



125 Central Avenue, Suite 300, Coos Bay, OR 97420

Phone: 541.267.7678 Fax: 541.269.1475

Email: portcoos@portofcoosbay.com

Project website: www.PCIPproject.com

Pacific Coast Intermodal Port (PCIP)

NEPA Lead Services

Addendum No. 3

Date Issued: August 19, 2026

This Addendum No. 3 is issued under §2.2 (Addenda) of the above-referenced RFP to answer Proposer Questions / Requests for Change and/or to modify the RFP. Terms used have the meanings in OAR 137-046-0110. This Addendum is incorporated into the RFP as though fully set forth therein. Except as expressly modified below, all terms and conditions of the RFP remain in full force and effect. Per §2.2, only officially issued written Addenda are binding on the Port and Proposer; the Port is not responsible for sending Addenda, and Proposers are responsible for monitoring and downloading from the posting site above.

Acknowledgment: Each Proposer must acknowledge receipt of this and all Addenda on the *Acknowledgment of Addenda* form submitted with its Proposal, consistent with the certifications in Attachment A – Proposal Cover Sheet, Part II.

RESPONSES TO PROPOSER QUESTIONS / CLARIFICATIONS / RFI Comment No. 1

Comment: Due to confidentiality considerations and standard insurance industry practices, would NorthPoint consider revising the opening paragraph of Exhibit A as follows:

"Contractor shall provide a standard ACORD Certificate of Insurance, including all applicable endorsements. Contractor shall carry insurance in the following amounts and limits."

And:

Would NorthPoint consider modifying the final sentence of Paragraph G to read:

"All policies shall be endorsed to provide NorthPoint Holdings, LLC and Owner thirty (30) days' notice of cancellation and, for Professional Liability coverage, notice of material change."

Response: The requested revisions to MSA - Exhibit A - Insurance Requirements are not accepted.

Comment No. 2

Comment: The Master Services Agreement establishes the applicable professional standard of care in Section 20. To maintain consistency with that standard, would NorthPoint consider revising Item 1 of the Task Order by replacing:

"in a good and workmanlike manner"

with

"in accordance with the applicable professional standard of care."

Response: The Task Order will be revised to match the language in the Master Services Agreement.

Comment No. 3

Comment: Due to commercially available insurance requirements, would NorthPoint consider revising Article 2.5.7 as follows:

"To the fullest extent permitted by law, the Designer shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner, Lender, Tenant and their respective affiliates and other designees as additional insureds, and incorporate a provision requiring written notice to the Owner at least thirty (30) days prior to cancellation, ten (10) days for non-renewal, or thirty (30) days for material modification of the professional liability policy."

And:

Due to confidentiality considerations, would NorthPoint consider deleting the phrase:

"and upon request, copies of all insurance policies"

from Article 2.5.8?

Response: Only the selected consultants will need to submit their insurance requirements.

Comment No. 4

Comment: Would NorthPoint consider adding the following language to Article 10.11:

"However, Designer will not be required to indemnify, defend or hold harmless Owner if the suit or claim results from (1) Owner's alteration of a deliverable where such alteration creates the infringement, or (2) use of a deliverable in combination with materials not provided by Designer where the combination creates the infringement."

Response: The requested revision of the Designer Agreement is not accepted.

Comment No. 5

Comment: Can the NPD add the following sentence to subarticle 11.10.2.2: "In no event shall Designer be liable for liquidated damages unless Designer is solely at fault as reasonably determined between the Parties, and any liquidated damages attributed to the fault of the Designer shall be capped at 10% of fees paid by Owner under this Agreement and shall be included in the limitation of liability amount set out under Article 2.6.1 and not in addition to such limitation of liability.

Response: The requested revision of the Designer Agreement is not accepted.

Comment No. 6

Comment: Section 1.7 states that contract provisions not modified by addendum or expressly reserved for negotiation will not be negotiated after the solicitation protest deadline. To confirm the proposing team's ability to comply with the applicable Master Services Agreement and Task Order, please clarify or consider the following provisions.

Item 1 of the Master Services Agreement Task Order and Section 20 of the Master Services Agreement appear to establish different standards of performance. Please confirm that professional services under the Task

Order will be governed by the professional standard of care stated in Section 20, and that the phrase “good and workmanlike” is not intended to create a warranty, guarantee, or heightened standard for professional services. Alternatively, will the Port revise Item 1 to conform to Section 20?

Section 10 of the Master Services Agreement appears to impose a duty to defend that may include claims arising from professional services. Please confirm that the duty to defend does not apply to professional-liability claims and that such claims will instead be subject to the applicable professional-liability indemnification obligations. Alternatively, will the Port add “except professional-liability claims” after “defend”?

Section 9 of the Master Services Agreement appears to tie the limitation of liability to the limits of applicable insurance policies, which may exceed the insurance limits required by the agreement and may vary among consultants. Will the Port revise the provision so that any insurance-based limitation is measured by the applicable insurance amounts required under Exhibit A, rather than the consultant’s actual policy limits?

Section 13 of the Master Services Agreement and Section 8.1.3 of the Standard Form of Agreement Between Owner and Designer include an exception to the mutual waiver of consequential damages “to the extent covered by insurance.” Will the Port remove that exception so that the mutual waiver applies consistently regardless of whether insurance may be available? Alternatively, please clarify the intended operation and scope of the insurance exception.

Response: The Task Order will be revised to match the language in the Master Services Agreement. The other requested revisions to the Master Services Agreement are not accepted.

Comment No. 7

Comment: Current Language Requires disputes to proceed directly to arbitration.

Requested Clarification / Change

Moffatt & Nichol respectfully requests that Section 14 be modified to include a preliminary management-level discussion between principals of each party prior to commencement of arbitration proceedings. The intent is to encourage informal resolution of disputes before either party incurs the expense associated with arbitration.

Response: Section 14 will not be modified. Informal resolution would be encouraged prior to arbitration.

Comment No. 8

Comment: Under Section 1.7 CONTRACT TERMS & CONDITIONS, if the submitting firm/team has a current contract/MSA with the Port and/or NorthPoint; will the Port consider agreeing to the same terms if there is a slight difference from the attached RFP sample contract?

Response: The MSA and TO have been modified for this specific project and it will be used.

Comment No. 9

Comment: Updated agreements.

Response: The updated Designer Agreement, Master Services Agreement (MSA), Task Order (TO) and Insurance requirements are provided with this Addendum.

END OF ADDENDUM NO. 3

Date: Click or tap to enter a date.

Contract Number: Click or tap here to enter text.

Standard Form of Agreement Between Owner and Designer

AGREEMENT made as of the Click or tap here to enter text. day of Click or tap here to enter text. in the year Click or tap here to enter text.

(In words, indicate day, month and year.)

BETWEEN the Designer's client identified as the Owner:
(Name, legal status, address and other information)

Click or tap here to enter text.

3315 N Oak Trafficway
Kansas City, MO 64116

and the Designer:

(Name, legal status, address and other information)

Click or tap here to enter text.

Click or tap here to enter text.

Click or tap here to enter text.

for the following Project:

(Name, location and detailed description)

Project Number: Click or tap here to enter text.

Click or tap here to enter text.

Click or tap here to enter text.

Click or tap here to enter text.

The Owner and Designer agree as follows.

TABLE OF ARTICLES

1	INITIAL INFORMATION
2	DESIGNER'S RESPONSIBILITIES
3	SCOPE OF DESIGNER'S BASIC SERVICES
4	SUPPLEMENTAL AND ADDITIONAL SERVICES
5	OWNER'S RESPONSIBILITIES
6	COST OF THE WORK
7	COPYRIGHTS AND LICENSES
8	CLAIMS AND DISPUTES
9	TERMINATION OR SUSPENSION
10	MISCELLANEOUS PROVISIONS
11	COMPENSATION
12	SPECIAL TERMS AND CONDITIONS
13	SCOPE OF THE AGREEMENT

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

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

§ 1.1.1 The Owner's program for the Project:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

Reference Exhibit A Item 1.a

§ 1.1.2 The Project's physical characteristics:

(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

Reference Exhibit A Item 1.b

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:

(Provide total and, if known, a line item breakdown.)

Reference Exhibit B – Designer's Budget

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

- .1 Design phase milestone dates, if any:

Reference Exhibit C – Development Schedule

§ 1.1.5 The Owner intends the following procurement and delivery method for the Project:

(Identify method such as competitive bid or negotiated contract, as well as any requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction.)

Reference Exhibit A Item 2

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:

(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

Click or tap here to enter text.

§ 1.1.6.1 If the Owner identifies in Exhibit A a Sustainable Objective, the Owner and Designer shall complete and incorporate AIA Document E204™–2017, Sustainable Projects Exhibit, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E204–2017 is incorporated into this agreement, the Owner and shall incorporate the completed E204–2017 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 The Owner identifies the following representative in accordance with Section 5.3:

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

Reference Exhibit A Item 3

§ 1.1.8 The persons or entities, in addition to the Owner's representative, who are required to review the Designer's submittals to the Owner are as follows:

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

Reference Exhibit A Item 4

§ 1.1.9 The Owner shall retain the following consultants and contractors:

(List name, legal status, address, and other contact information.)

- .1 Geotechnical Engineer: Reference Exhibit A – Item 5a
- .2 Architect: Reference Exhibit A – Item 5b
- .3 Click or tap here to enter text. Reference Exhibit A – Item 5c
- .4 General Contractor: Reference Exhibit A – Item 5d

§ 1.1.10 The Designer Identifies the following representative in accordance with Section 2.3:

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

Click or tap here to enter text.

Click or tap here to enter text.

Click or tap here to enter text.

Click or tap here to enter text.

§ 1.1.11 The Owner shall retain the consultants identified in Sections 1.1.11.1.
(List name, legal status, address, and other contact information.)

Click or tap here to enter text.
3315 N Oak Trafficway
Kansas City, MO 64116

§ 1.1.11.1 Consultants retained by Owner:

.1 Mechanical Engineer: Reference

Exhibit A – Item 5e

.2 Electrical Engineer:

Reference Exhibit A – Item 5f

.3 Plumbing Engineer:

Reference Exhibit A – Item 5g

§ 1.1.12 Other Initial Information on which the Agreement is based:

Reference Exhibit A item 6

§ 1.2 The Owner and Designer may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Designer shall appropriately adjust the Designer's services, schedule for the Designer's services, and the Designer's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

ARTICLE 2 DESIGNER'S RESPONSIBILITIES

§ 2.1 The Designer shall provide professional services as set forth in this Agreement. The Designer represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

§ 2.2 The Designer shall perform its services consistent with the professional skill and care ordinarily provided by civil engineers practicing in the same or similar locality under the same or similar circumstances. The Designer shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Designer shall identify a representative authorized to act on behalf of the Designer with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Designer shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Designer's professional judgment with respect to this Project.

§ 2.5 The Designer shall maintain all forms of insurance required by law in the State of which the project is located. The Designer shall ensure that any and all Consultants engaged or employed by the Designer carry and maintain similar insurance. The maintenance of such coverage in full current force and effect shall be a condition precedent to the Owner's obligation to pay under this Agreement. The Designer shall maintain the

following minimum insurance types and limits until termination of this Agreement and Designer shall endeavor to maintain such coverage for two (2) years thereafter.

§ 2.5.1 Commercial General Liability: Reference Exhibit D – Insurance Requirements

§ 2.5.2 Automobile Liability: Reference Exhibit D – Insurance Requirements Designer

§ 2.5.3 Umbrella/Excess Liability Policy: Reference Exhibit D – Insurance Requirements Designer

§ 2.5.4 Workers' Compensation: Reference Exhibit D – Insurance Requirements

§ 2.5.5 Employers' Liability: Reference Exhibit D – Insurance Requirements

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits: Reference Exhibit D – Insurance Requirements

§ 2.5.7 Additional Insured Obligations. To the fullest extent permitted by law, the Designer shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner, Oregon International Port of Coos Bay, Lender, Tenant and their respective affiliates and other designees as an additional insured for claims caused solely by the Designer's negligent acts or omissions and incorporate a provision requiring written notice to the Owner at least thirty (30) days prior to any cancellation, nonrenewal, or material modification of the policies. The additional insured coverage shall be primary and non-contributory to any of the Owner's or Oregon International Port of Coos Bay's insurance policies and shall apply to both ongoing and completed operations.

§ 2.5.8 The Designer shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.5 and upon request, copies of all insurance policies. Designer's insurance carriers shall be authorized to do business in state which the project is physically located, Owner shall have the right to approve the insurance carriers and form of policies, which approval shall not be unreasonably withheld. These policies shall remain in effect for the benefit of the Owner at least through any warranty period covering the Project but in no case for less than two (2) years after the date of issuance of the final Certificate for Payment by the Designer.

§ 2.6 INDEMNITY

§ 2.6.1 To the fullest extent permitted by law, Owner and Designer (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project, and (2) agree that Designer's total liability to Owner under this Agreement shall be limited to \$2,000,000 or the total amount of compensation received by Designer, whichever is greater. The Owner and Designer acknowledge that the Oregon International Port of Coos Bay (the "Port"), an intended third-party beneficiary of this Agreement, is a public body subject to the Oregon Tort Claims Act, ORS 30.260 to 30.300 (the "OTCA"). Notwithstanding any other provision of this Agreement, nothing in this Agreement waives, limits, expands, or modifies any immunity, defense, damage limitation, or other protection available to the Port under the OTCA or other applicable law, and any liability of the Port that is subject to the OTCA shall not exceed the applicable limitations set forth in ORS 30.271 to 30.273, as adjusted from time to time.

§ 2.6.2 The indemnification obligation under Section 2.6.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Designer or a consultant under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 2.6.3 To the fullest extent permitted by law, the Designer shall hold harmless and indemnify Owner from and against Losses, by whomsoever brought or alleged, for infringement of patent rights, copyrights, or other intellectual property rights, except with respect to designs, processes or products of a particular manufacturer expressly required by the Owner in writing. If the Designer has reason to believe the use of a design, process or product required by the Owner

is an infringement of a third party's intellectual property right, the Designer shall provide prompt written notice to the Owner.

ARTICLE 3 SCOPE OF DESIGNER'S BASIC SERVICES

§ 3.1 The Designer's Basic Services consist of those described in this Article 3 and Exhibit A. Services not set forth in this Article 3 or Exhibit A are Supplemental or Additional Services.

§ 3.1.1 The Designer shall manage the Designer's services, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.

§ 3.1.2 The Designer shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Designer shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner and the Owner's consultants. The Designer shall provide prompt written notice to the Owner if the Designer becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Designer shall submit for the Owner's approval a schedule for the performance of the Designer's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review if required within Exhibit A item 1.b. of this Agreement, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Designer or Owner. With the Owner's approval, the Designer shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Designer shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made or given without the Designer's written approval.

§ 3.1.5 The Designer shall contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Designer shall respond to applicable design requirements imposed by those authorities and entities.

§ 3.1.6 The Designer shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.2 Schematic Design Phase Services

§ 3.2.1 The Designer shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Designer's services.

§ 3.2.2 The Designer shall prepare a preliminary evaluation of the Owner's program, Project site, the proposed procurement and delivery method, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Designer shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Designer shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project. The Designer shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project requirements agreed upon with the Owner, the Designer shall prepare and present, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Designer shall prepare Schematic Design Documents for the Owner's approval if required within Exhibit A item 1.b. of this Agreement. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital

representations. Preliminary selections of construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 If required within Exhibit A item 1.b. of this Agreement the Designer shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.1.

§ 3.2.5.2 The Designer shall consider the value of alternative materials, and, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

§ 3.2.6 The Designer shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Exhibit A Item 1.b. of this Agreement.

§ 3.2.7 If required within Exhibit A item 1.b. of this Agreement the Designer shall submit the Schematic Design Documents to the Owner and request the Owner's approval.

§ 3.3 Design Development Phase Services

§ 3.3.1 If required in Exhibit A item 1b of this Agreement and based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Designer shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of special conditions to fix and describe the size and character of the Project conditions, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

§ 3.3.2 If required in Exhibit A item 1b of this Agreement the Designer shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

§ 3.3.3 If required within Exhibit A item 1.b. of this Agreement, Designer shall participate and provide assistance in value-engineering or cost and scope reduction evaluations necessary to conform the construction cost to the Owner's budget, and modify the Design Development documents accordingly.

§ 3.4 Construction Documents Phase Services

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Designer shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Designer acknowledge that, in order to perform the Work, the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Designer shall review in accordance with Section 3.6.4.

§ 3.4.2 If required within Exhibit A item 1.b. of this Agreement the Designer shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents. The Designer shall review laws, codes, and regulations applicable to the Designer's services. The Designer's performance and design, and those of its Consultants, shall conform to all applicable laws, codes, regulations and other requirements imposed by governmental authorities having jurisdiction over the Project.

§ 3.4.3 If required within Exhibit A item 1.b. of this Agreement, during the development of the Construction Documents, the Designer shall assist the Owner in the development and preparation of procurement information.

The Designer shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications.

§ 3.4.5 The Designer shall submit the Construction Documents to the Owner and request the Owner's approval.

§3.4.6 If required within Exhibit A item 1.b. of this Agreement, and upon the Designer's completion of seventy-five percent (75%) of the Contract Documents Phase of the services, the Designer shall provide to the Owner for its approval a list of all tests, inspections, or reports that are required by the Contract Documents, including, but not limited to, those provided by the Designer as a Basic Service. This list must designate the party responsible for the engagement of any payment for providers of those services.

§ 3.5.2 Competitive Bidding – by Owner

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Designer shall assist the Owner in bidding the Project by:

- .1 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda.

§ 3.5.2.3 If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Designer shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.2 If required within Exhibit A item 1.b. of this Agreement, the Designer shall advise and consult with the Owner during the Construction Phase Services. The Designer shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Designer shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Designer be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Designer shall be responsible for the Designer's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.2 and except as provided in Section 3.6.6.5, the Designer's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Designer issues the final Certificate for Payment.

§ 3.6.2 Evaluations of the Work – as requested by Owner

§ 3.6.2.1 If required within Exhibit A item 1.b. of this Agreement, the Designer shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, (1) to become generally familiar with the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Designer shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Designer shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Designer shall recommend to Owner rejection of Work that does not conform to the Contract Documents. Whenever the Designer considers it necessary or advisable, the Designer shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Designer nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Designer to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities

performing portions of the Work. Designer shall be responsible for Designer's negligent acts or omissions, but shall not have control over or charge of and shall not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work. However, to the degree that Designer's negligent conduct, failure to perform, or omissions result in damages to Owner, Designer shall be liable for those damages. Nothing in this Agreement shall relieve Designer of liability for the consequences of the failure to fully perform its services according to the requisite standard of care.

§ 3.6.2.3 The Designer shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Designer's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Designer shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Designer shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Designer's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents and subject to Owner's approval.

§3.6.2.5 The Designer shall give prompt written notice to the Owner if the Designer becomes aware of any fault, defect, error, omission, or inconsistency in the Project or in the Contract Documents.

§ 3.6.4 Submittals

§ 3.6.4.1 The Designer shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Designer's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Designer's professional judgment, to permit adequate review.

§ 3.6.4.2 The Designer shall review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Designer's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Designer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Designer shall specify the appropriate performance and design criteria that such services must satisfy. The Designer shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Designer. The Designer's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Designer shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to Section 4.2, the Designer shall review and respond to requests for information ("RFI") about the Contract Documents. The Designer shall set forth, in the Contract Documents, the requirements for RFI, which shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Designer's response to RFI shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Designer shall prepare and issue supplemental Drawings and Specifications in response to RFI. The Designer shall acknowledge the receipt of each Contractor-generated RFI within three (3) days after receiving it. The Designer shall simultaneously issue a written answer to the Contractor and the Owner for each RFI (along with necessary descriptive drawings, specifications, or other documents) with the promptness necessary to avoid unnecessary delay or cost, but in no case

more than ten (10) days after the RFI is received by the Designer. The Designer shall include in the Contract Documents a requirement that the Contractor issue a number (in a single and consecutive series) to each RFI prepared by the Contractor, Subcontractors, the Owner, or others, before submittal of the RFI to the Designer. The Designer shall refer to that RFI by number in all subsequent correspondence, Change Orders, Construction Change Directives, reports, etc., related to that RFI or its resolution.

§ 3.6.4.5 The Designer shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 Changes in the Work – Prepared solely by Owner

§ 3.6.5.1 The Designer may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.2, the Designer shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents. As part of its Basic Services, the Designer shall analyze written requests by the Owner or Contractor for changes in the Work, including requests for adjustments to the Contract Sum or Contract Time, and shall report the results of its analysis in writing to the Owner and the Contractor within a reasonable period of time, but in no case later than ten (10) days after the Designer's receipt of request. No Change Order or Adjustment to Contract Sum or Contract Time will be issued by the Designer without the specific written authorization of the Owner.

§ 3.6.5.2 The Designer shall maintain records relative to changes in the Work.

§ 3.6.6 Project Completion– As requested by Owner

§ 3.6.6.1 If required within Exhibit A item 1.b. of this Agreement the Designer shall:

- .1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;

§ 3.6.6.2 The Designer's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 If required within Exhibit A item 1.b. of this Agreement, when Substantial Completion has been achieved, the Designer shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 If required within Exhibit A item 1.b. of this Agreement, the Designer shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 If required within Exhibit A item 1.b. of this Agreement, prior to the expiration of one year from the date of Substantial Completion, the Designer shall, conduct a meeting with the Owner to review the facility operations and performance. Unless otherwise agreed, this meeting shall occur at the Project site during the tenth (10th) month after the Date of Substantial Completion. The Designer shall visit the Project to review the Work and shall prepare a report to be issued to the Owner and, at the Owner's direction, to the Contractor indicating outstanding Work to be corrected and warranty issues to be addressed by the Contractor. With the exception of site review and preparation of this report, to the extent that services are required of the Designer for correction or satisfaction of a warranty and such services are requested in writing by the Owner and are not required, in whole or in part, as a result of the Designer's failure to fully perform its services, in whole or in part, such services shall be considered an Additional Service for which the Designer shall be reasonably compensated.

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1 The Designer shall provide the listed Supplemental Services as part of Basic Services only if specifically designated in the table below as the Designer's responsibility, and the Owner shall compensate the Designer as

provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Designer is designated, the parties agree that the listed Supplemental Service is not being provided for the Project. *(Designate the Designer's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Designer or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)*

§ 4.1.2 Description of Supplemental Services

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Designer's responsibility is provided below.

(Describe in detail the Designer's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Designer's Services documents that can be included as an exhibit to describe the Designer's Supplemental Services.)

Reference Exhibit A – Item 7

§ 4.1.2.2 A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility reference Exhibit A – Item 7.

§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Designer shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E204™–2017, Sustainable Projects Exhibit, attached to this Agreement. The Owner shall compensate the Designer as provided in Section 11.2.

§ 4.2 Designer's Additional Services – only as authorized by Owner

The Designer may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Designer, any Additional Services provided in accordance with this Section 4.2 shall entitle the Designer to compensation pursuant to Section 11.3 and an appropriate adjustment in the Designer's schedule subject to Designer's compliance with notice requirements set forth in this Section. If the Designer determines that services beyond Basic Services are required, Designer shall notify the Owner in writing, by electronic or hard copy mail, within seven (7) days of the occurrence of the event giving rise to a claim for Additional Services, stating the basis for that determination and the fees and expenses that the Designer believes will be incurred by the Owner if the Owner authorizes such services. Under no circumstances will the Owner be obligated to compensate the Designer or others for fees and expenses related to Additional Services unless the Owner has authorized the performance of such services in writing in advance. If the Owner determines that the proposed Additional Services (which the Designer has suggested are essential) are included in the Designer's Basic Services, the Designer shall perform them, submitting written notice, by electronic or hard copy mail, to the Owner before performing those services, stating that the Designer disputes the Owner's determination that those services are Basic Services and that the Designer disputes the Owner's determination that those services are Basic Services and that the Designer does not waive its right to seek compensation for those services by performing them. If the Designer fails to timely provide such notice, Designer shall be deemed to have waived the right for compensation for performing the Additional Services.

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, the Designer shall notify the Owner in accordance with Section 4.2. The Designer shall not proceed to provide Additional Services until the Designer receives the Owner's written authorization including, without limitation, the following:

- .1 Services necessitated by a material change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;

- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors provided the Designer has promptly notified the Owner in writing of such delay;
- .5 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .8 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Designer is party thereto;
- .9 Evaluation of the qualifications of entities providing bids or proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or,
- .11 Assistance to the Initial Decision Maker, if other than the Designer.

§ 4.2.2 To avoid delay in the Construction Phase, the Designer shall provide the following Additional Services, notify the Owner in accordance with Section 4.1, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Designer's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Designer of the Owner's determination. The Owner shall compensate the Designer for the services provided prior to the Designer's receipt of the Owner's notice.

- .1 Reviewing a Contractor's submittal materially out of sequence from the submittal schedule approved by the Designer;
- .2 Responding repeatedly to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is readily available to the Contractor from a review of the Contract Documents, field conditions, other Owner-provided information, Contractor- prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require extensive evaluation of Contractor's proposals and supporting data, or the extensive preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker; or,
- .5 Evaluating major and material substitutions proposed by the Owner or Contractor and making subsequent, extensive revisions to Instruments of Service resulting therefrom.

§ 4.2.3 If required within Exhibit A Item 1.b of this Agreement the Designer shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Designer shall notify the Owner:

- .1 Two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 Two (2) visits to the site by the Designer during construction
- .3 Two (2) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 One (1) inspections for any portion of the Work to determine final completion.

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Designer incurs additional cost in providing those Construction Phase Services.

§ 4.2.5 If the services covered by this Agreement have not been completed within Twelve (12) months of the date of this Agreement, through no fault of the Designer, extension of the Designer's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner

regarding requirements for and limitations on the Project, including a written program, which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements. Designer and Owner acknowledge that the information provided is subject to change, but that the Basic Services Fees indicated herein take that change into account.

§ 5.2 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Designer. The Owner and the Designer shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Designer's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Designer's services. Owner may change the designated representative upon written notice to the Designer; and the Owner may modify the scope of authority of the designated representative in like manner.

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

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1.

§ 5.7 If the Owner identified in Exhibit A of this agreement, a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E204™–2017, Sustainable Projects Exhibit, attached to this Agreement.

§ 5.8 The Owner shall coordinate the services of its own consultants with those services provided by the Designer. Upon the Designer's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Designer in this Agreement or authorize the Designer to furnish them as an Additional Service, when the Designer requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.9 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

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

§ 5.11 The Owner shall provide prompt written notice to the Designer if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Designer's Instruments of Service, provided nothing in this Agreement shall be construed so as to require the Owner to determine the adequacy, accuracy, or

sufficiency of the design, the Construction Documents, or the Designer's Services.

§ 5.12 The Owner shall include the Designer in all communications with the Contractor that relate to or affect the Designer's services or professional responsibilities. The Owner shall promptly notify the Designer of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Designer's consultants shall be through the Designer.

§ 5.13 Before executing the Contract for Construction, the Owner shall coordinate the Designer's duties and responsibilities set forth in the Contract for Construction with the Designer's services set forth in this Agreement. The Owner shall provide the Designer a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction, which may be redacted to delete certain financial information.

§ 5.14 The Owner shall provide the Designer access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Designer access to the Work wherever it is in preparation or progress.

§ 5.15 Within 15 days after receipt of a written request from the Designer, the Owner shall furnish the requested information reasonably available to Owner for the Designer to evaluate, give notice of, or enforce lien rights.

§5.16 If additional "Owner-provided" information regarding the site (other than that which is listed in this Article) is needed for complete performance of the Designer's services, the Designer shall notify the Owner in writing as to exactly what additional information is needed and the Designer's basis for that opinion. If the Owner approves, the Designer shall provide the services necessary for the procurement of those services.

ARTICLE 6 COST OF THE WORK – Determined by Owner

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Designer and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Designer; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information and shall be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. If required within Exhibit A Item 1.b of this Agreement, evaluations of the Owner's budget for the Cost of the Work, and the preliminary opinion of the Cost of the Work and updated opinions of the Cost of the Work, prepared by the Designer, represent the Designer's judgment as a design professional. It is recognized, however, that neither the Designer nor the Owner has control over the cost of labor, materials, or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Designer cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any opinion of the Cost of the Work, or evaluation, prepared by the Designer.

§ 6.3 In preparing opinions of the Cost of Work, the Designer shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Designer's opinion of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requires a detailed opinion of the Cost of the Work, the Designer shall provide such an opinion, if identified as the Designer's responsibility in Section 4.1.1, as a Supplemental Service.

§ 6.4 If, through no fault of the Designer, the Procurement Phase has not commenced within 90 days after the Designer submits the Construction Documents to the Owner, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Designer's opinion of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Designer shall make appropriate recommendations to the Owner to adjust the Project's size, quality, or budget for the Cost of the Work, and the Owner shall cooperate with the Designer in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Designer, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or, (compensation for changes to Design shall be provided)
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Designer shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. If the Owner requires the Designer to modify the Construction Documents because the lowest bona fide bid or negotiated proposal exceeds the Owner's budget for the Cost of the Work due to market conditions the Designer could not reasonably anticipate, the Owner shall compensate the Designer for the modifications as an Additional Service pursuant to Section 11.3.

ARTICLE 7 Ownership and Assignment of Work Product.

§ 7.1. All Instruments of Service and all other reports, studies, designs, drawings, specifications, data, models, software, calculations, notes, memoranda, and other materials, whether in draft or final form, prepared by the Designer or the Designer's consultants in connection with the Project (collectively, "Work Product") shall be deemed works made for hire for the Owner and the Oregon International Port of Coos Bay (the "Port"). To the extent any Work Product does not qualify as a work made for hire under applicable law, the Designer hereby irrevocably assigns, and shall cause its consultants to irrevocably assign, to the Owner and the Port, jointly, all right, title, and interest in and to such Work Product, including all copyrights and other intellectual property rights therein. The Owner and the Port shall each have the right to use, reproduce, modify, and distribute the Work Product for any purpose relating to the Project, including the construction, use, maintenance, alteration, expansion, and promotion of the Project, without further consent of, or compensation to, the Designer. The Owner's payment of amounts due to the Designer for the applicable services shall be the sole condition to the assignment set forth in this Section 7.1. The Designer warrants that it has, and will obtain from its consultants, all rights necessary to make the assignments required by this Section.

§ 7.2 Notwithstanding Section 7.1, the Designer and the Designer's consultants shall retain ownership of their respective pre-existing proprietary materials, standard details, design tools, and software not created specifically for the Project ("Pre-Existing Materials"). To the extent any Pre-Existing Materials are incorporated into the Work Product, the Designer hereby grants, and shall cause its consultants to grant, to the Owner and the Port a non-exclusive, irrevocable, royalty-free license to use such Pre-Existing Materials as incorporated in the Work Product for the purposes described in Section 7.1. The Owner and the Port hereby grant the Designer a non-exclusive, royalty-free license to use the Work Product for the Designer's internal archival, professional-licensure, and regulatory-compliance purposes. Any use of the Work Product on a project other than the Project, or any material modification of the Work Product without retaining the Designer, shall be at the using party's sole risk and without liability to the Designer and the Designer's consultants.

§ 7.3 The Designer grants to the Owner and the Port a nonexclusive license to use the Designer's Instruments of Service for purposes of constructing, using, maintaining, altering and adding to the Project and premises adjacent thereto, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due pursuant to Article 9 and Article 11. The Designer shall obtain similar nonexclusive licenses from the Designer's consultants consistent with this Agreement. The license granted under this section permits the Owner and the Port to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's and the Port's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, for use in performing services or construction for the Project or as otherwise allowed pursuant to this Agreement. The licenses granted in this Section 7.3 are in addition to, and not in limitation of, the ownership and assignment provisions of Section 7.1, and no termination of

this Agreement shall terminate or impair the rights of the Owner or the Port in the Work Product under Section 7.1.

§ 7.3.1 In the event the Owner or the Port uses, reuses, or modifies the Instruments of Service or other Work Product on the Project without retaining the authors of the Instruments of Service, or uses the Instruments of Service or other Work Product on any project other than the Project, the Owner and the Port release the Designer and the Designer's consultant(s) from all claims and causes of action arising from such uses, and such use shall be at the sole risk of the party making it. The terms of this Section 7.3.1 shall not apply to the Owner if the Owner rightfully terminates this Agreement.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner and Oregon International Port of Coos Bay shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Designer. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Designer and the Designer's consultants.

§ 7.5 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

§ 7.6 The Designer shall provide to the Owner and Oregon International Port of Coos Bay, in a medium (*e.g.*, disk, magnetic tape, network direct transfer, etc.) approved by the Owner, a digital copy of the most recent design drawings, CAD files, and Contract Documents, including those which were produced or created by the Designer's consultants or others.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Designer shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Designer waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance. The Owner or the Designer, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 Except to the extent covered by insurance, the Designer and Owner waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement.

§ 8.2 Mediation

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Designer's services, the Designer may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

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

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

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

☒ Arbitration pursuant to Section 8.3 of this Agreement

If the Owner and Designer do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.

§ 8.3 Arbitration

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

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

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

§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.4 Consolidation or Joinder

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

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

§ 8.3.4.3 The Owner and Designer grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Designer under this Agreement.

§ 8.4 The provisions of this Article 8 shall survive the termination of this Agreement.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Designer in accordance with this Agreement, such failure shall be

considered substantial nonperformance and cause for termination or, at the Designer's option, cause for suspension of performance of services under this Agreement. If the Designer elects to suspend services, the Designer shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Designer shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Designer all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Designer's services. The Designer's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Designer shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Designer shall be compensated for expenses incurred in the interruption and resumption of the Designer's services. The Designer's fees for the remaining services and the time schedules shall be equitably adjusted.

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

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

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

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Designer terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Designer for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Designer's termination of consultant agreements.

§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Designer terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Designer the following fees:

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

.1 Termination Fee: None.

.2 Licensing Fee if the Owner intends to continue using the Designer's Instruments of Service: None.

§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion except for indemnity obligations of the Designer.

§ 9.9 The Owner's rights to use the Designer's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 9.7.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 N/A

§ 10.3 The Owner and Designer, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Designer shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to an affiliate or a lender providing financing for the Project if the affiliate or lender agrees to assume the Owner's rights and obligations under this

Agreement, including any payments due to the Designer by the Owner prior to the assignment.

§ 10.4 If the Owner requests the Designer to execute certificates, the proposed language of such certificates shall be submitted to the Designer for review at least 14 days prior to the requested dates of execution. If the Owner requests the Designer to execute consents reasonably required to facilitate assignment to a lender, the Designer shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Designer for review at least 14 days prior to execution. The Designer shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 10.5 Except as expressly provided in this Section 10.5, nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Designer. Notwithstanding the foregoing, the Oregon International Port of Coos Bay (the "Port") is an intended third-party beneficiary of this Agreement, including without limitation the insurance obligations in Section 2.5, the indemnity obligations in Section 2.6, and the ownership, assignment, and license provisions of Article 7, and the Port may rely upon the Designer's services and Instruments of Service and enforce the Designer's obligations under this Agreement to the same extent as the Owner, without execution of a separate reliance agreement and without payment of any reliance fee.

§ 10.6 Unless otherwise required in this Agreement, the Designer shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site unless the toxic materials or substances were brought to the Project pursuant to the terms of the Contract Documents. Should the Designer become aware of the presence of hazardous materials or toxic substances on the Project site, he shall immediately report that presence to the Owner in writing. The Designer shall cooperate with Owner in resolution of problems related to hazardous or toxic materials.

§ 10.7 The Designer shall have the right to include photographic or artistic representations of the design of the Project among the Designer's promotional and professional materials. The Designer shall be given reasonable access to the completed Project to make such representations. However, the Designer's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Designer in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Designer in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement. Designer shall request the Owner's written permission prior to the use of project photographs or other depictions, which consent shall not be unreasonably withheld.

§ 10.8 If the Designer or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party so the other party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8. In the event such protective order or other remedy is not obtained or Owner waives compliance with the provisions of this Paragraph, Designer shall furnish only that portion of the confidential or business proprietary information that is legally required and will, if required by Owner, cooperate in Owner's efforts to obtain a required protective order or other reliable assurance that confidential treatment will be accorded the confidential or business proprietary information. A violation of this Paragraph shall be a material breach of this Agreement and, in addition to any other available remedies, upon such breach, Owner may terminate this Agreement without penalty by providing Designer with written notice specifying the date of termination. This Paragraph shall survive termination or expiration of this Agreement.

§ 10.9 Severability. The invalidity of any provision of the Agreement shall not invalidate the Agreement or its

remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

§ 10.10 No Exclusive Agreement. This is not an exclusive agreement. Owner is free to engage others to provide services the same as or similar to Designer's.

§ 10.11 No Infringement. No work product produced by Designer under this Agreement shall infringe the rights of any third party under the intellectual property laws of the United States, any state, or any foreign country. Designer shall defend, indemnify and hold harmless the Owner from any claims of infringement or the like with respect to intellectual property laws.

§ 10.12 Good Standing. If it is an entity, Designer warrants that it is duly organized, validly existing, and in good standing under the laws of the state of its organization and the state in which the Work is to be performed. Designer warrants that it possesses all licensing required, if any, for the Work.

§ 10.13 Power and Authority. Designer has the power and authority to execute, deliver, and perform this Agreement, which shall constitute a valid and binding obligation of Designer, enforceable against Designer in accordance with its terms. The person signing this Agreement on behalf of Designer has been properly authorized and empowered to enter into this Agreement.

§ 10.14 Entire Agreement. This Agreement contains the entire agreement among the parties with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements and understandings, inducements, or conditions, express or implied, oral or written. The express terms hereof control and supersede any course of performance or usage of the trade inconsistent with any of the terms hereof.

§ 10.15 Amendment. This Agreement may not be modified or amended other than by an agreement in writing signed by both of the parties.

§ 10.16 No Waiver. No failure or delay by any party in exercising any right, power, or privilege hereunder shall operate as a waiver of any right, power, or privilege hereunder. No waiver of any default on any one occasion shall constitute a waiver of any subsequent or other default. No single or partial exercise of any right, power, or privilege shall preclude the further or full exercise thereof.

§ 10.17 Remedies. The rights and remedies of the parties with respect to failure of the other party to comply with the terms of this Agreement are not exclusive, the exercise thereof shall not constitute an election of remedies, and the aggrieved party shall in all events be entitled to seek whatever additional remedies may be available in law or in equity.

§ 10.18 Headings. The headings of this Agreement are for purposes of reference only and shall not limit or otherwise affect the meaning hereof.

§ 10.19 Notices. All notices, demands, or other communications given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally or if mailed via certified mail, postage prepaid, to Owner or to Designer at the address and to the attention of the parties' representative identified in this Agreement.

§ 10.20 Counterparts; Facsimile and Electronic Signatures. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. The parties agree that this Agreement may be executed by any party by facsimile or electronic (e-mail PDF) signatures and each such signature shall be valid and binding.

ARTICLE 11 COMPENSATION

§ 11.1 For the Designer's Basic Services described under Article 3, the Owner shall compensate the Designer as follows: Reference Exhibit B – Designer Budget

§ 11.2 For the Designer's Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Designer as follows:

(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

Reference Exhibit B – Designer Budget

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Designer as follows:
(Insert amount of, or basis for, compensation.)

Reference Exhibit B – Designer Budget

§ 11.4 Compensation for Supplemental and Additional Services of the Designer's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Designer plus «» percent («»%), or as follows:
(Insert amount of, or basis for computing, Designer's consultants' compensation for Supplemental or Additional Services.)

Reference Exhibit B – Designer Budget

§ 11.5 When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows. Reference Exhibit B – Designer Budget.

§ 11.6 When compensation identified in Section 11.1 and Exhibit B – Designer Budget is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.

§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Designer shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Designer and the Designer's consultants are set forth below.

The rates shall be adjusted in accordance with the Designer's and Designer's consultants' normal review practices.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Reference Exhibit B – Designer Budget

§ 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Designer and the Designer's consultants directly related to the Project, as follows: Reference Exhibit B – Designer Budget

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Designer and the Designer's consultants: Reference Exhibit B – Designer Budget, for a list of items considered reimbursable.

§ 11.9 Designer's Insurance. If the types and limits of coverage required in Section 2.5 are in addition to the types and limits the Designer normally maintains, the Owner shall pay the Designer for the additional costs incurred by the Designer for the additional coverages as set forth below:

(Insert the additional coverages the Designer is required to obtain in order to satisfy the requirements set forth in Section 2.5, and for which the Owner shall reimburse the Designer.)

The Fee includes insurance costs

§ 11.10 Payments to the Designer

§ 11.10.1 Initial Payments

§ 11.10.1.1 An initial payment of «Zero Dollars» (\$ «0») shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.1.2 If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Designer of Zero Dollars (\$0) shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Designer's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.

§ 11.10.2 Progress Payments

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Designer's invoice. Amounts unpaid Sixty (60) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Designer.

(Insert rate of monthly or annual interest agreed upon.)

6 % per annum

§ 11.10.2.2 Right to Set-off. The Owner shall not withhold amounts from the Designer's compensation to impose a penalty or liquidated damages on the Designer, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Designer is liable for the amounts.

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times. Reimbursable expenses shall **not** exceed Reference Exhibit B – Designer Budget unless previously approved in writing by Owner.

§11.10.2.4 The Designer shall issue monthly invoices.

§11.10.2.5 The Designer shall submit with each invoice a current, itemized cumulative statement of amounts invoiced and received, all other funds sought and received by the Designer, and remaining contract billing limits. All invoices shall be sequentially numbered. When the Owner specifies that a payment is to be applied in satisfaction of a certain invoice or portion of an invoice, the Designer shall apply the payment to the account as specified and shall indicate that specific application on subsequent monthly statements.

§11.10.2.6 In addition to the Payment Terms in Article 11, the Designer further agrees that the Designer, as an absolute condition precedent to its right to receive any monies under this Agreement, must furnish partial and final written lien waivers for the Designer and the Designer's consultants. In addition, the Designer hereby agrees to protect, defend, indemnify, and hold the Owner harmless from and against any and all claims and mechanic's liens, if any, for payment by Designer's employees and consultants on the Project.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

§12.1 Complete Professional Services. Designer shall provide all professional services necessary for the complete design and documentation of the Project. The Designer agrees that the Basic Fee, as stated in this Agreement, represents adequate and sufficient consideration for its provision of all professional services (including those of its consultants) necessary to completely design the Project and prepare the documents that are necessary to fully indicate the requirements for construction, whether or not those services are individually expressed in this Agreement, the only exceptions to this being (1) the cost of those services that are provided by third parties and that are expressly designated herein as being the "Owner's responsibility" or "Owner-provided" and (2) the cost of those engineering or consulting services that become necessary as a result of a change in Project scope affecting the Designer and that are the subject of a written modification between the Owner and the Designer in accordance with this Agreement.

§12.2 Project and Design Schedule. TIME IS OF THE ESSENCE in this Agreement. Before the Designer submits his invoice for professional services to the Owner, the Designer shall prepare for the Owner's review and approval a comprehensive schedule of the performance of the Designer's services and those of the Consultants. This schedule shall indicate dates of (or, where applicable, periods of elapsed time allowed for) Owner approvals, dates when specific information is required by the Designer from the Owner, and anticipated approval periods required for public

authorities having jurisdiction over the Project. Once submitted by the Designer, the Designer shall be bound by that schedule and will not deviate from it without prior written authorization by the Owner and agrees to complete the performance of its service(s) consistent with this Owner-approved schedule. Whether or not deviations from the schedule have been authorized by the Owner, the Designer shall update this schedule as necessary to reflect Owner-approved changes or other deviations, indicating probable impacts of those deviations on the performance of the Designer's services and the Project. However, nothing in this Agreement shall be construed as a waiver of the Owner's right to obtain compliance by the Designer with Owner-approved schedules. The Project and Design Schedule is attached hereto as Exhibit C.

§ 12.3 Services Rendered To Date. Owner and Designer acknowledge that the Designer has provided some of the Basic Services prior to the conclusion and execution of this Agreement. The Designer asserts and agrees that services prior to the execution of this Agreement shall be governed by the terms and conditions of this Agreement, and that all fees billed and paid to date shall be credited to the fees as provided for in this Agreement.

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Designer and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Designer.

§ 13.2 This Agreement is comprised of the following documents identified below:

- .1 When applicable AIA Document B101™–2017, Standard Form Agreement Between Owner and Designer
- .2 When applicable AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
- .3 Other Exhibits:
 - Exhibit A – Agreement Specification
 - Exhibit B – Designer Budget
 - Exhibit C – Project and Design Schedule
 - Exhibit D – Insurance Requirements

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

NorthPoint Development, LLC
a Missouri limited liability company
3315 N Oak Trafficway
Kansas City, MO 64116

Click or tap here to enter text.
Click or tap here to enter text.
Click or tap here to enter text.

Developer for:
Click or tap here to enter text.
a Click or tap here to enter text. limited liability
company
3315 N Oak Trafficway
Kansas City, MO 64116

Signature
Click or tap here to enter text. – Development
Manager
Agent for NorthPoint Development LLC

Print Name and Title

Signature
Click or tap here to enter text.

Print Name and Title

Date

Date



Reference Number: Click or tap here to enter text.

Date: Click or tap to enter a date.

MASTER SERVICES AGREEMENT

This **MASTER SERVICES AGREEMENT** ("MSA") is between **NorthPoint Development, LLC** ("Client") and Click or tap here to enter text. ("Consultant") for Services to be provided by Consultant on projects as described in the Project Information section of individual Task Order (which sections are incorporated into this MSA). For purposes of this MSA, "Client" shall include NorthPoint Development, LLC and its subsidiaries and affiliates.

- 1. Scope of Services.** The scope of Consultant's services ("Services") will be set forth in the Task Order. Portions of the Services may be subcontracted. Consultant's Services do not include the investigation or detection, nor do recommendations in Consultant's reports address the presence or prevention of biological pollutants (e.g., mold, fungi, bacteria, viruses, or their byproducts) or occupant safety issues, such as vulnerability to natural disasters, terrorism, or violence. If Services include purchase of software, Client will execute a separate software license agreement. Consultant's findings, opinions, and recommendations are based solely upon data and information obtained by and furnished to Consultant at the time of the Services.
- 2. Assignment.** Neither party to this agreement shall transfer, sublet, or assign any rights under or interest in this Agreement without prior written consent of the other party except Client may assign this Agreement to an affiliate.
- 3. Acceptance/ Termination.** Client agrees that execution of this MSA is a material element of the consideration Consultant requires to execute the Services. Additional terms and conditions may be added or changed only by written amendment to this MSA signed by both parties. In the event Client uses a purchase order or other form to administer this MSA, the use of such form shall be for convenience purposes only and any additional or conflicting terms it contains are stricken. Either party may terminate this MSA or the Services upon 7 days written notice to the other. In the event of termination, the Consultant shall be compensated for services properly performed to termination date. If the termination is not due to the fault of the Consultant, the Consultant shall also be paid Termination Expenses. Termination Expenses are expenses directly attributable to termination, including a reasonable amount for overhead and profit on the portion of the Services performed prior to such termination, for which the Consultant is not otherwise compensated.
- 4. Time.** The Consultant shall perform the Basic and Additional services as expeditiously as is consistent with professional skill and care and shall complete services in the timely manner or as indicated on the Task Order.
- 5. Change Orders.** Client may request changes to the scope of Services by altering or adding to the Services to be performed. If Client so requests, Consultant will return to Client a statement (or supplemental proposal) of the change setting forth an adjustment to the Services and fees for the requested changes. Following Client's review, Client must provide written acceptance prior to Consultant's performance of such Services. If project conditions change materially from those observed at the site or described to Consultant at the time of proposal, Consultant is entitled to a change order equitably adjusting its Services and fee subject to compliance with this MSA.
- 6. Compensation and Terms of Payment.** Client shall pay compensation for the Services performed at the fees stated in the Compensation section of the individual Task Order. If not stated in either, fees will be according to Consultant's current fee schedule. Fee schedules are valid for the calendar year in which they are issued. Client-approved, detailed invoices itemizing Services completed will be processed by Client for payment so long as such invoice is received on or before the 25th day of each month, and will be paid within thirty (30) days thereafter. Invoices received after the 25th of the month will not be processed until the next month. Client's payment obligations are conditioned upon execution and delivery, simultaneously with each payment, of a lien waiver which is in form and substance acceptable to Client and Owner. Daily tickets for onsite services shall be provided as requested by Client. Client shall notify Consultant in writing, at the address below, within 15 days of the date of the invoice if Client objects to any portion of the charges on the invoice, and shall promptly pay the undisputed portion. Client shall pay a finance fee of 1% per month, but not exceeding the maximum rate allowed by law, for all unpaid amounts 30 days or older.

- 7. REIMBURSABLE EXPENSES.** Reimbursable Expenses are in addition to the Compensation for Basic and Additional Services and include actual expenditures made by the Consultant and the Consultant's employees in the interest of the Project for the expenses listed in the following subparagraphs.
- Expense of transportation in connection with the Project; living expenses in connection with out-of-town travel; long-distance communications; and fees paid for securing approval of authorities having jurisdiction over the Project if authorized in advance by the Client
 - Expense of reproductions, postage and handling of drawings, specifications and other documents, excluding reproductions for the office use of the Consultant.
 - Expense of renderings, models and mock-ups requested by the Client.
 - Expense of any additional insurance coverage or limits, including professional liability insurance, requested by the Client in excess of that normally carried by the consultant.

If allowed by the Task Order, Client shall pay these Reimbursable Expenses.

- 8. Third Party Reliance; Port Beneficiary Rights.** The Oregon International Port of Coos Bay (the "Port") is an intended third-party beneficiary of this MSA and each Task Order. The Port may rely upon the Services and all work product delivered under this MSA to the same extent as Client, without execution of a separate reliance agreement and without payment of any reliance fee and may enforce the Consultant's obligations under this MSA directly. Except for the Port, no other third-party beneficiaries are intended. This MSA and each Task Order are collaterally assignable by Client to the Port without Consultant's further consent, and Consultant shall continue performance for the Port following any such assignment, provided the Port assumes Client's payment obligations arising after the assignment.
- 9. LIMITATION OF LIABILITY. CLIENT AND CONSULTANT HAVE EVALUATED THE RISKS AND REWARDS ASSOCIATED WITH THIS MSA, INCLUDING CONSULTANT'S FEE RELATIVE TO THE RISKS ASSUMED, AND AGREE TO ALLOCATE CERTAIN OF THE ASSOCIATED RISKS. TO THE FULLEST EXTENT PERMITTED BY LAW, THE TOTAL AGGREGATE LIABILITY OF CONSULTANT (AND ITS RELATED CORPORATIONS AND EMPLOYEES) TO CLIENT AND THIRD PARTIES GRANTED RELIANCE IS LIMITED TO THE GREATER OF \$1,000,000, LIMITS OF APPLICABLE INSURANCE POLICY OR POLICIES OR THE COMPENSATION PAID TO CONSULTANT FOR THE TASK ORDER IN DISPUTE, FOR ANY AND ALL INJURIES, DAMAGES, CLAIMS, LOSSES, OR EXPENSES (INCLUDING ATTORNEY AND EXPERT FEES) ARISING OUT OF CONSULTANT'S SERVICES OR THIS MSA. UPON WRITTEN REQUEST FROM CLIENT, CONSULTANT MAY NEGOTIATE A HIGHER LIMITATION FOR ADDITIONAL CONSIDERATION. THIS LIMITATION SHALL APPLY REGARDLESS THE THEORY OF LIABILITY, INCLUDING NEGLIGENCE, INDEMNITY, OR OTHER RECOVERY. THIS LIMITATION SHALL NOT APPLY TO CLAIMS OF WILLFUL CONDUCT OR GROSS NEGLIGENCE.**
- 10. Indemnity/Statute of Limitations.** To the fullest extent permitted by law, the Consultant and Client shall defend, indemnify and hold harmless the other and their respective agents, employees, officers, directors, members, managers, and other representatives of and from and against legal liability for claims, losses, damages, and expenses to the extent such claims, losses, damages, or expenses caused by their or their respective agents, employees or contractors negligent acts, errors, or omissions. In the event such claims, losses, damages, or expenses are legally determined to be caused by the joint or concurrent negligence of Consultant and Client, they shall be borne by each party in proportion to its own negligence under comparative fault principles.
- 11. Warranty.** Consultant will perform the Services in a manner consistent with that level of care and skill ordinarily exercised by members of its profession currently practicing under similar conditions in the same locale. **CONSULTANT MAKES NO OTHER WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, RELATING TO CONSULTANT'S SERVICES AND CONSULTANT DISCLAIMS ANY IMPLIED WARRANTIES OR WARRANTIES IMPOSED BY LAW, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**
- 12. Insurance.** Please refer to Exhibit A for Insurance Requirements.

13. MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES. EXCEPT TO THE EXTENT COVERED BY INSURANCE, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES.

14. Dispute Resolution. Claims, disputes and other matters in question between the parties shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect unless the parties agree otherwise. Notice of demand for arbitration shall be filed in writing with the other party and with the American Arbitration Association. The demand shall be made within a reasonable time after the claim, dispute, or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when the applicable statute of limitations would bar institution of a legal or equitable proceeding based on such claim, dispute or other matter in question. The arbitration shall be held in the location of the Task Order project. The award rendered by arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction. Unless otherwise agreed in writing, the consultant shall carry on the services and maintain progress during any arbitration proceedings, and the Client shall continue to make payments to the Consultant properly due in accordance with agreement.

15. Subsurface Explorations. Subject to Consultant performing subsurface explorations per the task order, subsurface conditions throughout the site may vary from those depicted on logs of discrete borings, test pits, or other exploratory services. Client understands Consultant's layout of boring and test locations is approximate and that Consultant may deviate a reasonable distance from those locations. Consultant will take reasonable precautions to reduce damage to the site when performing Services; however, Client accepts that invasive services such as drilling or sampling may damage or alter the site. Site restoration is not provided unless specifically included in the Services.

16. Testing and Observations. Subject to Consultant performing the Services in accordance with the applicable standard of care, Client understands that testing and observation are discrete sampling procedures, and that such procedures indicate conditions only at the depths, locations, and times the procedures were performed. Consultant will provide test results and opinions in a timely manner based on tests and field observations only for the work tested. Any variance from the contract documents or failure to comply with project specifications shall immediately be reported to the client. Client understands that testing and observation are not continuous or exhaustive, and are conducted to reduce - not eliminate - project risk.

The Task Order shall establish the level or amount of testing performed. Client is responsible (even if delegated to contractor) for requesting services, and notifying and scheduling Consultant so Consultant can perform these Services. Consultant is not responsible for damages caused by services not performed due to a failure to request or schedule Consultant's services. Consultant shall not be responsible for the quality and completeness of Client's contractor's work or their adherence to the project documents, and Consultant's performance of testing and observation services shall not relieve Client's contractor in any way from its responsibility for defects discovered in its work, or create a warranty or guarantee. Unless required by the Task Order, Consultant will not supervise or direct the work performed by Client's contractor or its subcontractors and is not responsible for their means, methods, techniques, sequences, or procedures.

17. Sample Disposition, Affected Materials, and Indemnity. Samples are consumed in testing or disposed of upon completion of tests (unless stated otherwise in the Services). Client shall furnish or cause to be furnished to Consultant all documents and information known or available to Client that relate to the identity, location, quantity, nature, or characteristic of any hazardous waste, toxic, radioactive, or contaminated materials ("Affected Materials") at or near the site, and shall immediately transmit new, updated, or revised information as it becomes available. Client agrees that Consultant is not responsible for the disposition of Affected Material unless specifically provided in the Services, and that Client is responsible for directing such disposition. In the event that test samples obtained during the performance of Services (i) contain substances hazardous to health, safety, or the environment, or (ii) equipment used during the Services cannot reasonably be decontaminated, Client shall sign documentation (if necessary) required to ensure the equipment and/or samples are transported and disposed of properly, and agrees to pay Consultant the fair market value of this equipment and reasonable disposal costs. In no event shall Consultant be required to sign a hazardous waste manifest or take title to any Affected Materials. Client shall have the obligation to make all spill or release notifications to appropriate governmental agencies. The Client agrees that Consultant neither created nor contributed to the creation or existence of any Affected Materials

conditions at the site. Accordingly, Client waives any claim against Consultant for injury or loss sustained by any party from such exposures allegedly arising out of Consultant's non-negligent performance of the Services hereunder.

- 18. Ownership of Work Product.** All reports, studies, designs, drawings, specifications, data, models, calculations, notes, and other materials, in draft or final form, prepared by Consultant or its subconsultants in connection with the Services ("Work Product") shall be deemed works made for hire for Client and the Port. To the extent any Work Product does not qualify as a work made for hire, Consultant hereby irrevocably assigns, and shall cause its subconsultants to irrevocably assign, to Client and the Port jointly all right, title, and interest in and to the Work Product, including all intellectual property rights therein. Consultant retains the right to use its standard details, tools, and pre-existing proprietary materials, and is granted a non-exclusive license to use the Work Product for its internal archival and regulatory-compliance purposes. Client's payment for the applicable Services is the only condition to the assignment herein.
- 19. Work in Progress.** It is agreed and understood that any work performed by Consultant shall be deemed preliminary and may not be relied upon as complete until delivery of written, signed, or sealed documents.
- 20. Standard of Care.** In providing services under the agreement, Consultant will exercise reasonable skill, care, and diligence in the performance of its services and will carry out its responsibilities in accordance with the applicable standard of care and professional practices.
- 21. Utilities.** Client shall provide the location and/or arrange for the marking of private utilities and subterranean structures. Consultant shall take reasonable precautions to avoid damage or injury to subterranean structures or utilities. Consultant shall not be responsible for damage to subterranean structures or utilities that are not called to Consultant's attention, are not correctly marked, including by a utility locate service, or are incorrectly shown on the plans furnished to Consultant.
- 22. Site Access and Safety.** Client shall secure all necessary site related approvals, permits, licenses, and consents necessary to commence and complete the Services and will execute any necessary site access agreement unless specified in scope. Consultant will be responsible for supervision and site safety measures for its own employees, but shall not be responsible for the supervision or health and safety precautions for any other parties, including Client, Client's contractors, subcontractors, or other parties present at the site.
- 23. Compliance With Law.** Consultant shall pay all lawful taxes and fees imposed by federal, state or local law, rule or regulation. Consultant shall obtain all necessary licenses, permits and approvals necessary to perform services pursuant to this Agreement and ensure that the Work is performed in all respects in accordance with all applicable federal, state and local law, rule or regulation.
- 24. Waiver.** Neither the failure nor any delay by any party in exercising any right, power or privilege under this Agreement will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege will preclude any other or further exercise of such right, power or privilege. No waiver shall be binding unless executed in writing by the party making the waiver. No written waiver of any provision of this Agreement shall be deemed a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver.
- 25. Headings.** The headings to the various paragraphs are for convenience only and shall not affect the interpretation of this Agreement.
- 26. Severability.** The terms and conditions of this Agreement are severable. In the event that any term or condition of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect the enforceability or validity of any other term or condition of this Agreement.
- 27. Counterparts; Facsimile Execution.** This Agreement may be executed in two or more counterparts and by facsimile or electronic (PDF) signature, each of which shall be deemed to be an original, but all of which together shall constitute one and the same agreement.



**THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISIONS
WHICH MAY BE ENFORCED BY THE PARTIES**

NorthPoint Development, LLC a Missouri limited
liability company,
3315 N Oak Trafficway
Kansas City, MO 64116

Click or tap here to enter text.
Click or tap here to enter text.
Click or tap here to enter text.

Signature

Larry Lapinski – Chief Development Officer
Authorized Person

Print Name and Title

Date

Signature

Print Name and Title

Date

Reference Number: Click or tap here to enter text.

Contract Number: Click or tap here to enter text.

Vendor Code: Click or tap here to enter text.

Date: Click or tap to enter a date.

MASTER SERVICES AGREEMENT TASK ORDER

This TASK ORDER is issued under the MASTER SERVICES AGREEMENT (dated Click or tap to enter a date. agreement reference number Click or tap here to enter text.); between Choose an item. ("Client") and Click or tap here to enter text. ("Consultant") for Services to be provided by Consultant for Client on Click or tap here to enter text. ("Project"), as described below in "Item 1 – Description of Services". This Task Order is incorporated into and part of the Master Services Agreement.

Item 1 – Description of Services

Consultant shall furnish labor, supervision, safety protection, insurance, materials, equipment, tools, supplies, other property and services necessary to perform in accordance with the applicable professional standard of care and in compliance with the Contract Documents hereinafter identified all of the services (herein termed "Services") described as:

The Services shall include all Click or tap here to enter text. for the Click or tap here to enter text. project as described in the contract documents. More specifically, Consultant's Services shall include but is not limited to the following scope of work:

Item 2 – Project Location

Click or tap here to enter text.

Click or tap here to enter text.

Item 3 – Date of Commencement

Click or tap to enter a date.

Item 4 – Completion Date

Click or tap to enter a date.

Item 5 – Contract Sum

Click or tap here to enter text.

Click or tap here to enter text.

Item 6 – Unit Prices

Choose an item.

Item 7 – Payments

All invoices shall be submitted through the vendor's VendorCafe portal. Invoices received outside of VendorCafe will not be accepted. Invoices may be generated from the 'Contract Details' page in the 'Contracts' tab. Please ensure all invoice details are provided and attach any supporting documents (i.e. lien waivers) to the invoice. Payment will not be issued if a Vendor's account status is 'Non-Compliant'. Please contact the Project Administrator or vendorcafe_support@yardi.com with questions.

Item 8 – Supplementary and Other Conditions

Choose an item.

NorthPoint Development, LLC
 A Missouri limited liability company
 3315 N Oak Trafficway
 Kansas City, MO 64116

Click or tap here to enter text.
 Click or tap here to enter text.
 Click or tap here to enter text.

Developer for:
 Click or tap here to enter text., A Click or tap here to enter text. limited liability company
 3315 N Oak Trafficway
 Kansas City, MO 64116

Signature

Click or tap here to enter text. –
 Development Manager
 Agent for NorthPoint Development

Print Name and Title

Date

Signature

Click or tap here to enter text.

Print Name and Title

Date

Exhibit A - Insurance Requirements

Contractor shall provide copies of required insurance policies when requested by Owner. Policies must include all applicable endorsements. Contractor shall carry insurance in the following amounts and limits:

A. Commercial General Liability Including Contractual and Completed Operations

1. Bodily Injury and Property Damage Combined Single Limits
 - a. \$2,000,000 General Aggregate Limit
 - b. \$2,000,000 Products-Completed Operations Aggregate
 - c. \$1,000,000 Bodily Injury and Property Damage Occurrence Limit
 - d. General aggregate limit is applied separately to each project
2. Occur Box must be marked
3. Additional Insured and Waiver of Subrogation boxes must be checked
4. For projects in the State of New York, the Contractor must additionally provide an Accord 855 Form for "NYS Construction Certificate of Liability Addendum."

B. Commercial Automobile Liability

1. Bodily Injury and Property Damage Combined Single Limits
 - a. \$1,000,000 Combined Single Limit
2. Policy type must be indicated
3. Additional Insured and Waiver of Subrogation boxes must be checked

C. Umbrella Excess Liability

1. \$5,000,000 - Each Occurrence and Aggregate Limit
2. Occur Box must be marked
3. Additional Insured and Waiver of Subrogation boxes must be checked

D. Worker's Compensation & Employers Liability

1. Work Compensation – Statutory
2. Employer's Liability – \$1,000,000 Bodily Injury – each accident
\$1,000,000 – Bodily Injury by Disease – each employee
\$1,000,000 – Bodily Injury by Disease – aggregate
3. Per Statute must be marked
4. Waiver of Subrogation box must be checked (as applicably by law)

E. Professional Liability

1. \$2,000,000 each claim
2. \$2,000,000 annual aggregate

F. Certificate Holder shall be addressed to:

NorthPoint Holdings, LLC
c/o VendorShield
PO Box 1576
Hicksville, NY 11802-1576

- G. Description of Operations: All policies except Workers Compensation and Professional Liability shall include NorthPoint Holdings, LLC, NorthPoint Development, LLC, Oregon International Port of Coos Bay, and all subsidiaries, affiliated companies, property owners and their agents, successors, and assigns, as their interests may appear, and owner as additional insured on a primary and noncontributory basis for claims as required by written contract or agreement. A waiver of subrogation in favor of the NorthPoint Holdings, LLC, NorthPoint Development, LLC, Oregon International Port of Coos Bay, and all subsidiaries, affiliated companies, property owners and their agents, successors, and assigns, as their interests may appear, and owner is included under the General Liability, Automobile Liability, Umbrella Liability and Workers' Compensation. All Policies to be endorsed to provide NorthPoint Holdings, LLC, Oregon International Port of Coos Bay, and Owner 30-day notice of cancellation or material change.