



AIA[®] Document A145[™] – 2015

Standard Form of Agreement Between Owner and Design-Builder for a One or Two Family Residential Project

AGREEMENT made as of the _____ day of _____ in the year _____
(In words, indicate day, month and year.)

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

and the Design-Builder:
(Name, legal status, address, license or registration number, and other information)

for the following Project:
(Name, location and detailed description. Provide legal description and any statutorily required description of the property.)

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

FEDERAL, STATE AND LOCAL LAW MAY IMPOSE REQUIREMENTS ON CONTRACTS FOR RESIDENTIAL CONSTRUCTION. THE REQUIREMENTS FOR SINGLE FAMILY AND TWO FAMILY PROJECTS MAY BE DIFFERENT. THE OWNER SHOULD CONSULT LOCAL AUTHORITIES OR AN ATTORNEY TO VERIFY REQUIREMENTS APPLICABLE TO THIS AGREEMENT.

Sample

The Owner and Design-Builder agree as follows.

Init.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Initial Information

§ 1.1.1 The Owner's program and design requirements for the Project:

(Set forth the size, number of rooms, features and other requirements of the Project.)

§ 1.1.2 Additional Project requirements upon which the Agreement is based:

(Identify special characteristics or requirements of the Project not identified elsewhere, such as property or site covenants, conditions, and restrictions; design review requirements; or historic preservation requirements. Identify any submittals needed to satisfy the additional requirements.)

§ 1.1.3 Physical characteristics of the Owner's site:

(Identify or describe pertinent information, such as drawings, geotechnical reports; site, boundary and topographic surveys; availability of public and private utilities and services; etc.)

§ 1.1.4 The Owner's budget to plan, design and construct the Work, excluding costs of land:
(Provide total and, if known, a line item breakdown.)

§ 1.1.5 The Owner's anticipated design and construction milestone dates:
(List anticipated milestone dates such as the anticipated dates for submission of the Design-Builder's Proposal, commencement of construction, Substantial Completion, and other milestones.)

§ 1.1.6 The Owner will retain the following consultants and separate contractors:
(List name, discipline, legal status, address and other information.)

§ 1.2 Statutory Requirements

§ 1.2.1 Consumer protection notice requirements:

(State or local law may require inclusion of specific consumer protection notices for residential projects. Insert any required statutory language here and attach specific documents required by statute, if any. Identify the documents in Article 17.)

§ 1.2.2 Warranty requirements:

(State or local law may require inclusion of specific warranty requirements for residential projects. Insert any required statutory language here and attach specific documents required by statute, if any. Identify the documents in Article 17.)

§ 1.2.3 Mechanic's lien notification requirements:

(State or local law may require inclusion of specific mechanic's lien notification or related requirements for residential projects. Insert any required statutory language here and attach specific documents required by statute, if any. Identify the documents in Article 17.)

§ 1.2.4 Jurisdiction and jurisdiction-specific requirements:

(List the pertinent governmental authorities having jurisdiction over the Project and provide, as applicable, any municipal, flood, environmental protection, historic preservation, zoning and other unique or site specific jurisdictional requirements.)

§ 1.2.5 Other requirements:

(Insert any other required statutory language here and attach specific documents required by statute, if any. Identify the documents in Article 17.)

§ 1.3 Contract Time

The Contract Time shall be established in the Design-Build Amendment.

§ 1.4 Definitions

§ 1.4.1 Design-Build Documents

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

§ 1.4.2 The Contract

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

§ 1.4.3 The Work

The term “Work” means the design, construction and related services required to fulfill the Design-Builder’s obligations under the Design-Build Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Design-Builder. The Work may constitute the whole or a part of the Project.

§ 1.4.4 The Project

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

§ 1.4.5 The Drawings

The Drawings are the graphic and pictorial representations showing the design, location, and dimensions of the Work; generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.4.6 The Specifications

The Specifications are the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.4.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work provided by the Design-Builder. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.4.8 Submittal

A Submittal is any submission to the Owner for review and approval, demonstrating how the Design-Builder proposes to conform to the Design-Build Documents, for those portions of the Work for which the Design-Build Documents require Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples. Submittals are not Design-Build Documents unless incorporated into a Modification.

§ 1.4.9 Design-Builder

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

§ 1.4.10 Contract Sum

The Contract Sum set forth in the Design-Build Documents, subject to adjustments as authorized in the Design-Build Documents, is the total amount payable by the Owner to the Design-Builder for performance of the Work following execution of the Design-Build Amendment, and includes allowances and contingencies, if any.

§ 1.4.11 Contract Time

Unless otherwise provided, the Contract Time is the period of time set forth in the Design-Build Amendment, including adjustments as authorized in the Design-Build Documents, for Substantial Completion of the Work.

§ 1.4.12 Day

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

ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS

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

§ 2.1.1 For the Design-Builder’s performance of Work prior to the execution of the Design-Build Amendment, as set forth in Article 4 of this Agreement, the Owner shall pay the Design-Builder as follows:

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

§ 2.1.2 The hourly billing rates for services of the Design-Builder and the Design-Builder's consultants and contractors, if any, are set forth below. The rates shall be adjusted in accordance with the Design-Builder's and Design-Builder's consultants' and contractors' normal review practices.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Employee or Category

Rate

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

§ 2.1.3.1 Reimbursable Expenses are in addition to compensation set forth in Section 2.1.1 and 2.1.2 and include expenses incurred by the Design-Builder, and the Design-Builder's consultants and contractors, directly related to the Project, prior to execution of the Design-Build Amendment, as follows:

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

§ 2.1.3.2 For Reimbursable Expenses, the compensation shall be the expenses incurred by the Design-Builder and the Design-Builder's consultants and contractors, plus a fee of _____ percent (__%) of the expenses incurred.

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

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

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

Payments are due and payable upon presentation of the Design-Builder's invoice. Amounts unpaid _____ (__) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Design-Builder.

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

_____ % _____

§ 2.2 Contract Sum and Payment for Work After Execution of the Design-Build Amendment

For the Design-Builder's performance of the Work after execution of the Design-Build Amendment, the Owner shall pay to the Design-Builder the Contract Sum in current funds as agreed in the Design-Build Amendment and in accordance with the process set forth in Article 9 of this Agreement.

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

§ 3.1 General

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

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

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

§ 3.2 Progress Reports

§ 3.2.1 The Design-Builder shall keep the Owner informed of the progress and quality of the Work. On a monthly basis, or otherwise as agreed to by the Owner and Design-Builder, the Design-Builder shall submit written progress reports to the Owner, showing Work completed for the period and Project schedule status; cumulative total of the Contract Sum paid to date; approved and pending Change Orders and Change Directives; and additional information agreed upon by the Owner and Design-Builder.

§ 3.2.2 The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, and other persons or entities, performing portions of the Work for, or on behalf of, the Design-Builder or any of its contractors and consultants.

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

§ 3.3 Owner's Selections

The Design-Builder shall prepare a schedule for Owner's selections of products and materials, and shall submit the schedule for the Owner's approval. The Owner's approval shall not unreasonably be delayed or withheld. The schedule for Owner's selections shall (1) provide a list of product and material selections to be made by the Owner and the date by which selections shall be made, (2) identify the products or materials for which the Design-Builder will provide samples or information for review and consideration by the Owner and the dates by which the samples or information will be provided, and (3) allow the Owner reasonable time to review and consider selections. If the Design-Builder fails to submit a schedule for Owner's selections, the Design-Builder shall not be entitled to any increase in the Contract Sum or extension of the Contract Time based on the time required for review of selections. The Owner's selections shall be set forth in the Design-Build Amendment.

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

§ 4.1 Owner's Criteria

§ 4.1.1 As soon as practicable after execution of this Agreement, the Design-Builder and the Owner shall meet to discuss the Initial Information and develop the Owner's Criteria. The Owner's Criteria shall be agreed upon and set forth in writing and shall include detailed design requirements, physical characteristics, the Owner's budget, milestone dates, and other criteria for the Project.

§ 4.1.2 After development of the Owner's Criteria, the Owner will provide the Design-Builder with written consent to proceed to the development of the Preliminary Design.

§ 4.1.3 The Owner and Design-Builder recognize that the Owner's Criteria may change and, in that event, the Owner and the Design-Builder shall execute a Modification identifying such changes and adjusting the schedule, the Design Builder's services, the scope of Work, and the Design Builder's compensation, as appropriate.

§ 4.2 Preliminary Design

§ 4.2.1 Upon the Owner's issuance of a written consent to proceed under Section 4.1.2, the Design-Builder shall prepare and submit a Preliminary Design to the Owner in accordance with the agreed upon Owner's Criteria. The Preliminary Design shall consist of Drawings and other documents and Instruments of Service, and shall include a report identifying any deviations from the Owner's Criteria.

§ 4.2.2 The Owner shall review the Preliminary Design and, if acceptable, provide its consent in writing to the Design Builder to proceed to development of the Design-Builder's Proposal. The Preliminary Design shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.3 Design-Builder's Proposal

§ 4.3.1 Upon the Owner's issuance of a written consent to proceed under Section 4.2.2, the Design-Builder shall prepare and submit the Design-Builder's Proposal to the Owner. The Design-Builder's Proposal shall be based on the Preliminary Design and include all of the information required by AIA Document A145™–2015, Exhibit A, Design-Build Amendment.

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

§ 4.3.3 If the Owner and Design Builder agree on the Design-Builder's Proposal, the Owner and Design Builder shall execute the Design-Build Amendment setting forth the terms of their agreement.

ARTICLE 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 5.1 Construction Documents

§ 5.1.1 Upon the execution of the Design-Build Amendment, the Design-Builder shall prepare the necessary construction documents, including Drawings, and, where appropriate, Specifications, and other information setting forth the requirements for construction of the Work. The construction documents shall be consistent with the Design-Build Documents.

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

§ 5.2 Construction Phase

§ 5.2.1 Commencement

The Construction Phase shall commence on the date set forth in the executed Design-Build Amendment.

§ 5.2.2 The Design-Builder shall supervise and direct the Work, using the Design-Builder's best skill and attention. The Design-Builder shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Design-Builder's Work.

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

§ 5.3 Labor and Materials

§ 5.3.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall provide and pay for labor, materials, equipment, tools, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work.

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

§ 5.4 Warranty

In addition to any warranty provided by statute, the Design-Builder warrants to the Owner that: (1) materials and equipment furnished under the Contract will be new and of good quality unless otherwise required or permitted by the Design-Build Documents; (2) the Work will be free from defects not inherent in the quality required or permitted; and (3) the Work will conform to the requirements of the Design-Build Documents.

§ 5.5 Taxes

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

§ 5.6 Permits, Fees and Notices

§ 5.6.1 The Design-Builder shall obtain and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work.

§ 5.6.2 The Design-Builder shall comply with notice and other requirements of agencies having jurisdiction over the Work.

§ 5.7 Submittals

The Design-Builder shall submit, for the Owner's information or selection, shop drawings, product data, samples and similar submittals required by the Design-Build Documents. Acceptance of such submittals by the Owner shall not relieve the Design-Builder of responsibility to perform the Work in accordance with the Design-Build Documents.

§ 5.8 Use of Site

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

§ 5.9 Cutting and Patching

The Design-Builder shall not cut, patch, or otherwise alter, fully or partially completed construction by the Owner or a separate contractor, without the written consent of the Owner and the separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting, patching, or otherwise altering the Work.

§ 5.10 Cleaning Up

The Design-Builder shall keep the premises and surrounding area free from accumulation of debris and trash related to the Work. At the completion of the Work, the Design-Builder shall remove its tools, construction equipment, machinery and surplus material; and shall properly dispose of waste materials.

§ 5.11 Indemnification

To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Design-Builder, its consultants or contractors, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.

§ 5.12 Access to Work

The Design-Builder shall provide the Owner and its separate contractors and consultants access to the Work in preparation and progress.

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly in writing. If the Owner and Design-Builder cannot agree to a change in the Contract Sum, the Owner shall pay the Design-Builder its actual cost plus reasonable overhead and profit.

§ 6.2 The Design-Builder will have authority to make minor changes in the Work not involving changes in the Contract Sum or the Contract Time and not inconsistent with the intent of the Design-Build Documents.

§ 6.3 If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Design-Build Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be subject to equitable adjustment.

ARTICLE 7 OWNER RESPONSIBILITIES

§ 7.1 Information and Services Required of the Owner

§ 7.1.1 If requested by the Design-Builder, the Owner shall furnish all necessary surveys and a legal description of the site.

§ 7.1.2 The Owner shall promptly obtain easements, zoning variances, and legal authorizations or entitlements regarding site utilization, where essential to the execution of the Project.

§ 7.1.3 Except for permits and fees that are the responsibility of the Design-Builder under Section 5.6.1 and the Design-Build Documents, the Owner shall obtain and pay for other necessary approvals, easements, assessments, and charges.

§ 7.2 The Owner has authority to reject Work that does not conform to the Design-Build Documents and to require inspection or testing of the Work.

§ 7.3 Owner's Right to Stop the Work

If the Design-Builder fails to correct Work which is not in accordance with the Design-Build Documents, the Owner may direct the Design-Builder in writing to stop the Work until the correction is made.

§ 7.4 Owner's Right to Carry Out the Work

If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails, within a seven day period after receipt of written notice from the Owner, to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies, correct such deficiencies. In such case, the Contract Sum shall be adjusted to deduct the cost of correction from payments due the Design-Builder.

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

§ 7.5.1 The Owner reserves the right to perform construction or operations related to the Project, and to award separate contracts in connection with other portions of the Project.

§ 7.5.2 The Design-Builder shall coordinate and cooperate with the Owner, and separate contractors employed by the Owner.

§ 7.5.3 Costs caused by delays, or by improperly timed activities, or defective construction, shall be borne by the party responsible.

ARTICLE 8 TIME

§ 8.1 Time limits stated in the Design-Build Documents are of the essence of the Contract.

§ 8.2 If the Design-Builder is delayed at any time in progress of the Work, by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, or other causes beyond the Design-Builder's control, the Contract Time shall be subject to equitable adjustment.

ARTICLE 9 PAYMENT APPLICATIONS AND COMPLETION

§ 9.1 Applications for Payment

§ 9.1.1 At least ten days before the date established for each progress payment in the Design-Build Amendment, the Design-Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work. The Application shall be supported by data substantiating the Design-Builder's right to payment, as the Owner may reasonably require.

§ 9.1.2 The Design-Builder warrants that title to all Work, other than Instruments of Service, covered by an Application for Payment, will pass to the Owner no later than the time of payment. The Design-Builder further warrants that upon submittal of an Application for Payment, all Work for which payments have been received from the Owner shall, to the best of the Design-Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or other encumbrances adverse to the Owner's interests.

§ 9.2 Progress Payments

§ 9.2.1 Based upon Applications for Payment the Design-Builder submits to the Owner, the Owner shall make progress payments to the Design-Builder not later than _____ (__) days after the Owner receives the Application for Payment.

§ 9.2.2 The Design-Builder shall promptly pay each consultant and contractor, upon receipt of payment from the Owner, an amount determined in accordance with the terms of the applicable contracts and purchase orders.

§ 9.2.3 The Owner shall have no responsibility for payments to a consultant or contractor.

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

§ 9.3 Substantial Completion

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

§ 9.3.2 When the Design-Builder considers that the Work is substantially complete, the Design-Builder shall prepare and submit to the Owner a list of items to be completed or corrected prior to final payment. Upon receipt of the Design-Builder's list, the Owner will make an inspection to determine whether the Work or designated portion thereof is substantially complete and to determine if there are any additional items to be completed or corrected that are not on the Design-Builder's list.

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

§ 9.4 Final Completion and Final Payment

§ 9.4.1 Upon receipt of a final Application for Payment, the Owner will inspect the Work. When the Owner finds the Work acceptable and the Contract fully performed, the Owner will promptly make final payment to the Design-Builder.

§ 9.4.2 Final payment shall not become due until the Design-Builder submits to the Owner releases and waivers of liens, and data or documentation establishing payment or satisfaction of obligations, Claims, security interests or encumbrances arising out of the Contract.

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 The Design-Builder shall be responsible for initiating, maintaining and supervising all safety precautions and programs, including all those required by law in connection with performance of the Contract. The Design-Builder shall take reasonable precautions to prevent damage, injury, or loss, to employees on the Work, the Work and materials and equipment to be incorporated therein, and other property at the site or adjacent thereto. The Design-Builder shall promptly remedy damage and loss to property caused in whole or in part by the Design-Builder, or by anyone for whose acts the Design-Builder may be liable.

§ 10.2 The Design-Builder is responsible for compliance with any requirements included in the Design-Build Documents regarding hazardous materials. If the Design-Builder encounters a hazardous material or substance not addressed in the Design-Build Documents, and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing. Upon receipt of the Design-Builder's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to cause it to be rendered harmless. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Design-Builder. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Design-Builder's reasonable additional costs of shutdown, delay and start-up.

§ 10.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Design-Builder, its contractors and consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact, the material or substance presents the risk of bodily injury or death as described in Section 10.2 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.4 If, without negligence on the part of the Design-Builder, the Design-Builder is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Design-Build Documents, the Owner shall indemnify the Design-Builder for all cost and expense thereby incurred.

ARTICLE 11 CORRECTION OF WORK

§ 11.1 The Design-Builder shall promptly correct Work rejected by the Owner as failing to conform to the requirements of the Design-Build Documents. The Design-Builder shall bear the cost of correcting such rejected Work, including the costs of uncovering, replacement, and additional testing.

§ 11.2 In addition to the Design-Builder's other obligations, including warranties under the Contract, the Design-Builder shall, for a period of one year after Substantial Completion, correct Work not conforming to the requirements of the Design-Build Documents.

§ 11.3 If the Design-Builder fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 7.5.

ARTICLE 12 COPYRIGHTS AND LICENSES

§ 12.1 Drawings, specifications, and other documents furnished by the Design-Builder, including those in electronic form, are Instruments of Service. The Design-Builder, its contractors, consultants and any other person or entity providing services or work for any of them, shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements, or for similar purposes in connection with the Project, is not to be construed as publication in derogation of the reserved rights of the Design-Builder, its contractors and consultants, and any other person or entity providing services or work for any of them.

§ 12.2 Upon execution of this Agreement, the Design-Builder grants to the Owner a limited, irrevocable and non-exclusive license to use the Instruments of Service solely and exclusively for the purpose of work performed by separate contractors, and for the purposes of using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under the Design-Build Documents. If the Design-Builder rightfully terminates this Agreement for cause as provided in Section 13.1 the license granted in this Section 12.2 shall terminate.

§ 12.3 The Owner releases the Design-Builder, its consultants, contractors and any other person or entity providing services or work for any of them, from all claims and causes of action arising from the Owner's use of the Instruments of Service without retaining the authors of the Instruments of Service. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Design-Builder, its consultants, contractors and any other person or

entity providing services or work for any of them, from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service under this Section 12.3. The terms of this Section 12.3 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 13.4.

§ 12.4 Except for the licenses granted in this Article 12, no other license or right shall be deemed granted or implied under this Agreement.

ARTICLE 13 TERMINATION OF THE CONTRACT

§ 13.1 Termination by the Design-Builder

If the Owner fails to make payment as provided in Section 9.2.1 for an additional period of 30 days, the Design-Builder may, upon seven additional days' written notice to the Owner, terminate the Contract and recover from the Owner payment in accordance with Section 13.3.1 or 13.3.2.

§ 13.2 Termination by the Owner for Convenience

The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. The Design-Builder shall be entitled to receive payment in accordance with Section 13.3.1 or 13.3.2.

§ 13.2.1 If the Owner does not accept the Design-Builder's Proposal and execute the Design-Build Amendment, this Agreement will terminate. The Design-Builder shall be entitled to receive payment in accordance with Section 13.3.1.

§ 13.3 Compensation

§ 13.3.1 In the event of a termination under Section 13.1 or Section 13.2 prior to execution of the Design-Build Amendment, the Design-Builder shall be compensated for Work performed prior to termination, together with Reimbursable Expenses then due and any other expenses directly attributable to termination for which the Design-Builder is not otherwise compensated. In no event shall the Design-Builder's compensation under this Section be greater than the compensation set forth in Section 2.1.

§ 13.3.2 In the event of a termination under Section 13.1 or Section 13.2 after execution of the Design-Build Amendment, the Design-Builder shall be compensated for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

§ 13.4 Termination by the Owner for Cause

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

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to consultants and contractors for materials or labor in accordance with the respective agreements between the Design-Builder and the consultants and contractors;
- .3 persistently disregards laws, ordinances; or rules, regulations, or orders, of a public authority having jurisdiction; or
- .4 is otherwise guilty of substantial breach of a provision of the Contract Documents.

§ 13.4.2 When any of the reasons set forth in Section 13.4.1 exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder seven days' written notice, terminate employment of the Design-Builder and may:

- .1 take possession of the site and of all materials thereon owned by the Design-Builder, and
- .2 finish the Work by whatever reasonable method the Owner may deem expedient.

§ 13.4.3 When the Owner terminates the Contract for one of the reasons stated in Section 13.4.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished.

§ 13.4.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, such excess shall be paid to the Design-Builder. If such costs exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner. This obligation for payment shall survive termination of the Contract.

ARTICLE 14 CLAIMS AND DISPUTES

§ 14.1 Claims

§ 14.1.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

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

§ 14.2 Binding Dispute Resolution

Any Claim arising under the terms of this Agreement shall be subject to litigation in a court of competent jurisdiction unless otherwise agreed by the parties.

§ 14.3 Claims for Consequential Damages

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

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

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 13. Nothing contained in this Section 14.3 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of Section A.2.2 of the Design-Build Amendment.

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located.

§ 15.2 Assignment of Contract

Neither party to the Contract shall assign the Contract without written consent of the other.

§ 15.3 Tests and Inspections

§ 15.3.1 At the appropriate times, the Design-Builder shall arrange for, and bear the cost of, tests, inspections, and approvals, of portions of the Work, required by the Design-Build Documents or by laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

§ 15.3.2 If the Owner requires additional testing, the Design-Builder shall arrange for the performance of those tests. The costs of such tests, except as provided in Section 11.1, shall be at the Owner's expense.

§ 15.3.3 The Owner shall bear the cost of tests, inspections, or approvals, that do not become requirements until after the Design-Build Amendment is executed.

ARTICLE 16 INSURANCE

§ 16.1 The Design-Builder shall maintain the following types and limits of insurance until the expiration of the period for correction of Work as set forth in Section 11.2, subject to the terms and conditions set forth in this Section 16.1.

§ 16.1.1 Commercial General Liability with policy limits of not less than _____ (\$ __) for each occurrence and _____ (\$ __) in the aggregate for bodily injury and property damage.

§ 16.1.2 Automobile Liability covering vehicles owned by the Design-Builder and non-owned vehicles used by the Design-Builder with policy limits of not less than _____ (\$ __) per claim and _____ (\$ __) in the aggregate for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles specified in this Section 16.1.2, along with any other statutorily required automobile coverage.

§ 16.1.3 The Design-Builder may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess liability insurance, provided that such primary and excess insurance policies result in the same or greater coverage as those required under Section 16.1.1 and 16.1.2.

§ 16.1.4 Workers' Compensation at statutory limits.

§ 16.1.5 Employers' Liability with policy limits as provided below:

§ 16.1.6 The Design-Builder shall provide builder's risk insurance to cover the value of any construction that is related to the Work.

§ 16.2 The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance and shall provide property insurance to cover the value of the Owner's property.

§ 16.3 The Design-Builder shall obtain an endorsement to its commercial general liability insurance policy to cover the Design-Builder's obligations under Section 5.11.

§ 16.4 Each party shall provide certificates of insurance showing their respective coverages prior to commencement of the Work.

§ 16.5 Unless specifically precluded by the Owner's property insurance policy, the Owner and Design-Builder waive all rights against each other, and any of their consultants, contractors, suppliers, agents, and employees, each of the other, for damages caused by fire, or other causes of loss, to the extent covered by property insurance pursuant to Section 16.2, or other insurance applicable to the Work and completed construction.

ARTICLE 17 SCOPE OF THIS AGREEMENT

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

§ 17.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document A145™-2015, Standard Form of Agreement Between Owner and Design-Builder for a One or Two Family Residential Project
- .2 AIA Document A145™-2015, Exhibit A, Design-Build Amendment, if executed
- .3 Other:

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

(If required by law, insert cancellation period, disclosures or other warning statements above the signatures.)

OWNER (Signature)

DESIGN-BUILDER (Signature)

(Printed name, title and address)

(Printed name, title and address)

LICENSE NO.:
JURISDICTION: