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous.

§ 1.1.9.7 The Design-Builder agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

§ 1.1.9.8 The Design-Builder certifies that it is not listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. part 180 that implement Executive Orders 12549 (3 C.F.R. part 1986 Comp., p. 189) and 12689 (3 C.F.R. part 1989 Comp., p. 235), “Debarment and Suspension.”

§ 1.1.9.9 The Design-Builder certifies that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. The Design-Builder will ensure that its subcontracts contain this provision.

§ 1.1.9.10 If subcontracts are made, the Design-Builder shall take all necessary affirmative steps to assure that minority businesses, women’s business enterprises, and labor surplus area firms are used, when possible, in accordance with 2 C.F.R. § 200.321. The Design-Builder shall not make any subcontracts to any subcontractors that are debarred, suspended, or otherwise excluded from participation in any projects funded by the State of Alaska or the U.S. Government.

§ 1.1.9.11 The Owner, and to the extent permitted by Owner, representatives of ANTHC and IHS shall be permitted to inspect all Work, materials, payrolls, personnel records, invoices of materials, and other relevant data and records of the Design-Builder.

§ 1.1.9.12 The Owner, and to the extent permitted by Owner, authorized representatives of the ANTHC and IHS shall have the right to examine the Design-Builder’s pertinent books, documents, papers, or other records involving transactions related to this Agreement for the purpose of audit, examination, transcription, or other lawful use for a period of three (3) years after Final Payment under this Agreement, or until the final disposition of any appeals, litigation, or claims arising under this Agreement or the Funding Agreements, whichever is longer.

§ 1.1.9.13 To the extent that any facilities, equipment, vessel or vehicle to be provided under this offer is to be used as a place of work by the Tribe’s employees, the Design-Builder certifies that it does and will maintain such place of work as a drug-free workplace in compliance with the Drug Free Workplace Act of 1988 (P.L. 100-690).

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

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

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

§ 1.1.12 The Owner and the Design-Builder shall transmit preliminary and final design documents, Instruments for Hire or any other Project information or documentation in digital form that permits the Owner to review the documents.

§ 1.2 Project Team

§ 1.2.1 The Owner identifies the following representatives in accordance with Section 7.1.1:

Authorized Representative
Victor Joseph, Executive Director
Tanana Tribal Council
Email: executivedirector@tananatribe.org
Telephone: 907-388-9830

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

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§ 1.2.5 Neither the Owner's nor the Design-Builder's representative shall be changed without ten (10) days' written notice to the other party.

§ 1.3 Binding Dispute Resolution

The method of binding dispute resolution shall be binding arbitration pursuant to Section 14.4.

§ 1.4 Definitions

§ 1.4.1 **Design-Build Documents.** The Design-Build Documents consist of this Agreement between the Owner and the Design-Builder and its attached Exhibits (hereinafter, the "Agreement"); other documents listed in this Agreement; and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, including the Design-Build Amendment, (2) a Change Order, (3) a Change Directive, or (4) a minor change in the Work.

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

§ 1.4.3 **The Work.** The term "Work" means the design, construction, and related services required to fulfill the Design-Builder's obligations under the Design-Build Documents, whether completed or partially completed, and includes all labor, Materials sold by the Design-Builder or its Contractors or Subcontractors to the Owner pursuant to Exhibit D, and all consumable equipment and supplies, other than Materials and services provided or to be provided by the Design-Builder. The Work may constitute the whole or a part of the Project.

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

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

§ 1.4.6 **Submittal.** A Submittal is any submission to the Owner for review and approval demonstrating how the Design-Builder proposes to conform to the Design-Build Documents for those portions of the Work for which the Design-

Build Documents require Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples. Submittals are not Design-Build Documents unless incorporated into a Modification.

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

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

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

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

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

§ 1.4.12 Contract Time. Contract Time is the period of time set forth in Section 1.1.7.4 for the Substantial Completion of the Work and the Final Completion and closeout of the Contract, including authorized Contract Time adjustments, as provided in Article 6.

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

§ 1.4.14 Contract Sum. The Contract Sum is the firm fixed price dollar amount to be paid to the Design-Builder for performance of all Work under the Agreement, as set forth in Section 1.1.6.

§ 1.4.15 Open Book

The term “Open Book” means providing a detailed breakdown of all costs, including overhead, profit, materials, labor hours and rates, equipment, and all other costs and supporting data for the Design-Builder and its Consultants, Subcontractors and material suppliers.

§ 1.4.16 Best Value

The term “Best Value” means a procurement process that includes the evaluation of both qualifications and cost.

ARTICLE 2 COMPENSATION, PROGRESS PAYMENTS, AND PROJECT COST RECORDS

§ 2.1 Compensation for Work Performed by the Design Builder

The Design-Builder shall submit a monthly Application for Payment in accordance with the procedures set out in Article 9. Payment shall be based on hourly rates and reimbursable expenses for design-phase work, in accordance with the Personnel and Rate Sheet set forth in Exhibit C, and the percentage of Work completed for construction-phase work, in accordance with the Schedule of Values to be set forth as Exhibit B. Work authorized by Change Order or other Modification shall be similarly invoiced and paid based on the percentage of the Work completed against the monetary value assigned by the Change Order or other Modification. The Design-Builder’s Personnel and Personnel and Rate Sheet, set forth in Exhibit C, shall be used for the purpose of calculating equitable Change Order pricing, to the extent authorized and approved by the Owner.

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

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

§ 2.3 Project Cost Records

To assist the Owner with any audit requirements, the Design-Builder shall keep a complete record of all Project costs, including but not limited to Reimbursable Expenses, Contractor and supplier mark-up costs, and any other costs related to the performance of Work for a period of three (3) years following the Substantial Completion of the Work. The Design-Builder shall provide the Owner with access to these Project Records upon request, provided that the Owner provides reasonable advance notice and pays any required copying costs.

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

§ 3.1 General

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

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

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

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

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

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

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

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

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

§ 3.1.8 Progress Reports

§ 3.1.8.1 The Design-Builder shall keep the Owner informed of the progress and quality of the Work. Upon the request of the Owner, the Design-Builder shall promptly submit a written progress report to the Owner, showing estimated percentages of completion and other information identified below, as requested:

- .1 Work completed for the period;
- .2 Project schedule status;
- .3 Submittal schedule and status report, including a summary of outstanding Submittals;
- .4 Responses to requests for information to be provided by the Owner;
- .5 Approved Change Orders and Change Directives;
- .6 Pending Change Order and Change Directive status reports;
- .7 Tests and inspection reports;
- .8 Status report of Work rejected by the Owner;

- .9 Status of Claims previously submitted in accordance with Article 14;
- .10 Cumulative total of the Cost of the Work to date including the Design-Builder's compensation and Reimbursable Expenses, if any;
- .11 Current Project cash-flow and forecast reports; and
- .12 Additional information as agreed to by the Owner and Design-Builder.

§ 3.1.9 Design-Builder's Schedules

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

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

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

§ 3.1.11 Design-Builder's Submittals

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

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

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

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

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

§ 3.1.12 Warranty.

§ 3.1.12.1 The Design-Builder warrants to the Owner that: (1) the Materials and equipment furnished under the Contract to the Owner by the Design-Builder or a Contractor or Subcontractor is or will be new and of good quality unless otherwise required or permitted by the Design-Build Documents and the Construction Documents; (2) the Work will be free from defects; and (3) the Work will conform to the requirements of the Design-Build Documents and Construction Documents. The Design-Builder further warrants to the Owner that the Design-Builder, its employees, Contractors, consultants, and agents shall fully comply with all applicable tribal, state, and federal laws, regulations, and ordinances during the performance of the Work.

§ 3.1.12.2 The Design-Builder shall remedy, at the Design-Builder's own expense, any failure of the Work (including Materials and equipment whether acquired as Materials from the Design-Builder, a Contractor, or Subcontractor) to conform to the Design-Build Documents and Construction Documents and any defect of material, workmanship, or design in the Work for a period of one (1) year, provided that the Owner gives the Design-Builder notice of any such failure or defect promptly after discovery but not later than one (1) year after final acceptance of the Work. The Design-Builder, at his own expense, shall also remedy damage to equipment, the Project site, or affected areas which are the result of any failure or defect and restore any Work damaged in fulfilling the terms of this Contract. Should the Design-Builder fail to remedy any such failure or defect within twenty (20) calendar days after receipt of notice thereof, the Owner shall have the right to replace, repair, or otherwise remedy such failure or defect at Design-Builder's expense. The entire cost thereof shall be paid by the Design-Builder and may be collected from the Design-Builder or the Design-Builder's surety or sureties or both.

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

§ 3.1.13 Ownership of Documents, Royalties, Patents and Copyrights

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

§ 3.1.13.2 Copyright The Parties agree that the Owner shall obtain ownership of the copyright of all Documents. The Owner's acquisition of the copyright for all Documents shall be subject to the making of payments as required by Section 1.1.6.

§ 3.1.13.3 Owner Use of Documents in the Event of Termination In the event of a termination of this Contract pursuant to Article 13, the Owner shall have the right to use, to reproduce, and to make derivative works of the Documents to complete the Project, regardless of whether there has been a transfer of copyright under Section 3.1.13.2, provided payment has been made pursuant to Section 1.1.6.

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

§ 3.1.13.5 Design-Builder Use of Documents Neither the Design-Builder nor its Design Professional, Subcontractors, or Consultants, or any other person or organization performing or furnishing any of the Work under this Agreement shall have or acquire any title to or ownership rights in any of the Documents (or copies thereof), and they shall not reuse any of the Documents on extension of the Project or any other project without written consent of the Owner.

§ 3.1.14 Indemnification

§ 3.1.14.1 To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, including the Owner's agents and employees, from and against claims, damages, losses and expenses, including but

not limited to attorneys' fees, arising out of or resulting from performance of the Work, but only to the extent caused by the negligent acts or omissions of the Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. The foregoing obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.1.14.

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

§ 3.1.15 Contingent Assignment of Agreements

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

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

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

Type of insurance	Limit of liability
Workers' Compensation Employer's Liability:	State: statutory \$1,000,000.00
General Liability	Each Occurrence: \$1,000,000.00 Aggregate: \$3,000,000.00
Automobile Liability	Each Accident (Bodily Injury and Property Damage): \$1,000,000.00
Contractual Liability	Each Occurrence: \$1,000,000.00 Aggregate: \$3,000,000.00
Professional Liability Insurance for Design-Builder	\$2,000,000.00
Builder's Risk	100% replacement value of Project
Excess Liability-Umbrella Form Coverage	Each Occurrence: \$2,000,000.00 Aggregate: \$4,000,000.00

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

§ 3.1.16.2 The Design-Builder shall obtain an endorsement to its general liability insurance policy to cover the Design-Builder's obligations under this Contract.

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

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

§ 3.1.16.5 Performance Bond and Payment Bond. The Design-Builder shall furnish performance and payment bonds from an AM Best A-Rated surety company authorized to do business in the State of Alaska, each in an amount at least equal to the construction portion(s) of the total Contract Sum, as security for the faithful performance and payment of all the Design-Builder's obligations under the Contract Documents. Bonds shall remain in effect until one (1) year after the date when final payment becomes due under the Contract or until completion of the period of correction under Section 3.1.12 ("Warranty"), whichever is later.

§ 3.1.16.6 The Design-Builder shall be responsible for ensuring that its Subcontractors comply with the same insurance and bond provisions as required in this Section 3.1.16 during the course of its Subcontractors' operations. The Design-Builder shall provide copies of all Subcontractors' certificates of insurance and bonds to the Owner prior to any Subcontractor commencing work.

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

§ 4.1 General

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

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

§ 4.2 Evaluation of the Owner's Criteria

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

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

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

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

§ 4.3 Preliminary and Final Design

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

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

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

§ 4.3.2 The Owner shall review the Preliminary and Final Design Documents and, if acceptable, provide the Design-Builder with written consent to proceed to development of the Design-Builder's Proposal.

§ 4.4 Design-Builder's Proposal

§ 4.4.1 Upon the Owner's issuance of a written consent to proceed under Section 4.2.3, the Design-Builder shall prepare and submit the Design-Builder's Proposal to the Owner. The Design-Builder's Proposal to the Owner shall include the following:

- .1 A list of the Preliminary and Final Design documents and other information, including the Design-Builder's clarifications, assumptions, and deviations from the Owner's Criteria, upon which the Design-Builder's Proposal is based;
- .2 The proposed date the Design-Builder shall achieve Substantial Completion, which has already been set as **July 31, 2026**;
- .3 An enumeration of any qualifications and exclusions, if applicable;
- .4 A list of the Design-Builder's key personnel, Contractors, and suppliers; and
- .5 The date on which the Design-Builder's Proposal expires.

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

§ 4.4.3 All pricing assumptions in the Design-Builder's Proposal, including Supplier and Subcontractor pricing and any other cost information supporting the Design-Builder's price proposal shall be subject to "Open Book" negotiations. Submission of the Design-Builder's Proposal shall also constitute a representation that the Design-Builder has (1) visited, tested and inspected the Project site; (2) become familiar with local conditions, code requirements and other Project requirements under which the Work is to be completed; (3) tested, inspected or otherwise assured itself that the Owner's Project site preparations, including but not limited to tree-clearing, surveying, grading, leveling, soil compacting or any other Site preparation activities undertaken by the Owner were completed in a satisfactory manner and are sufficient for the Design-Builder to satisfactorily perform all Work required under this Agreement and the terms of the Design-Build Amendment..

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

§ 4.4.5 Potential Additional Scope of Work: In addition to the above-referenced Project Scope of Work, the Owner is also planning the repair and renovation of an existing Greenhouse located next to the health clinic facility. This additional scope of work may include the following: (1) remove existing climate control system and install a new system; (2) connect Greenhouse plumbing/piping system to nearby water- sewer system; (3) complete all electrical repairs and bring the entire electrical and plumbing system up to current building codes and specifications. This additional scope of work shall not be included with the selected Design-Builder's first Design-Build Proposal, but the Owner reserves the right to require the Design-Builder to prepare a separate Design-Build Proposal for this Additional Scope of Work at a future date. This second Design-Build Proposal, if requested by Owner, shall be based on the same hourly rates included in this Agreement, but the Not-To-Exceed (NTE) amount shall be developed through "open book" price negotiations between the Owner and the Design Builder.

ARTICLE 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 5.1 Construction Documents

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

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

§ 5.2 Construction

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

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

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

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

§ 5.3 Labor and Materials

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

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

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

§ 5.3.4 The Design-Builder shall comply with the current prevailing wage rates defined by the State of Alaska, Department of Labor, Laborer's and Mechanics' Minimum Rates of Pay Pamphlet (Title 36) as of the date of this Agreement. The Design-Builder and Subcontractors shall keep certified payroll records and submit those records to the Owner upon request.

§ 5.4 Sales Taxes and Other Taxes

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

§ 5.5 Permits, Fees, Notices and Compliance with Laws

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

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

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

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

§ 5.6 Allowances

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

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

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

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

§ 5.7 Key Personnel, Contractors, and Suppliers

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

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

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

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

§ 5.8 Documents and Submittals at the Site

The Design-Builder shall maintain at the site for the Owner one (1) copy of the Design-Build Documents and a current set of the Construction Documents, in good order and marked currently to indicate field changes and selections made during construction, and one (1) copy of approved Submittals. The Design-Builder shall deliver these items to the Owner in accordance with Section 9.10.2 as a record of the Work as constructed.

§ 5.9 Use of Site

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

§ 5.10 Cutting and Patching

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

§ 5.11 Cleaning Up

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

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

§ 5.12 Access to Work

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

§ 5.13 Construction by Owner or by Separate Contractors

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

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

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

§ 5.13.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces, and of each separate contractor, with the Work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Design-Builder shall

make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Design-Builder, separate contractors, and the Owner until subsequently revised.

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

§ 5.14 Mutual Responsibility

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

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

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

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

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

§ 5.15 Owner's Right to Clean Up

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

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 General

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

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

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

§ 6.2 Change Orders

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

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

§ 6.3 Change Directives

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

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

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

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

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

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

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

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

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

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

§ 6.3.9 Pending final determination of the total cost of a Change Directive to the Owner, the Design-Builder may request payment for Work completed under the Change Directive in Applications for Payment. The Owner will make

an interim determination for purposes of certification for payment for those costs deemed to be reasonably justified. The Owner's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of the Design-Builder to disagree and assert a Claim in accordance with Article 14.

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

ARTICLE 7 OWNER'S RESPONSIBILITIES

§ 7.1 General

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

§ 7.1.2 The Owner shall render decisions in a timely manner and in accordance with the Design-Builder's schedule agreed to by the Owner.

§ 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 construction, tests, inspections, or investigations involving structural or mechanical systems; chemical, air and water pollution; hazardous materials; or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site. Upon receipt of a written request from the Design-Builder, the Owner shall also provide surveys describing physical characteristics, legal limitations, and utility locations for the site of the Project, and a legal description of the site under the Owner's control.

§ 7.3 Submittals

The Owner shall have the opportunity to review all Submittals. Review of Submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities; or for substantiating instructions for installation or performance of equipment or systems; or for determining that the Submittals are in conformance with the Construction Documents, all of which remain the responsibility of the Design-Builder as required by the Construction Documents. The Owner's review of Submittals shall not relieve the Design-Builder of the obligations under Sections 3.1.11, 3.1.12, and 5.2.3. The Owner's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Owner, of any construction means, methods, techniques, sequences, or procedures. The Owner's review of a specific item shall not indicate approval of an assembly of which the item is a component.

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

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

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

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

§ 7.8 Owner's Right to Stop Work

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

§ 7.9 Owner's Right to Carry Out the Work

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

ARTICLE 8 TIME

§ 8.1 Progress and Completion

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

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

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

§ 8.2 Delays and Extensions of Time

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

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

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

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

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

§ 8.3 Liquidated Damages For Delay

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

- .1 If the Design-Builder fails to substantially complete the Project within the specified times, as liquidated damages for delay (but not as a penalty), the Design-Builder shall pay Owner seven hundred and fifty dollars (\$750.00) each day that expires after Substantial Completion until the Owner certifies that the Work is substantially complete.
- .2 If the Design-Builder fails to meet the Final Completion date provided by the Contract Documents, or any proper extension thereof granted by Owner, as liquidated damages for delay (but not as a penalty), the Design-Builder shall pay Owner seven hundred and fifty (\$750.00) each day that expires after Substantial Completion until the Owner certifies that the Work meets Final Completion.

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

ARTICLE 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION

§ 9.1 Contract Sum

The Contract Sum shall be a firm fixed price as set out in Section 1.1.6.

§ 9.2 Schedule of Values

The Schedule of Values to be attached hereto as Exhibit B and, by execution of the Design-Build Amendment, approved by the Owner, shall allocate the entire Contract Sum to the various portions of the Work. This schedule, following execution of the Design-Build Amendment by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment. Prior to execution of the Design-Build Amendment, the Personnel and Rate Sheet set forth in Exhibit C shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten (10) 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, based on the Personnel and Rate Sheet set forth in Exhibit C or the approved Schedule of Values set forth in Exhibit B and the requirements of Exhibit D. The Application shall be supported by data substantiating the Design-Builder's right to payment as the Owner may require, such as progress reports on the status of the Work or copies of requisitions from the consultants, Contractors, and material suppliers.

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

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

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

§ 9.3.3 The Design-Builder warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder further warrants that, upon submittal of an Application

for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Design-Builder's knowledge, information and belief, be free and clear of liens, claims, security interests, or encumbrances in favor of the Design-Builder, Architect, Consultants, Contractors, material suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials, and equipment relating to the Work.

§ 9.4 Certificates for Payment

§ 9.4.1 The Owner shall, within ten (10) business days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a Certificate for Payment indicating the amount the Owner determines is properly due and notify the Design-Builder in writing of the Owner's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

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

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

§ 9.5 Decisions to Withhold Certification

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

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

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

§ 9.5.3 If the Owner withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Design-Builder and to the Architect or any Consultants, Contractor, material or equipment

suppliers, or other persons or entities providing services or work for the Design-Builder to whom the Design-Builder failed to make payment for Work properly performed or material or equipment suitably delivered.

§ 9.6 Progress Payments

§ 9.6.1 Within thirty (30) days after the Owner has issued a Certificate for Payment, the Owner shall make payment in the manner provided in the Design-Build Documents, less retainage of five percent (5%).

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

§ 9.6.3 Intentionally omitted.

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

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

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

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

§ 9.7 Failure of Payment

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

§ 9.8 Substantial Completion

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

§ 9.8.2 When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall prepare and submit to the Owner a comprehensive list

of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Design-Build Documents.

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

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

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

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

§ 9.9 Partial Occupancy or Use

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

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

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

§ 9.10 Final Completion and Final Payment

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

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work (less amounts withheld by the Owner) have been paid or otherwise satisfied; (2) a certificate evidencing that insurance required by the Design-Build Documents will remain in force after final payment and will not be

canceled or allowed to expire until the conclusion of a one (1) year warranty period; (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents; (4) consent of surety, if any, to final payment; (5) as-constructed record copy of the Construction Documents marked to indicate field changes and selections made during construction; (6) manufacturer's warranties, product data, and maintenance and operations manuals; and (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, or releases and waivers of liens, claims, security interests, or encumbrances, arising out of the Contract, to the extent and in such form as may be designated by the Owner. If an Architect, a Consultant, or a Contractor, or other person or entity providing services or work for the Design-Builder, refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such liens, claims, security interests, or encumbrances. If such liens, claims, security interests, or encumbrances remain unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be compelled to pay in discharging such liens, claims, security interests, or encumbrances, including all costs and reasonable attorneys' fees.

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

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

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

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

§ 9.11 Equipment Operation and Maintenance Training.

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

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

§ 10.2 Safety of Persons and Property

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

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

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

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

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

§ 10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3, caused in whole or in part by the Design-Builder, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections 10.2.1.2 and 10.2.1.3; except damage or loss attributable to acts or omissions of the Owner, or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section 3.1.14, and nothing herein will absolve the Design-Builder from remedying damages in accordance with this Agreement, regardless of the cause of such damage.

§ 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. The Superintendent in attendance at the Project site during the progress of the Work shall remain at the site and on the Project until Final Completion.

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

§ 10.3 Hazardous Materials

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

§ 10.3.2 Upon receipt of the Design-Builder's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to cause it to be rendered harmless. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and the Design-Builder.

§ 10.3.3 Intentionally omitted.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Design-Builder brings to the site, including such materials or substances that are required by the Contract Documents.

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

§ 10.4 Emergencies

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

ARTICLE 11 UNCOVERING AND CORRECTION OF WORK

§ 11.1 Uncovering of Work

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

§ 11.2 Correction of Work

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

§ 11.2.2 After Substantial Completion

§ 11.2.2.1 In addition to the Design-Builder's obligations under Section 3.1.12, if, within one (1) year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found not to be in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it within thirty (30) days after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of the Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct nonconforming Work within thirty (30) days during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 7.9.

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

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

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

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

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

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

§ 11.3 Acceptance of Nonconforming Work

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

ARTICLE 12 COPYRIGHTS AND LICENSES

The Owner and Contractor shall have the rights and obligations set out in Section 3.1.13 of this Agreement with respect to copyrights and licenses.

ARTICLE 13 TERMINATION OR SUSPENSION

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

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

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

§ 13.1.3 If the Owner suspends the Project for more than ninety (90) cumulative days for reasons other than the fault of the Design-Builder, the Design-Builder may terminate this Agreement by giving not less than thirty (30) days' written notice.

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

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

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

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

§ 13.2.1 Termination by the Design-Builder

§ 13.2.1.1 The Design-Builder may terminate the Contract if the Work is stopped for a period of forty-five (45) consecutive days through no act or fault of the Design-Builder, the Architect, a Consultant, or a Contractor, or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:

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

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

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

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

§ 13.2.2 Termination by the Owner For Cause

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

- .1 fails to submit the Design Proposal by the date required by this Agreement, or if no date is indicated, within a reasonable time consistent with the date of Substantial Completion;
- .2 refuses or fails to supply an Architect, or enough properly skilled Consultants, Contractors, or workers or proper materials;
- .3 fails to make payment to the Architect, Consultants, or Contractors for services, materials, or labor in accordance with their respective agreements with the Design-Builder;
- .4 disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .5 is otherwise guilty of substantial breach of a provision of the Design-Build Documents.

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

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

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

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

§ 13.2.3 Suspension by the Owner for Convenience

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

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

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

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

§ 13.2.4 Termination by the Owner for Convenience

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

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

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

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

ARTICLE 14 CLAIMS AND DISPUTE RESOLUTION

§ 14.1 Claims

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

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

§ 14.1.3 Notice of Claims

§ 14.1.3.1 Prior To Final Payment. Prior to Final Payment, Claims by either the Owner or the Design-Builder must be initiated by written notice to the other party within thirty (30) days after occurrence of the event giving rise to such Claim or within thirty (30) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 14.1.3.2 Claims Arising After Final Payment. After Final Payment, Claims by either the Owner or the Design-Builder that have not otherwise been waived pursuant to Sections 9.10.4 or 9.10.5, must be initiated by prompt written notice to the other party, provided however that the Owner may pursue a Claim for a latent or hidden defect in the Work within three (3) years after actual (rather than imputed or constructive) discovery of the basis for the Claim. The Owner may pursue the Claim for a latent or hidden defect through the arbitration procedure set forth in this Agreement or by filing a civil action in a court of competent jurisdiction, at the Owner's sole election.

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

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

§ 14.1.6 Claims for Additional Time

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

§ 14.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction. The Design-Builder shall have sole responsibility to schedule the Work to be completed within the Contract Time, taking into account weather in Western Alaska, including abnormal temperatures, abnormal precipitation, or other abnormal natural phenomenon, recognizing that Western Alaska experiences extreme weather conditions. Adverse weather conditions may serve as the basis for a Claim for additional time only until the date of Substantial Completion. 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 construction schedule. “Adverse weather” conditions will be defined as a weather event, or events, with greater than a 10-year recurrence interval, as determined by the National Weather Service or equivalent state or federal agency. To justify a Claim for additional time. Adverse weather conditions must exceed a 10-year recurrence interval, prevent work for fifty percent (50%) or more of the Design-Builder’s workday, and delay work critical to the timely completion of the Project. Further, such Claim must be submitted with a pay request concurrent with or in the month following the month in which the event occurred.

§ 14.1.7 Claims for Consequential Damages

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

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

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

§ 14.2 Initial Decision

§ 14.2.1 An initial decision shall be required as a condition precedent to arbitration of all Claims between the Owner and the Design-Builder initiated prior to the date final payment is due, excluding those arising under Sections 10.3, 10.4, and 14.1.3.2 of the Agreement, unless thirty (30) days have passed after the Claim has been initiated with no decision having been rendered. Unless otherwise mutually agreed in writing, the Owner shall render the initial decision on Claims.

§ 14.2.2 Claims Procedure

§ 14.2.2.1 Claims Initiated by the Owner. If the Owner initiates a Claim, the Design-Builder shall provide a written response to Owner within ten (10) days after receipt of the notice required under Section 14.1.3.1. Thereafter, the Owner shall render an initial decision within ten (10) days of receiving the Design-Builder’s response: (1) withdrawing the Claim in whole or in part, (2) approving the Claim in whole or in part, or (3) suggesting a compromise.

§ 14.2.2.2 Claims Initiated by the Design-Builder. If the Design-Builder initiates a Claim, the Owner will take one or more of the following actions within ten (10) days after receipt of the notice required under Section 14.1.3.1: (1) request additional supporting data, (2) render an initial decision rejecting the Claim in whole or in part, (3) render an initial decision approving the Claim, (4) suggest a compromise, or (5) indicate that it is unable to render an initial decision because the Owner lacks sufficient information to evaluate the merits of the Claim or because, in the Owner’s sole discretion, the Owner determines that it would be inappropriate for the Owner to resolve the Claim.

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

§ 14.2.4 If the Owner requests the Design-Builder to provide a response to a Claim or to furnish additional supporting data, the Design-Builder shall respond, within ten (10) days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Owner when the response or supporting data will be

furnished, or (3) advise the Owner that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Owner will either reject or approve the Claim in whole or in part.

§ 14.2.5 The Owner's initial decision shall approve or reject the Claim or indicate that the Owner is unable to resolve the Claim. It shall also (1) be in writing; (2) state the reasons therefor; and (3) identify any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to binding dispute resolution solely as authorized by the Design-Build Documents.

§ 14.2.6 Either party may, within thirty (30) days from the date of an initial decision, pursue binding dispute resolution proceedings with respect to the initial decision.

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

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

§ 14.3 Mediation Intentionally omitted.

§ 14.4 Arbitration

§ 14.4.1 Because the parties have selected arbitration as the method for binding dispute resolution in Section 1.3, any Claim shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 14.4.1.1 A demand for arbitration shall not be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations or statute of repose. For statute of limitations or statute of repose purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

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

§ 14.4.3 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Contract, shall be specifically enforceable under applicable laws of the State of Alaska. Either party may seek enforcement of any final and binding decision, award, or judgment issued in accordance with this Article 14 in the Alaska State Superior Court located in Fairbanks, Alaska in the Fourth Judicial District, except that any decision, award, or judgment against the Owner is subject to all of the limitations set forth in this Article 14 and any other limitations on Claims, judgments, or awards against the Owner that may apply under applicable law.

§ 14.4.4 Consolidation or Joinder

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

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

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

§ 14.4.5 Sovereign Immunity and Limited Waiver

§ 14.4.5.1 All parties to this Contract understand and agree that the Owner is a federally recognized Alaska Native Tribal Government and is constructing the Project to further the Tribe's governmental interests. Nothing in the Contract Documents shall be construed to be a waiver of the Owner's sovereign immunity, except to the limited extent necessary to permit the Design-Builder to pursue the dispute resolution procedures authorized in this Agreement. Sovereign immunity is not waived as to any employee, Tribal Council member, or agent of the Owner, and the Owner hereby specifically reserves and retains its sovereign immunity and all rights and privileges pertaining thereto, except to the limited extent expressly stated in this Section 14.4.5.

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

§ 14.4.5.3 The Owner hereby grants a limited waiver of its sovereign immunity from suit solely for the limited purpose of allowing a Claim to be brought for moneys due and owing to Design-Builder for Work properly performed or for a share of insurance proceeds arising from any claims for damage or destruction of property, through the binding arbitration procedures set out in Section 17.2. A judgment or award against the Owner may be satisfied only from available funds which the Owner has specifically budgeted for this Project and shall not exceed the total amount of any invoice(s) for Work properly that Owner has refused to pay. Nothing in this limited waiver of immunity shall be construed as a waiver or consent to the levy of any judgment, lien, attachment, or encumbrance upon any other funds, assets, income, or real property or interest in any real property belonging to the Owner, whether held in trust for the benefit of the Owner by the United States, as restricted fee land, or in fee simple.

§ 14.4.5.4 This limited waiver of sovereign immunity does not permit the Design-Builder to seek the recovery of attorneys' fees or post-judgment interest against the Owner and does not extend to actions for declaratory judgment or injunctive relief beyond the remedies expressly set forth in this Section 14.4.5.

§ 14.4.5.5 The parties hereby acknowledge that this limited sovereign immunity waiver shall apply to any other agreements entered into by the parties during the respective terms of such agreements and shall continue to apply notwithstanding the prior termination of this Agreement or any ancillary agreements between the parties. The Owner specifically reserves and retains its full sovereign immunity, and all rights and privileges pertaining thereto, concerning any claims brought more than three (3) years after date of the execution of this Agreement by the Owner and Design-Builder. This limited waiver of sovereign immunity pertains only to a Claim brought by the Design-Builder and not by any third party.

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Governing Law

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

§ 15.2 Successors and Assigns

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

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

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

§ 15.3 Written Notice

Written notice shall be deemed to have been duly served if delivered in person or sent by registered or certified mail or by courier service providing proof of delivery to the Owner's representative as designated in Section 1.2.1 or the Design-Builder's representative in Section 1.2.4 of this Agreement.

§ 15.4 Rights and Remedies

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

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

§ 15.5 Tests and Inspections

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

§ 15.5.2 If the Owner determines that portions of the Work require additional testing, inspection, or approval not included under Section 15.5.1, the Owner will instruct the Design-Builder to make arrangements for such additional testing, inspection, or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. If such testing reveals any construction flaws, defects or improper workmanship, the cost of the additional testing shall be borne by the Design-Builder. If the additional testing shows that the Work was properly performed, the cost of the additional testing shall be borne by the Owner. If the Design-Builder refuses to arrange for the additional testing, the Owner may make arrangements for such testing, and the costs thereof shall be assessed as provided for in this section.

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

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

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

§ 15.6 Confidential Information

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

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

§ 15.7 Capitalization

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

§ 15.8 Interpretation

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

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

§ 15.9 Counterparts

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

ARTICLE 16 SCOPE OF THE AGREEMENT

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

- .1 AIA Document A141™-2014, Standard Form of Agreement Between Owner and Design-Builder, with Owner’s Project-specific revisions
- .2 Exhibit A, Scope of Work/Floor Plan (Dated [redacted])
- .3 Exhibit B, Approved Schedule of Values (Add as Part of Design-Build Amendment)
- .4 Exhibit C, Design-Builder Personnel and Rate Sheet
- .5 Exhibit D, Executed Design-Build Amendment (Add When Completed)
- .6 Exhibit E, Project Schedule (Add as Part of Design-Build Amendment)
- .7 Exhibit F, Final Design-Build Construction Documents (Add as Part of Design-Build Amendment)

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

OWNER (Signature)

DESIGN-BUILDER (Signature)

(Printed name and title)

(Printed name and title)

**NATIVE VILLAGE OF TANANA
(Hohudodetlaatl Denh)**



"WHERE THE TWO RIVERS MEET"

Attachment B

BEMAR Project Scope of Work Descriptions for Four Renovations Tasks

Name of Project: THC Roof Replacement

THO: Tanana Tribal Council

Priority: 2

Date: March 18, 2025

Facility/ BLS: AK152-316

Location: Tanana, Alaska

I. SUMMARY

Backlog of Essential Maintenance, Alterations & Repairs (BEMAR) funds are required to replace the existing metal roof, reconstruct the main entry vestibule, install snow guards and robust gutters at the Tanana Health Center (THC) in Tanana, Alaska.

This project is necessary to address the aged condition of the existing metal roof and noncompliant main entry.

PROJECT SCOPE AND DESCRIPTION

A. Project Description: This project will replace the existing metal roof system, install snow guards, and reconfigure the canopy covers at the building entrances. Design canopies and modify roof lines to divert drainage away from entrances.

B. Project Justification. The roof is old and in poor condition. Snow slides off and impedes access to the building. The canopy at the main entrance does not meet ADA and life safety requirements. The existing gutter system constantly gets ripped off from shedding snow and ice.

Name of Project: Domestic Water Improvements

THO: Tanana Tribal Council

Priority: 1

Date: March 18, 2025

Facility/ BLS: Tanana Health Center (AK152-00316)

Location: Tanana, Alaska

I. SUMMARY

Backlog of Essential Maintenance, Alterations & Repairs (BEMAR) funds are required to replace the entire domestic water distribution system at the Tanana Health Center in Tanana, Alaska.

This project is necessary to address elevated level of copper found in the domestic water at the health center.

PROJECT SCOPE AND DESCRIPTION

A. Project Description: This project will remove all existing copper piping in the domestic water distribution system at the health center. New PEX piping will be installed to new faucets and fixtures. Code-required safety mixing valves will be installed. A new drinking fountain will be installed.

B. Project Justification. Elevated levels of dissolved copper have been detected in the domestic water at the health center. The water from the city water plant and distribution test negative for dissolved copper. By deduction, the only source is the copper piping within the building. Long term exposure to excessive copper can cause kidney and liver damage.

Drainage Improvements

THO: Tanana Tribal Council

Priority: 3

Date: March 18, 2025

Facility/ BLS: Tanana Health Center (AK152-00316)

Location: Tanana, Alaska

SUMMARY

Backlog of Essential Maintenance, Alterations & Repairs (BEMAR) funds are required regrade the site around the Tanana Health Center (THC) in Tanana, Alaska. This project is necessary to address numerous issues of ponding water and water infiltration into the basement.

PROJECT SCOPE AND DESCRIPTION

A. Project Description: This project will regrade the entire perimeter area around the health center to promote drainage away from the building especially from the entryways.

B. Project Justification. Ponding water makes access difficult and dangerous with mud in the warmer months and icing in the winter months. Water also infiltrates into the basement.

Name of Project: Casework Replacement

Facility Priority Number: 1

Date: October 4, 2022

Facility Name: Tanana Health Center

Location: Tanana, Alaska

SUMMARY

Maintenance and Improvement (M&I) funds in the amount of \$ 228,976 are required to replace the all permanently-mounted casework and workstations at the Tanana Health Center in Tanana, Alaska.

This project is necessary to address the aged and worn casework, which is well beyond its useful life.

PROJECT SCOPE AND DESCRIPTION

A. Project Description: This project will replace existing aged casework in the Health Center. Wall cabinets, standing height cabinets, and sink cabinets in the laboratory, pharmacy, exam, and trauma rooms will be replaced. Permanently mounted workstations and wall cabinets will be installed in the front reception, provider, and counseling offices.

B. Project Justification.

Plastic laminate casework and counters are in poor condition. Casework has failed and has delaminating surfaces. Counters have worn or damaged surfaces. Casework has no sloped tops and open storage below sinks. These conditions pose infection and sanitary concerns.

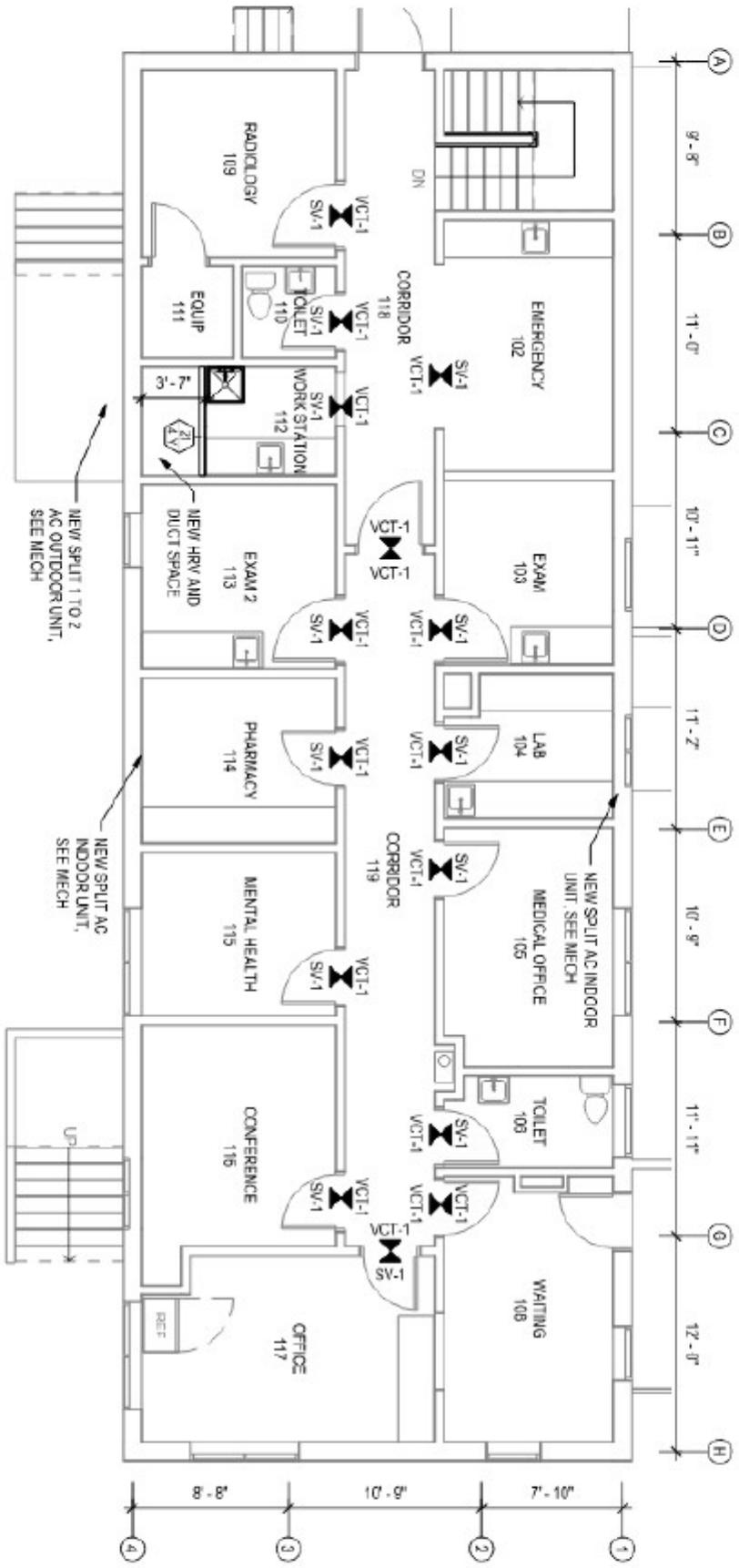
**NATIVE VILLAGE OF TANANA
(Hohudodetlaatl Denh)**



"WHERE THE TWO RIVERS MEET"

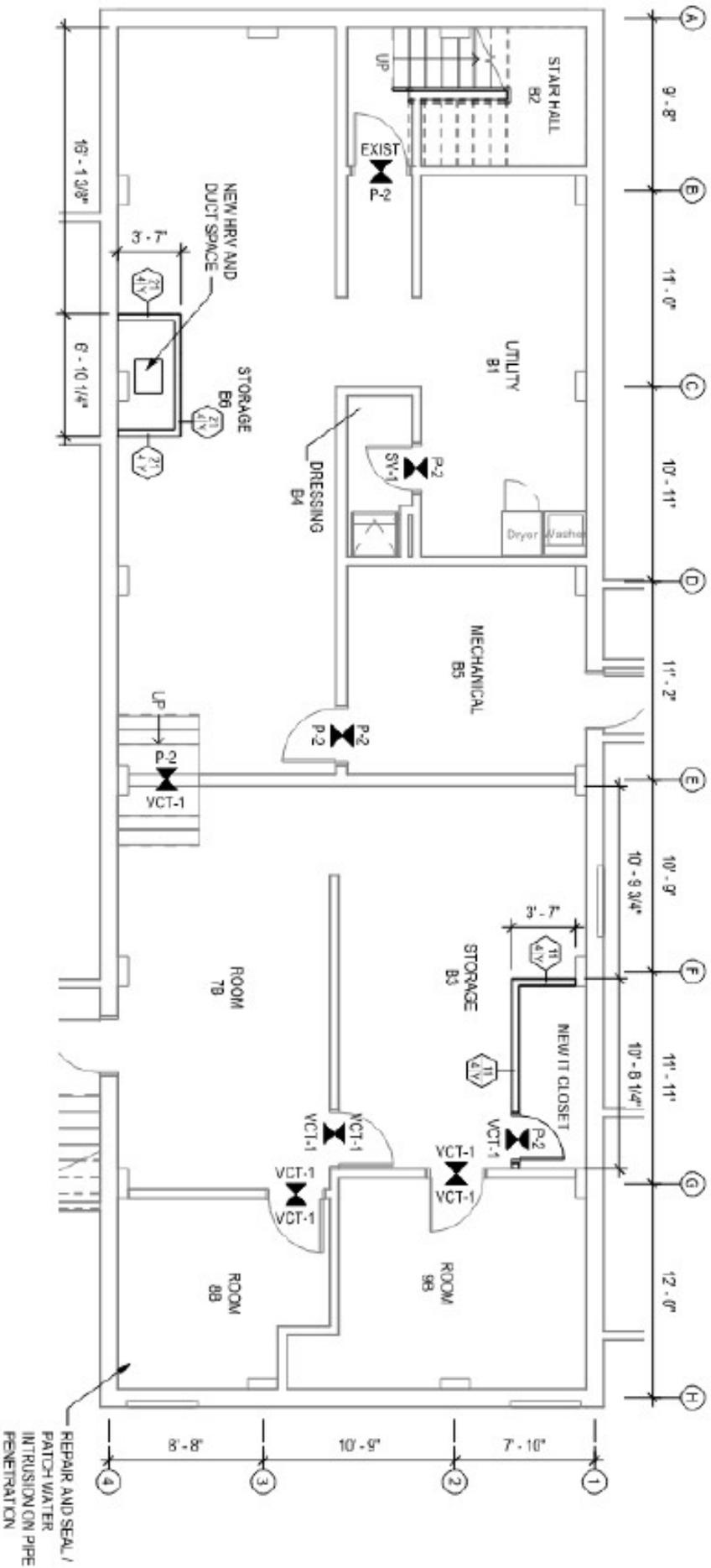
Attachment C

First Floor Plan



Building 316 – Health Center Floor Plans

Basement Floor plan



**NATIVE VILLAGE OF TANANA
(Hohudodetlaatl Denh)**



"WHERE THE TWO RIVERS MEET"

Attachment D

Attachment D

