

REQUEST FOR PROPOSALS
FOR THE
DESIGN AND CONSTRUCTION
OF THE
CURRITUCK COUNTY ANIMAL SHELTER
CURRITUCK, NORTH CAROLINA

Distributed March 28, 2013



REQUEST FOR PROPOSALS FOR A DESIGN/BUILD AGREEMENT

FOR THE DESIGN AND CONSTRUCTION OF THE CURRITUCK COUNTY ANIMAL SHELTER CURRITUCK, NORTH CAROLINA

Proposals must be received by May 7, 2013, by 3:00 P.M.

I. Request For Proposal

The County of Currituck (hereafter, "the Owner"), through this Request for Proposals ("RFP") from a Design/Builder team (hereafter, "the Offeror"), hereby request submission of proposals for the design/build construction of the CURRITUCK COUNTY ANIMAL SHELTER in Barco, North Carolina (hereafter, "the Project").

The purpose of the Project is to construct a new 10,000 sf Animal Shelter on a site in the Currituck Community Park. The project should include: 22 dog runs, space to accommodate 86 cat cages, support services space for the care and adoption of the animals and including operational space for the Animal Control Department and associated animal isolation areas.

The Offeror, through its Architects, agents, and/or employees, shall provide design and prepare documents setting forth in detail the requirements for construction of the Project, and shall:

- A. Provide architectural, structural, mechanical, electrical systems, site lighting and landscape architecture; and the materials and such other elements of the Project.
- B. Project shall be phased in accordance with: Schematic Design, Design Development, Construction Documents and Construction Management. A Guaranteed Maximum Price shall be provided at the Design Development phase.
- C. Manage and construct the Project within or below the guaranteed maximum price and within the approved overall project schedule.

The Owner will contract separately with Hyman and Robey, PC of Camden N.C. for civil engineering services which are not to be included in the Project costs provided by the Offeror. Hyman and Robey shall provide the site work plans and specifications to the Offeror; the Offeror shall be responsible preparation of the bid documents and bidding the site work. See Section II for responsibilities of Hyman and Robey.

II. Project Description

The Project shall provide an animal adoption shelter with space for sheriff's animal control department. Attachment A contains a vicinity and site maps for the project. The program calls for a total building square footage of approximately 10,000 sf. It is the desire to match the look of the other buildings in the Currituck Community Park including brick front with blue standing seam roof. A pre-engineered building may be acceptable. The building will be constructed on a shallow concrete foundation.

The project shall address the particular laws governing the development of shelter facilities in North Carolina, including but not limited to building codes and codes relative to animal welfare and protection. The intent is to develop an approach that will support a high level of animal adoptions. The "adoption friendly" approach seeks to develop a facility adequately sized to accommodate the projected volume of dogs and cats it will serve both initially and in the longer term; one that offers the public sufficient opportunity to visit sheltered animals in a positive, healthy environment encouraging the willingness to adopt. Length of stay is the predominant predictor of shelter size. Existing shelter statistics indicate a current breakdown of 34% canines and 66% felines. The current length of stay is 21 days for canines and 45 days for felines. An average length of stay of ten (10) days for both canines and felines represents the absolute minimum allowing sufficient exposure to the public to effectively encourage higher return to owner and adoption rates while simultaneously reducing the rate of euthanasia.

The animal shelter facility should include the following primary functions:

- A. Public reception and sales of basic pet care needs for adopted animals.
- B. Administrative areas including private offices for animal shelter staff and animal control officers. Animal control should include an enclosed sally port to aid in the handling of animals during the intake process.
- C. Public education provisions such as classroom or multi-function meeting/training room.
- D. Animal receiving, including examination and grooming functions.
- E. Animal kennels for adoption and strays.
- F. Animal kennels for quarantine and routine observation.
- G. Clinic space(s) for shelter animal care, euthanasia, emergencies and spay/neuter programs.
- H. Expandability for future growth.

The following is the estimated number of individual office spaces based on staffing of similar facilities:

- A. Shelter Manager Office
- B. Shelter Assistant Manager Office
- C. Shelter Volunteer Coordinator Office
- D. Animal Control Supervisor
- E. Animal Control General Office
- F. Separate staff "break rooms" for the adoption shelter section and the animal control section.

The following are the building program desired areas:

- A. Public Reception and Sales
 - 1. Adoption Lobby
 - a. Lobby/Gathering/Retail
 - b. Reception/Work/ Office Storage Area
 - c. Cat Community Room
 - d. Acquaint/Adopt Counseling
 - e. Puppy/Small Display Pens
 - f. Adoptable Dogs
 - g. Public Toilets
 - 2. Relinquishment Lobby
 - a. Lobby/Reception/Waiting
 - b. Temporary Canine Holding/Transfer
 - c. Temporary Feline Holding/Transfer
 - 3. Public Education
 - a. Community Education & Training
 - b. Public Restrooms
 - c. General Storage

- B. Administration
 - 1. Administrative Areas
 - a. Shelter Manager's Office
 - b. Assistant Shelter Manager's Office
 - c. Volunteer Coordinator's Office
 - d. Staff Conference/Break Room w/ Kitchenette
 - e. Staff Bathroom (HC Unisex)
- C. Animal Care
 - 1. Animal Kennel Areas (non-adoption)
 - a. Adult Male Dog Holding Kennels
 - b. Adult Female Holding Kennels
 - c. Dog Isolation Kennels
 - d. Dog Observation Kennels
 - e. Dog Receiving
 - f. Cat Adoption & Stray
 - g. Cat Isolation/Observation
 - h. Feral Cats
 - i. Cat Receiving
 - j. Small Exotic Animals
 - 2. Animal Treatment & Support Areas
 - a. Animal Receiving
 - b. Exam/Euthanasia
 - c. Grooming
 - d. Animal Kitchen/Preparation
 - e. General Animal Food Storage
 - f. Bowl Cleaning/Laundry
 - g. Cleaning Equipment + Janitor
 - h. Supplies/Storage
- D. Animal Control Area
 - 1. Administrative Areas
 - a. Supervisor's Office
 - b. General Office area for officers + Public
 - c. ACO's Bathroom + Changing Room
 - d. Staff Conference/Break Room w/ Kitchenette
 - 2. Animal Holding Areas
 - a. Dog Holding Kennels
 - b. Cat Holding Kennels
 - c. Exotic Animals
 - 3. Animal Support Areas
 - a. Euthanasia Room
 - b. Food Prep and Storage
 - c. Cleaning Equipment + Janitor
 - d. General Storage
- E. Desired Additional Support Areas
 - 1. Spay/Neuter Clinic
 - 2. Garage – Sally Port

The Project budget shall not exceed \$2,500,000. The budget is broken down as follows:

- A. Site work = \$550,000 – includes all civil engineering and related site work provided by Hyman and Robey as outlined below.
- B. General Building = \$1,750,000 – includes all design/build services and related work including general building, kennels, FF&E, ready for occupancy and operation.
- C. Contingency = \$200,000.

The Owner will contract directly with Hyman and Robey of Camden, North Carolina to provide civil engineering services for the project. The civil engineering services shall include but are not limited to:

- A. Topographic and boundary surveys
- B. Coordinating geotechnical work for stormwater, roadway work and for building/foundation design
- C. Driveways, parking and site lighting photogrammetric plans
- D. Stormwater management and erosion & sedimentation control plans
- E. NC Department of Environment and Natural Resources permitting
- F. All site utilities 5' outside the building footprint including potable water, fire service and sewer service for pretreatment, collection and transmission to the adjacent wastewater treatment plant.
- G. Preparation of site plans and technical specifications
- H. Construction administration services for site work
- I. Work closely with the Owner and the design/builder team throughout the project

III. General Description of Proposal Submittal, Evaluation and Selection Process

The Owner contemplates that the proposal submittal, evaluation, and selection process will essentially be as follows: The Offeror shall submit a proposal, the contents of which are described in this RFP. Offeror should carefully follow all the instructions in this RFP to ensure that its proposals are considered to be eligible. The Owner will review the proposals and evaluate them in accordance with the evaluation criteria established herein. The Owner may ask the Offeror(s), individually or collectively, for clarifications or further information, may check references and other information, may meet individually with the Offeror(s). At its own discretion the Owner may request oral presentations, or it may base its evaluations on the proposals as submitted and if deemed necessary and conduct negotiations. The Owner will then decide if proceeding with a Design/Build Agreement or Agreements serves the public interest, and if so, will attempt to enter into such an agreement or agreements. Award of the design-build contract will be to the Offeror that submits the best value proposal per the evaluation criteria.

IV. Criteria To Be Used In Evaluating Proposals

The Technical and Financial selection criteria used to evaluate the proposals are defined in Section VI, Instructions to Offeror on Proposal Submission. The evaluation criteria are as follows:

- A. Technical Criteria: 60%
 - 1. Experience and qualifications of the design firms, construction firms, key individuals of both, as well as previous experience working together on similar projects (20%).
 - 2. Compliance with the building program, design features, project description, scope of services, and terms & conditions of the full RFP (30%).
 - 3. Completion of the project on or before the required schedule (10%).
- B. Financial Criteria: 40%
 - 1. Lump sum cost proposal.

V. Terms and Conditions of this Request for Proposal

The following terms and conditions apply to this RFP, and by submitting its proposal, the Offeror agrees to them without exception:

- A. Neither this RFP nor the Owner's consideration of any proposal shall create any contract, express or implied any contractual obligation by the Owner to any Offeror, or any other obligation by the Owner to any Offeror. The Owner makes no promise, express or implied, regarding whether it will enter into a Design/Build Agreement with any Offeror or regarding the manner in which it will consider proposals.
- B. The Owner will not be responsible for any expenses incurred by an Offeror in preparing and submitting a proposal, or in engaging in oral presentations, discussions, or negotiations.
- C. Offeror submitting a proposal in response to this RFP may be required to make an oral presentation or oral presentations of their proposal to the County at their own expense. The Owner may request the presence of Offeror(s) representative(s) from architectural, engineering, specialty and construction teams at these presentations. The Owner will schedule the time and location for these presentations. By submitting its proposal, the Offeror agrees to make these representatives reasonably available to the County of Currituck, and acknowledges that the failure to do so may result in the proposal not being considered.
- D. The Owner reserves the right to waive any informality with respect to any proposal submitted in response to this RFP.
- E. The Owner reserves the right to accept or reject any and all proposals received by reason of this request, in whole or in part, and to negotiate separately in any manner necessary to serve the best interests of the Owner.
- F. Any confidential and proprietary information provided to the Owner by the Offeror pursuant to this RFP shall be subject to disclosure under the North Carolina Public Records laws.
 1. To prevent the release of any confidential and proprietary information that otherwise could be held in confidence, the Offeror submitting the information must:
 - a. Invoke the exclusion from Public Record Law when the data or materials are submitted to the Owner or before such submission,
 - b. Identify the data and materials for which protection from disclosure is sought, and
 - c. State why the exclusion from disclosure is necessary.
 2. The Offeror may request and receive a determination from the Owner as to the anticipated scope of protection prior to submitting the proposal. The Owner is authorized and obligated to protect only confidential proprietary information, and thus will not protect any portion of a proposal from disclosure if the entire proposal has been designated confidential by the Offeror without reasonably differentiating between the proprietary and non-proprietary information contained therein.
- G. The Owner will not discriminate against any Offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.
- H. This RFP with all attachments and the Offeror's responses may become part of the Design/Build Agreement contract as determined by the Owner.
- I. The Owner obtained legal authority for this process through local legislation from the North Carolina General Assembly – Session Law 2010- 47, House Bill 2727

VI. Terms and Conditions of the Design/Build Agreement(s)

The successful Offeror or Offerors shall agree to enter into the Design/Build Agreement included in Attachment D of this RFP. The Owner expressly reserves the right to modify any provision of the Design/Build Agreement, at its sole discretion, prior to entering into the definitive Agreement.

VII. Instructions to Offeror on Proposal Submission

A. For the Offeror's proposal to be considered:

1. Proposals are to be submitted in two (2) separately sealed envelopes (one for the Technical Proposal and one for the Financial Proposal) with the words "Technical Proposal Enclosed" on the face of one envelope and "Financial Proposal Enclosed" and the other envelope. Proposals must be signed in ink by an authorized representative of the Offeror. (Note: Documentation of signature authority shall be provided for both this RFP response and the Design-Build Agreement.) Provide one (1) original and seven (7) copies of the Technical Proposal (PART ONE) and (1) original and three (3) copies of the Financial Proposal (PART TWO). The lower left corner of the face of the each envelope shall indicate the Design/Builder name and title of the proposal. Deliver proposals to the Owner at the following location:

*Currituck County Manager
153 Courthouse Road, Suite 202
Currituck, North Carolina 27929*

2. Proposals must be complete when submitted, including a cover sheet and all attachments and in the format specified. Proposals or any amendments to proposals received by the Owner after the closing date and time will not be considered. Actual receipt by the Owner and not the mailing or sending date shall control.
3. A **pre-proposal meeting will be held on April 16, 2013 at 2:00 pm** at the Board Room of the Currituck County Cooperative Extension Center, Barco, North Carolina.
4. **Written questions and requests for clarification shall be submitted no later than April 23, 2013 at 5:00pm.** To the extent Currituck County determines to respond to such questions and requests for clarification, any and all responses and any supplemental instructions will be in the form of **a final written addendum, which if issued, will be emailed to all firms holding this RFP not later than April 30, 2013 at 5:00 pm.** All addenda shall become part of the RFP and the Design/Build Agreement.
5. **Proposals must be received no later than May 7, 2013 at 3:00 pm.** Requests for extensions of this date will not be granted except by written amendment to the RFP applicable to all prospective Offerors.

B. Instructions for Proposals

1. Brevity, clarity, and responsiveness in proposals are encouraged. The inclusion of extraneous information not pertinent to the basic purpose of the RFP is discouraged.
2. Technical proposals shall be limited to 50 letter size (unless otherwise expressed herein), one sided pages, not including cover sheet and tab dividers. All contents of the technical proposal shall be bound in one completed document.
3. Offerors are encouraged to carefully examine the RFP for discrepancies, errors, omissions or ambiguities. Any questions concerning the requirements of the RFP should be directed to Eric T. Weatherly, PE, County Engineer at 252-232-6035 or email (preferred) at eric.weatherly@currituckcountync.gov.
4. The Offeror's proposal shall be submitted in two parts sealed separately:
 - a. Part One will be the Technical Proposal and include responses to Items 1 thru 6 below. Items 1 through Item 5 will be reviewed and evaluated for best value determination. Item 6 will be reviewed for compliance. The technical proposal shall be arranged in accordance with the evaluation criteria by 6 tabbed dividers as identified below.
 - b. Part Two will be the Financial Proposal defined as Item 7 and sealed separately.

5. The information required by this RFP must be complete and the Offeror's submittal must "stand-alone". Information submitted in the RFQ phase will not be reconsidered or reviewed from that document in evaluation of the Offeror response to this RFP.
6. The term "similar project" shall be defined as an Animal Shelter with construction completed within the last 10 years. Each similar project will be presented on a separate sheet to include, but not limited to, a photo of the completed project, floor plan, size of the facility, construction cost, date completed, major features, general contractor, the architect of record, and owner of the facility with current contact information for a reference check.

TECHNICAL PROPOSAL - PART ONE:

**(Each section under a separate tab and each sub-section identified on the page (s).
Submit sealed in an envelope separate from PART TWO)**

1. Qualifications and experience of the architectural firm. The qualifications and similar project experience of the architectural firm will be presented in five categories:
 - a. A copy of the current North Carolina professional registration of the architectural firm.
 - b. A copy of the current North Carolina professional registration and resume of the architect of the firm that will be the architect-of-record for this project.
 - c. Similar projects by the firm designed by the architect, still with the firm, that will be assigned to this project.
 - d. Similar projects designed by currently employed architect(s) of the firm prior to their employment with the firm.
 - e. Architectural firm experience on similar projects where the employee who designed the project is no longer with the firm or will not be assigned to this project. (Note: In sections 1.c., 1. d., and 1.e., do not include more than 5 projects. A project will only be listed once within all three categories. In sections 1.c. and 1.d., the individual named as the architect must have been a registered architect in the position of architect of record, lead architect, and/or project architect.)
2. Qualifications and experience of the Design-Builder:
 - a. Provide project sheets for no more than five design-build projects, in excess of \$1,500,000, completed by the design-builder firm in the last five years. These reference projects are for any type of buildings, not necessarily an animal shelter. Each project will be presented on a separate sheet to include, but not limited to, a photo of the completed project, size of the facility, key individuals, construction cost, date completed, major features, architect of record, and owner of the facility with current contact information for a reference check.
 - b. Provide a resume for the pre-construction services manager that will be assigned to this project highlighting their design-build experience, not more than 5 projects.
 - c. Provide a resume for the construction project manager that will be assigned to this project highlighting their design-build experience, not more than 5 projects.
 - d. Will the design-builder have a Designated Design-Build Professional certified by the Design-Build Institute of America (DBIA) assigned to this project? If so, provide a resume of that individual with project responsibilities highlighted.
 - e. Provide the Project Team: Primary Members Form from Attachment B.
 - f. A copy of the design-builder's North Carolina Contractor's License.
3. Previous experience of the Design-Builder and the architectural firm working together:
 - a. Previous experience working together on a similar project via the design-build delivery method.

- b. Previous experience working together on any design-build project.
4. The Offeror's technical solution to the requirements of the RFP, to include but not limited to:
- a. Accommodation of the overall scope, building program, and quality standards expressed in the RFP **without** exclusions and/or exceptions. It is the intent of the Owner to award a design-build contract that is in full compliance with the technical and financial requirements of this RFP.
 - b. The technical proposal should include a floor plan, area use plan, elevations, and any other schematic design elements that represent the Offeror's approach to the project.
 - c. The technical proposal shall include a narrative and graphic illustrations to show how the design will assimilate into the overall architecture of the campus master plan. A copy of the campus master plan as well as a base map showing the project site boundaries including some limited topographical data is shown in Attachment A.
 - d. The Offeror's Financial Proposal shall be in accordance with the "terms and conditions" of this Request for Proposals. **Proposals including exclusions, exception, and/or alternatives to the terms and conditions of the Design Build Agreement with all Exhibits (Part 1: Contract Requirements) to the Agreement will be considered non-responsive and will not be evaluated.**
5. The ability of the Offeror to complete the work on or ahead of schedule. The Owner has defined a 540 calendar day project schedule to obtain Substantial Completion. Final Completion shall occur not more than 30 calendar days after Substantial Completion. The proposed project schedule shall include, but not limited to; design, lead time for long lead time materials and equipment, construction, all required inspections, and Owner move-in. The schedule must include all design code reviews and approvals, permits and permitting requirements, and Owner approval review periods. Graphic timeline schedules may be folded into the proposal. The timeline presented for the schedule should start with the Notice-to-Proceed (NTP) as "Day 1" and not be date specific. The narrative and graphic schedule should clearly state and show the number of calendar days proposed by the design-build to achieve substantial completion and final completion. **Proposals including project schedule duration, from the date of the Owner's Notice-to- Proceed to the date of Substantial Completion that exceeds 540 calendar days will be considered non-responsive and shall not be evaluated.**
6. Woman-Owned, Service Disabled Veteran-Owned, and Minority-Owned Business Participation Plan: Offerors are advised that there is a requirement for the preparation and inclusion of a good faith participation plan for minority-owned, service disabled veteran-owned, and woman owned contractors. Further, the Currituck County Board of Commissioners adopted a resolution in 2008 establishing a minimum of 10% participation by minority-owned contractors as an aspirational goal in all areas of county contracting.

FINANCIAL PROPOSAL - PART TWO

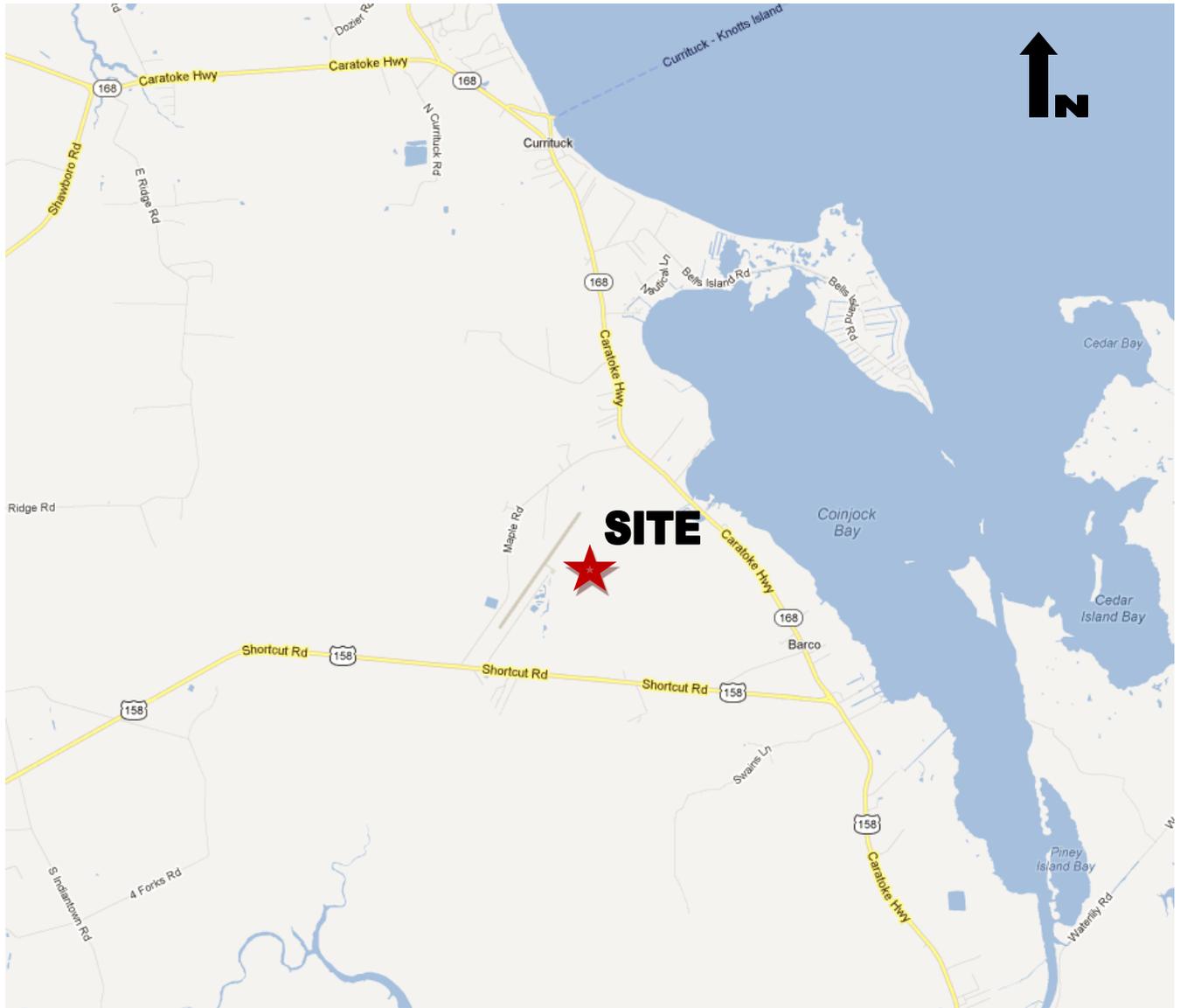
(Item 7 shall be sealed in a separate envelope from PART ONE)

7. The Offeror's Financial Proposal will be a lump sum cost proposal to complete the work. The Financial Proposal will consist of two forms:
- a. Provide a detailed cost proposal for the cost of the work using the Cost Proposal Form included in Attachment C.
 - b. Provide a listing of hourly rates for professional services. **Proposal amounts for the Design Build Contract Total in excess of \$2,500,000 will be considered nonresponsive and shall not be evaluated.**

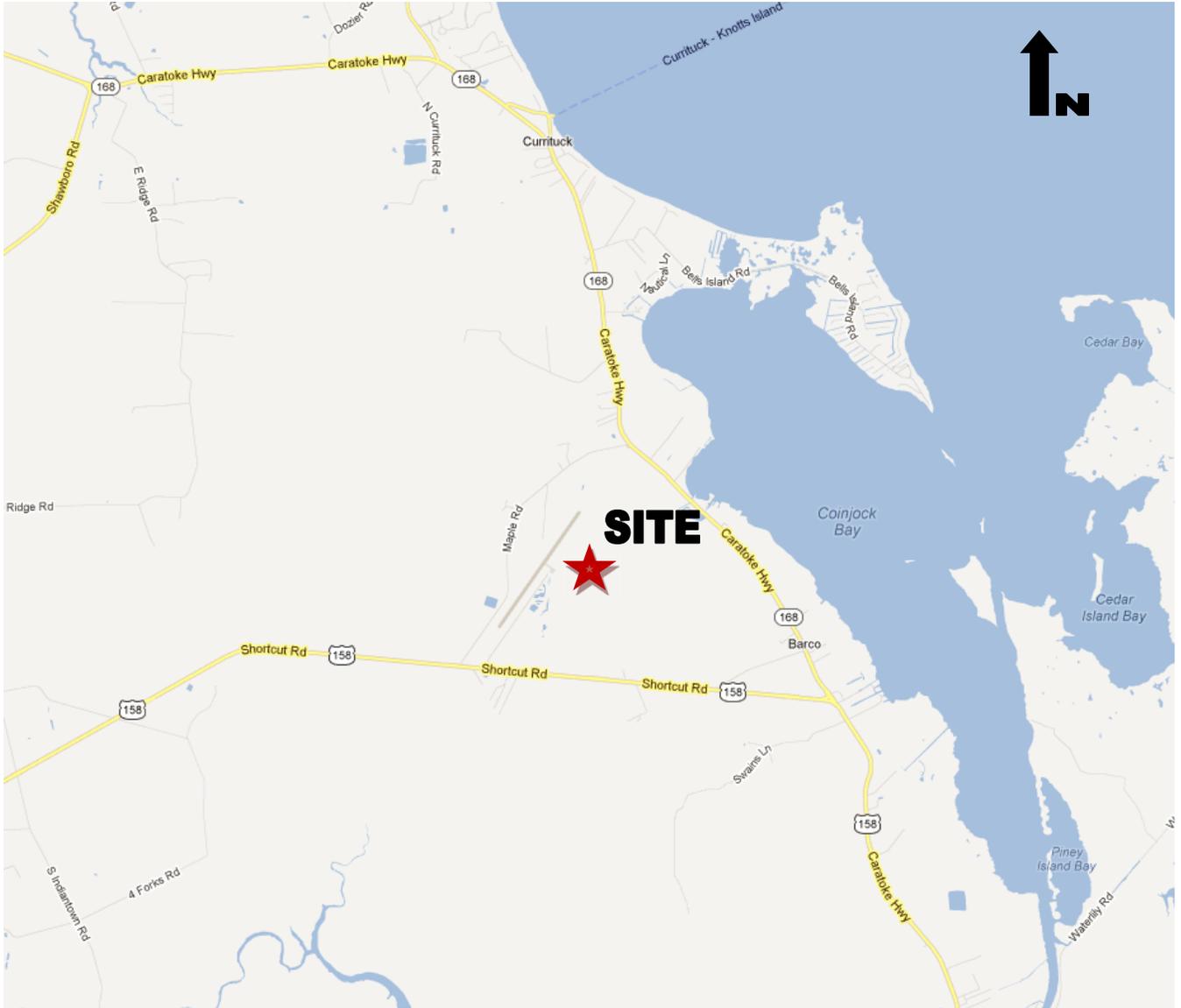
ATTACHMENT A

Currituck Community Park and Animal Shelter Site Maps

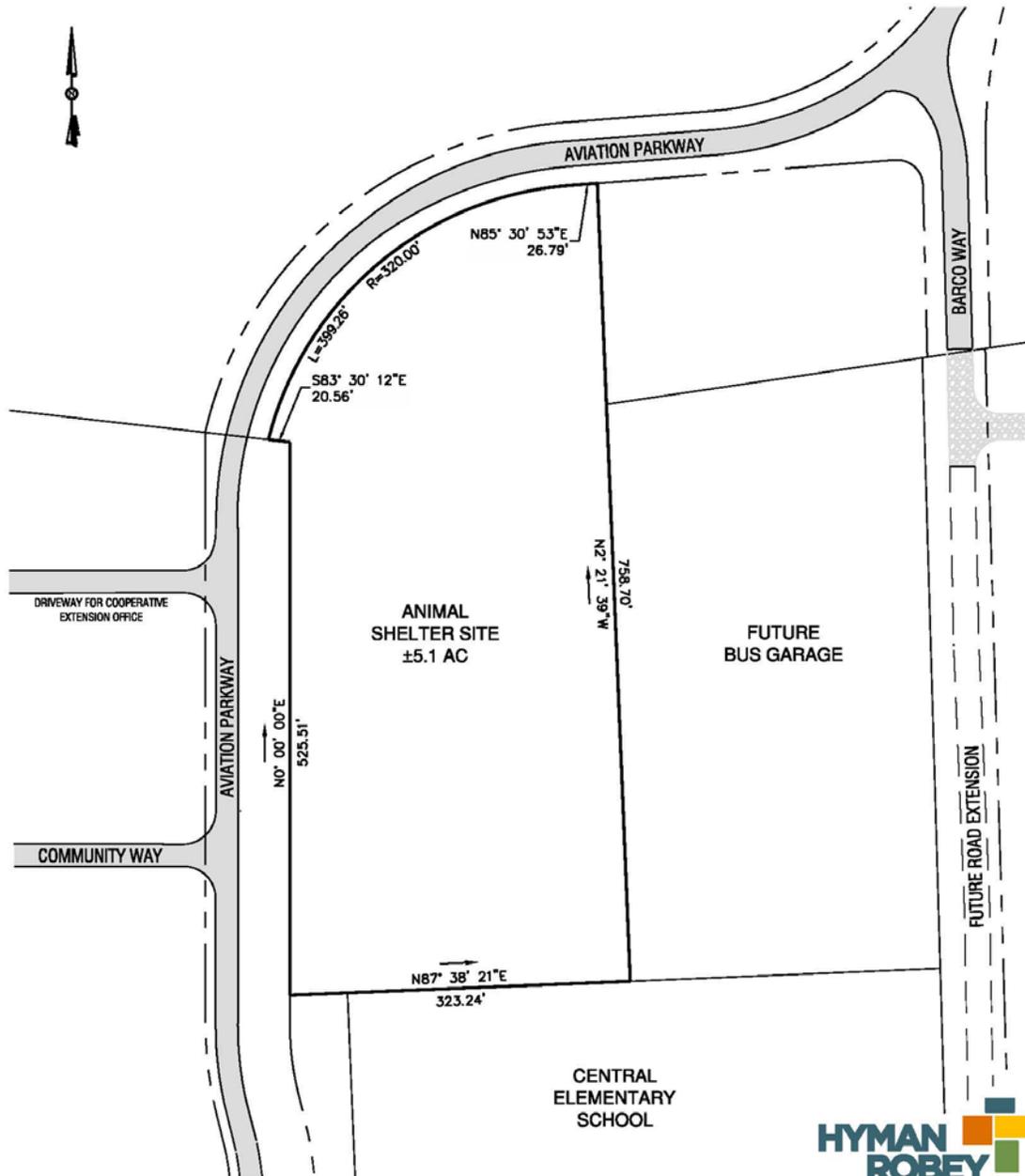
Animal Shelter Vicinity Map



Animal Shelter Vicinity Map



Animal Shelter Boundary Survey and Site Plan



CURRITUCK ANIMAL SHELTER SITE EXHIBIT

**HYMAN
ROBEY**
SOLUTIONS FROM THE GROUND UP
Hyman & Robey, PC
150 US Hwy 158 E.
PO Box 339
Camden, NC 27921
(252) 338-2913
(252) 338-5552 fax
www.hymanrobey.com
License C-0598

ATTACHMENT B

PROJECT TEAM: PRIMARY MEMBERS FORM

Design / Builder _____
Point of Contact _____
Address _____
Telephone _____
Email _____

Architectural Firm _____
Point of Contact _____
Address _____
Telephone _____
Email _____

Structural Engineer _____
Point of Contact _____
Address _____
Telephone _____
Email _____

Electrical Engineer _____
Point of Contact _____
Address _____
Telephone _____
Email _____

Mechanical Engineer _____
Point of Contact _____
Address _____
Telephone _____
Email _____

Civil Engineer _____
Point of Contact Sean Robey _____
Address 150-A US Hwy 158 East _____
Elizabeth City, NC _____
Telephone (252) 337-8988 _____
Email sean@hymanrobey.com _____

ATTACHMENT D

Design/Build Agreement

PROJECT DEVELOPMENT AGREEMENT Cost Plus with a Guaranteed Maximum Price

This Agreement (the "Agreement") is between:

(Hereinafter referred to as "Owner") and:

(Hereinafter referred to as "Design/Builder")

For the following Project: **Currituck County Animal Shelter**

Plan, design and build an Animal Shelter

Architectural services shall be provided by the following person or entity that is lawfully licensed to practice architecture in the state in which the project is located:

Normal structural, mechanical, and electrical engineering, and interior design shall be provided contractually through the Architect.

Civil Engineering Services shall be provided by the following person or entity who is lawfully licensed to practice civil engineering in the state in which the project is located:

**Hyman Robey, P.C.
150 US Highway 158 E
Camden, North Carolina 27921**

The Design-Build Documents and this Agreement form the Design-Build Contract, which shall be the Agreement between Owner and Design/Builder (hereinafter, the "Agreement") and its attached Exhibits; Supplementary and other Conditions; and Addenda issued prior to execution of the Agreement.

The Owner and the Design/Builder agree as set forth below:

Services

The Design/Builder through its Architects, agents, and/or employees, shall provide design and prepare documents setting forth in detail the requirements for construction of the Work, (hereinafter defined), and shall construct the project, in accordance with the Preliminary Project Schedule attached (Exhibit III) and shall:

- A. Provide to the Owner for Owner's written approval (hereinafter defined) design documents sufficient to establish the size, quality and character of the Project; its architectural, structural, mechanical and electrical systems; and the materials and such other elements of the Project to the extent required by the Design-Build Documents. Deviations, if any, from the Design-Build Documents shall be disclosed in writing.
- B. Construct the Project.

I. PHASE I: SCHEMATIC DESIGN

The Schematic Design for this Project shall be completed, which analysis includes, but is not limited to:

- (1) Determination of the Owner's preferences and facility type and architectural style;
 - (2) Review and determination of facility needs, personnel and space requirements;
 - (3) Determining whether special equipment is required;
 - (4) Establish budgetary considerations with the Owner;
 - (5) Schematic layout;
 - (6) Project Schedule;
 - (7) Project Cost Estimate (hereinafter defined.)
- A. The Project Cost Estimate shall mean those costs estimated to be incurred by the Design/Builder in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior written consent of the Owner. The Project Cost Estimate shall include labor costs, contract costs, costs of materials and equipment incorporated in the completed construction, temporary facilities and related items, and Design/Builder's Overhead and Profit and Design Fees.
 - B. The Project Cost Estimate on any phase will not include: cost of real estate and civil engineering provided by Owner for the Project unless otherwise noted in the Design-Build Documents.
 - C. The cost of performance and payment bonds is included in the Project Cost Estimate, although same can be added if required by Owner for additional cost to be paid to Design/Builder.

II. PHASE II: DESIGN DEVELOPMENT

Upon Owner's approval of the Schematic Design and Project Cost Estimate identified in Phase I above, the Design/Builder will proceed with Phase II, Design Development, update the Project Cost Estimate, update the Project Schedule and otherwise complete the Design Development Documents, Phase II.

- A. Upon completion of the Design Development, Design/ Builder will update the Project Cost Estimate and Project Schedule, giving its best estimate of the cost of the Project as well as its best estimate of the schedule.

III. PHASE III: CONSTRUCTION DOCUMENTS AND CONSTRUCTION MANAGEMENT

With Owner's approval of the Design Development documents, and general approval by Owner of the Project Cost Estimate (which is not binding on either party) and with the Owner's written authorization to proceed to Construction Documents, Design/Builder shall proceed with Construction Documents and Construction Management, Phase III

A. Construction Documents

1. Prepare Construction Documents for the project consisting of working drawings and specifications setting forth in detail and prescribing the work to be accomplished and the materials, workmanship, finishes and equipment required for the architectural, interiors, structural, mechanical, and Owner provided systems and equipment.
2. The Construction Documents will include appropriate general conditions which define the duties, rights, responsibilities, and relationship of all parties.
3. In addition, when the Construction Documents are tendered to Owner in accordance with III.A.2, Design/Builder shall warrant that the Construction Documents are in compliance with existing laws, building regulations, and ordinances in force where the Project is located as of the time of the issuance of the Construction Documents.
4. The Design/Builder shall submit plans and specifications to approving authorities and jurisdictions and revise Design-Build Documents as required for final approvals necessary to obtain permits.

B. Guaranteed Maximum Price

Upon completion of the Design Development, Design/Builder shall obtain pricing for the performance of the work and shall submit to the Owner a proposed guaranteed maximum price for the work per Exhibit I, "Confirmation of Guaranteed Maximum Price and Notice to Proceed with Construction" which shall include a proposed break down of the costs of the work, hereinafter referred to as a Schedule of Values. The Schedule of Values shall be used as a basis in submitting pay requisitions for Owner's approval. The Schedule of Values may be updated periodically to reflect changes in the allocation of the Guaranteed Maximum Price

The guaranteed maximum price shall include all costs of construction, including for "allowance" items for which the final design is not known, or for costs that cannot be appropriately estimated as of the date of the agreement on the guaranteed maximum price. Such items, however, will be expressly set forth in the proposed guaranteed maximum price break down of the work. It is also agreed by the parties hereto that the itemization of the work set forth in the proposed guaranteed maximum price is generally non-binding in that a listing of dollar values as to one line item may be shifted and used for other line items. The Guaranteed Maximum Price is a single price. This Agreement does not provide for "line item" guaranteed maximum prices. Notwithstanding the aforesaid, the Guaranteed Maximum Price is a single price which shall be expressly relied upon by the Owner.

The guaranteed maximum price shall include reasonable costs for construction, superintendents' salary and benefits, and other field overhead type costs that are direct job site costs., All architectural fees, Design Fees and design professional fees for design of the project and architectural/engineering administration shall be included in the Guaranteed Maximum Price. In addition, the Design/Builder's fee for overhead and profit shall be included in the Guaranteed Maximum Price.

C. Schedule for Construction

The date of commencement of the services under this Agreement shall be the date of this Agreement. Contract time for construction of the Project will commence upon issuance of a Notice to Proceed by Owner. It is anticipated that such Notice will be given no later than _____. The Design/Builder shall achieve substantial completion of the Project not later than ___ calendar days from issuance of the Notice to Proceed by Owner. The commencement date and schedule is subject to modification in the event of the written approval of change orders that cause a delay in the work or other causes that are beyond Design/Builder's control, including government action, government inaction, abnormal adverse weather, or substantial interference to the work beyond Design/Builder's control causes delay. TIME IS OF THE ESSENCE.

IV. Design/Builder Responsibilities

- A. Design/Builder shall perform all Design/Builder responsibilities, including, but not limited to, the following:
1. Total responsibility for the performance of all work necessary for the completion of the Project including, but not limited to, completion of the Construction Documents and incorporating all applicable Owner requirements.
 2. Repair or Replacement of work found to be defective within one (1) year following substantial completion of the project; however, the one year warranty is subject to a qualification as to equipment that deteriorates due to normal wear, tear, and use.
 3. Incorporate into the documents any changes in the work authorized in writing, by the Owner.
 4. Unless otherwise provided in the Contract Documents, shall provide and pay for all design services, labor, materials, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for proper execution and completion of the Work.
 5. Secure bids or quotations for materials, services and subcontracts for the Work and determine those suppliers and subcontractors that best comply with the requirements of the Design-Build Documents.
 6. Prepare and issue all purchase orders, subcontracts and any other construction related documents.
 7. Provide a competent on-site superintendent and other project related employees to direct and coordinate the work.
 8. Prepare job payrolls and related government reports.
 9. Maintain proper records and keep an accurate and detailed account of all transactions resulting from the performance of the work.
 10. Maintain worker's compensation and comprehensive general liability insurance in accordance with the Design-Build Contract.
 11. Timely pay all subcontractors and/or suppliers and obtain appropriate lien release waivers prior to each payment.
 12. Upon completing the work, provide the Owner with a detailed final statement of cost called Final Billing as provided in Section VI.G.

13. Furnish all working drawings and specifications required of the construction work.
 14. Design/Builder will file on the Owner's behalf all documents necessary for approval of authorities governing construction. The cost shall be included in the Guaranteed Maximum Price as an allowance item, and be adjusted upwards or downwards based on the actual cost, as applicable.
 15. Shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public or private authorities relating to the Project.
 16. Make periodic and timely inspections of the work to ensure compliance with the intent of the Construction Documents.
 17. Construction Administration to include the following: check and approve shop drawings, samples, schedules and other submittals for compliance with the design intent of the construction documents, review laboratory tests, prepare change orders, make periodic inspections of the work to ensure compliance with the intent of the Construction Documents, assemble written guarantees and operation and maintenance manuals and secure the Certificate of Substantial Completion.
 18. Shall maintain at the site for the Owner one record copy of the drawings, specifications, product data, samples, shop drawings, Change Orders and other modifications, in good order and regularly updated to record the completed construction. These shall be delivered to the Owner upon completion of construction and prior to final payment.
 19. Shall have prepared a set of reproducible record documents in electronic format showing significant changes in the Work made during construction and provide two copies of electronic data and one print copy to the Owner.
 20. Shall keep the Owner informed of the progress and quality of the Work and no less frequently than monthly Owner shall be provided with an updated Project Schedule.
 21. Shall be responsible for correcting Work which does not confirm to the Contract Documents.
 22. Provide coordination of construction performed by the Owner's own forces or separate contractors employed by the Owner, and coordination of services required in connection with construction performed and equipment supplied by the Owner.
 23. Shall provide assistance in the utilization of equipment or building systems including, but not limited to, preparation of operation and maintenance manuals, and training Owner's personnel for operation and maintenance.
 24. Provide Jobsite Safety, which is more particularly described in the AIA Document, which will form part of this Agreement.
- B. Compliance and performance in accordance with the following provisions or sections, all of which are incorporated by reference: The documents listed in this Subsection B are incorporated into this agreement, and shall control in the event of conflict or ambiguity with other sections of the agreement.
1. AIA Document A141-2004 Standard Form of Agreement between Owner & Design/Builder. Articles:
 - a. Section 1.2 of Article 1, The Design-Build Documents
 - b. Section 1.3 of Article 1, The Design-Build Documents
 - c. Article 5.1 Progress Payments as amended
 - d. Section 5.4.3 of Progress Payments as amended
 - e. Section 5.5.1 of Final Payment

- f. Section 6.1 of Dispute Resolution
 - g. Section 6.2 of Dispute Resolution as amended
2. AIA Document A141-2004 Exhibit A Terms and Conditions
- a. Section A.1.6.1, Ownership and Use of Documents and Electronic Data except that in all circumstances the drawings, specifications and other documents including those in electronic form, prepared by Architect or others shall be the property owned and controlled by Owner as amended
 - b. Section A.2.2 of Information and Services Required of the Owner as amended
 - c. Section A.2.4, Owner's Right to Stop Work, in its entirety
 - d. Section A.2.5.1, Owner's Right to Carry Out the Work as amended
 - e. Section A.3.3, Construction as amended
 - f. Section A.3.4, Labor and Materials as amended
 - g. Section A.3.5.1, Warranty as amended
 - h. Section A.3.6.1, Taxes
 - i. Section A.3.7, Permits, Fees and Notices, in its entirety
 - j. Section A.3.10.1, Documents and Samples at the Site
 - k. Section A.3.11, Shop Drawings, Product Data and Samples, in its entirety
 - l. Section A.3.12, Use of Site, in its entirety
 - m. Section A.3.13, Cutting and Patching as amended
 - n. Section A.3.14, Cleaning Up, in its entirety
 - o. Section A.3.15.1, Access to Work
 - p. Section A.3.17, Indemnification as amended
 - q. Section A.6.3.1 Owner's Right to Clean Up as amended
 - r. Section A.9.1.1, Contract Sum
 - s. Section A.9.2.1, Schedule of Values
 - t. Section A.9.3, Applications for Payment as amended
 - u. Section A.9.4.1, Acknowledgment of Application for Payment as amended
 - v. Section A.9.5, Decisions to Withhold Payment as amended
 - w. Section A.9.6, Progress Payments, in its entirety
 - x. Section A.9.8, Substantial Completion, in its entirety
 - y. Section A.9.10, Final Completion and Final Payment as amended
 - z. Section A.10, Protection of Persons and Property as amended
 - aa. Section A.11, Insurance and Bonds as amended
 - bb. Article A.12, Uncovering and correction of work as amended
 - cc. Section A.14.2, Termination by Owner for Cause, in its entirety
 - dd. Section A.13.6 as amended
 - ee. Section A.14.1 as amended
3. AIA Document A141-2004 Exhibit B Determination of the Cost of the Work as amended
4. AIA Document A141-2004 Exhibit C Insurance and Bonds

V. Owner's Responsibilities

- A. Designate a representative authorized to act on the Owner's behalf with respect to the Project. The Owner or such authorized representative shall examine documents submitted by the Design/Builder and shall render decisions in a timely manner and in accordance with the schedule accepted by the Owner.
- B. Provide information regarding requirements for the Project, contemplated changes in operations, new or expanded services, and identify preferences, if any, regarding architectural style, materials, colors and finish quality.
- C. Cooperate with the Design/Builder in securing building and other permits, licenses and inspections.

- D. Furnish, at Owner's expense, but at Owner's sole and absolute discretion, services of land surveyors, geotechnical engineers and other consultants for subsurface soil investigation and analysis, and such other tests as may be deemed necessary by the Design/Builder to properly carry out the design services required by this Agreement.
- E. Be responsible for the accuracy of above mentioned data and information furnished. The Design/Builder shall be entitled to rely upon the accuracy and completeness thereof, except to the extent the Owner advises the Design/Builder to the contrary in writing.
- F. Furnish, at Owner's expense, legal, accounting and insurance counseling services as may be necessary for the Project.
- G. Promptly notify the Design/Builder in writing of any observed defects or fault in the Work or nonconformity with the Contract Documents.

VI. TERMS USED IN THIS AGREEMENT

- A. Project Cost Estimate. The estimates referred to in this Agreement are provided for the purpose of guidance to the Owner as to anticipate costs in relationship to the budget requested by the Owner. Such estimates are not binding on the Design/Builder. The only binding contract amount is the agreed to Guaranteed Maximum Price, sometimes referred to as GMP.
- B. Allowances. Within the Guaranteed Maximum Price will be a listing of certain items referred to as allowances. These are items for which pricing has not or cannot be agreed to at the time of the guaranteed maximum agreement. Such items will vary upwards or downwards from the estimate and the actual cost of said items will be deemed to be part of the guaranteed maximum.
- C. Insurance. Design/Builder is responsible for and shall provide worker's compensation and general liability insurance and the cost directly attributable to the Project shall be considered a cost of the work and included in the GMP and may be listed as an allowance item. The policy limits for said insurance should be no less than those set forth in the Certificate of Insurance ("COI") attached hereto as Exhibit V. Design/Builder shall be responsible to insure that all subcontractors and consultants that perform services on the Project shall have no less than the policy limits as set forth per Exhibit V. All insurance shall be for a term that remains in force until Final Payment, or if required by Design-Build Documents to remain in force after Final Payment, whichever is later. The Design/Builder shall provide a builder's risk insurance policy. Insurance provided by the Owner is not a cost of the work.
- D. Written Approval. Design/Builder and Owner acknowledge and agree that from time to time in performance with this Agreement the written approval of Owner shall be required. However, the parties further agree that the Owner is expressly relying on the knowledge and the experience of the Design/Builder when such written approval of Owner is required and any such written approval by Owner, with the exception of the Guaranteed Maximum price, shall be without an express or implied warranty or representation of such by Owner.
- E. Design Fees. As defined in Section VII below.
- F. Guaranteed Maximum Price (GMP). As defined in Section III B.
- G. Final Construction Cost. The final cost of construction for the Project including general work; subcontract work; reproduction of documents; all costs associated with civil, soils, environmental or other construction tests, surveys or consulting fees required by the owner or any governmental agency; permit fees; materials; tools; tool rentals; supplies; equipment; utilities; taxes; premiums for worker's compensation, comprehensive general liability, and professional liability insurance; wages, salaries and benefits of any Design/Builder's field personnel engaged at the Project or owner location; material handling; shipping; payment and performance bonds and any other Project related expenses that may be incurred in the development and construction of the Project.

- H. Exhibit I: Preliminary project cost estimate
- I. Exhibit II: Guaranteed Maximum Price and Notice to Proceed with Construction
- J. Exhibit III: Confidentiality Agreement
- K. Exhibit IV: Preliminary Project Schedule
- L. Exhibit V: Certificate of Insurance

VII: Design/Builder's FEES

A. Design Fee:

The fees for professional design services rendered by Design/Builder in the design of the project are as follows and such fees are included in the total Project Cost Estimate and the Guaranteed Maximum Price. For all architectural, and structural, plumbing, mechanical engineering, and interior design services, review and coordination, the Design/Builder shall be paid _____.

Civil Engineering services are to be paid for directly by the County of Currituck under separate agreement.

Design Fees shall be paid as follows:

1. Upon completion of the Schematic Design phase (Phase I), 25% of the Design Fee. The remaining Design Fee shall be paid as follows:
2. Upon completion of the Design Development (Phase II) 60% of the Design Fee is due, less Design Fee payments previously paid to Design/Builder under this Agreement. In the event at the completion of the Design Development Phase, the anticipated Project Cost Estimate increases or decreases from the original estimate.
3. Upon completion of the Construction Documents (Phase III), 90% of the Design Fee is due, less Design Fee payments previously paid to Design/Builder under this Agreement. The remaining 10% of the Design Fee shall be paid to Design/Builder in equal monthly payments over the life of the anticipated schedule of performance referred to above.

B. Design/Builder Overhead and Profit

1. The Design/Builder shall be paid eight percent (8%) for overhead expenses plus a five percent (5%) fee of the costs of construction (Section III.B) which is included in the Guaranteed Maximum Price for the Project.
2. In the event the Owner adds work, which increases scope and the cost of the Project, the Guaranteed Maximum Price will not be increased by the total cost of the change plus Design/Builder's fees as described in Section V of this Agreement, but shall be a separate change agreed to in writing by Owner and Design/Builder.
3. In the event a deductive work authorization is agreed to, the Guaranteed Maximum Price Cost will be decreased by the total of the estimated cost of the deleted work, plus Design/Builder's profit fee on the estimated cost of the deducted work.

C. Payments

1. Design/Builder shall submit an itemized Application for Payment to the Owner based upon the percentage complete of the work by the end of each month in accordance with the current schedule of values. The application will detail for each category of work performed the

percentage complete and compute the amount earned for that month and reflecting retainage as appropriate. In the event a line item has been exceeded, the Design/Builder may allocate money from one item into the deficit account. However, the GMP may not be increased, and the allocation of money from one line item to the other shall not be allowed in the event the costs will exceed the value established for the GMP excluding authorized change orders outside the GMP (see VII 7.B.2 above).

2. Simultaneous with the submittal of the monthly application for payment, Design/Builder shall submit copies of substantiating data from subcontractors and suppliers showing the actual costs incurred to Design/Builder.
3. Five percent (5%) retainage shall be withheld by the Owner from payments for work performed by subcontractors to Design/Builder and including retainage on Design/Builder's fees. No retainage shall be withheld on design professional fees.
4. Release of retainage by the Owner shall be per standard terms contained in the referenced AIA documents upon Substantial Completion.
5. Within ten (10) business days of the Owner's approval of a properly-submitted and correct Application for Payment, the Owner shall make the payment to the Design/Builder. Final payment shall be paid per terms contained in the above-referenced AIA documents upon completion of all closeout procedures, including, but not limited to, receipt of Record Documents, Owner's Operations and Maintenance Manuals, warranties, stock materials, lien waivers, and completion of Punchlist items.

D. Additional Services:

Owner may request the following additional services which will be paid for by the Owner; however, prior to the additional services being rendered, Design/Builder and the Owner will reach a mutual agreement as to the cost of the additional service. These costs will be invoiced separately and are not a part of the Guaranteed Maximum Price (GMP) nor are these items part of any estimates and are to be paid separately by the Owner:

1. Making alternative site evaluation studies of prospective sites.
2. Preparing documents for alternate bids for tenant layouts.
3. Revising documents previously approved by Owner after completion of Construction Documents.
4. Preparing documents for changes requested by the Owner requiring extensive modifications of the work.

E. Reimbursable Expenses

The following costs, expenses, and activities may become necessary during the course of the engagement. When requested in writing by Owner, Design/Builder will provide an estimate of such cost to the Owner in advance of incurring any such cost or expense and will gain Owner's approval prior to proceeding. These costs are not part of the GMP nor are these items part of any estimates. They are to be paid separately by the Owner.

1. Special Consultant Fees for special structural, mechanical, electrical and civil engineering services.

F. Expenses Incurred Prior to Construction

Costs incurred prior to the start of construction shall be billed by Design/Builder and paid by the Owner as incurred. The costs may include: plan review fees and related time and expenses required for submittals to approving authorities; boundary and topographical survey; professional design fees including, if required; renderings and document reproduction. These expenses are included within the GMP.

G. Indemnity

Design/Builder will indemnify, protect and hold Owner, its Directors, Officers and employees harmless from any and all damages to persons or property arising out of the negligence of Design/Builder resulting from or incurred in connection with the execution of the work described in this Agreement.

- H. Ownership and Use of Documents and Electronic Data Drawings, specifications, and other documents including those in electronic form, prepared by the Architect and furnished by the Design/Builder are Instruments of Service and furnished for use as provided in Section A.1.6.1 of the Supplementary Conditions to AIA Document A141-2004 Exhibit A to this Agreement.

If this Agreement is terminated, each of the Design/Builder's design professionals, including the Architect, shall be contractually required to convey to the Owner a non-exclusive license to use that design professional's Instruments of Service for the completion, use and maintenance of the Project, conditioned upon the Owner's written notice to that design professional and payment to that design professional of all reasonable amounts due to that design professional and its consultants. If the Owner does not assume the remaining duties and obligations of the Design/Builder to that design professional under this Agreement, then the Owner shall indemnify and hold harmless that design professional from all claims and any expense, including reasonable legal fees, which that design professional shall thereafter incur by reason of the Owner's use of such Instruments of Service. The Design/Builder shall incorporate this requirement in all agreements with its design professionals.

I. Execution of Agreement

The undersigned officer of the Owner and the Design/Builder represents that he or she is authorized to enter into this Contract on behalf of the parties.

J. Termination for Convenience

1. Upon ten (10) day's written notice to the Design/Builder, Owner may, for its convenience and without cause, elect to terminate this Agreement. In such event, Owner shall pay the Design/Builder for the following:
 - a) All work executed and for proven loss, cost or expense, including work in progress or in fabrication for the project, or purchased or committed to the project. ;
 - b) The reasonable costs and expenses attributable to such termination, including but not limited to demobilization costs and amounts due in settlement of terminated contracts with sub-contractors and design consultants; and
 - c) Contract specified fees and reimbursable expenses on all costs incurred, including construction management fees.

Notwithstanding any other provision in this Agreement, for each and every Phase set forth herein, Owner shall have the right to terminate this Agreement at any time.

K. Scope of Agreement

This Agreement and its referenced attachments and exhibits represent the entire understanding between Owner and Design/Builder and supersede all prior Agreements, understandings and negotiations. This Agreement may be modified only in writing. Owner and Design/Builder understand, agree, and acknowledge that this Agreement has been freely negotiated by the parties, and that in any controversy, dispute, arbitration, or contest over the meaning, interpretation, validity or enforceability of this Agreement; or any of its terms and conditions, there will be no interference, presumption or conclusion drawn whatsoever against either party by virtue of the party having drafted this Agreement or any portion thereof.

L. Incorporation of AIA Sections

Design/Builder and Owner agree that in the event that any section and the language set forth in any AIA section is in conflict with a provision in this Agreement, the referenced section and the language noted in the AIA Document(s) shall be controlling.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals to this Agreement on the dates shown below, in duplicate.

COUNTY OF CURRITUCK, NORTH CAROLINA

BY: _____
Dan Scanlon, County Manager

DATE: _____

Corporate Seal:

Contractor

BY: _____

DATE: _____

Corporate Seal:

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

Sandra Hill, Currituck County Finance Officer

Currituck County Supplementary Conditions to AIA Document A141-2004
Standard Form of Agreement between Owner and Design-Builder
July 25, 2011 Edition

Additions appear as underlined. Deletions appear by reference or by strikeout.

ARTICLE 5
PAYMENTS

§5.1 Progress Payments

5.1.2 Amend paragraph 5.1.2 to read as follows:

The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

5.1.3 Amend paragraph 5.1.3 to read as follows:

Provided that an Application for Payment is received not later than the ____ day of the month, the Owner shall make payment to the Design-Builder not later than the ____ day of the month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than ____ () days after the Owner receives the Application for Payment. The Owner shall make payment to the Design-Builder, or provide the Design-Builder written notice of the reason the Owner is withholding such payment no later than 10 business days after the Owner receives an Application for Payment duly completed and submitted by the Design-Builder.

5.1.4 Amend paragraph 5.1.4 to read as follows:

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

5.1.5 Amend paragraph 5.1.5 to read as follows:

With each Application for Payment where the Contract Sum is based upon a Stipulated Sum or Cost of the Work with a Guaranteed Maximum Price, the Payment, the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services shall be shown separately. Where the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, the The Design-Builder's Fee shall be shown separately. The schedule of

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

5.1.7 Amend paragraph 5.1.7 to read as follows:

Except with the Owner's prior approval, ~~which the Owner may withhold in its sole discretion,~~ the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

5.4 Progress Payments – Cost of the Work Plus a Fee with a Guaranteed Maximum Price

5.4.3 Amend paragraph 5.4.3 to read as follows:

Except with the Owner's prior approval, payments for the Work, other than for services provided by design professionals and other consultants retained directly by the Design-Builder, shall be subject to retainage of not less than 5%. The Owner and Design-Builder shall agree on a mutually acceptable procedure for review and approval of payments and retention for Contractors.

ARTICLE 6 **DISPUTE RESOLUTION**

6.1 Strike paragraph 6.1 in its entirety and replace with the following clause:

The Owner shall provide the initial decision pursuant to section A.4.2 of Exhibit A, Terms and Conditions.

6.2 Amend paragraph 6.2 to read as follows:

If the parties do not resolve their dispute through mediation pursuant to A.4.3 of Exhibit A, Terms and Conditions, the method of binding dispute resolution shall be the following: Litigation in the North Carolina General Court of Justice in Currituck County, North Carolina subject to negotiation and mediation as provided in Section 4.3 of Exhibit A, Terms and Conditions.

The Owner and Contractor hereby agree to the full performance of the covenants contained herein.

IN WITNESS WHEREOF, the Owner and Contractor have entered into this Agreement as of the date and year as written below.

Owner:

Contractor:

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

**Currituck County Supplementary Conditions to AIA Document A141-2004 Exhibit
A
Terms and Conditions
July 25, 2011 Edition**

Additions appear as underlined. Deletions appear by reference or by strikeout.

**ARTICLE A.1
GENERAL PROVISIONS**

§A.1.6 Ownership and Use of Documents and Electronic Data

A.1.6.1 Amend paragraph A.1.6.1 to read:

Drawings, specifications, and other documents including those in electronic form, prepared by the Architect and furnished by the Design-Builder are Instruments of Service. The ~~Design-Builder, Design-Builder's Architect and other providers of professional services individually~~ Owner and Architect shall retain own all common law, statutory and other reserved rights, including copyright in those Instruments of Services, furnished by them. The Owner acknowledges that the ~~D~~drawings, specifications, and other documents and materials and electronic data are prepared and furnished for construction use solely with respect to this Project and the Owner agrees that any other use by the Owner shall be at Owner's sole risk. Without limiting the generality of this section, the Owner may use the Instruments of Service (including without limitation Instruments of Service prepared by the Architect and Architect's consultants), for planning or renovations of and additions to the Project, and the Owner may permit qualified professionals to reproduce all or portions of the Instruments of Service (including the design embodied in those Instruments of Service) for incorporation into instruments of service to be prepared by such other qualified professionals for planning or renovations of or additions to the Project or other projects for the Owner if those professionals assume all responsibility for the resulting instruments of service and all references to the Design-Builder and the Design-Builder's consultants are removed from the resulting instruments of service.

If this Design-Build Contract is terminated for cause or convenience after payment to the Design-Builder of amounts due under this Design-Build Contract, the Design-Builder shall promptly deliver to the Owner a complete set of prints and electronic copies of Instruments of Service, as completed through the date of termination.

Upon completion of construction and before final payment, the Design-Builder shall forward to the Owner a revised set of prints and electronic copies of the drawings and specifications showing "as-built" conditions, including Change Orders and other modifications prepared by the Design-Builder. Any set of electronic copies of drawings or specifications the Design-Builder is required to deliver pursuant to this Design-Build Contract shall be in a format acceptable to the Owner.

ARTICLE A.2

OWNER

A.2.2.2 Amend paragraph A.2.2.2 to read as follows:

Subject to Section A.2.2.1, the Owner shall be responsible to provide surveys, if not required by the Design-Build Documents to be provided by the Design-Builder, describing physical characteristics, legal limitations, and utility locations for the site of this Project, and a written legal description of the site to the extent such physical characteristics, legal limitations and utility locations can be determined by review of readily available records, observation of surface conditions and other standard surveying practices. Upon the reasonable request of the Design-Builder, the surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements, and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restriction, boundaries, and contours of the site; information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information in the survey shall be referenced by a Project benchmark.

A.2.2.4 Amend paragraph A.2.2.4 to read as follows:

The Owner may obtain independent review of the Design-Builder's design, construction and other documents by a separate architect, engineer, and contractor or cost estimator under contract or employed by the Owner. Such independent review shall be undertaken at the Owner's expense in a timely manner and shall not delay the orderly progress of the Work. Any such review shall be for the benefit of the Owner and shall not release the Design-Builder from its obligations to perform the Work in accordance with the Design-Build Documents.

A.2.2.5 Amend paragraph A.2.2.5 to read as follows:

The Owner shall cooperate with the Design-Builder in securing building and other permits, licenses and inspections by governmental agencies necessary for proper execution and completion of the Work. The Owner shall not be required to pay the fees for such permits, licenses and inspections unless the cost of such fees is excluded from the responsibility of the Design-Builder under the Design-Build Documents.

A.2.2.7 Amend paragraph A.2.2.7 to read as follows:

If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder, provided the Owner shall not become responsible for, and the Design-Builder shall not be released from responsibility for, any fault or defect in the Work or non-conformity with the Design-Build Documents by reason of the Owner giving or failing to give such notice.

A.2.2.10 Amend paragraph A.2.2.10 to read as follows:

The Subject to Section A.2.2.2, the Owner shall furnish the services of geotechnical engineers or other consultants, if not required by the Design-Build Documents to be provided by the Design-Builder, for subsoil, air and water conditions when such services are deemed reasonably necessary by the Design-Builder to properly carry out the design services provided by the Design-Builder and Design-Builder's Architect. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants

shall include preparation and submission of all appropriate reports and professional recommendations.

A.2.2.11 Amend paragraph A.2.2.11 to read as follows:

The Owner shall promptly obtain easements, zoning variances and legal authorizations regarding site utilization where essential to the ~~execution~~ completion of the ~~Owner's program~~ Work.

§A.2.5 Owner's Right to Carry out the Work

A.2.5.1 Add the following sentence to the end of Section A.2.5.1:

The right of the Owner to carry out the Work pursuant to this Section A.2.5.1 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.

ARTICLE A.3 **DESIGN-BUILDER**

§A.3.3 Construction

A.3.3.1 Amend paragraph A.3.3.1 to read as follows:

The Design-Builder shall perform no construction Work prior to the Owner's review and written approval of the construction documents. ~~The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require the Owner's review of submittals, such as Shop Drawings, Product Data and Samples, until the Owner has approved each submittal.~~

A.3.3.2 Amend paragraph A.3.3.2 to read as follows:

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

A.3.3.3 Amend paragraph A.3.3.3 to read as follows:

The Design-Builder shall direct specific attention, in writing or on resubmitted design and construction documents ~~or other submittals such as Shop Drawings, Product Data, Samples or other submittals~~, to revisions other than those requested by the Owner on previous submittals. In the absence of such written notice, the Owner's approval of a resubmission shall not apply to such revisions.

A.3.3.7 Amend paragraph A.3.3.7 to read as follows:

The Design-Builder shall be responsible for the supervision and direction of the Work ~~using the Design-Builder's best skill and attention~~. If the ~~Design-Build Documents~~ Owner gives specific instructions concerning construction means, methods, techniques, sequences or procedures, the Design-Builder shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Design-Builder determines that such means, methods, techniques, sequences or procedures may not be safe, the Design-Builder shall give timely notice to the Owner and shall not proceed with that portion of the Work without further written instructions from the Owner. If the Design-Builder is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Design-Builder, the Owner shall be solely responsible for any resulting loss or damage.

A.3.4 Labor and Materials

A.3.4.2 Amend paragraph A.3.4.2 to read as follows:

When a material is specified in the Design-Build Documents, the Design-Builder may make substitutions only with the written consent of the Owner, which the Owner may withhold in its discretion and, if appropriate, in accordance with a Change Order.

A.3.5 Warranty

A.3.5.1 Delete paragraph A.3.5.1 and substitute the following:

A.3.5.1 Owner and Design-Builder agree and acknowledge that the Owner is entering into this Agreement in reliance on Design-Builder's represented expertise and ability to provide design/build services. Design-Builder agrees to use its best efforts, skill, judgment, and abilities to perform the Work and to further the interests of Owner in accordance with Owner's requirements and procedures.

A.3.5.2 The Design-Builder warrants to Owner that materials and equipment furnished under the Design-Build Documents will be of good quality and new unless otherwise required or permitted by the Design-Build Documents, that the Work will be free from defects not inherent in the quality required or permitted by law or otherwise, and that the Work will conform to the requirements of the Design-Build Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

A.3.5.3 The term "defective" Work means Work that does not conform to the requirements of the Design-Build Documents, including without limitation incomplete Work.

A.3.5.4 During the first year following the Date of Substantial Completion of Work, the Owner's remedies for breach of warranty by the Design-Builder shall include, but not be limited to, correction of the Work pursuant to Section A.12.2.

A.3.5.5 The Design-Builder's duties shall not be diminished nor shall Design-Builder be released from any liability by any review and/or approval by Owner, it being understood that Owner's

review and/or approval of documents shall be for informational purposes only and not for purposes of approving or determining the propriety of the documents and the Owner is ultimately relying upon the Design-Builder's skill and knowledge in performing the Work.

A.3.5.6 All warranties and obligations of the Design-Builder are intended not as limitations but are in addition to all other express and implied warranties. The Design-Builder and its surety, if any, shall be liable for the satisfaction and full performance of the warranties set forth in the Design-Build Documents and granted by applicable law. The Design-Builder's warranties and obligations under Section A.3.5 shall survive the Owner's acceptance of the Work or termination of this Design-Build Contract.

A.3.13 Cutting and Patching

A.3.13.1 Amend paragraph A.3.13.1 to read as follows:

The Design-Builder shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching unless otherwise required by the Design-Build Documents. Design-Builder shall carry patching of finished surfaces to natural breakpoints and otherwise perform patching to provide an unbroken appearance to the extent possible.

A.3.17 Indemnification

Amend A.3.17 by adding the following clause:

A.3.17.1.3 The Design-Builder's obligations under Section A.3.17 shall survive the Owner's acceptance of Work or termination of this Design-Build Contract.

ARTICLE A.4 **DISPUTE RESOLUTION**

A.4.2 Resolution of Claims and Disputes

A.4.2.1 Strike paragraph A.4.2.1 in its entirety.

A.4.2.2 Amend paragraph A.4.2.2 to read as follows:

~~If the parties have not identified a Neutral in Section 6.1 of the Agreement or elsewhere in the Design-Build Documents then, except for those claims arising under Section A.10.3 and A.10.5, Except for those claims arising under Section A.10.3, the Owner shall provide an initial decision. An initial decision by the Owner shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Owner with no decision having been rendered by the Owner.~~

A.4.2.3 Amend paragraph A.4.2.3 to read as follows:

The initial decision pursuant to ~~Sections A.4.2.1 and~~ Section A.4.2.2 shall be in writing, shall state the reasons therefore and shall notify the parties of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject first to mediation under Section A.4.3 ~~and thereafter to such other dispute resolution methods as provided in Section 6.2 of the Agreement or elsewhere in the Design-Build Documents~~ and, if the parties fail to resolve their dispute through mediation, to litigation.

A.4.3 Mediation

A.4.3.1 Amend paragraph A.4.3.1 to read as follows:

Any Claim arising out of or related to the Design-Build Contract, except those waived as provided for in Sections A.4.1.10, A.9.10.4 and A.9.10.5, shall, after initial decision of the Claim or 30 days after submission of the Claim for initial decision, be subject to mediation as condition precedent to ~~arbitration or the institution of legal or equitable or other binding dispute resolution proceedings by either party~~ litigation. The terms of this Section A.4.3.1 shall survive Owner's acceptance of the Work or termination of this Design-Build Contract.

A.4.3.2 Amend paragraph A.4.3.2 to read as follows:

The parties shall endeavor to resolve their Claims by non-binding mediation which, unless the parties mutually agree otherwise, shall be conducted in accordance with ~~the Construction Industry Mediation Rules of the American Arbitration Association~~ N.C. Gen. Stat. §7A-38.1 currently in effect at the time of the mediation. Request for mediation shall be filed in writing with the other party to the Design-Build Contract ~~and with the American Arbitration Association~~. The request may be made concurrently with the filing of a ~~demand for arbitration or other binding dispute resolution~~ complaint in litigation proceedings but, in such event, mediation shall proceed in advance thereof or of legal or equitable proceedings, litigation, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

ARTICLE A.6

CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTOR

A.6.3 Owner's Right to Clean Up

A.6.3.1 Amend paragraph A.6.3.1 to read as follows:

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 the Owner shall ~~allocate the cost among those responsible~~ be entitled to reimbursement from the Design-Builder.

ARTICLE A.9

PAYMENTS AND COMPLETION

A.9.3 Applications for Payment

A.9.3.1.1 Strike paragraph A.9.3.1.1 in its entirety.

A.9.3.1.2 Amend paragraph A.9.3.1.2 to read as follows:

Such application may not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay to performed by a Contractor or material supplier or other parties providing services for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay to the Design-Builder, unless the Design-Builder intends to use payment from the Owner to pay the Contractor or material supplier or other parties.

A.9.3.3 Amend paragraph A.9.3.3 to read as follows:

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

A.9.4 Acknowledgement of Application for Payment

A.9.4.1 Amend paragraph A.9.4.1 to read as follows:

The Owner ~~shall~~ may, within seven days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a written acknowledgement of receipt of the Design-Builder's Application for Payment indicating the amount the Owner has determined to be properly due and, if applicable, the reasons for withholding payment in whole or in part.

A.9.5 Decisions to Withhold Payment

Amend A.9.5 by adding new clauses to read as follows:

A.9.5.3 If the Design-Builder disputes any determination by the Owner with regard to any Application for Payment, the Design-Builder nevertheless shall continue to prosecute the Work expeditiously provided Owner pays Design-Builder for undisputed work completed to date.

A.9.5.4 The Owner shall not be deemed to be in breach of the Design-Build Contract by reason of the withholding of any payment pursuant to any provision of the Design-Build Documents.

A.9.10 Final Completion and Final Payment

A.9.10.1 Amend paragraph A.9.10.1 to read as follows:

~~Upon receipt of The Design-Builder shall provide~~ written notice that the Work is ready for final inspection and acceptance and ~~upon receipt of a final Application for Payment, the Owner shall promptly make such inspection and, when a final Application for Payment.~~ When the Owner finds the Work acceptable under the Design-Build Documents and fully performed and the Design-Builder has delivered to the Owner a bound compilation of all warranties and operations manuals applicable to the Project and a complete set of the documents described in Section A.3.10, the Owner shall, subject to Section A.9.10.2, promptly make final payment to the Design-Builder.

A.9.10.4 Amend paragraph A.9.10.4 to read as follows:

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 Design-Build Documents 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; or
- .4 any other duties or obligations of the Design-Builder that by the terms of the Design-Build Contract survive the Owner's acceptance of the Work of this Design-Build Contract.

ARTICLE A.10

PROTECTION OF PERSONS AND PROPERTY

A.10.3 Hazardous Materials

A.10.3.2 Amend paragraph A.10.3.2 to read as follows:

The Owner shall obtain the services of a ~~licensed~~ qualified laboratory to verify the presence or absence of the material or substance reported by the Design-Builder, ~~and, in In~~ the event such material or substance is found to be present, ~~to verify that it has been rendered harmless. Unless otherwise required by the Design-Build Documents, the Owner shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task or removal or safe containment of such material or substance. The Design-Builder shall promptly reply to the Owner in writing stating whether or not the Design-Builder has reasonable objection to the person or entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has no reasonable objection. When and the Owner elects to proceed with the Project, the Owner will have its consultant verify that such material or substance has been remediated as required by applicable law. If the Owner has elected to proceed with the Project, when the material or substance has been rendered harmless, work in the affected area shall resume upon written agreement of the Owner and Design-Builder. The Contract Time shall be extended appropriately, remediated as required by applicable law, Work in the affected area shall resume. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Design-Builder's reasonable additional costs of shutdown, delay and startup, which adjustments shall be accomplished as provided in Article A.7.~~

A.10.3.3 Amend paragraph A.10.3.3 to read as follows:

To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Design-Builder, Contractors, Subcontractors, Architect, Architect's consultants and the agents and employees of any of them from and against Claims, damages, losses and expenses arising out of or resulting from performance of the Work in the affected area if in fact the material or substance exists on site as of the date of the Agreement, is not disclosed in the Design-Build Documents and presents the risk of bodily injury or death as described in Section A.10.3.1 and has not been rendered harmless, provided but only to the extent that such Claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death as described in Section A.10.3.1 or to injury to or destruction of tangible property (other than the Work itself) to the extent that such damage, loss or expense is not due to the negligence of the Design-Builder, Contractors, Subcontractors, Architect, Architect's consultants and the agents and employees of any of them.

A.10.4 Amend paragraph A.10.4 to read as follows:

The Owner shall not be responsible under Section A.10.3 for materials and substances brought to the site by the Design-Builder ~~unless such materials and substances were required by the Design-Build Documents.~~ The terms of this Section A.10.4 shall survive the Owner's acceptance of the Work or termination of this Design-Build Contract.

A.10.5 Strike paragraph A.10.5 in its entirety.

A.10.6 Emergencies

A.10.6.1 Amend paragraph A.10.6.1 to read as follows:

In an emergency affecting safety of persons or property, the Design-Builder shall act ~~at the Design-Builder's discretion,~~ promptly to prevent threatened damage, injury or loss. The Design-Builder shall provide the Owner with prompt notice of any such emergency affecting the Project. Additional compensation or extension of time claimed by the Design-Builder on account of an emergency shall be determined as provided in Section A.4.1.7 and Article A.7.

ARTICLE A.11 **INSURANCE AND BONDS**

Amend Article A.11 by striking in its entirety and replacing with the following clauses:

A.11.1 DESIGN-BUILDER'S LIABILITY INSURANCE

A.11.1.1 The Design-Builder shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located. Such insurance shall be sufficient to protect the Design-Builder from claims set forth below and in Exhibit C which may arise out of or result from the Design-Builder's operations and completed operations under this Design-Build Contract and for which the Design-Builder may be legally liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;

- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Design-Builder's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Design-Builder's employees;
- .4 Claims for damages insured by usual personal injury liability coverage:
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; .
- .8 Claims involving contractual liability insurance applicable to the Design-Builder's obligations under Section 3.17:
- .9 Claims for bodily injury, property damage, loss of use of property, cleanup costs, Environmental damage, completed operations and defense related to pollution; and
- .10 Claims involving professional liability for architectural, engineering, and other professional services provided by the Design-Builder, the Architect, and the Architect's consultants; and
- .11 Other claims, if any, specifically described in attached Exhibit C.

A.11.1.2 The insurance required by Section A.11.1.1 shall be written for not less than the limits of liability specified in attached Exhibit C, the Design-Build Documents or required by law, whichever coverage is greater. Any aggregate limit under the Design-Builder's primary commercial general liability insurance shall, by endorsement, apply to this Project separately. Coverages shall be written on an occurrence basis, unless otherwise required or permitted by the Design-Build Documents or specifically approved by the Owner in writing, shall be maintained without interruption from the date of commencement of the Work until the date of final payment or any later date required by the Design-Build Documents, and, with respect to the Design-Builder's completed operations coverage, until the later of expiration of the period for correction of Work or three years after final payment by the Owner.

A.11.1.3 Certificates of insurance acceptable to the Owner, or at Owner's request, certified copies of the insurance policies and all endorsements substantiating the compliance with the insurance requirements set forth in this Design-Build Contract, including maintenance of required minimum insurance coverages and endorsements, shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance and from time to time on request of the Owner. These certificates and the insurance policies required by this Section A11.1 shall contain a provision that coverage afforded under the policies will not be changed, canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner and the Owner shall be given ten days written notice of non-payment of premiums. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section A.9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section A.11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the general aggregate, or both, shall be furnished by the Design-Builder with reasonable promptness.

A.11.1.4 The Design-Builder shall cause all liability coverage the Design-Build Documents require the Design-Builder to maintain (other than Professional Liability Insurance, if any) to include (l) the Owner, as an additional insured for claims caused in whole or in part by the Design-Builder's negligent acts or

omissions during the Design-Builder's operations, and (2) the Owner as an additional insured for claims caused in whole or in part by the Design-Builder's negligent acts or omissions during the Design-Builder's completed operations. Such additional insured coverage shall be primary and any insurance obtained by the Owner (including self-insurance) shall be excess and noncontributory. The Owner shall not become responsible for payment of insurance premiums by reason of the naming of the Owner as an additional insured. As an additional insured the Owner shall have all the rights, coverages and limits afforded the Design-Builder under the policies. In the event that any insurer issues a reservation of rights for any additional insured, the additional insured shall be entitled to employ independent counsel at the Design-Builder's expense.

A.11.1.5 The Design-Builder shall cause all liability coverage the Design-Build Documents require the Design-Builder to maintain (other than Professional Liability Insurance, if any) to include by endorsement or otherwise (1) coverage for cross liability and separation of insured's (or their equivalents), and (2) waivers of subrogation and recovery rights against the Owner. For all such liability insurance coverage, the Design-Builder agrees to waive and shall require all Contractors and Subcontractors at any tier to waive all subrogation and recovery rights on behalf of themselves and their insurers against the Owner and its employees.

A.11.1.6 The Design-Builder may use an Umbrella or Excess Liability insurance policy to supplement the Design-Builder's policy limit to satisfy the full policy limits required by this Design-Build Contract. If these policies are not follow-form of the underlying coverage, the coverage shall, at a minimum, provide the coverage available on the underlying policies, except with respect to the Design-Build professional liability policy.

A.11.1.8 OTHER CONDITIONS OF DESIGN-BUILDER'S LIABILITY INSURANCE

A.11.1.8.1 The Design-Builder shall maintain required insurance coverage with companies authorized to do business in the State of North Carolina. It shall be a material breach of this Design-Build Contract if the insurance Design-Builder or any of its Contractors or any of its Contractor's Subcontractors are required to maintain under this Design-Build Contract are cancelled, non-renewed, reduced in coverage below the level required in this Design-Build Contract and Design-Builder or its Contractors or any of its Contractor's Subcontractors fail to obtain qualifying alternative insurance from a qualified carrier before the effective date of such cancellation non-renewal, reduction, or downgrading (or as soon as possible thereafter if such cancellation non-renewal. Reduction, or downgrading change occurs without notice to the Design-Builder or its Contractors or any of its Contractor's Subcontractors.

A.11.1.8.2 The Owner shall have the right at the Owner's sole discretion and expense to require the Design-Builder to obtain additional insurance coverages and endorsements to insure against particular hazards not specified under Article A.11 or elsewhere in the Design-Build Documents.

A.11.1.8.3 If Design-Builder fails to maintain the insurance this Design-Build Contract requires the Design-Builder to maintain, the Owner may, at its option and without waiving any rights under this Design-Build Contract, place such insurance, pay the premiums and recover the premium from the Design-Builder by any means available to the Owner, including off set against amounts owed to the Design-Builder.

A.11.1.8.4 The Design-Builder shall require its Contractors to maintain the same insurance the Design-Builder is required to maintain (including coverage, endorsements and limits) and, upon request by the Owner, to provide certificates of insurance or certified insurance policies and endorsements to the Owner.

A.11.1.8.8 The Owner, by requiring minimum insurance coverages, will not be deemed to limit any of the other obligations or liabilities of the Design-Builder. Design-Builder shall be responsible to pay the full amount of any deductibles or self-insured retentions of any coverages. The Design-Builder and their insurer waive the right to assert the immunity of the Owner as a defense to any claims arising out the Project.

A.11.1.8.6 The Design-Builder shall submit to the Owner, within three days, copies of all reports of claims submitted to insurance carriers for bodily injury or property damages to third parties arising or alleged to have arisen on account of any Work done by Design-Builder, any Contractors or any Subcontractors on the Project.

A.11.2 OWNER'S LIABILITY INSURANCE

A.11.2.1 The Owner shall maintain the Owner's usual liability insurance. The Owner may in its discretion purchase insurance or self-insure and will provide Design-Builder with a certificate of insurance evidencing Owner's compliance with this section.

A.11.3 PROPERTY INSURANCE

A.11.3.1 The Design-Builder shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk, "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus the value of subsequent Design-Build Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without except that 2% wind deductible and all other perils at a \$5,000 amount to be paid by Owner. Such property insurance shall be maintained, unless otherwise provided in the Design-Build Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section A.9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section A.11.3 to be covered whichever is later. This insurance shall include interests of the Owner, Design-Builder, Contractors and Subcontractors on the Project. The form of policy for this coverage shall be Completed Value. If the Owner is damaged by the failure of the Design-Builder to maintain such insurance, then the Design-Builder shall bear all reasonable costs properly attributable thereto.

A.11.3.2 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, windstorm, false work, testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Design-Builder's services and expenses required as a result of such insured loss.

A.11.3.2.2 This property insurance shall cover portions of the Work stored off the site and also portions of the Work in transit.

A.11.3.2.3 Partial occupancy or use in accordance with Section A.9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use, by endorsement or otherwise. The Owner and Design-Builder shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual consent, take

no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction or insurance.

A.11.3.3 BOILER AND MACHINERY INSURANCE

The All Risks Policy shall provide coverage for loss or damage to boilers and machinery, which specifically covers such insured objects during construction, erection, installation, Assembly, and hot and cold testing, subject to the limits, sublimits, and exclusions in the All Risks Policy; this insurance shall include interests of the Owner, Design-Builder, Contractors and Subcontractors in the Work, and the Owner and Design-Builder shall be named insureds. The Design-Builder shall provide the Owner notice before testing, acceptance, use or startup of any equipment or installation, in ample time to allow the Owner to arrange for any required inspections.

A.11.3.4 WAIVERS OF SUBROGATION

A.11.3.4.1 The Owner and Design-Builder waive all rights against each other and any of their Contractors, Subcontractors, agents and employees, each of the other for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to Section A.11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Design-Builder, as appropriate, shall require of the Contractors, Subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged. The Design-Builder's obligations in this Section A.11.3.4.1 shall survive the Owner's acceptance of the Work or termination of this Design-Build Contract.

A.11.3.5 REPORTING AND ADJUSTING PROPERTY INSURANCE CLAIMS

A.11.3.5.1 All Builder's Risk losses and claims (including claims relating to Boilers and Machinery covered under the All Risks Policy) shall be immediately reported to the Owner by the Design-Builder. The Owner and Design-Builder shall promptly report all claims to their respective insurance carriers in accordance with the policy conditions.

A.11.3.5.2 In the event of any loss which is equal to or less than the deductible, the Design-Builder shall immediately repair, replace, rebuild or otherwise remedy the loss to prevent or minimize delay of the Project.

A.11.3.5.3 In the event of a loss in excess of the deductible, if no other special agreement is made and unless the Owner terminates this Design-Build Contract for convenience, replacement of damaged property shall be performed by the Design-Builder after notification of a Change in the Work in accordance with Article A.7.

A.11.3.5.4 The Design-Builder shall cooperate with the Owner and the insurance adjusters to determine the value of any loss. All losses shall be adjusted by and be payable to the Owner. After the

Design-Builder has received payment on a loss the Design-Builder shall pay each Contractor a just share of any uninsured loss the Design-Builder is responsible for, including deductible amounts, and of any insurance monies received by the Design-Builder, and by appropriate agreement, written where legally required for validity, shall require each Contractor to make payments to its Subcontractors in similar manner.

A.11.3.5.5 The Owner shall have no liability for the division, application and payment of proceeds from the insurance except for any improper management, allocations or disbursements made as a result of intentional or willful misconduct. If, after loss, no special agreement is made, replacement of damaged work may be ordered and executed, as provided for under Article A.7.

A.11.4 PERFORMANCE BOND AND PAYMENT BOND

A.11.4.1 The Design-Builder, before commencing the Work, shall furnish a Performance Bond and a Labor and Material Payment Bond (individually, a "Bond," collectively the "Bonds") to the Owner. The Performance Bond shall be in an amount equal to 100% of the full amount of the Contract Sum as security for the faithful performance of the Design-Build Documents, and the Labor and Material Payment Bond shall be in an amount equal to 100% of the full amount of the Contract Sum as security for the payment of all persons performing labor and furnishing materials in connection with the Design-Build Documents. Such Bonds shall be on forms approved by the Owner and shall name the Owner as a primary obligee.

A.11.4.2 The sureties issuing the Bonds (individually, a "Surety," collectively "Sureties") shall be satisfactory to Owner, be licensed to issue the Bonds in the State of North Carolina and shall be rated by A.M. Best as A-minus or better. There shall be no affiliation between the Design-Builder and the Bonding Agent or Agency.

A.11.4.3 In the event of Change Orders that result in an increase in the Contract Price, the penal sum of each Bond shall increase in the amount of such change in the Contract Price without obtaining the Surety's consent up to a maximum of ten percent of the penal sum. Any aggregate increase in excess of 10% of the original penal sum shall require the Surety's written consent.

A.11.4.4. Final acceptance of the Work shall not relieve the Design-Builder nor the Design-Builder's Surety from their obligations under this Design-Build Contract, including guarantees of materials, equipment, installation or service.

A.11.4.5 If for any reason the Bonds (or either of them) shall cease to be adequate security to the Owner in the Owner's reasonable discretion, the Design-Builder shall substitute acceptable bond(s) in such form and sum and issued by such other sureties as may be satisfactory to the Owner, in the Owner's reasonable discretion. The Design-Builder shall pay the premiums on such new bond(s). The Design-Builder shall be entitled to reimbursement of the cost of such substitution as a Change Order increasing the GMP only if the bonds provided by the Design-Builder meet the requirements of Design-Build Documents at the time the Owner requests such substitution. The Design-Builder acknowledges that further payments to Design-Builder may not be made until the new sureties have been qualified and approved.

ARTICLE A.12

UNCOVERING AND CORRECTION OF WORK

A.12.2 Correction of Work

A.12.2.1 Before or After Substantial Completion

A.12.2.2.1 Amend paragraph A.12.2.2.1 to read as follows:

In addition to the Design-Builder's obligations under Section A.3.5, if, within one year after the date of Substantial Completion or after the date for commencement of warranties established under Section A.9.8.5 or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found to be not in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so ~~unless the Owner has previously given the Design-Builder a written acceptance of such condition~~. The Owner shall give such notice promptly after discovery of the condition. ~~During the one-year period for correction of 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 non-conforming Work within a reasonable time during ~~that period~~ the one-year period for correction of the Work after receipt of notice from the Owner, the Owner may correct it in accordance with Section A.2.5.

A.12.2.2.3 Amend paragraph 12.2.2.3 to read as follows:

The one-year period for correction of Work shall ~~not~~ be extended by corrective Work performed by the Design-Builder pursuant to this Section A.12.2 for an additional one-year period commencing on the date the Owner accepts the corrected Work.

A.12.2.4 Amend paragraph A.12.2.4 to read as follows:

The Design-Builder shall bear all direct and incidental cost associated with correction of defective Work, including (1) the cost of such tests as Owner may require to verify that such repairs, corrections and replacements comply with the requirements of the Design-Build Documents, (2) all costs incidental to any required redesign, repair, correction, replacement and testing, including the removal, replacement and reinstallation of equipment necessary to gain access, and (3) the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Design-Builder's correction or removal of Work which is not in accordance with the requirements of the Design-Build Documents.

ARTICLE A.13

MISCELLANEOUS PROVISIONS

A.13.6 Commencement of Statutory Period

A.13.6.1 Strike language in its entirety and replace with the following language:

The Owner and Design-Builder shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Design-Build Contract within the time period specified by applicable law.

ARTICLE A.14

TERMINATION OR SUSPENSION OF THE DESIGN/BUILD CONTRACT

A.14.1 Termination by the Design-Builder

A.14.1.3 Amend paragraph A.14.1.3 to read as follows:

If one of the reasons described in Sections A.14.1.1 or A.14.1.2 exists, the Design-Builder may, upon ~~seven~~ 14 days' written notice to the Owner, ~~terminate the~~ (given after the Work has stopped for 30 consecutive days) terminate the Design-Build Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable ~~overhead, profit~~ overhead and profit for completed Work (but not on overhead or anticipated profits for Work not yet executed) and damages.

The Owner and Contractor hereby agree to the full performance of the covenants contained herein.

IN WITNESS WHEREOF, the Owner and Contractor have entered into this Agreement as of the date and year as written below.

Owner:

Contractor:

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Currituck County Supplementary Conditions to AIA Document A141-2004 Exhibit B

Terms and Conditions

June 20 July 25, 2011 Edition

Additions appear as underlined. Deletions appear by reference or by strikeout.

ARTICLE B.2

COSTS TO BE REIMBURSED

B.2.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

B.2.5.4 Amend paragraph B.2.5.4 to read as follows:

Cost of document reproductions, ~~facsimile transmissions and~~ long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office. Charges for mobile telephone use will be reimbursed only for actual expenses incurred for airtime applicable to the Project.

B.2.7 Miscellaneous Costs

B.2.7.5 Amend paragraph B.2.7.5 to read as follows:

Royalties and license fees paid for the use of a particular design, process or product required by the Design-Build Documents; ~~the cost of defending suits or claims for infringement of patent rights arising from such requirements of the Design-Build Documents; and payments made in accordance with legal judgments against the Design-Builder resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Design-Builder's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section A.3.16.1 of Exhibit A, Terms and Conditions, or other provisions of the Design-Build Documents, they shall not be included in the cost of the Work.~~

B.2.7.8 Strike paragraph B.2.7.8 in its entirety.

B.2.8 Other Costs and Emergencies

B.2.8.3 Amend paragraph B.2.8.3 to read as follows:

Cost of repairing or correcting damaged or non-conforming Work executed by the Design-Builder, Contractors, Subcontractors or suppliers, provided except to the extent (1) that such damaged or non-conforming Work was ~~not~~ caused by the negligence or failure to ~~fulfill a specific responsibility of the Design-Builder and only to the extent that~~ the perform of the Design-Builder, or (2) the cost of repair or correction is not recoverable by the Design-Builder from another source, including insurance, sureties, Contractors, Subcontractors or suppliers.

ARTICLE B.3 **COSTS NOT TO BE REIMBURSED**

B.3.1 Amend paragraph B.3.1 to read as follows:

~~The~~ Notwithstanding anything to the contrary in Section B.2, the Cost of the Work shall not include:

Amend Article B.3 by adding clauses to read as follows:

B.3.1.10 Legal, mediation, or arbitration costs, however incurred.

B.3.1.11 Amounts the Design-Build Contract Documents specifically require the Design-Builder to pay, including deductible amounts payable by the Design-Builder under any policy of insurance the Design-Builder is required to provide.

ARTICLE B.4 **DISCOUNTS, REBATES AND REFUNDS**

B.4.1 Amend paragraph B.4.1 to read as follows:

The Design-Builder shall use reasonable efforts to advise the Owner of the availability of the cash discounts in time to allow the Owner to provide payment to qualify for such cash discounts. Cash discounts obtained on payments made by the Design-Builder shall accrue to the Owner if (1) before making the payment, the Design-Builder included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Design-Builder with which to make payments; otherwise, such discounts shall accrue to the Design-Builder, unless the Owner fails to provide Design-Builder with payment in time to qualify for the cash discount after timely notice from the Design-Builder of the availability of the cash discount. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Design-Builder shall make provisions so that they can be secured.

ARTICLE B.6 **ACCOUNTING RECORDS**

B.6.2 Amend paragraph B.6.2 to read as follows:

When the Design-Builder believes that all the Work required by the Agreement has been fully performed, the Design-Builder shall deliver to the ~~Owner's Accountant~~ Owner a final accounting of the Cost of the Work.

B.6.3 Amend paragraph B.6.3 to read as follows:

~~The Owner's accountants will review and report in writing on the Design-Builder's final accounting within 21 days after delivery of the final accounting. Based upon such Cost of the Work as the Owner's accountants report~~ Owner reports to be substantiated by the Design-Builder's final accounting, and provided the other conditions of Section A.9.10 of the Agreement have been met, the Owner will, within seven days after receipt of the written report of the Owner's accountants, notify the Design-Builder in writing of the Owner's intention to make final payment or to withhold final payment.

B.6.4 Amend paragraph B.6.4 to read as follows:

If the ~~Owner's accountants report~~ Owner reports the Cost of the Work as substantiated by the Design-Builder's final accounting to be less than claimed by the Design-Builder, the Design-Builder shall be entitled to initiate resolution of the dispute pursuant to Article 6 of the Agreement and Article A.4 of

Exhibit A, Terms and Conditions, for the disputed amount. If the Design-Builder fails to so initiate resolution of the dispute within the period of time required by Section A.4.1.2 of Exhibit A, Terms and Conditions, the substantiated amount reported by the Owner's accountants shall become binding on the Design-Builder. Pending a final resolution pursuant to Article 6 of the Agreement and Article A.4 of Exhibit A, Terms and Conditions, the Owner shall pay the Design-Builder the amount, if any, determined by the ~~Owner's accountants~~ Owner to be due the Design-Builder.

B.6.5 Amend paragraph B.6.5 to read as follows:

If, subsequent to final payment and at the Owner's request, the Design-Builder incurs costs in connection with the correction of defective or non-conforming work as described in Article B.2, Costs to be Reimbursed, and not excluded by Article B.3, Costs Not to be Reimbursed, the Owner shall reimburse the Design-Builder such costs and the Design-Builder's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price, if any. ~~If the Design-Builder has participated in savings as provided in Section 4.4.3.1 of the Agreement, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Design-Builder.~~

The Owner and Contractor hereby agree to the full performance of the covenants contained herein.

IN WITNESS WHEREOF, the Owner and Contractor have entered into this Agreement as of the date and year as written below.

Owner:

Contractor:

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

**Currituck County Supplementary Conditions to AIA Document A141-2004 Exhibit
C
Terms and Conditions
July 25, 2011 Edition**

Additions appear as underlined. Deletions appear by reference or by strikeout.

ARTICLE C.1

Add the following language to Article C.1:

Workers' Compensation

Employer's Liability

<u>Each Accident</u>	<u>\$ 100,000</u>
<u>Disease-Each Employee</u>	<u>\$ 100,000</u>
<u>Disease-Policy Limit</u>	<u>\$ 500,000</u>

Commercial General Liability Insurance

<u>General Aggregate</u>	<u>\$2,000,000</u>
<u>Products/Completed Operations Aggregate</u>	<u>\$2,000,000</u>
<u>Personal and Advertising Injury</u>	<u>\$1,000,000</u>
<u>Bodily Injury and Property Damage</u>	
<u>Each Occurrence</u>	<u>\$1,000,000</u>
<u>Fire Damage</u>	<u>\$ 50,000</u>
<u>Medical Expense</u>	<u>\$ 5,000</u>

Automobile Liability (owned, hired and/or non-owned vehicles)

<u>Combined Single Limit</u>	<u>\$1,000,000</u>
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Excess Umbrella Coverage

<u>Each Occurrence</u>	<u>\$5,000,000</u>
<u>Aggregate</u>	<u>\$5,000,000</u>

Builder's Risk

Coverage of Owner Deductible Except 2% Wind Deductible and All Other Perils At
\$5,000 Amount To Be Paid By Owner

Professional Liability (Errors and Omissions)

<u>Each Occurrence or Claim</u>	<u>\$1,000,000</u>
<u>Aggregate</u>	<u>\$1,000,000</u>

Add the following language to Article C.2:

Payment and Performance Bonds

100% of the value of the Contract

The Owner and Contractor hereby agree to the full performance of the covenants contained herein.

IN WITNESS WHEREOF, the Owner and Contractor have entered into this Agreement as of the date and year as written below.

Owner:

By: _____

Title: _____

Date: _____

Contractor:

By: _____

Title: _____

Date: _____