

## **POSSIBLE MOTION**

**I MOVE TO award a Design-Build Contract to Coastal Excavation to: 1) Construct a cover for the existing Turnaround Skatepark, and 2) Sitka Recycle Yard Building Project, in the bid amount of \$270,875.00**

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## MEMORANDUM

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**To:** Mayor Westover and Members of the Assembly  
Jim Dinley, Municipal Administrator

**From:** Michael Harmon, P.E. Public Works Director *MH*  
Lance Henrie, P.E., Senior Engineer *LH*

**Reviewed:** Jay Sweeney, Finance Director  
Stephen Weatherman, P.E, Municipal Engineer *SW*  
Gary Baugher Jr., Public Works M&O Superintendent *GB*  
Tammy O'Neill, Contract Coordinator

**Date:** April 17, 2012

**Subject:** Existing Turnaround Skatepark Cover and Sitka Recycle Yard Building  
Recommendation for Award of Design Build Contract

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### Background

Immediately after the Turnaround skatepark's opening in 2007, the Parks Division heard from skaters and the public that the skatepark needed to be covered to allow skatepark users to use the park during inclement weather. During the development of and public meetings for the 2010 Sitka Outdoor Recreation Action Plan, a cover for the skatepark was determined to be a first tier priority. The Parks and Recreation Committee members unanimously voted that the cover is a priority use of remaining grant funds.

In August 2011, the Assembly authorized staff to prepare a Request for Proposal (RFP) for a design-build contract for the Turnaround Skatepark Cover Project. During the process of preparing the RFP, staff determined that a replacement structure for the collapsed Quonset style building that covered the City's glass crusher should be bid together with the Skatepark Cover to obtain a better economy of scale. The glass crusher is located on the north side of Sawmill Creek Road at the Sawmill Cove Industrial Site.

The Public Works Department opened bids for this project on March 29, 2012. The Request for Proposal was published in the Sitka Sentinel and Juneau Empire, in accordance with City and Borough of Sitka procurement policies. Three (3) design-build proposals were received, as indicated in the following table:

Bidder	Base Bid
<b>Coastal Excavation</b>	<b>\$270,875.00</b>
Island Enterprises	\$360,966.00
CBC Construction	\$394,966.00

The estimated cost for this project was advertised between \$150,000 and \$300,000.

Analysis

All three (3) proposals were reviewed and judged to be responsive. Coastal Excavation was the low bidder with a base bid of \$270,875.00. The Department proposes to award a design-build contract to Coastal Excavation.

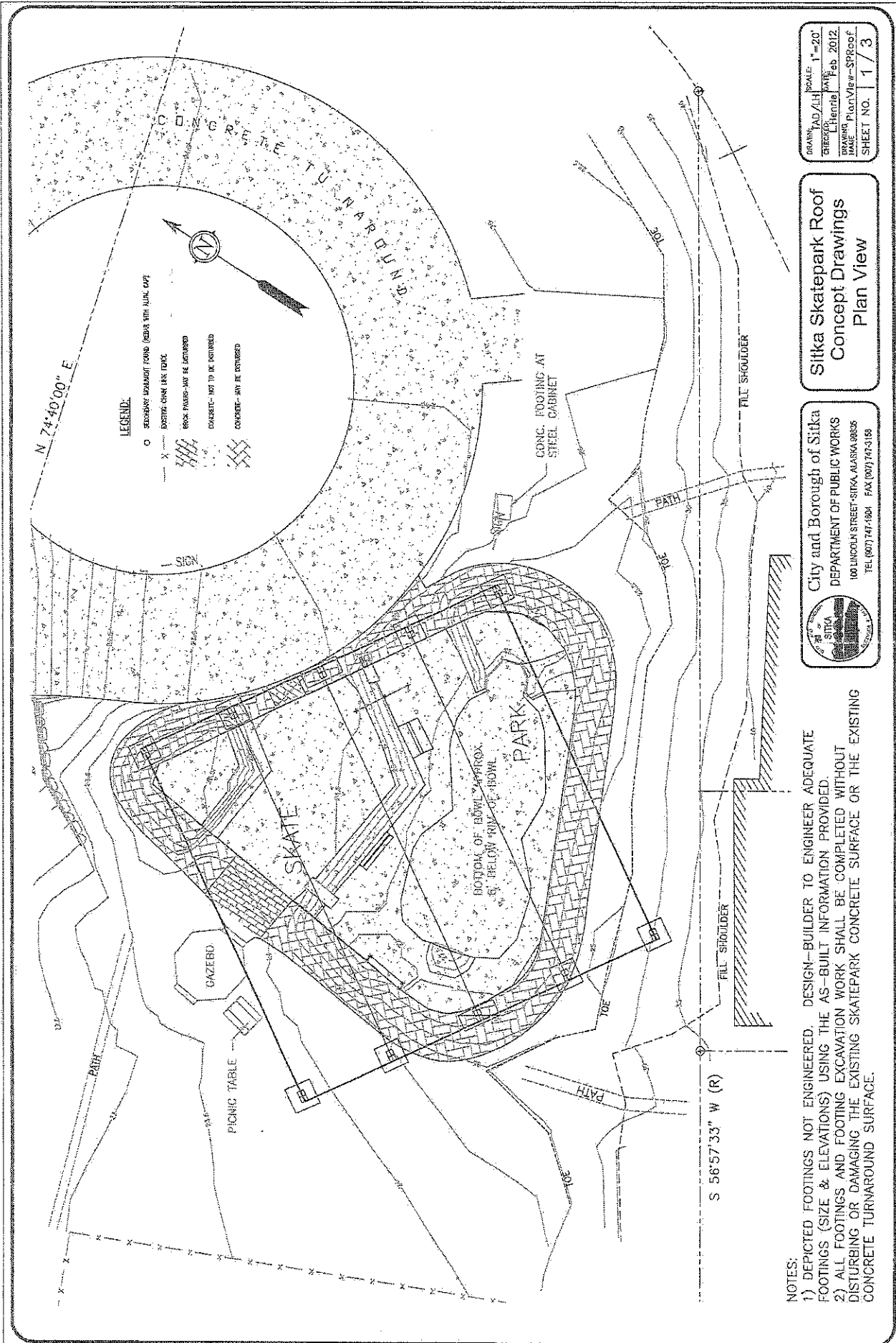
Fiscal Note:

The amount of the contract dedicated to the Skatepark Cover would be approximately \$196,000. The current budget for the Skateboard Park is \$225,279.00, which consists of \$38,255.00 remaining in a Land and Water Conservation Grant and \$187,024.00 in matching CBS Funds.

The amount of the contract dedicated to the glass crusher building would be approximately \$75,000. The glass crusher building has \$80,000 of FY12 budgeted funds for design and construction in the Solid Waste Fund as part of the Scrap Yard Upgrades.


Recommendation:

**Award a Design-Build Contract to Coastal Excavation for completion of the Existing Turnaround Skatepark Cover and Sitka Recycle Yard Building project, in the amount of \$270,875.00.**

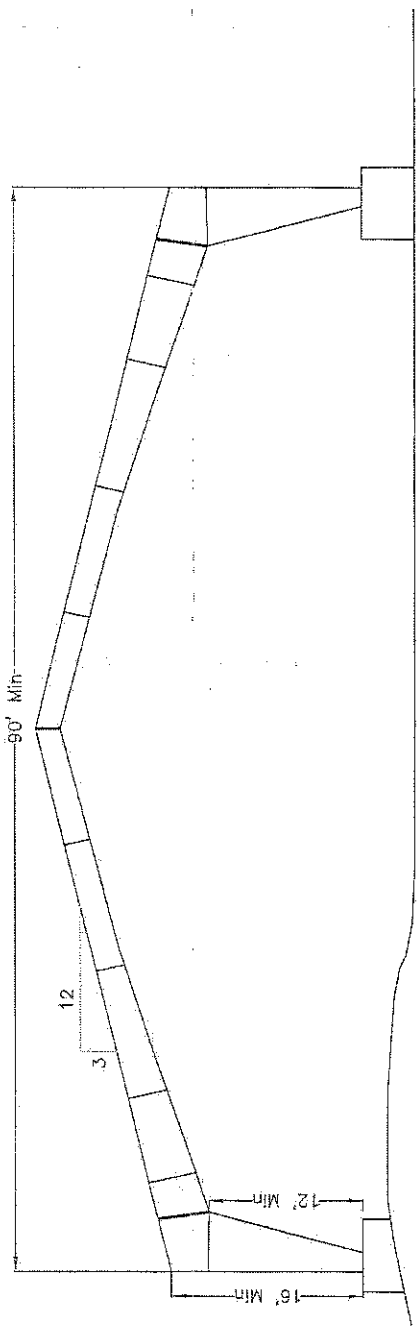


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 CHECKED: J. Henkle DATE: Feb. 2012  
 DRAWING: PlanView-SPRoof  
 MAKE: SHEET NO. 1 / 3

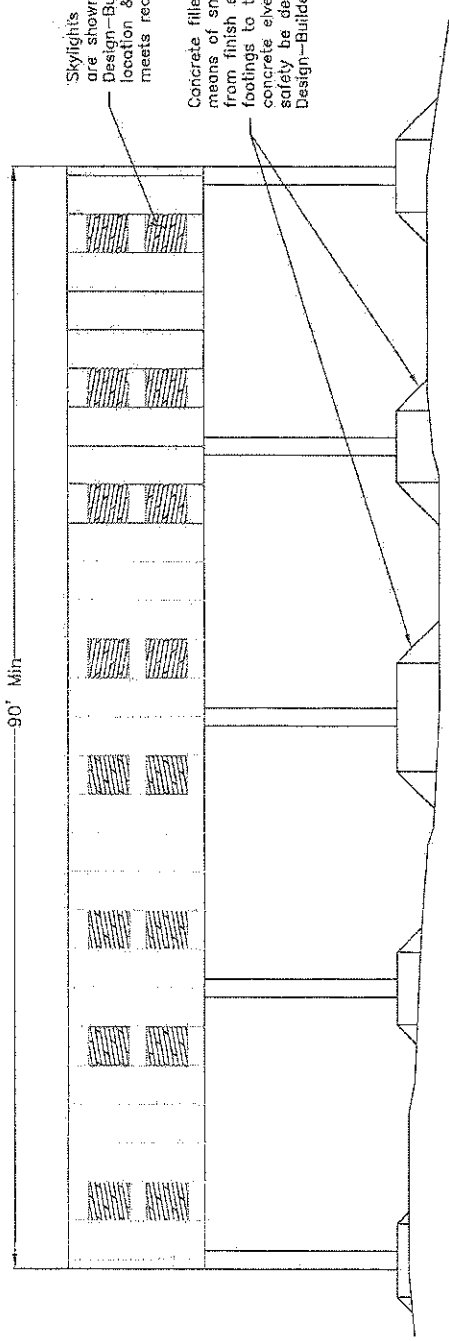
**Sitka Skatepark Roof**  
**Concept Drawings**  
**Plan View**


**City and Borough of Sitka**  
 DEPARTMENT OF PUBLIC WORKS  
 100 LINCOLN STREET-SITKA, ALASKA 99835  
 TEL (907) 747-1804 FAX (907) 747-3158

- NOTES:
- 1) DEPICTED FOOTINGS NOT ENGINEERED. DESIGN-BUILDER TO ENGINEER ADEQUATE FOOTINGS (SIZE & ELEVATIONS) USING THE AS-BUILT INFORMATION PROVIDED.
  - 2) ALL FOOTINGS AND FOOTING EXCAVATION WORK SHALL BE COMPLETED WITHOUT DISTURBING OR DAMAGING THE EXISTING SKATEPARK CONCRETE SURFACE OR THE EXISTING CONCRETE TURNAROUND SURFACE.



WEST END ELEVATION

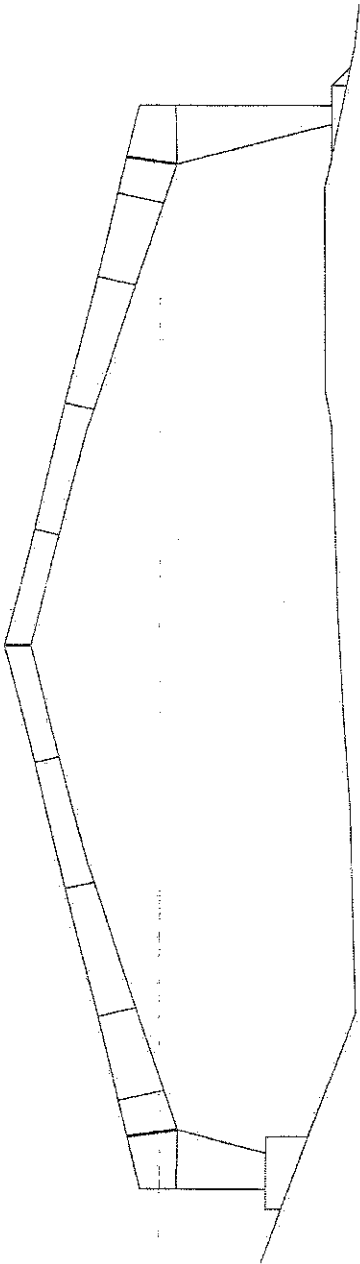


NORTH ELEVATION

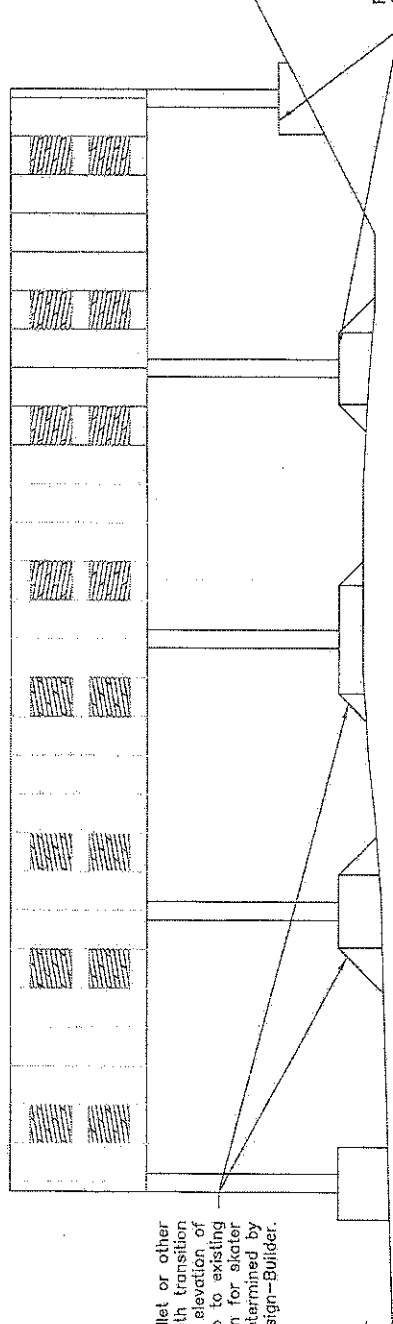
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Sitka Skatepark Roof  
 Concept Drawings  
 North & West Elevations

City and Borough of Sitka  
 DEPARTMENT OF PUBLIC WORKS  
 100 LINCOLN STREET-SITKA, ALASKA 99835  
 TEL (907) 747-1804 FAX (907) 747-3158



EAST END ELEVATION



SOUTH ELEVATION

Concrete fillet or other means of smooth transition of finish elevation of footings to existing concrete elevation for safety be determined by Design-Builder.

Finish elevations of footings to be determined by Design-Builder.



City and Borough of Sitka  
DEPARTMENT OF PUBLIC WORKS  
100 LINCOLN STREET-SITKA, ALASKA 99835  
TEL (907) 747-1804 FAX (907) 747-3188

Sitka Skatepark Roof  
Concept Drawings  
South & East Elevations

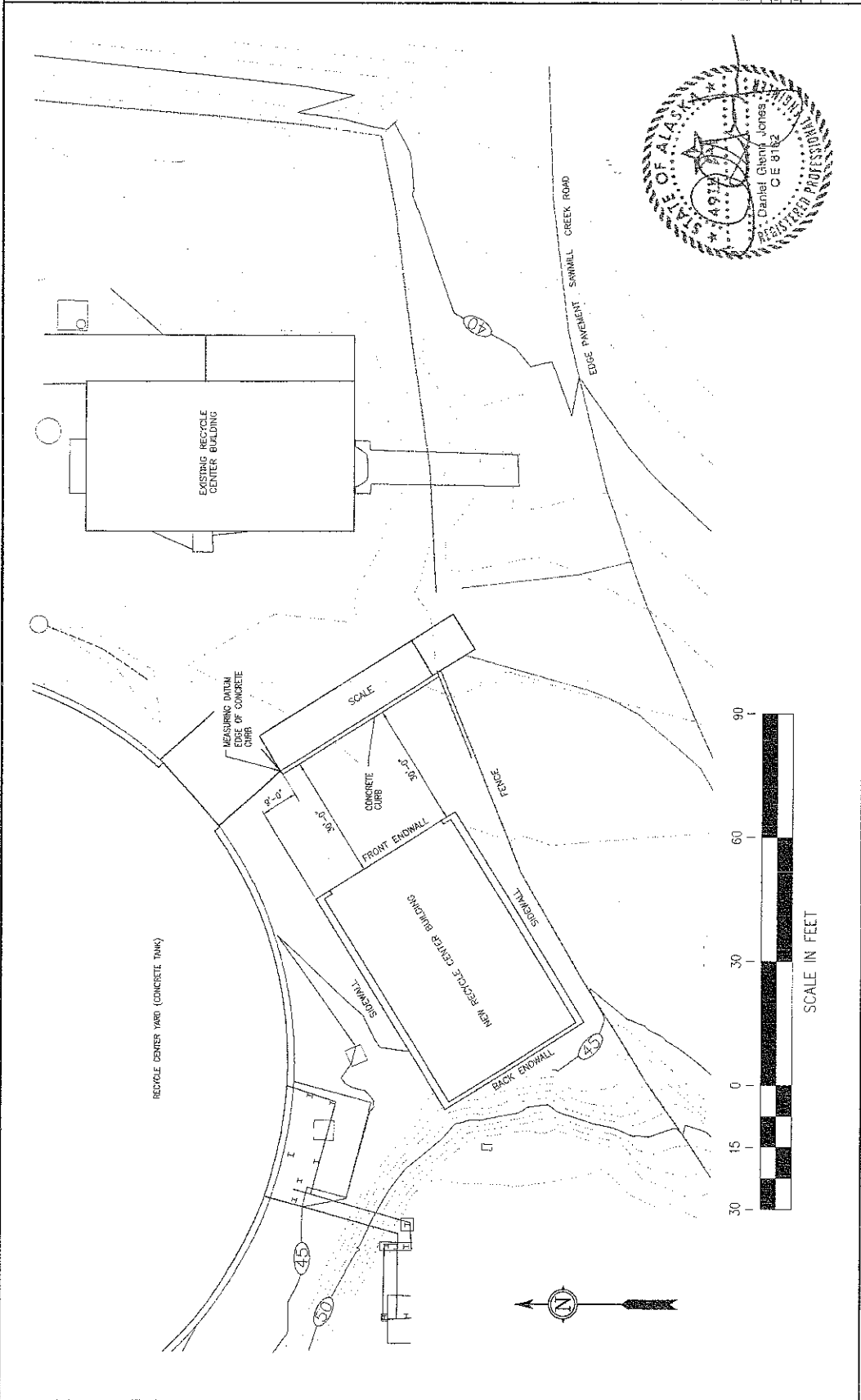
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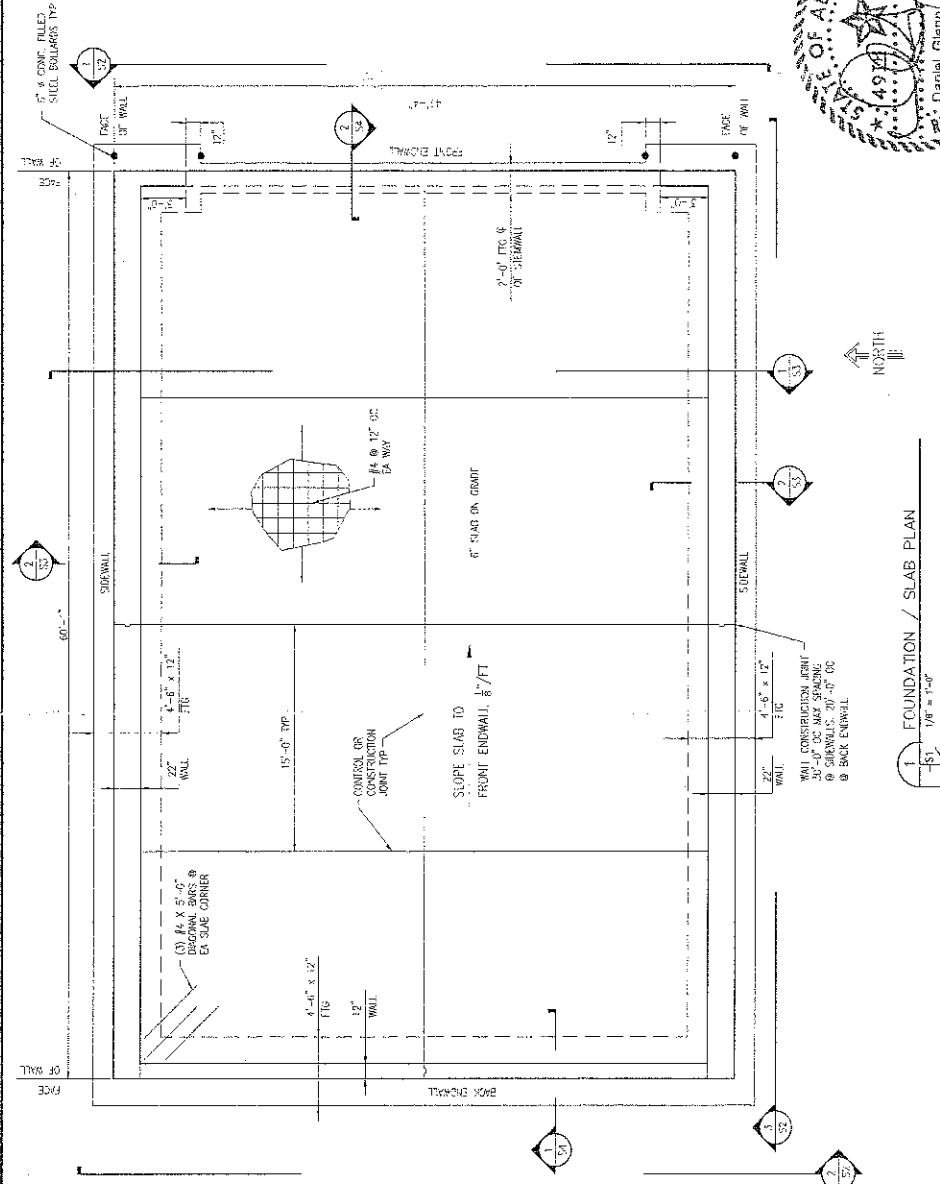
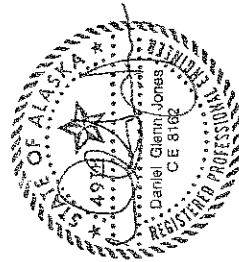
**DESIGN SOUTH EAST**  
 PO BOX 414  
 SITKA, AK 99836  
 (907) 747-4523

SAWILL COVE INDUSTRIAL  
 PARK RECYCLE CENTER BUILDING

SITE PLAN

DATE: 12/20/2011  
 DRAWN BY: J. JONES  
 CHECKED BY: J. JONES  
 PROJECT NO: 11-001  
 SHEET NO: 1





1 FOUNDATION / SLAB PLAN  
 1/8" = 1'-0"

SECTION 03100  
 CONCRETE  
 PART 1 - SUMMARY  
 1.00 SECTION INCLUDES  
 FORMWORK  
 CONCRETE  
 REINFORCEMENT  
 PART 2 - MATERIALS  
 2.01 CONCRETE SHALL BE 4000 PSI AND 28 DAY COMPRESSIVE STRENGTH SHALL BE 4000 PSI.  
 2.02 REINFORCEMENT SHALL BE A601 GRADE 60 STEEL.  
 2.03 ALL REINFORCEMENT SHALL BE PROTECTED WITH A MINIMUM OF 2" CLEARANCE FROM ALL SURFACES.  
 2.04 ALL REINFORCEMENT SHALL BE TIED TOGETHER.  
 2.05 ALL REINFORCEMENT SHALL BE WELDED TOGETHER.  
 2.06 ALL REINFORCEMENT SHALL BE WELDED TOGETHER.  
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 2.20 ALL REINFORCEMENT SHALL BE WELDED TOGETHER.

- SECTION 03100  
 CONCRETE  
 PART 3 - EXECUTION  
 3.01 FORMWORK SHALL BE 1/2" THICK AND SHALL BE PROTECTED WITH A MINIMUM OF 1/2" CLEARANCE FROM ALL SURFACES.  
 3.02 FORMWORK SHALL BE TIED TOGETHER.  
 3.03 FORMWORK SHALL BE WELDED TOGETHER.  
 3.04 FORMWORK SHALL BE WELDED TOGETHER.  
 3.05 FORMWORK SHALL BE WELDED TOGETHER.  
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 3.20 FORMWORK SHALL BE WELDED TOGETHER.

- SECTION 03100  
 CONCRETE  
 PART 4 - FINISHES  
 4.01 CONCRETE SHALL BE FINISHED TO A FINISH OF 1/4" TYP.  
 4.02 CONCRETE SHALL BE FINISHED TO A FINISH OF 1/4" TYP.  
 4.03 CONCRETE SHALL BE FINISHED TO A FINISH OF 1/4" TYP.  
 4.04 CONCRETE SHALL BE FINISHED TO A FINISH OF 1/4" TYP.  
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 4.18 CONCRETE SHALL BE FINISHED TO A FINISH OF 1/4" TYP.  
 4.19 CONCRETE SHALL BE FINISHED TO A FINISH OF 1/4" TYP.  
 4.20 CONCRETE SHALL BE FINISHED TO A FINISH OF 1/4" TYP.

ABBREVIATIONS TO SYMBOLS

AVL	ADDITIONAL
CON	CONCRETE
FORM	FORMWORK
REIN	REINFORCEMENT
WEL	WELDED

REBAR LAP SPICE TABLE

SIZE	1/4"
LENGTH	24"
SIZE	3/8"
LENGTH	30"

2 REBAR LAP SPICE TABLE  
 1/8" = 1'-0"



**Request for Proposals**  
**By the City and Borough of Sitka, Alaska**  
**Professional Design and Construction Services**  
**Existing Turnaround Skatepark Cover and Sitka Recycle Yard Building**

Proposals for professional design and construction services will be received at the Office of the City Clerk, City Hall, City and Borough of Sitka, 100 Lincoln Street, Sitka, Alaska until **Thursday, March 29, 2012 at 2:00 p.m.** The time of receipt will be determined by the City Clerk's time stamp. Proposals received after the time fixed for the receipt of the bids shall not be considered.

The project consists of furnishing all professional design and construction services and all labor, materials, equipment, tools, supervision, and other facilities necessary to perform the following services, including but not limited to:

**It is the intent of the City and Borough of Sitka to award a design-build contract that includes both design and construction of a non-combustible pre-engineered metal structure (open on all sides) to cover the existing Turnaround Skatepark and a non-combustible pre-engineered metal structure to cover the glass crushing operations of the Recycling Center at the Sawmill Cove Industrial Park.**

The estimated cost for this project is between \$150,000 and \$300,000.

A non-mandatory pre-proposal meeting and site walk will begin at the Turnaround Skatepark, 801A Halibut Point Road, Sitka, Alaska, **Tuesday, March 13, 2012 at 2:00 p.m.**

Bid documents are available at the office of the Director of Public Works, 100 Lincoln Street, Room 201, Sitka, Alaska 99835; (907)747-1804(phone) for a non-refundable fee of \$50.00 per set plus tax if picked up, and \$60.00 per set if to be mailed first class. Bid documents may also be downloaded from the web:

[www.cityofsitka.com](http://www.cityofsitka.com)  
(Click on the Bid Document link)

Any questions regarding this project should be directed to Lance E. Henrie, P.E., Senior Engineer, at [lance@cityofsitka.com](mailto:lance@cityofsitka.com), (907) 747-1805 or Stephen Weatherman, P.E., Municipal Engineer, at [stephen@cityofsitka.com](mailto:stephen@cityofsitka.com), (907) 747-4042.

The City and Borough of Sitka reserves the right to accept or reject any or all proposals, to waive irregularities or informalities in the proposals, and to award the contract to the respondent that best meets the selection criteria.

Dated this 27 day of February, 2012.

CITY AND BOROUGH OF SITKA

  
Michael Harmoh, P.E., Director of Public Works

Dates of Publication:

Sitka Daily Sentinel: 2/28, 3/2, 3/9 & 3/16  
Juneau Empire: 2/28, 3/2 & 3/9

**Request for Proposals  
By the City and Borough of Sitka, Alaska**

**Professional Design and Construction Services  
Existing Turnaround Skatepark Cover  
and  
Sitka Recycle Yard Building**

The City and Borough of Sitka, Alaska is requesting proposals from qualified firms for the project described herein. It is the intent of the City and Borough of Sitka (CBS) to award a single design-build contract for complete design and construction services.

The following subjects are discussed in this RFP to assist you in preparing your proposal.

- I. Introduction/Background
- II. Scope of Services/ Project Criteria and Project Performance Standards
- III. General Requirements
- IV. Proposal Format and Content
- V. Selection Process
- VI. Proposal Form
- VII. Contract Payments
- VIII. Project Schedule
- IX. Attachments:
  - CBS Design Build -Sample Agreement
  - General Conditions of Contract Between Owner and Design Builder
  - Bid, Payment, and Performance Bond Forms
  - Concept Drawing for Turnaround Skatepark Cover
  - As-built drawing for Existing Turnaround Skatepark
  - Recycle Yard Reference Design Drawings from 2006 by Design Southeast. **Note:** Drawings are not As-Built Drawings and are supplied for Design Builders reference only.

**I. Introduction/Background**

**Turnaround Skatepark**

Immediately after the Turnaround Skatepark's opening in 2007, the City and Borough of Sitka Parks Division heard from skaters and the public that the Skatepark needed to be covered to allow skatepark users to use the park during inclement weather.

The existing Skatepark address is 801A Halibut Point Road, Sitka, AK. The Project is located on the south side adjacent to the former Amphibious Plane Turnaround in Turnaround Park. Road access is via a steep driveway from Halibut Point Road (HPR) north of the HPR and Katlian intersection.

The Skatepark itself is uniquely triangular in shape and preliminary quotes obtained for a triangular structure proved to be very uneconomical. Site constraints including the existing

concrete amphibious plane turnaround, the existing skatepark itself, existing elevation changes across the park, and existing slope and property line on the south have to be taken into consideration. All foundation work must not negatively affect the existing concrete plane turnaround or the existing skatepark concrete footprint. The existing concrete apron surrounding the skatepark may be removed and replaced as needed to accommodate concrete foundation/spot footings.

It is the intent of the CBS to award a design-build contract that includes both design and construction of a non-combustible pre-engineered metal structure (open on all sides) to cover the existing Skatepark. The cover design shall also provide intermittently-spaced translucent roof panels since visibility for the skaters and the ability to monitor the use of the park is a priority. The new structure shall cover 8,100 square feet as shown on the concept drawings and meet all Performance Criteria and Performance Standards specified in Section II. Reference Section V regarding selection process. Design services must be performed by Alaskan registered professional architects and/or engineers.

### **Recycle Yard Building**

In the winter of 2005, the City and Borough of Sitka Public Works Department hired a local design firm to inventory a salvaged corrugated metal Quonset style building, verify that it was capable of meeting local structural requirements, and design a concrete foundation, stem walls and slab required to make a complete building. The plan was to provide a cost effective covered area for the glass crushing operations of the Recycling Center at the Sawmill Cove Industrial Park.

The reinforced concrete design was completed in January 2006, and the building was constructed. Unfortunately, in March 2007 the building collapsed, apparently due to the weight of the wet snow it was supporting.

The existing concrete foundation is still being used for the City's glass crusher and is located on the north side of Sawmill Creek Road at Sawmill Cove Industrial Park. The physical address is 4651 Sawmill Creek Road.

It is the intent of the CBS to award a design-build contract that includes both design and construction of a non-combustible pre-engineered metal structure using the existing concrete foundation (if possible and economically feasible) or constructing a new foundation outside of the existing concrete footprint. The structure design shall also provide intermittently-spaced translucent roof panels for natural lighting. The new structure shall meet all Performance Criteria and Performance Standards specified in Section II. Design services must be performed by Alaskan registered professional architects and/or engineers.

CBS reserves the right to accept or reject any or all proposals, to waive irregularities or informalities in the proposals, and to award the contract to the respondent that best meets the selection criteria. CBS shall not be liable for any proposal preparation costs incurred by bidders in connection with this request for proposals.

## II. Scope of Services / Project Criteria and Project Performance Standards

The project consists of furnishing all professional design and engineering services and all labor, materials, equipment, tools, supervision, and other facilities necessary to perform the design and construction in accordance with the Project Criteria of the City and Borough of Sitka, Project Performance Standards, and all applicable local, state and federal codes, laws and regulations.

Without force or effect on requirements of the contract documents, the description of the work of the Contract can be summarized as follows:

Provide all labor, materials, equipment, and tools to design and construct a non-combustible cover over the existing Skatepark in Sitka, Alaska. This structure is to be a rigid galvanized steel frame structure with a 3:12 (min) sloped metal roof with rain gutters, downspouts, and snow clips. Roof design shall meet all applicable City codes. The covered area dimensions shall be 90'-0" x 90'-0". It shall be completely open walled and constructed on an engineered concrete foundation outside the existing concrete skatepark footprint. All foundation work must not negatively affect the existing concrete plane turnaround or the existing skatepark concrete footprint. The existing concrete apron surrounding the skatepark may be removed and replaced as needed to accommodate concrete foundation/spot footings. The structure shall have an open vaulted ceiling area with intermittently-spaced translucent roof panels and a minimum eave height of 16 feet. The scope of work is further described and detailed in this specification.

Also, provide all labor, materials, equipment, and tools to design and construct a non-combustible structure at the Recycle Yard in Sitka, Alaska. This structure is to be a rigid galvanized steel frame structure with a 3:12 (min) sloped metal roof with rain gutters, downspouts, and snow clips. Roof design shall meet all applicable City codes. The structure shall be an open ended, side-walled structure constructed on an existing concrete foundation or constructed on an engineered concrete foundation outside the existing concrete footprint. The structure shall have an open vaulted ceiling area with intermittently-spaced translucent roof panels and a minimum height of 21 feet clear at its mid-span. The scope of work is further described and detailed in this specification.

An as-built/topographic plan and design concept for the Skatepark Cover, as well as, reference Recycle Yard design drawings are included with this RFP for the Design Builder's use in preparing his bid. The drawings are provided to generally make the bidders familiar with the Owner's intent and site considerations. Any notation included on concept plan shall be considered as part of the Project Performance Standards for this contract. Perspective bidders are strongly urged to inspect the sites in order to get a full comprehension of the scope of work. Site visits can be scheduled with Lance E. Henrie @ 747-1805 or [lance@cityofsitka.com](mailto:lance@cityofsitka.com).

The Design Builder shall be responsible for the methods, sequences, and safety precautions required to perform the Work. It is the Design Builder's responsibility to determine the actual efforts required to complete the project.

The Project Criteria includes, but is not limited to preparing architectural/engineering design and performing complete construction of a project that achieves the following Project Performance Standards:

- Design services shall be performed by Alaskan registered professional engineers and/or architects under contract to the Design Builder. The design shall be performed in accordance with the best standards of the engineering and architectural profession.
- Develop a complete project cost estimate to include all required services, costs and contingencies.
- Design Drawings: Within 60 days from Notice to Proceed, the Design Builder shall submit 65% design drawings and specifications to the Owner for review and approval. Drawings shall include the plan view of the project and all building elevations. Design Builder shall provide five (5) sets of drawings for the 65% and 100% design submittals. All text and details shall be legible as determined by the Owner.
  1. Design Builder shall submit a schematic plan for the Skatepark Cover and Recycle Yard structure with the proposal.
  2. Final Drawings and specifications shall be submitted within 90 calendar days from Notice to Proceed. Note: specifications and code notes may be printed on drawings where appropriate. These plans should differ from the 65% drawings to reflect input, if any, from the CBS review of the 65% drawings.
  3. The 65% design drawing submittal shall include specifications. Design Builder shall allow Owner 7 working days to review the submittal. Design Builder shall make revisions as directed by the Owner at no additional cost to the Owner.
  4. Final design drawings and specifications shall be approved by the Owner. All final drawings shall be signed and sealed prior to commencing with construction.
- All design and engineering, without limitation, must be completed to a standard acceptable to the local Sitka Building Official.
- A fire sprinkler waiver shall be obtained by the CBS Public Works Staff prior to construction. These structures should not be required to be fire sprinkled due to its use as long as it is constructed of non-combustible materials. Both structures shall be constructed of non-combustible materials.
- The Turnaround Park does not have power or water. The Design-Builder shall provide all power and water as required for construction.
- The Design Builder shall provide concrete testing services and proper concrete curing systems or methods.
- Areas to the east of the turnaround concrete pavement toward Halibut Point Road and the center circle of the turnaround are available for staging/temporary storage. Prior to any project mobilization, the Design Builder shall submit to the Owner's Representative for

approval, a site sketch showing all areas they propose to utilize for staging and temporary storage. The Design Builder shall also include a plan to secure materials within these staging areas.

- Subsurface exploration was completed prior to and during the construction of the existing Skatepark. Ground water was encountered between 8' to 10' below existing ground in multiple test pits. All materials exposed were a mixture of very fine sand and gravel. Sitka's native subsurface conditions often vary radically within a small area, but by appearance, this material was imported from a nearby beach.
- Provide a construction fence between the work area and the rest of the property that may be used by the general public.
- Structural Design Criteria, International Building Code 2006
  - **Wind Load:**  
Basic wind speed, V (3-second gust wind speed) = 120 miles per hour,  
Exposure D
  - **Snow Load:**  
Ground snow load, pg = 50 pounds per square foot
  - **Earthquake Load:**  
Maximum considered earthquake ground motion-  
0.2 second spectral response, Ss = 0.97 g  
1.0 second spectral response, S1 = 0.50 g
  - **Frost Depth:**  
Minimum of 18 inches required from finish grade to base of footing or base of non-frost susceptible fill.
- The Pre-Engineered Building shall meet or exceed the following criteria (if applicable):

## PART 1 GENERAL

### 1.1 SECTION INCLUDES

- A. Pre-engineering building and components including the following:
  - 1. Structural steel frame.
  - 2. Roof covering system including exterior roof panels, panel attachments, sealants, mastics, trim and flashings.
  - 3. Exterior wall system including wall panels, panel attachments, sealants, mastics, trim and flashings.
- B. Roof accessories including the following:
  - 1. Translucent roof panels.
  - 2. Rain Gutters and Downspouts

## 1.2 RELATED SECTIONS

- A. Section 03300 – Cast-in-Place Concrete: Foundations and anchor bolts. To be supplied by Design Build engineer (By Design Engineer).
- B. Section 050513 – Metal Finishes
- C. Section 09900 – Paints and Coatings: Finish painting of structural members, and factory prime painted miscellaneous items.

## 1.3 REFERENCES

- A. AAMA 101 – Voluntary Specification for Aluminum and Poly (Vinyl Chloride) (PVC) Prime Windows and Glass Doors; American Architectural Manufacturers Association.
- B. ASTM A 36/ASTM A36M – Standard Specification for Carbon Structural Steel.
- C. ASTM A 123/A 123M-01 – Standard Specification for Zinc (Hot-Dip Galvanized) coatings on Iron and Steel products.
- D. ASTM A 153/A 153M – Standard Specification for Zinc coating (Hot-Dip) on Iron and Steel hardware
- E. ASTM A 307 – Standard Specification for Carbon Steel Bolts and Studs, 60 000 PSI Tensile Strength.
- F. ASTM A 325 – Standard Specification for Structural Bolts, Steel, Heat Treated, 120/105 ksi Minimum Tensile Strength.
- G. ASTM A 500 – Specification for Cold-Formed Welded and Seamless Carbon Steel Structural Tubing in Rounds and Shapes.
- H. ASTM A 529/A 529M – Standard Specification for High-Strength Carbon-Manganese Steel of Structural Quality.
- I. ASTM A 572/A 572M – Standard Specification for High-Strength Low-Alloy Columbium-Vanadium Steel.
- J. ASTM A 607 – Standard Specification for Steel, Sheet and Strip, High-Strength, Low-Alloy, Columbium or Vanadium, or Both, Hot-Rolled and Cold-Rolled.
- K. ASTM A 653/A 653M – Standard Specification for Steel Sheets, Zinc-Coated (Galvanized) or Zinc-Iron Alloy-Coated (Galvannealed) by the Hot-Dip Process.
- L. ASTM A 792/A 792M – Standard Specification for Steel Sheet, 55% Aluminum-Zinc Alloy-Coated by the Hot-Dip Process.
- M. ASTM A 1011 - Standard Specification for Steel, Sheet and Strip, Hot-Rolled, Carbon, Structural, High-Strength Low-Alloy and High-Strength Low Alloy with Improved Formability.
- N. ASTM D 635 – Standard Test Method for Rate of Burning and/or Extent and Time of Burning of Self-Supporting Plastics in a Horizontal Position.
- O. ASTM D 1929 – Standard Test Method for Ignition Properties of Plastics.

- P. ASTM D 2843 – Standard Test Method for Smoke from the Burning or Decomposition of Plastics.
- Q. ASTM E 84 – Standard Test Method for Surface Burning Characteristics of Building Materials.
- R. ASTM E 774 – Standard Specification for Sealed Insulating Glass Units.
- S. ASTM E 1592 – Standard Test Method for Structural Performance of Sheet Metal Roof and Siding Systems by Uniform Static Air Pressure Difference.
- T. AWS D1.1 – Structural Welding Code; American Welding Society.
- U. NAIMA 202 – Standard for Flexible Fiber Glass Insulation Used in Metal Buildings; North American Insulation Manufacturers Association.
- V. SDI 100 – Recommended Specifications for Standard Steel Doors and Frames; Steel Door Institute.
- W. UL 580 – Tests for Wind Uplift Resistance of Roof Assemblies; Underwriters Laboratories Inc.
- X. UL 723 – Standard for Test for Surface Burning Characteristics of Building Materials; Underwriters Laboratories Inc.

#### 1.4 DEFINITIONS

- A. Building Width: Measured from outside to outside of sidewall girts.
- B. Building Length: Measured from outside to outside of end wall girts.
- C. Building Line: Outside face of structural steel.
- D. Building Eave Height: Measured from the top of the eave member at the outside of the sidewall girt line to the bottom of the sidewall column base plate.
- E. Bay Spacing: Measured from centerline to centerline of primary frames for interior bays and from centerline of the first interior frame to outside of end wall girts for end bays.
- F. Roof Pitch: The ratio of the vertical rise to the horizontal run.

#### 1.5 SYSTEM DESCRIPTION

- A. General:
  1. Provide pre-engineered galvanized metal building frame, metal roof panels, metal wall panels (if applicable), accessories and miscellaneous materials for a complete project including supports for building components specified in other sections.
  2. Design structural systems according to professionally recognized methods and standards and legally adopted building codes.
  3. Design under supervision of Alaska licensed professional engineer.
- B. Design Requirements:
  1. Bay size: 15 feet (minimum)
  2. Roof pitch: 3/12 (minimum)
  3. Roof Snow Load: 50 psf.



4. Seismic Loads: Calculate in accordance with applicable code,
  5. Wind loads:
    - a. Roof Wind Load: Calculate in accordance with applicable code.
  6. Main building frames: Clear span
  7. Sidewalls and end-walls: Skatepark—remain open full height  
Recycle Yard—end-walls open
- C. Performance Requirements:
1. Provide frame with design roof profile after vertical dead load deflection has occurred.
  2. System to withstand gravity and lateral loads in compliance with code requirements and contract documents.
  3. Allowable Deflections
    - a. Vertical: Clear span/240 for total load; clear span/360 for live load.
    - b. Lateral frame movement: Height/200 for a 25 year mean recurrence wind load.
    - c. Design wall and roof panel system to withstand specified loads with deflection of 1/ 240 of span, maximum.
  4. Metal wall panels (interior and exterior) shall not to be used as shear elements.
  5. Construct assembly to permit movement of components without buckling, failure of joint seals, undue stress on fasteners or other detrimental effects, when subject to temperature range of 100 degrees F (37 degrees C).
  6. Design and fabricate wall and roof systems free of distortion or defects detrimental to appearance or performance.
- D. Serviceability Criteria: Deflection limits for major components based on Pre-Engineered Buildings standards unless otherwise noted.

## 1.6 SUBMITTALS

- A. Design Data: Provide detailed design criteria and calculations prepared and stamped by an Alaska licensed engineer.
- B. Certification: Manufacturer certification that the building conforms to the contract documents and manufacturer's standard design procedures.
- C. Shop Drawings: Show building layout, primary and secondary framing member sizes and locations, cross-sections, and product and connection details.
  1. Anchor Bolt Installation Drawings: Layouts with minimum bolt diameters.
- D. Information on manufactured products to be incorporated into the project.
- E. Selection Samples: For each finish product specified, three complete sets of color chips representing manufacturer's full range of available colors and patterns.
- F. Verification Samples: For each finish product specified, three samples, minimum size 6 inches (150 mm) square, representing actual product, color, and patterns.

## 1.7 QUALITY ASSURANCE

- A. Manufacturer Qualifications: Not less than 5 years experience in the actual production of specified products.
  1. Member of the Metal Building Manufacturer's Association (MBMA).
  2. Certified by AISC in the Metal Building category.
  3. Primary manufacturer of frames, secondary steel, roof and wall sheeting, and trim.

- B. Installer Qualifications – Firm experienced in application or installation of systems similar in complexity to those required for this project, plus the following:
  - 1. Acceptable to or licensed by manufacturer.
  - 2. 3 years experience with systems.
  - 3. Successfully completed not less than 3 comparable scale projects using this system.

#### 1.8 DELIVERY, STORAGE, AND HANDLING

- A. Store products in manufacturer's unopened packaging until ready for installation.
- B. Store and dispose of solvent-based materials, and materials used with solvent-based materials, in accordance with requirements of local authorities having jurisdiction.

#### 1.9 PROJECT CONDITIONS

- A. Maintain environmental conditions (temperature, humidity, and ventilation) within limits recommended by manufacturer for optimum results. Do not install products under environmental conditions outside manufacturer's absolute limits.

#### 1.10 WARRANTY

- A. Manufacturer shall warranty installed system for the periods described herein, starting from Date of Substantial Completion against all the conditions indicated below. When notified in writing from Owner, manufacturer/installer shall, promptly and without inconvenience and cost to Owner, correct said deficiencies.
  - 1. Materials and Workmanship Warranty: 3 years
  - 2. Finish Warranty:
    - a. Finish coating shall not peel, blister, chip, crack or check in finish, and shall not chalk in excess of 8 numerical ratings when measured in accordance with ASTM D659.
    - b. Finish coating shall not change color or fade in excess of 5 NBS units as determined by ASTM D2244.
      - 1) Panel finish: 20 years.
  - 3. Performance Warranty: Furnish written warranty, stating sheet metal roofing system and flashing under this Section will be maintained in watertight condition and defects resulting from the following items will be corrected without cost to Owner for a period of 20 years.
    - a. Faulty workmanship.
    - b. Defective materials including sealants and fasteners.
    - c. Water infiltration.

### PART 2 PRODUCTS

#### 2.1 MANUFACTURERS

- A. Acceptable Manufacturers (other manufacturers may be acceptable if compliant with the specified requirements):
  - 1) VP Buildings, Inc.; 3200 Players Club Circle Suite 400, Memphis, TN 38125. ASD. Tel: (901)748-8000. Fax: (901)748-9323. E-mail: [vpsales@vp.com](mailto:vpsales@vp.com). Web: [www.vp.com](http://www.vp.com).
  - 2) Star Building Systems, PO Box 94910, Oklahoma City, OK 73143, (800) 654-3921 phone, (405) 636-2419 fax
  - 3) Braemar Building Systems, 925 Kenyon Ave, Suite 6, Englewood, CO 80110, (888) 480-5552 phone, (303) 788-9996 fax
- B. Substitutions will be considered subject to compliance with these specifications.

## 2.2 STRUCTURAL STEEL FRAMING

Note: All primary and secondary structural steel framing shall be galvanized and comply with current ASTM standards.

- A. Primary Framing: Rigid Frame (RF Series) solid web framing consisting of tapered or uniform depth rafters rigidly connected to tapered or uniform depth columns. Provide a clear span that supports the loads at bay spacing indicated.

## 2.3 SECONDARY FRAMING

Note: All primary and secondary structural steel framing shall be galvanized and comply with current ASTM standards.

- A. Purlins: Zee-shaped; depth as required; with minimum yield strength of 55,000 psi (345 Mpa); simple span or continuous span as required for design.
- B. Girts: Zee- or Cee-shaped; depth as required, with minimum yield strength of 55,000 psi (345 Mpa); simple span or continuous span as required for design.
- C. Wind Bracing: Portal, torsional, diagonal bracing or diaphragm in accordance with manufacturer's standard design practices; utilizing rods, angles, and other members, with minimum yield strengths as required for design.
  - 1. Skatepark Cover sidewalls and end-walls to remain open (free of bracing) to full height (minimum of 16 feet to eave height). Skatepark Cover design should account for any absence of standard bracing.
- D. Primary Frame Flange Bracing: Attached from purlins or girts to the primary framing, minimum yield strength as required for design.

## 2.4 MISCELLANEOUS FRAMING

- A. Base Angles: 2 inch by 3 inch by 0.059 inch (50 mm by 75 mm by 1.5 mm) steel angles, with minimum yield strength of 55,000 psi (38 Mpa), anchored to the floor slab or grade beam with power driven fasteners or equivalent at a maximum spacing of 4 feet (1220 mm) on center and not more than 6 inches (150 mm) from the end of any angle member.
- B. Sag Angles and Bridging: Steel angles, with minimum yield strength of 36,000 psi (250 Mpa).

## 2.5 ROOF COVERING SYSTEM

- A. Roof Panels: Panel Rib; 36 inch (915 mm) wide net coverage, with 1-3/16 inch (30 mm) high major ribs at 12 inches (305 mm) on center with minor ribs spaced between the major ribs.
  - 1. Material: Galvalume steel pre painted with KXL finish (1 mil Kynar 500 coating).
  - 2. Thickness: 24 gage min. (0.61 mm).
  - 3. Side laps: At least one full major rib, with a supporting member bearing edge on the lower panel and an anti-capillary groove on the upper panel.
  - 4. Length: Continuous from eave to ridge except where lengths become prohibitive for handling purposes or where translucent panels are installed.
  - 5. End laps, where required: 6 inches (150 mm) wide, located at a support member.
  - 6. Continuous ridge vent with water dams.

## 2.6 WALL COVERING SYSTEM (Recycle Yard Building only)

- A. Wall Panels: Vee Rib; 36 inch (915 mm) wide net coverage, with reverse ribs 12 inches (305 mm) on center 1-1/4 inches (32 mm) deep, sculptured profile with textured finish.
  - 1. Material: Galvalume steel, painted 1 mil Kynar500 coating on exterior surface with 0.5 mil min. wash coat on interior surface.
  - 2. Thickness: 26 gage min. (0.45-mm).
  - 3. Side laps: At least one full major rib, with a supporting member bearing edge on the lower panel and an anti-capillary groove on the upper panel.
  - 4. Length: Continuous from sill to eave up to 41 feet (12500 mm) in length.
  - 5. End laps, where required: Located at a support member.
  - 6. Cut panels square at ends; provide base trim at sill.

## 2.7 ROOF ACCESSORIES

- A. Eave Gutters: Roll-formed 26 gage (0.45 mm) steel sheet, with gutter straps, fasteners and joint sealant; same color as roof panels.
  - 1. Downspouts: 4 by 5 inches (100 by 125 mm) in 10 foot (3050 mm) lengths, with downspout elbows and downspout straps; same color as wall panels.
- B. Translucent Skylight Panels: Skylights shall be 8 ounce minimum fiberglass reinforced polyester translucent panels made in the same configuration as the metal panels.
  - 1. Provide minimum of four translucent roof panels (minimum size 3' x 10') per bay (four each side of ridgeline)

## 2.8 MATERIALS

- A. Structural Steel Plate, Bar, Sheet, and Strip for Use in Bolted and Welded Constructions: ASTM A 572/A 572M, A 529/A 529M, A 1011 or A 36/A 36M Modified 50, with minimum yield strength of 50,000 psi (345 Mpa).
- B. Galvanized Structural Steel Material for Use in Roll Formed or Press Broken Secondary Structural Members: ASTM A 563, with minimum yield strength of 55,000 psi (380 Mpa).
- C. Galvanized Steel Sheet for Roll Formed or Press Broken Roof and Wall Coverings, Trim and Flashing: ASTM A 653/A 653M, with minimum yield strength of 50,000 psi (345 Mpa).
- D. Galvalume Steel Sheet Used in Roll Formed or Press Broken Roof Covering: Aluminum-zinc alloy-coated steel sheet, ASTM A 792/A 792M, with minimum yield strength of 50,000 psi (345 Mpa); nominal coating weight of 0.5 oz per sq ft (152 kg/sq m) both sides, equivalent to an approximate coating thickness of 0.0018 inch (0.05 mm) both sides.
- E. Hot Rolled Steel Shapes: W, M and S shapes, angles, rods, channels and other shapes; ASTM A 500, ASTM A 572/A 572M or ASTM A 36/A 36M as applicable; with minimum yield strengths required for the design.
- F. Structural Bolts and Nuts Used with Primary Framing: High strength, ASTM A 325.
- G. Bolts and Nuts Used with Secondary Framing Members: ASTM A 307.
- H. Panel Fasteners:
  - 1. For Galvalume and KXL finished roof panels: Stainless steel-capped carbon steel fasteners with integral sealing washer.
  - 2. For SP finished roof panels: Coated carbon steel.
  - 3. For wall panels: Coated carbon steel.
  - 4. Color of exposed fastener heads to match the wall panel finish.
  - 5. Concealed Fasteners: Self-drilling type, of size as required.

6. Provide fasteners in quantities and location as required by the manufacturer.
- I. Flashing and Trim: Match material, finish, and color of adjacent components. Provide trim at rakes, including peak and corner assemblies, high and low eaves, corners, bases, framed openings and as required or specified to provide weathertightness and a finished appearance.
- J. Plastic Parts: Glass fiber reinforced resin or thermoformed ABS (Acrylonitrile-Butadiene-Styrene).
  1. ABS: Minimum 1/8 inch (3 mm) thick.
  2. Color: Manufacturer's standard color.
- K. Sealants, Mastics and Closures: Manufacturer's standard type.
  1. Provide at roof panel end laps, side laps, rake, eave, transitions and accessories as required to provide a weather resistant roof system; use tape mastic or gun grade sealant at side laps and end laps.
  2. Provide at wall panel rakes, eaves, transitions and accessories.
  3. Closures: Formed to match panel profiles; closed cell elastic material, manufacturer's standard color.
  4. Tape mastic: Pre-formed butyl rubber-based, non-hardening, non-corrosive to metal; white or light gray.
  5. Gun grade sealant: Non-skinning synthetic Elastomeric based material; gray or bronze.

## 2.9 FABRICATION

- A. Fabrication: Fabricate according to manufacturer's standard practice.
  1. Fabricate structural members made of welded plate sections by jointing the flanges and webs by continuous automatic submerged arc welding process.
  2. Welding operators and processes: Qualified in accordance with AWS D1.1.
  3. Field connections: Prepare members for bolted field connection by making punched, drilled, or reamed holes in the shop.
- B. Component Identification: Mark all fabricated parts, either individually or by lot or group, using an identification marking corresponding to the marking shown on the shop drawings, using a method that remains visible after galvanizing.

## 2.10 FINISH

- A. Schedule of Finishes:
  1. Roof finish and color: (Owner Approved) Standard Kynar 500 Color (KXL Pre-Painted Finish).
  2. Wall finish and color: Standard Kynar 500 Color equal to KXL Pre-Painted Finish.
  3. Structural Steel Finish (Primary and Secondary): All structural framing members shall be galvanized.
- B. Shop Coat (for non galvanized framing members, if applicable): Manufacturer's standard rust inhibitive primer paint; manufacturer's standard color.
  1. Finish all structural steel members using one coat of manufacturer's standard shop coat, after cleaning of oil, dirt, loose scale and foreign matter.
- C. KXL Pre-Painted Finish: 1 mil (0.025 mm) Kynar 500 coating on exterior surface.
  1. Color: Interior Finish: Off white 0.5 mil (0.01 mm) washcoat.

## PART 3 EXECUTION

### 3.1 EXAMINATION

- A. Verification of Conditions: Examine areas and conditions under which Work is to be performed and identify conditions detrimental to proper and or timely completion.
  - 1. Verify foundations are properly installed, to correct dimensions and within acceptable tolerances.
  - 2. Verify location of covered or built-in work.
  - 3. Do not proceed until unsatisfactory conditions have been corrected.

### 3.2 PREPARATION

- A. Framing Erection: Erect framing in compliance with AISC Specification.
- B. Provide for erection and wind loads. Provide temporary bracing to maintain structure plumb and in alignment until completion of erection and installation of permanent bracing. Locate braced bays as required by manufacturer.

### 3.3 ERECTION OF FRAME

- A. Install in accordance with manufacturer's instructions.
- B. Do not erect frames without complete installation of tie beams and anchorages.
- C. Set column base plates with non-shrink grout to full plate bearing.
- D. Do not field cut or alter structural members without written approval.
- E. After erection, prime bolts, welds, abrasions, and surfaces not primed with primer used for shop painting or approved equivalent.

### 3.4 INSTALLATION OF WALL AND ROOF SYSTEM

- A. Install in compliance with manufacturer's instructions.
- B. Exercise care when cutting pre-finished material to ensure cuttings do not remain on finish surface.
- C. Fasten cladding system to structural supports, aligned level and plumb.
- D. Locate end laps over supports. End lap panels according to manufacturer's recommendations. Place side-laps over bearing.
- E. Provide expansion joints where indicated.
- F. Use concealed fasteners.
- G. Install sealant and gaskets to prevent weather penetration.
- H. Install system free of rattles, noise due to thermal movement, and wind whistles.
- I. Install door frames, service doors, overhead doors, window and glass, and gutter system in compliance with manufacturer's instructions.

- J. Seal wall and roof accessories watertight and weathertight with sealant in compliance with building manufacturer's standard procedures.
- K. Rigidly support and secure gutters and downspouts. Joint lengths with formed seams sealed watertight. Flash and seal gutters to downspouts.
- L. Apply bituminous paint on surfaces in contact with cementitious materials (if applicable).
- M. Tolerances:
  1. Framing Members: ¼ inch (6 mm) from level; 1/8 inch (3 mm) from plumb.
  2. Racking: 1/8 inch (3 mm) from true position. Provide shoring to maintain position prior to cladding installation.

### 3.5 FIELD QUALITY CONTROL

- A. Testing by Contractor:
  1. Roof installation inspection by roof manufacturer's representative; as required as part of warranty provision.
- B. Testing by Owner:
  1. High Strength Bolted Connections: Specification for Structural Joints Using ASTM A325 or A490 Bolts, with minimum testing of bolted connections per the arbitration inspection procedure.
  2. Welded Connections: AWS. Visual inspection of 100 percent of welds. Ultrasonic inspection of 50 percent of full and partial penetration welds. A rejection rate greater than 5 percent will increase the inspection to 100 percent.
  3. General Testing: For materials and installed tolerances.

- CBS shall select colors for construction materials prior to design-builder placing orders.
- Design-Builder shall be responsible for coordination of all subcontractors, and design consultants, design disciplines, drawings, and specifications so that a fully integrated functional project is constructed.
- Submittals: Within 60 days from Notice to Proceed, the Design Builder shall submit the following submittals to the Owner for review and approval:
  1. Section 03300- Cast-in-Place Concrete
  2. Section 050513- Metal Finishes
  3. Section 13120- Pre-Engineered Buildings: Design Builder to meet or exceed the pre-engineered building specification attached to this RFP.

Design Builder shall allow the Owner 5 business days for submittal review. The Design Builder at no cost to the Owner shall correct rejected submittals.

- The Design-Builder is responsible for giving all applicable notices, obtaining all required permits (specifically including, but not limited to the CBS Building Permit, Alaska State Contractor's license and Alaska State business license) and paying all applicable permit fees.

- The Design-Builder shall attempt to avoid damaging any public or private lawn, trees, tidelands, structures, fences, utilities, asphalt or concrete unless specified on the plans. The Design Builder will correct any damage which is caused by construction of the structures at no expense to the CBS.
- Design-Builder's Qualifications:
  1. The Design Builder shall use adequate amounts of such qualified workmen who are thoroughly trained in the crafts and techniques required to properly complete the work specified and within the specified time.
  2. The Design Builder shall have an experienced, thoroughly trained superintendent, who is familiar with the requirements of this project, on the job at all times when work is in progress.
- Design-Builder Warranty:  
The Design Builder shall guarantee the finished structure with respect to workmanship for one (1) year from the date of acceptance by the Owner. Should any deficiencies occur, or become apparent during this period, corrective action will be taken by the Design Builder to make the required repairs to the satisfaction of the Owner. All corrective work will be done at no cost to the owner.
- Manufacturer's Warranty:  
Provide Manufacturers on materials and workmanship: 3 years min. Panel finish warranty: 20 years min.
- Product Maintenance Manual and maintenance products:  
Prior to final completion Design Builder shall provide Owner with product maintenance manual for all products utilized on the project. The manual shall outline manufacturer's data, maintenance procedures, warranties, etc. Design Builder shall provide five gallons of the structural member paint used for all structural members (primary and secondary) which are not galvanized.
- At the completion of the project the Design Builder shall certify in writing that the project was constructed in accordance with the Project Criteria and in accordance with the approved design.
- As-built drawings of all work performed shall be provided by Design-Builder. All construction and as-built drawings shall be provided to the Owner in Auto-CAD 2002 (or later) as well as 1 set of hard copies (22 x 34). All drawings shall be legible as determined by the Owner. All as-builts shall be approved by the owner. Drawings shall include plan view and all sections and details utilized in completion of the project.



- If the contract price requires an adjustment due to changes in the work, the following markups shall be allowed on such changes:
  1. For work performed by Design-Builder's own forces: Loaded labor rate + 10%.  
Note: this applies to sub-contractors additional (own forces) work too.
  2. For Design-Builder provided materials or rental equipment: Cost FOB jobsite + 8%. Note: this applies to sub-contractors additional (own forces) work too.
  3. For work provided by subcontractors, the Design Builder is allowed the Subcontractor cost (as calculated above) + 8%.

### III. General Requirements

The following information is presented as a general guideline for the preparation of the proposals. It is not intended to be an exhaustive list of project requirements.

- a. It is the responsibility of the firms submitting proposals to determine the actual efforts required to complete the project, **including inspecting and determining all as-built conditions, confirming any and all existing design drawings for accuracy of as-built conditions and all noted dimensions, measured areas, and/or as-built conditions for all take-offs.**
- b. CBS will review the project design at the schematic design (submitted with proposal) and 65% design levels of completion. The selected firm or individual should expect substantial input from the CBS.
- c. Proposers shall submit their bid on the Bid Proposal Form included in these specifications. All spaces must be filled in.

Each bid **must** be submitted sealed in the envelope provided with these specifications, or an equivalent opaque envelope, addressed to the Municipal Clerk, City and Borough of Sitka, 100 Lincoln Street, Sitka, Alaska 99835.

The envelope shall bear on the outside the name and address of the bidder.

- c. The City and Borough of Sitka intends to enter into a contract with the successful Proposer using the Design Build Institute of America (DBIA) contract #525 (Lump Sum) and #535 (General Conditions) (1998 Ed.) (Clean forms to be provided by the Design Builder prior to award). Copies of said contract may be obtained and reviewed through the DBIA at (202)682-0110.
- d. Construction labor shall be paid by Design-Builder in accordance with State of Alaska Title 36 regulations (AS 36.05). State Wage Rates can be obtained at <http://labor.alaska.gov/lss/pamp600.htm>. Use the State wage rates that are in effect 11 days before Bid Opening. A copy of the State Wage rates will be provided upon request.

- e. The Design Builder shall include with its final pay request, a "Notice of Completion of Public Works," from the Alaska Department of Labor showing that all employee's wages and employment security taxes have been paid to his employees and the employees of his subcontractors (T-36 Clearance Approved). Final payment will not be released until this has been submitted.
- f. For proposals that exceed \$100,000, a 100% performance bond and a 100% payment bond, with a corporate surety approved by the Owner, will be required for the faithful performance of the Contract. Attorneys-in-fact who sign bid bonds or payment bonds must file with each bond a certified copy of their power of attorney. A certified check or cashier's check made payable to the City and Borough of Sitka may be used in lieu of a performance bond.
- g. Each bid that exceeds \$50,000 must be accompanied by a bid bond payable to the Owner in the amount of 5% of the total bid price. As soon as bid prices have been compared, the Owner will return the bonds of all except the three lowest bidders. When the Agreement is executed, the bonds of the two remaining unsuccessful bidders will be returned. The bid bond of the successful Bidder shall be retained until the payment bond and/or performance bond have been executed and approved, after which it will be returned. A certified check may be used in lieu of a bid bond. Attorneys-in-fact who sign bid bonds must file with each bond a certified copy of their power of attorney.
- h. Per Alaska Statute the required ten day protest period will be observed beginning with issuance of the Notice of Intent to Award Contract, which will be sent to all responsive Proposers prior to award of contract.
- i. CBS encourages DBE firms to propose and participate in the RFP process. Neither the CBS nor the Consultant (or Sub-consultants) shall discriminate on the basis of race, color, national origin, or sex in the solicitation, award, and performance of any contract.
- j. A non-mandatory pre-proposal meeting and site visits will be begin on site at the Turnaround Skatepark, 801A Halibut Point Road, Sitka, AK, at **2:00 pm, March 13, 2012**. The CBS strongly encourages all potential Proposers to attend this meeting.
- k. The party to whom the Contract is awarded will be required to execute the Agreement and obtain the performance bond within ten (10) days from the date when Notice of Award is delivered to the Proposer. Notice of Award shall be accompanied by the necessary agreement and bond forms. In case of the failure of the Proposer to execute the agreement, the Owner may at its option consider the Proposer in default, in which case the bid bond accompanying the proposal shall become the property of the Owner.

The Owner within ten (10) days of receipt of the agreement signed by the party to whom the contract is awarded shall sign the agreement and return to such party an executed duplicate of the agreement.

- l. The Notice to Proceed (NTP) shall be issued within ten (10) days of the execution of the agreement by the Owner. Should there be reason why the Notice to Proceed cannot be issued within such period; the time may be extended by mutual agreement between the Owner and the Contractor. If the Notice to Proceed has not been issued within the ten (10) day period mutually agreed upon, the contractor may terminate the agreement without further liability on the part of either party.
- m. A conditional or qualified proposal will not be accepted.
- n. Award will be made to the lowest responsive and responsible Proposer.
- o. All applicable laws, ordinances and the rules and regulations of all authorities having jurisdiction over this Agreement shall apply to the Contract throughout.
- p. The date for Substantial Completion is 200 calendar days after Notice to Proceed (NTP) is issued. The City will not accept weather delays. \$500 per day Liquidated Damages will be assessed if the project is not Substantially Complete by 200 days after NTP. Final Completion shall be obtained by 30 days after Substantial Completion.
- q. Liquidated damages in the amount of \$500 per calendar day shall be assessed against the contractor for failure to complete the requirements in the contract documents for Substantial Completion within the time specified, and/or \$500 per calendar day shall be assessed against the contractor for failure to complete the requirements in the contract documents for Final Completion within the time specified.
- r. Bids may be modified by Fax. The City and Borough of Sitka Fax number is (907) 747-4004. The Fax must be signed by the person who signed the original bid and may be received up to the time of the bid opening fixed in the Invitation to Bid. DO NOT reveal the actual bid amount in the Fax.
- s. A Proposer **not listed** on the official Plan Holder's List shall be deemed **non-responsive**.
- t. The Proposer must acknowledge receipt of all Addenda on the Proposal Form in the spaces provided in these documents.
- u. The Design-Builder will provide an insurance certificate that meets the following minimum requirements.

**Type of Coverage**

General Liability

Single Limit	\$1,000,000
Aggregate	\$2,000,000

With the following endorsements:

\*premises operations

- \*products/completed operations
- \*blanket contractual
- \*broad form property damage
- \*personal injury
- \*independent contractors
- \*appropriate endorsements for asbestos operations

Professional Errors and Omissions \$1,000,000

Workman's Compensation Statutory

\*U.S. Longshoremen & Harbor Worker's (USL&H)  
Comprehensive Automotive Liability \$1,000,000  
 Including all owned, hired and non-owned vehicles

Builders All Risk Coverage for the duration of the contract

Insurance Notes

1. USL&H Workmen's Compensation coverage required if contract involves marine related activity on docks, vessels, etc.
2. The City and Borough of Sitka shall be named as an additional named insured on all insurance policies. Sitka shall also be granted a full waiver of any rights of subrogation. These requirements extend to all sub-contractors.

#### **IV. Proposal Format and Content**

Direct questions regarding this Request for Proposal (RFP) to Lance E. Henrie, Senior Engineer, City and Borough of Sitka, (907) 747-1805.

Proposals, which do not address the items listed in this RFP, may be considered incomplete, and may be deemed non-responsive by the City and Borough.

##### PROPOSAL FORMAT

- A. Letter of Transmittal, transmitting proposal signed by authorized representative of the Proposer.
- B. Narrative
  1. Brief description of the architect and/or engineer including the A/Es experience with the scope of work described herein, specifically the A/Es experience with the pre-engineered buildings included in this project. Include a brief description of the Design Builder. Note the experience of the Design Builder and the experience of its key individuals. Submit work history data for the Design Builder with evidence of three (3) successful and warranted installations utilizing the systems described herein. Failure to provide any of the above described information may result in an unqualified bid determination.
  2. Demonstrate that your team has completed projects of a similar nature on time and within budget. Provide three client references.
  3. Describe your understanding of the project, the proposed work plan, and the schedule you intend to follow in order to complete the project in a timely manner.
- C. Schematic Design
  1. Provide the schematic design drawings of your preferred design solution for the project. Provide sufficient scale floor plans, elevations, building sections and details so the CBS can evaluate the suitability of the design solution.
- D. Project Schedule
  1. Provide a construction progress schedule that demonstrates that the project will be completed as defined in Section VIII of this RFP.
- E. Contract Price
  1. Submit a fixed, lump sum price proposal to perform the design and construction based on the Project Criteria, Project Performance Standards, and General Requirements described in this Request for Proposals.

Submit five (5) copies of the completed Proposal in an opaque envelope marked as follows:

**PROFESSIONAL DESIGN AND CONSTRUCTION SERVICES  
TURNAROUND SKATEPARK COVER AND RECYCLE YARD BUILDING PROJECT**

PROPOSAL DATED: \_\_\_\_\_, 20\_\_

The Proposals shall be addressed to:

City and Borough of Sitka, City Clerk  
100 Lincoln Street  
Sitka, Alaska 99835

**Proposals shall be received at the office of the City Clerk until 2:00 PM, March 29, 2012.**

**V. Selection Process**

A selection committee will evaluate the proposals and make a recommendation to the City Administrator and City Assembly for Award of Agreement/Contract.

The committee will recommend award to the lowest, responsive, and qualified Proposer. The definition of responsive is: The proposal must clearly demonstrate that the intent of the project will be met according to the Project Scope, Project Criteria, and Project Performance Standards. Proposals that do not adequately address the criteria or proposals that contain disclaimers that may result in change orders may be deemed non-responsive.

The Owner may waive any informalities or minor defects or reject any or all proposals. Any proposal may be withdrawn prior to the scheduled time for the opening of the proposals. Any proposal received after the time and date specified shall not be considered. No Proposer may withdraw a proposal within 60 days after the actual date of opening thereof. Should there be reason why the Contract cannot be awarded within the specified period; the time may be extended by mutual agreement between the Owner and the Design Builder.

**VI. Proposal Form**

**TO: CITY AND BOROUGH OF SITKA  
ATTN: Municipal Clerk  
100 Lincoln Street, Sitka, AK 99835**

The undersigned proposes to furnish all professional services, tools, equipment, supplies, manufactured articles, labor and materials, services and incidentals, and to perform all work necessary for the completion of the Turnaround Skatepark Cover and Recycle Yard Building Project and furthermore thoroughly understands the Project and the method by which payment will be made for said Project. The undersigned proposes to complete the project in accordance with said Scope of Work, Project Criteria, Project Performance Standards, and General Requirements at the following Contract Price: The Base Bid consists of two (2) Lump Sum Pay Items. Each pay item includes all other work necessary for the Final Completion and Warranty of the Project as shown and specified in strict accordance with the Contract Documents. **The Total Base Bid shall be written in numbers and words or as noted. Any work element not specifically listed shall be incidental.**

**BASE BID:**

Item No.	Approx. Quantity	Pay Item with Unit Bid Price Written in Words	Unit Price	Bid Price	
				Dollars	Cents
1.	Lump Sum (LS)	Design, furnish and install 8,100 square foot structure at Turnaround Skatepark <hr/> Lump Sum	Per Lump Sum	\$	
2.	Lump Sum (LS)	Design, furnish and install Recycle Yard Building at Sawmill Cove Industrial Park <hr/> Lump Sum	Per Lump Sum	\$	
3.	Lump Sum (LS)	Minor Changes <hr/> <i>Ten Thousand Dollars</i> Lump Sum	Per Lump Sum	\$10,000	00
4.	Lump Sum (LS)	Final Completion Payment <i>Eleven Thousand Two Hundred Fifty Dollars</i> Lump Sum	Per Lump Sum	\$11,250	00
5.	Lump Sum (LS)	Warranty Payment <i>Five Thousand Six Hundred Twenty Five Dollars</i> Lump Sum	Per Lump Sum	\$5,625	00
				\$	
				Base Bid Total – In Numbers	
				Base Bid Total - Written	

SUBMITTED BY: \_\_\_\_\_  
(Company Name)

\_\_\_\_\_  
(Company Contact)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Telephone)

\_\_\_\_\_  
(Alaska Contractor License No.)

\_\_\_\_\_  
(Authorized Signature)

I hereby acknowledge receipt of the following addenda: Addendum No. \_\_\_\_\_ Addendum No. \_\_\_\_\_  
Addendum No. \_\_\_\_\_ Addendum No. \_\_\_\_\_

**VII. Contract Payments**

CBS shall make payments according to the following schedule:

**7.1 Lump Sum Payment Schedule:**

*Turnaround Skatepark Cover and Recycle Yard Building  
Request for Proposals  
Page 23 of 26*



<u>Milestone</u>	<u>Percentage of Total Contract Price</u>
Completion of 65% design/5 sets to Owner	5%
Completion of final design/permits obtained/5 sets to Owner	5%
Mobilization of Design Builder at site to begin construction	5%
Materials delivered and stored, per Manufacturer's requirements to job site (upon submission of invoice copies)	12.5%
Substantial Completion (Owner Approval)	65%
Final Completion (Completion of Punch List, O&Ms, As-builts, Demobilization)	5%
Warranty Period Payment	2.5%

## 7.2 Minor Changes

Payments or credits for changes amounting to \$10,000 or less may be made under the bid item "Minor Changes". At the discretion of the Owner, the procedure for Minor Changes may be used in lieu of the more formal procedure as outlined in City and Borough of Sitka Standard Specifications (CBSSS) Article 5.21 Additional or Extra Work.

The Design Builder will provide a completed design, scope, and cost for the complete Minor Change. The agreement for the "Minor Change" will be documented by signature of the Design Builder and Owner, or notation of verbal agreement. If the Design Builder is in disagreement with anything required by the order for "Minor Change", the Design Builder may protest the order provided in CBSSS Article 5.36 Claims for Adjustments and Disputes.

Payment or credits will be determined in accordance with CBSSS Article 5.21 Additional or Extra Work. For the purpose of providing a common proposal for all bidders, the Owner has entered an amount for "Minor Changes" in the Proposal to become a part of the total bid by the Design Builder. Some, all or none of the amount of the funds allocated for "Minor Changes" may be expended in the project at the discretion of the Owner.

### Equitable Adjustment for Force Account

An equitable adjustment provided for "Minor Changes" may to be determined in one or more of the following ways:

1. By agreement with all parties, the price for the Designer's Work will be determined by using:
  - a. Lump Sum based on projected Designer's cost, profit, and overhead
  - b. Charged on an approved Hourly Rate including profit and overhead, based on a defined scope of work approved by the Owner.
2. By agreement with all parties, the price for the Construction Work will be determined by using:
  - a. Lump Sum Based on defined Unit prices
  - b. Lump Sum Based on projected direct cost plus 10%
  - c. Other means or combinations mutually agreed upon.

**The following limitations shall apply in determining the amount of the equitable**

**adjustment:**

1. The equipment rates shall be actual cost but shall not exceed the rates set forth by local Equipment Rental Rates in effect at the time the work is performed, and
2. The Design Builder shall not be entitled to any adjustment in contract price beyond this bid item amount without a contract change order (budget is \$10,000.00), and
3. The Design Builder shall not get any extensions in time as a result of this work; and
4. No claim for anticipated profits on deleted, terminated, or uncompleted work will be allowed.
5. No claim for consequential damages of any kind will be allowed.

**7.3 Final Completion and Warranty Payment**

The Final Completion and Warranty payments shall be Lump Sum payments in the amounts specified on the Bid Form. Percentages shown in the Payment Schedule are approximate based upon an estimated total contract price.

**VIII. Project Schedule**

**Professional Design and Construction Services**  
**Turnaround Skatepark Cover and Recycle Yard Building Project**

- |   |  |
|---|--|
| • Proposals due 2:00 PM   | <u>29 March 2012</u>                                     |
| • Non-Mandatory Pre-Proposal Meeting/<br>Walk at Skatepark at 2:00 pm | <u>13 March 2012</u>                                     |
| • Award design build contract   | <u>10 April 2012</u>                                     |
| • Notice to Proceed   | <u>Up to 10 days after Award*</u>                        |
| • Substantial completion  | <u>200 calendar days after<br/>Notice to Proceed</u>     |
| • Final Completion  | <u>30 calendar days after<br/>Substantial Completion</u> |
| • Warranty Payment  | <u>One year from Substantial<br/>Completion</u>          |

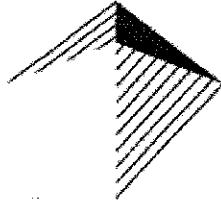
\*The Design-Builder has up to 10 days after Notice to Proceed to obtain the Performance and Payment Bond and Insurance required per Section III-General Requirements items (f) and (g). Notice to Proceed will be given when these requirements are met.

**IX. Attachments**

- CBS Design Build -Sample Agreement
- General Conditions of Contract Between Owner and Design Builder
- Bid, Payment, and Performance Bond Forms
- As-built drawing for Existing Turnaround Skatepark

- Concept Drawings for Turnaround Skatepark Cover
- Recycle Yard Reference Design Drawings from 2006 by Design Southeast. **Note:** Drawings are not As-Built Drawings and are supplied for Design Builders reference only (dimensions of existing concrete foundation and stem wall should be verified by Design Builder).

**DBIA**



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**DESIGN-BUILD  
INSTITUTE OF AMERICA**

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**STANDARD FORM OF AGREEMENT  
BETWEEN OWNER AND DESIGN-  
BUILDER C LUMP SUM**

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**Document No. 525**

First Edition, 1998

8 Design-Build Institute of America

Washington, DC

This AGREEMENT is made as of the \_\_\_\_\_ day of \_\_\_\_\_, in the year of 20\_\_\_\_, by and between the following parties, for services in connection with the Project identified below.

**OWNER:**

City and Borough of Sitka  
100 Lincoln Street  
Sitka, AK 99835

**DESIGN-BUILDER:**

**PROJECT:**

**Existing Turnaround Skatepark Cover and Sitka Recycle Yard Building**

In consideration of the mutual covenants and obligations contained herein, Owner and Design-Builder agree as set forth herein.

**Article 1**  
**Scope of Work**

1.1 Design-Builder shall perform all design and construction services, and provide all material, equipment, tools and labor, necessary to complete the Work described in and reasonably inferable from the Contract Documents.

**Article 2**  
**Contract Documents**

2.1 The Contract Documents are comprised of the following:

- .1 All written modifications, amendments and change orders to this Agreement issued in accordance with DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (1998 Edition) ("General Conditions of Contract")
- .2 This Agreement, including all exhibits and attachments, executed by Owner and Design-Builder
- .3 Written Supplementary Conditions, if any, to the General Conditions of Contract
- .4 The General Conditions of Contract
- .5 Construction Documents prepared and approved in accordance with Section 2.4 of the General Conditions of Contract
- .6 Design-Builder's Deviation List, if any, contained in Design-Builder's Proposal, which shall specifically identify any and all deviations from Owner's Project Criteria
- .7 Owner's Project Criteria
- .8 Attachment A: Owner's Request for Proposal
- .9 Attachment B: Project Payment Schedule

**Article 3**  
**Interpretation and Intent**

**3.1** The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall take precedence in the order in which they are listed in Section 2.1 hereof.

**3.2** Terms, words and phrases used in the Contract Documents, including this Agreement, shall have the meanings given them in the General Conditions of Contract.

**3.3** The Contract Documents form the entire agreement between Owner and Design-Builder and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

**Article 4**  
**Ownership of Work Product**

**4.1 Work Product.** All drawings, specifications and other documents and electronic data furnished by Design-Builder to Owner under this Agreement ("Work Product") are deemed to be the property of the City.

**4.2 Owner's use of Work Product Upon Design-Builder's Default.** If this Agreement is terminated due to Design-Builder's default pursuant to Section 11.2 of the General Conditions of Contract and (i) it is determined that Design-Builder was in default and (ii) Owner has fully satisfied all of its obligations under the Contract Documents, Design-Builder shall grant Owner access and ownership of all Work Product.

**4.3 Owner's Indemnification for Use of Work Product.** If Owner uses the Work Product under any of the circumstances identified in this Article 4, Owner shall defend, indemnify and hold harmless the Indemnified Parties from and against any and all claims, damages, liabilities, losses and expenses, including attorneys' fees, arising out of or resulting from the use of the Work Product.

**Article 5**  
**Contract Time**

**5.1 Date of Commencement.** The Work shall commence within five (5) days of Design-Builder's receipt of Owner's Notice to Proceed ("Date of Commencement") unless the parties mutually agree otherwise in writing.

**5.2 Substantial Completion and Final Completion**

**5.2.1** Substantial Completion of the entire Work shall be achieved 200 days after the Notice to Proceed is issued.

**5.2.2** Interim milestones and/or Substantial Completion of identified portions of the Work shall be achieved as follows: Project Schedule & Contract Payment Schedule

**5.2.3** Final Completion of the Work or identified portions of the Work shall be achieved no later than 30 calendar days after Substantial Completion.

**5.2.4** All of the dates set forth in this Article 5 ("Contract Time(s)") shall be subject to adjustment in accordance with the General Conditions of Contract.

**5.3 Time is of the Essence.** Owner and Design-Builder mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

**5.4 Liquidated Damages.** Design-Builder understands that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Owner will suffer damages, which are difficult to determine and accurately specify. Design-Builder agrees that if Substantial Completion is not attained by the dates established in 5.2.1 Designer-Builder shall pay Owner (\$500.00) as liquidated damages for each day that Substantial Completion extends beyond the dates established in 5.2.1.. The liquidated damages provided herein shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature incurred by Owner which are occasioned by any delay in achieving Substantial Completion.

**5.5 Early Completion Bonus.** If Substantial Completion is attained on or before N/A (N/A) days before the Scheduled Substantial Completion Date (the "Bonus Date"), Owner shall pay Design-Builder at the time of Final Payment under Section 7.3 hereof an early completion bonus of N/A Dollars (\$ N/A ) for each day that Substantial Completion is attained earlier than the Bonus Date.

**Article 6**  
**Contract Price**

**6.1 Contract Price.** Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract the sum of \$ \_\_\_\_\_ (amount written), subject to adjustments made in accordance with the General Conditions of Contract. Unless otherwise provided in the Contract Documents, the Contract Price is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

**6.2 Markups for Changes.** If the Contract Price requires an adjustment due to changes in the Work, and the cost of such changes is determined under Sections 9.4.1.3 or 9.4.1.4 of the General Conditions of Contract, the following markups shall be allowed on such changes:

For work performed by Design-Builder's own forces:	Loaded labor rate + 10 %
For Design Builder provided materials or rental equipment:	Cost FOB jobsite + 8%
For work provided by subcontractors:	Subcontractor cost + 8%

**Article 7**  
**Procedure for Payment**

**7.1 Progress Payments**

**7.1.1** When a particular Milestone identified in Section VII of the RFP is entirely complete, the Design-Builder shall submit to Owner an Application for Payment in accordance with Article 6 of the General Conditions of Contract. No amount of payment will be made for milestones only partially completed.

**7.1.2** Owner shall make payment within thirty (30) days after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with Article 6 of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the General Conditions of Contract.

**7.2 Retainage on Progress Payments**

~~7.2.1~~ Owner reserves the right to retain ~~zero percent (0.00%)~~ of each Application for Payment provided, however, that when fifty percent (50%) of the Work has been completed by Design-Builder, Owner will not retain any additional amounts from Design-Builder's subsequent Applications for Payment. Owner will also reasonably consider reducing retainage for Subcontractors completing their work early in the Project.

~~7.2.2~~ Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, pursuant to Section 6.6 of the General Conditions of Contract, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion. Section 7.2 does not apply.



**7.3 Final Payment.** Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section 6.7 of the General Conditions of Contract. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment within thirty (30) days after Owner's receipt of the Final Application for Payment, provided that Design-Builder has satisfied the requirements for final payment set forth in Section 6.7.2 of the General Conditions of Contract.

**7.4 Interest.** Payments due and unpaid by Owner to Design-Builder, whether progress payments or final payment, shall bear simple interest commencing five (5) days after payment is due at the rate of 0.03 percent (0.0003) per day

**7.5 Record Keeping and Finance Controls.** With respect to changes in the Work performed on a cost basis by Design-Builder pursuant to the Contract Documents, Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of three (3) years after Final Payment, Owner and Owner's accountants shall be afforded access from time to time, upon reasonable notice, to Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to changes in the Work performed on a cost basis in accordance with the Contract Documents, all of which Design-Builder shall preserve for a period of three (3) years after Final Payment.

## Article 8

### Termination for Convenience

**8.1** Upon ten (10) days' written notice to Design-Builder, Owner may, for its convenience and without cause, elect to terminate this Agreement. In such event, Owner shall pay Design-Builder for the following:

- .1 All Work executed and for proven loss, cost or expense in connection with the Work;
- .2 The reasonable costs and expenses attributable to such termination, including demobilization costs and amounts due in settlement of terminated contracts with Subcontractors and Design Consultants; and
- .3 The fair and reasonable sums for overhead and profit on the sum of items .1 and .2 above.

**8.2** In addition to the amounts set forth in Section 8.1 above, Design-Builder shall be entitled to receive one of the following as applicable:

- .1 If Owner terminates this Agreement prior to commencement of construction, Design-Builder shall be paid zero percent (0%) of the remaining balance of the Contract Price.
- .2 If Owner terminates this Agreement after commencement of construction, Design-Builder shall be paid zero percent (0%) of the remaining balance of the Contract Price.

**8.3** If Owner terminates this Agreement pursuant to Section 8.1 above and proceeds to design and construct the Project through its employees, agents or third parties, Owner's rights to use the Work Product shall be as set forth in Section 4.3 hereof.

**Article 9**  
**Representatives of the Parties**

**9.1 Owner's Representatives**

9.1.1 Owner designates the individual listed below as its Senior Representative ("Owner's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract:

Stephen Weatherman, P.E.                      (907) 747-4042  
Municipal Engineer  
City of Sitka  
100 Lincoln Street  
Sitka, AK 99835

9.1.2 Owner designates the individual listed below as its Owner's Representative, which individual has the authority and responsibility set forth in Section 3.4 of the General Conditions of Contract:

Lance E. Henrie, P.E.                      (907) 747-1805  
Senior Engineer  
City of Sitka  
100 Lincoln Street  
Sitka, AK 99835

**9.2 Design-Builder's Representatives**

9.2.1 Design-Builder designates the individual listed below as its Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9.2.2 Design-Builder designates the individual listed below as its Design-Builder's Representative, which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions of Contract:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Article 10**  
**Bonds and Insurance**

**10.1.1 Insurance.** Design-Builder shall procure in accordance with Article 5 of the General Conditions of Contract the following insurance coverage:

General Liability

Single Limit	\$1,000,000
Aggregate	\$2,000,000

With the following endorsements:

- \*Premises Operations
- \*Products/Completed Operations
- \*Blanket Contractual
- \*Broad Form Property Damage
- \*Personal Injury
- \*Independent Contractors
- \*appropriate endorsements for asbestos operations

Professional Errors and Omissions \$1,000,000

Workman=s Compensation Statutory

\*U.S. longshoremen & Harbor Worker's (USL&H)

Comprehensive Automotive Liability \$1,000,000

Including all owned, hired and non-owned vehicles

Insurance Notes

1. USL&H Workmen's Compensation coverage required if contract involves marine related activity on docks, vessels, etc.
2. City and Borough of Sitka shall be named as an additional named insured on all insurance policies. Sitka shall also be granted a full waiver of any rights of subrogation. These requirements extend to all sub-contractors.

**10.2 Bonds and Other Performance Security.** Design-Builder shall provide the following performance bond and labor and material payment bond or other performance security:

100% Performance and Payment Bond  
Warranties

Article 11  
**Other Provisions**

**11.1** Other provisions, if any, are as follows: NONE

In executing this Agreement, Owner and Design-Builder each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary corporate approvals to execute this Agreement, and perform the services described herein.

**OWNER:**

**DESIGN-BUILDER:**

\_\_\_\_\_  
*(Name of Owner)*

\_\_\_\_\_  
*(Name of Design-Builder)*

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Printed Name)*

\_\_\_\_\_  
*(Printed Name)*

\_\_\_\_\_  
*(Title)*

\_\_\_\_\_  
*(Title)*

Date: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF ALASKA            )  
  )ss.  
FIRST JUDICIAL DISTRICT    )

STATE OF ALASKA            )  
  )ss.  
FIRST JUDICIAL DISTRICT    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_, Municipal Administrator of the City and Borough of Sitka, an Alaska municipal corporation, for the corporation on behalf of the corporation.

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, for and on behalf of the corporation.

\_\_\_\_\_  
Notary Public for State of Alaska

\_\_\_\_\_  
Notary Public for State of Alaska

My Commission Expires: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**ATTACHMENT A: OWNER'S REQUEST FOR PROPOSALS**

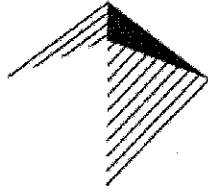
**ATTACHMENT B: PROJECT PAYMENT SCHEDULE**

**VII. CONTRACT PAYMENTS**

CBS SHALL MAKE PAYMENTS ACCORDING TO THE FOLLOWING SCHEDULE:

<u>Milestone</u>	<u>Percentage of Total Contract Price</u>
Completion of 65% design/5 sets to Owner	5%
Completion of final design/permits obtained/5 sets to Owner	5%
Mobilization of Design Builder at site to begin construction	5%
Materials delivered and stored, per Manufacturer's requirements. to job site (upon submission of invoice copies)	12.5%
Substantial Completion (Owner Approval)	65%
Final Completion (Completion of Punch List, O&Ms, As-builts, Demobilization)	5%
Warranty Period Payment	2.5%

**D B I A**



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**DESIGN-BUILD  
INSTITUTE OF AMERICA**

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**STANDARD FORM OF GENERAL  
CONDITIONS OF CONTRACT  
BETWEEN OWNER AND  
DESIGN-BUILDER**

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**Document No. 535**

First Edition, 1998

© Design-Build Institute of America

Washington, DC

# General Conditions of Contract Between Owner and Design-Builder

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

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## Article 1

### **General**

#### **1.1 Mutual Obligations**

**1.1.1** Owner and Design-Builder commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.

#### **1.2 Basic Definitions**

**1.2.1** *Agreement* refers to the executed contract between Owner and Design-Builder under either DBIA Document No. 525, *Standard Form of Agreement Between Owner and Design-Builder C Lump Sum* (1998 Edition) or DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder C Cost Plus Fee with an Option for a Guaranteed Maximum Price* (1998 Edition).

**1.2.2** *Day* or *Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.

**1.2.3** *Design Consultant* is a qualified, licensed design professional who is not an employee of Design-Builder, but is retained by Design-Builder, or employed or retained by anyone under contract with Design-Builder or Subcontractor, to furnish design services required under the Contract Documents.

**1.2.4** *Hazardous Conditions* are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.

**1.2.5** *General Conditions of Contract* refer to this DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (1998 Edition).

**1.2.6** *Legal Requirements* are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

**1.2.7** *Owner's Project Criteria* are developed by or for Owner to describe Owner's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Design-Builder's performance of the Work. Owner's Project Criteria may include conceptual documents, design criteria, performance requirements and other Project-specific technical materials and requirements.

**1.2.8** *Site* is the land or premises on which the Project is located.

**1.2.9** *Subcontractor* is any person or entity retained by Design-Builder as an independent contractor to perform a portion of the Work and shall include materialmen and suppliers.

**1.2.10** *Sub-Subcontractor* is any person or entity retained by a Subcontractor as an independent contractor to perform any portion of a Subcontractor's Work and shall include materialmen and suppliers.

**1.2.11** *Substantial Completion* is the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete so that Owner can occupy and use the Project or a portion thereof for its intended purposes.

**1.2.12** *Work* is comprised of all Design-Builder's design, construction and other services required by the Contract Documents, including procuring and furnishing all materials, equipment, services and labor reasonably inferable from the Contract Documents.

## Article 2

### **Design-Builder's Services and Responsibilities**

#### **2.1 General Services**

**2.1.1** Design-Builder's Representative shall be reasonably available to Owner and shall have the necessary expertise and experience required to supervise the Work. Design-Builder's Representative shall communicate regularly with Owner and shall be vested with the authority to act on behalf of Design-Builder. Design-Builder's Representative may be replaced only with the mutual agreement of Owner and Design-Builder.

**2.1.2** Design-Builder shall provide Owner with a monthly status report detailing the progress of the Work, including whether (i) the Work is proceeding according to schedule, (ii) discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution, (iii) health and safety issues exist in connection with the Work, and (iv) other items require resolution so as not to jeopardize Design-Builder's ability to complete the Work for the Contract Price and within the Contract Time(s).

**2.1.3** Design-Builder shall prepare and submit, at least three (3) days prior to the meeting contemplated by Section 2.1.4 hereof, a schedule for the execution of the Work for Owner's review and response. The schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when Owner information and approvals are required to enable Design-Builder to achieve the Contract Time(s). The schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. Owner's review of and response to the schedule shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

**2.1.4** The parties will meet within seven (7) days after execution of the Agreement to discuss issues affecting the administration of the Work and to implement the necessary procedures, including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents.

## **2.2 Design Professional Services**

**2.2.1** Design-Builder shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by Design-Builder, or procured from qualified, independent licensed Design Consultants, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work consistent with the Contract Documents. Nothing in the Contract Documents is intended or deemed to create any

legal or contractual relationship between Owner and any Design Consultant.

## **2.3 Standard of Care for Design Professional Services**

**2.3.1** The standard of care for all design professional services performed to execute the Work shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project. Notwithstanding the preceding sentence, if the parties agree upon specific performance standards for any aspect of the Work, which standards are to be set forth in an exhibit to the Agreement entitled "Performance Standard Requirements," the design professional services shall be performed to achieve such standards.

## **2.4 Design Development Services**

**2.4.1** Design-Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any interim design submissions that Owner may wish to review, which interim design submissions may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. On or about the time of the scheduled submissions, Design-Builder and Owner shall meet and confer about the submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any significant changes or deviations from the Contract Documents, or, if applicable, previously submitted design submissions. Minutes of the meetings will be maintained by Design-Builder and provided to all attendees for review. Following the design review meeting, Owner shall review and approve the interim design submissions in a time that is consistent with the turnaround times set forth in Design-Builder's schedule.

**2.4.2** Design-Builder shall submit to Owner Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Work. The Construction Documents shall be consistent with the latest set of interim design submissions, as such submissions may have been modified in a design review meeting. The parties shall have a design review meeting to discuss, and Owner shall review and approve, the Construction Documents in accordance with the procedures set forth Section 2.4.1 above. Design-Builder shall proceed with

construction in accordance with the approved Construction Documents and shall submit one set of approved Construction Documents to Owner prior to commencement of construction.

**2.4.3** Owner's review and approval of interim design submissions and the Construction Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. Neither Owner's review nor approval of any interim design submissions and Construction Documents shall be deemed to transfer any design liability from Design-Builder to Owner.

**2.4.4** To the extent not prohibited by the Contract Documents or Legal Requirements, Design-Builder may prepare interim design submissions and Construction Documents for a portion of the Work to permit construction to proceed on that portion of the Work prior to completion of the Construction Documents for the entire Work.

## **2.5 Legal Requirements**

**2.5.1** Design-Builder shall perform the Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements.

**2.5.2** The Contract Price and/or Contract Time(s) shall be adjusted to compensate Design-Builder for the effects of any changes in the Legal Requirements enacted after the date of the Agreement affecting the performance of the Work, or if a Guaranteed Maximum Price is established after the date of the Agreement, the date the parties agree upon the Guaranteed Maximum Price. Such effects may include, without limitation, revisions Design-Builder is required to make to the Construction Documents because of changes in Legal Requirements.

## **2.6 Government Approvals and Permits**

**2.6.1** Except as identified in an Owner's Permit List attached as an exhibit to the Agreement, Design-Builder shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project.

**2.6.2** Design-Builder shall provide reasonable assistance to Owner in obtaining those permits, approvals and licenses that are Owner's responsibility.

## **2.7 Design-Builder's Construction Phase Services**

**2.7.1** Unless otherwise provided in the Contract Documents to be the responsibility of Owner or a separate contractor, Design-Builder shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Design-Builder to complete construction of the Project consistent with the Contract Documents.

**2.7.2** Design-Builder shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Design-Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

**2.7.3** Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Owner may reasonably object to Design-Builder's selection of any Subcontractor, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that Owner's decision impacts Design-Builder's cost and/or time of performance.

**2.7.4** Design-Builder assumes responsibility to Owner for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

**2.7.5** Design-Builder shall coordinate the activities of all Subcontractors. If Owner performs other work on the Project or at the Site with separate contractors under Owner's control, Design-Builder agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and

coordinated manner without unreasonable disruption.

**2.7.6** Design-Builder shall keep the Site reasonably free from debris, trash and construction wastes to permit Design-Builder to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, Design-Builder shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit Owner to occupy the Project or a portion of the Project for its intended use.

## **2.8 Design-Builder's Responsibility for Project Safety**

**2.8.1** Design-Builder recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto. Design-Builder assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work. Design-Builder shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, Design-Builder's Safety Representative shall be an individual stationed at the Site who may have responsibilities on the Project in addition to safety. The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Design-Builder's personnel, Subcontractors and others as applicable.

**2.8.2** Design-Builder and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any Owner-specific safety requirements set forth in the Contract Documents, provided that such Owner-specific requirements do not violate any applicable Legal Requirement. Design-Builder will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to Owner's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities

having jurisdiction over safety-related matters involving the Project or the Work.

**2.8.3** Design-Builder's responsibility for safety under this Section 2.8 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages or accidents resulting from their performance of the Work.

## **2.9 Design-Builder's Warranty**

**2.9.1** Design-Builder warrants to Owner that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work by persons other than Design-Builder or anyone for whose acts Design-Builder may be liable. Nothing in this warranty is intended to limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this Section 2.9 or the Contract Documents. Design-Builder will provide Owner with all manufacturers' warranties upon Substantial Completion.

## **2.10 Correction of Defective Work**

**2.10.1** Design-Builder agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 2.9 hereof, within a period of one year from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by the Contract Documents.

**2.10.2** Design-Builder shall, within seven (7) days of receipt of written notice from Owner that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Design-

Builder fails to commence the necessary steps within such seven (7) day period, Owner, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder with written notice that Owner will commence correction of such nonconforming Work with its own forces. If Owner does perform such corrective Work, Design-Builder shall be responsible for all reasonable costs incurred by Owner in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the seven (7) day periods identified herein shall be deemed inapplicable.

**2.10.3** The one year period referenced in Section 2.10.1 above applies only to Design-Builder's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies Owner may have regarding Design-Builder's other obligations under the Contract Documents.

### **Article 3**

#### **Owner's Services and Responsibilities**

##### **3.1 Duty to Cooperate**

**3.1.1** Owner shall, throughout the performance of the Work, cooperate with Design-Builder and perform its responsibilities, obligations and services in a timely manner to facilitate Design-Builder's timely and efficient performance of the Work and so as not to delay or interfere with Design-Builder's performance of its obligations under the Contract Documents.

**3.1.2** Owner shall provide timely reviews and approvals of interim design submissions and Construction Documents consistent with the turnaround times set forth in Design-Builder's schedule.

##### **3.2 Furnishing of Services and Information**

**3.2.1** Unless expressly stated to the contrary in the Contract Documents, Owner shall provide, at its own cost and expense, for Design-Builder's information and use the following, all of which Design-Builder is entitled to rely upon in performing the Work:

- .1 Surveys describing the property, boundaries, topography and reference

points for use during construction, including existing service and utility lines;

- .2 Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;
- .3 Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable Design-Builder to perform the Work;
- .4 A legal description of the Site;
- .5 To the extent available, as-built and record drawings of any existing structures at the Site; and
- .6 To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site.

**3.2.2** Owner is responsible for securing and executing all necessary agreements with adjacent land or property owners that are necessary to enable Design-Builder to perform the Work. Owner is further responsible for all costs, including attorneys' fees, incurred in securing these necessary agreements.

##### **~~3.3 Financial Information~~**

~~**3.3.1** At Design-Builder's request, Owner shall promptly furnish reasonable evidence satisfactory to Design-Builder that Owner has adequate funds available and committed to fulfill all of Owner's contractual obligations under the Contract Documents. If Owner fails to furnish such financial information in a timely manner, Design-Builder may stop Work under Section 11.3 hereof or exercise any other right permitted under the Contract Documents.~~

~~3.3.2 Design Builder shall cooperate with the reasonable requirements of Owner's lenders or other financial sources. Notwithstanding the preceding sentence, after execution of the Agreement Design Builder shall have no obligation to execute for Owner or Owner's lenders or other financial sources any documents or agreements that require Design Builder to assume obligations or responsibilities greater than those existing obligations Design Builder has under the Contract Documents.~~

### **3.4 Owner's Representative**

3.4.1 Owner's Representative shall be responsible for providing Owner-supplied information and approvals in a timely manner to permit Design-Builder to fulfill its obligations under the Contract Documents. Owner's Representative shall also provide Design-Builder with prompt notice if it observes any failure on the part of Design-Builder to fulfill its contractual obligations, including any errors, omissions or defects in the performance of the Work.

### ~~3.5 Government Approvals and Permits~~

~~3.5.1 Owner shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees set forth in the Owner's Permit List attached as an exhibit to the Agreement.~~

~~3.5.2 Owner shall provide reasonable assistance to Design-Builder in obtaining those permits, approvals and licenses that are Design-Builder's responsibility.~~

### ~~3.6 Owner's Separate Contractors~~

~~3.6.1 Owner is responsible for all work performed on the Project or at the Site by separate contractors under Owner's control. Owner shall contractually require its separate contractors to cooperate with, and coordinate their activities so as not to interfere with, Design-Builder in order to enable Design-Builder to timely complete the Work consistent with the Contract Documents.~~

## Article 4

### **Hazardous Conditions and Differing Site Conditions**

#### **4.1 Hazardous Conditions**

4.1.1 Unless otherwise expressly provided in the Contract Documents to be part of the Work, Design-Builder is not responsible for any Hazardous Conditions encountered at the Site. Upon encountering any Hazardous Conditions, Design-Builder will stop Work immediately in the affected area and duly notify Owner and, if required by Legal Requirements, all government or quasi-government entities with jurisdiction over the Project or Site.

4.1.2 Upon receiving notice of the presence of suspected Hazardous Conditions, Owner shall take the necessary measures required to ensure that the Hazardous Conditions are remediated or rendered harmless. Such necessary measures shall include Owner retaining qualified independent experts to (i) ascertain whether Hazardous Conditions have actually been encountered, and, if they have been encountered, (ii) prescribe the remedial measures that Owner must take either to remove the Hazardous Conditions or render the Hazardous Conditions harmless.

4.1.3 Design-Builder shall be obligated to resume Work at the affected area of the Project only after Owner's expert provides it with written certification that (i) the Hazardous Conditions have been removed or rendered harmless and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or Site.

4.1.4 Design-Builder will be entitled, in accordance with these General Conditions of Contract, to an adjustment in its Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by the presence of Hazardous Conditions.

**4.1.5** To the fullest extent permitted by law, Owner shall indemnify, defend and hold harmless Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly for any of them, and their officers, directors, employees and agents, from and against any and all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from the presence, removal or remediation of Hazardous Conditions at the Site.

**4.1.6** Notwithstanding the preceding provisions of this Section 4.1, Owner is not responsible for Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable. Design-Builder shall indemnify, defend and hold harmless Owner and Owner's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable.

#### **4.2 Differing Site Conditions**

**4.2.1** Concealed or latent physical conditions or subsurface conditions at the Site that (i) materially differ from the conditions indicated in the Contract Documents or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work are collectively referred to herein as "Differing Site Conditions." If Design-Builder encounters a Differing Site Condition, Design-Builder will be entitled to an adjustment in the Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance are adversely impacted by the Differing Site Condition.

**4.2.2** Upon encountering a Differing Site Condition, Design-Builder shall provide prompt written notice to Owner of such condition, which notice shall not be later than fourteen (14) days after such condition has been encountered. Design-Builder shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

## **Article 5**

### **Insurance and Bonds**

#### **5.1 Design-Builder's Insurance Requirements**

**5.1.1** Design-Builder is responsible for procuring and maintaining from insurance companies authorized to do business in the state in which the Project is located, and with a minimum rating set forth in the Agreement, the following insurance coverages for certain claims which may arise from or out of the performance of the Work and obligations under the Contract Documents:

- .1** Coverage for claims arising under workers' compensation, disability and other similar employee benefit laws applicable to the Work;
- .2** Coverage for claims by Design-Builder's employees for bodily injury, sickness, disease, or death;
- .3** Coverage for claims by any person other than Design-Builder's employees for bodily injury, sickness, disease, or death;
- .4** Coverage for usual personal injury liability claims for damages sustained by a person as a direct or indirect result of Design-Builder's employment of the person, or sustained by any other person;
- .5** Coverage for claims for damages (other than to the Work) because of injury to or destruction of tangible property, including loss of use;
- .6** Coverage for claims of damages because of personal injury or death, or property damage resulting from ownership, use and maintenance of any motor vehicle; and
- .7** Coverage for contractual liability claims arising out of Design-Builder's obligations under Section 7.4.1 hereof.

**5.1.2** Design-Builder's liability insurance required by Section 5.1.1 above shall be written for the coverage amounts set forth in the Agreement and shall include completed operations insurance for the period of time set forth in the Agreement.

**5.1.3** Design-Builder's liability insurance set forth in Sections 5.1.1.1 through 5.1.1.7 above shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project.

**5.1.4** To the extent Owner requires Design-Builder or any Design Consultant to provide professional liability insurance for claims arising from the negligent performance of design services by Design-Builder or the Design Consultant, the coverage limits, duration and other specifics of such insurance shall be as set forth in the Agreement. Any professional liability shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project. Such policies shall be provided prior to the commencement of any design services hereunder.

**5.1.5** Prior to commencing any construction services hereunder, Design-Builder shall provide Owner with certificates evidencing that (i) all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect for the duration required by the Contract Documents and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to Owner.

## **5.2** ~~Owner's Liability Insurance~~

**5.2.1** ~~Owner shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located such liability insurance to protect Owner from claims which may arise from the performance of Owner's obligations under the Contract Documents or Owner's conduct during the course of the Project.~~

## **5.3** ~~Owner's Property Insurance~~

**5.3.1** ~~Unless otherwise provided in the Contract Documents, Owner shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located property insurance upon the entire Project to the full~~

~~insurable value of the Project, including professional fees, overtime premiums and all other expenses incurred to replace or repair the insured property. The property insurance obtained by Owner shall include as additional insureds the interests of Owner, Design-Builder, Design Consultants, Subcontractors and Sub-Subcontractors, and shall insure against the perils of fire and extended coverage, theft, vandalism, malicious mischief, collapse, flood, earthquake, debris removal and other perils or causes of loss as called for in the Contract Documents. The property insurance shall include physical loss or damage to the Work, including materials and equipment in transit, at the Site or at another location as may be indicated in Design-Builder's Application for Payment and approved by Owner.~~

**5.3.2** ~~Unless the Contract Documents provide otherwise, Owner shall procure and maintain boiler and machinery insurance that will include the interests of Owner, Design-Builder, Design Consultants, Subcontractors and Sub-Subcontractors.~~

**5.3.3** ~~Prior to Design-Builder commencing any Work, Owner shall provide Design-Builder with certificates evidencing that (i) all Owner's insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect until Design-Builder has completed all of the Work and has received final payment from Owner and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to Design-Builder. Owner's property insurance shall not lapse or be canceled if Owner occupies a portion of the Work pursuant to Section 6.6.3 hereof. Owner shall provide Design-Builder with the necessary endorsements from the insurance company prior to occupying a portion of the Work.~~

**5.3.4** ~~Any loss covered under Owner's property insurance shall be adjusted with Owner and Design-Builder and made payable to both of them as trustees for the insureds as their interests may appear, subject to any applicable mortgage clause. All insurance proceeds received as a result of any loss will be placed in a separate account and distributed in accordance with such agreement as the interested parties may reach. Any disagreement concerning the distribution of any proceeds will be resolved in accordance with Article 10 hereof.~~



~~5.3.5 Owner and Design-Builder waive against each other and Owner's separate contractors, Design Consultants, Subcontractors, agents and employees of each and all of them, all damages covered by property insurance provided herein, except such rights as they may have to the proceeds of such insurance. Design-Builder and Owner shall, where appropriate, require similar waivers of subrogation from Owner's separate contractors, Design Consultants and Subcontractors and shall require each of them to include similar waivers in their contracts.~~

#### **5.4 Bonds and Other Performance Security**

**5.4.1** If Owner requires Design-Builder to obtain performance and labor and material payment bonds, or other forms of performance security, the amount, form and other conditions of such security shall be as set forth in the Agreement.

### **Article 6**

#### **Payment**

##### **6.1 Schedule of Values**

**6.1.1** The schedule of values shall be as described in Section VII of the RFP.

##### **6.2 Monthly Progress Payments**

**6.2.1** On or before the date established in the Agreement, Design-Builder shall submit for Owner's review and approval its Application for Payment requesting payment for all milestones completed as of the date of the Application for Payment. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by Section 2.1.4 hereof.

**6.2.2** The Application for Payment may request payment for equipment and materials not yet incorporated into the Project, provided that (i) Owner is satisfied that the equipment and materials are

suitably stored at either the Site or another acceptable location, (ii) the equipment and materials are protected by suitable insurance and (iii) upon

payment, Owner will receive the equipment and materials free and clear of all liens and encumbrances.

**6.2.3** The Application for Payment shall constitute Design-Builder's representation that the Work has been performed consistent with the Contract Documents, has progressed to the point indicated in the Application for Payment, and that title to all Work will pass to Owner free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project, or upon Design-Builder's receipt of payment, whichever occurs earlier.

##### **6.3 Withholding of Payments**

**6.3.1** On or before the date established in the Agreement, Owner shall pay Design-Builder all amounts properly due. If Owner determines that Design-Builder is not entitled to all or part of an Application for Payment, it will notify Design-Builder in writing at least five (5) days prior to the date payment is due. The notice shall indicate the specific amounts Owner intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Design-Builder must take to rectify Owner's concerns. Design-Builder and Owner will attempt to resolve Owner's concerns prior to the date payment is due. If the parties cannot resolve such concerns, Design-Builder may pursue its rights under the Contract Documents, including those under Article 10 hereof.

**6.3.2** Notwithstanding anything to the contrary in the Contract Documents, Owner shall pay Design-Builder all undisputed amounts in an Application for Payment within the times required by the Agreement.

##### **6.4 Right to Stop Work and Interest**

**6.4.1** If Owner fails to pay Design-Builder any amount that becomes due, Design-Builder, in addition to all other remedies provided in the Contract Documents, may stop Work pursuant to Section 11.3 hereof. All payments due and unpaid shall bear interest at the rate set forth in the Agreement.

## **6.5 Design-Builder's Payment Obligations**

**6.5.1** Design-Builder will pay Design Consultants and Subcontractors, in accordance with its contractual obligations to such parties, all the amounts Design-Builder has received from Owner on account of their work. Design-Builder will impose similar requirements on Design Consultants and Subcontractors to pay those parties with whom they have contracted. Design-Builder will indemnify and defend Owner against any claims for payment and mechanic's liens as set forth in Section 7.3 hereof.

## **6.6 Substantial Completion**

**6.6.1** Design-Builder shall notify Owner when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is substantially complete. Within five (5) days of Owner's receipt of Design-Builder's notice, Owner and Design-Builder will jointly inspect such Work to verify that it is substantially complete in accordance with the requirements of the Contract Documents. If such Work is substantially complete, Owner shall prepare and issue a Certificate of Substantial Completion that will set forth (i) the date of Substantial Completion of the Work or portion thereof, (ii) the remaining items of Work that have to be completed before final payment, (iii) provisions (to the extent not already provided in the Contract Documents) establishing Owner's and Design-Builder's responsibility for the Project's security, maintenance, utilities and insurance pending final payment and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.

**6.6.2** Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion.

**6.6.3** Owner, at its option, may use a portion of the Work which has been determined to be substantially complete, provided, however, that (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in Section 6.6.1 above, (ii) Design-Builder and Owner have obtained the consent of their

sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project, and (iii) Owner and Design-Builder agree that Owner's use or occupancy will not interfere with Design-Builder's completion of the remaining Work.

## **6.7 Final Payment**

**6.7.1** After receipt of a Final Application for Payment from Design-Builder, Owner shall make final payment by the time required in the Agreement, provided that Design-Builder has completed all of the Work in conformance with the Contract Documents.

**6.7.2** At the time of submission of its Final Application for Payment, Design-Builder shall provide the following information:

- .1 an affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Owner's interests;
- .2 a general release executed by Design-Builder waiving, upon receipt of final payment by Design-Builder, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment;
- .3 consent of Design-Builder's surety, if any, to final payment;
- .4 all operating manuals, warranties and other deliverables required by the Contract Documents; and
- .5 certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents.

**6.7.3** Upon making final payment, Owner waives all claims against Design-Builder except claims relating to (i) Design-Builder's failure to satisfy its payment obligations, if such failure affects Owner's interests, (ii) Design-Builder's failure to complete the Work consistent with the Contract Documents, including defects appearing after Substantial

Completion and (iii) the terms of any special warranties required by the Contract Documents.

## **Article 7**

### **Indemnification**

#### **7.1 Patent and Copyright Infringement**

**7.1.1** Design-Builder shall defend any action or proceeding brought against Owner based on any claim that the Work, or any part thereof, or the operation or use of the Work or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. Owner shall give prompt written notice to Design-Builder of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Design-Builder shall indemnify and hold harmless Owner from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Owner or Design-Builder in any such action or proceeding. Design-Builder agrees to keep Owner informed of all developments in the defense of such actions.

**7.1.2** If Owner is enjoined from the operation or use of the Work, or any part thereof, as the result of any patent or copyright suit, claim, or proceeding, Design-Builder shall at its sole expense take reasonable steps to procure the right to operate or use the Work. If Design-Builder cannot so procure such right within a reasonable time, Design-Builder shall promptly, at Design-Builder's option and at Design-Builder's expense, (i) modify the Work so as to avoid infringement of any such patent or copyright or (ii) replace said Work with Work that does not infringe or violate any such patent or copyright.

**7.1.3** Sections 7.1.1 and 7.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by Owner and not offered or recommended by Design-Builder to Owner or (ii) arising from modifications to the Work by Owner or its agents after acceptance of the Work. If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Owner shall defend, indemnify and hold harmless Design-Builder to the same extent Design-Builder is obligated to defend, indemnify and hold harmless Owner in Section 7.1.1 above.

**7.1.4** The obligations set forth in this Section 7.1 shall constitute the sole agreement between the parties relating to liability for infringement or violation of any patent or copyright.

#### **7.2 Tax Claim Indemnification**

**7.2.1** If, in accordance with Owner's direction, an exemption for all or part of the Work is claimed for taxes, Owner shall indemnify, defend and hold harmless Design-Builder from and against any liability, penalty, interest, fine, tax assessment, attorneys' fees or other expenses or costs incurred by Design-Builder as a result of any action taken by Design-Builder in accordance with Owner's directive.

#### **7.3 Payment Claim Indemnification**

**7.3.1** Providing that Owner is not in breach of its contractual obligation to make payments to Design-Builder for the Work, Design-Builder shall indemnify, defend and hold harmless Owner from any claims or mechanic's liens brought against Owner or against the Project as a result of the failure of Design-Builder, or those for whose acts it is responsible, to pay for any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work. Within three (3) days of receiving written notice from Owner that such a claim or mechanic's lien has been filed, Design-Builder shall commence to take the steps necessary to discharge said claim or lien, including, if necessary, the furnishing of a mechanic's lien bond. If Design-Builder fails to do so, Owner will have the right to discharge the claim or lien and hold Design-Builder liable for costs and expenses incurred, including attorneys' fees.

#### **7.4 Design-Builder's General Indemnification**

**7.4.1** Design-Builder, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Owner, its officers, directors, employees and agents from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) to the extent resulting from the negligent acts or

omissions of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable.

**7.4.2** If an employee of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable has a claim against Owner, its officers, directors, employees, or agents, Design-Builder's indemnity obligation set forth in Section 7.4.1 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Design-Builder, Design Consultants, Subcontractors, or other entity under any employee benefit acts, including workers' compensation or disability acts.

## **7.5 Owner's General Indemnification**

**7.5.1** Owner, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Design-Builder and any of Design-Builder's officers, directors, employees, or agents from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) to the extent resulting from the negligent acts or omissions of Owner's separate contractors or anyone for whose acts any of them may be liable.

## **Article 8**

### **Time**

#### **8.1 Obligation to Achieve the Contract Times**

**8.1.1** Design-Builder agrees that it will commence performance of the Work and achieve the Contract Time(s) in accordance with Article 5 of the Agreement.

#### **8.2 Delays to the Work**

**8.2.1** If Design-Builder is delayed in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom Design-Builder is responsible, the Contract Time(s) for performance shall be reasonably extended by Change Order. By way of example,

events that will entitle Design-Builder to an extension of the Contract Time(s) include acts or omissions of Owner or anyone under Owner's control (including separate contractors), changes in the Work, Differing Site Conditions, Hazardous Conditions, wars, floods, labor disputes, unusual delay in transportation, epidemics abroad, earthquakes, adverse weather conditions not reasonably anticipated, and other acts of God.

**8.2.2** In addition to Design-Builder's right to a time extension for those events set forth in Section 8.2.1 above, Design-Builder shall also be entitled to an appropriate adjustment of the Contract Price provided, however, that the Contract Price shall not be adjusted for those events set forth in Section 8.2.1 above that are beyond the control of both Design-Builder and Owner, including the events of war, floods, labor disputes, earthquakes, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God.

## **Article 9**

### **Changes to the Contract Price and Time**

#### **9.1 Change Orders**

**9.1.1** A Change Order is a written instrument issued after execution of the Agreement signed by Owner and Design-Builder, stating their agreement upon all of the following:

- .1 The scope of the change in the Work;
- .2 The amount of the adjustment to the Contract Price; and
- .3 The extent of the adjustment to the Contract Time(s).

**9.1.2** All changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents. Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes.

**9.1.3** If Owner requests a proposal for a change in the Work from Design-Builder and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse Design-Builder for reasonable costs incurred for estimating

services, design services and services involved in the preparation of proposed revisions to the Contract Documents.

## **9.2 Work Change Directives**

**9.2.1** A Work Change Directive is a written order prepared and signed by Owner, directing a change in the Work prior to agreement on an adjustment in the Contract Price and/or the Contract Time(s).

**9.2.2** Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for the Work Change Directive. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the agreement.

## **9.3 Minor Changes in the Work**

**9.3.1** Minor changes in the Work do not involve an adjustment in the Contract Price and/or Contract Time(s) and do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Design-Builder may make minor changes in the Work consistent with the intent of the Contract Documents, provided, however that Design-Builder shall promptly inform Owner, in writing, of any such changes and record such changes on the documents maintained by Design-Builder.

## **9.4 Contract Price Adjustments**

**9.4.1** The increase or decrease in Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:

- .1 Unit prices set forth in the Agreement or as subsequently agreed to between the parties;
- .2 A mutually accepted, lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by Owner;
- .3 Costs, fees and any other markups set forth in the Agreement; and
- .4 If an increase or decrease cannot be agreed to as set forth in items .1

through .3 above and Owner issues a Work Change Directive, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit, as may be set forth in the Agreement. If the net result of both additions and deletions to the Work is an increase in the Contract Price, overhead and profit shall be calculated on the basis of the net increase to the Contract Price. If the net result of both additions and deletions to the Work is a decrease in the Contract Price, there shall be no overhead or profit adjustment to the Contract Price. Design-Builder shall maintain a documented, itemized accounting evidencing the expenses and savings associated with such changes.

**9.4.2** If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to Owner or Design-Builder because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.

**9.4.3** If Owner and Design-Builder disagree upon whether Design-Builder is entitled to be paid for any services required by Owner, or if there are any other disagreements over the scope of Work or proposed changes to the Work, Owner and Design-Builder shall resolve the disagreement pursuant to Article 10 hereof. As part of the negotiation process, Design-Builder shall furnish Owner with a good faith estimate of the costs to perform the disputed services in accordance with Owner's interpretations. If the parties are unable to agree and Owner expects Design-Builder to perform the services in accordance with Owner's interpretations, Design-Builder shall proceed to perform the disputed services, conditioned upon Owner issuing a written order to Design-Builder (i) directing Design-Builder to proceed and (ii) specifying Owner's interpretation of the services that are to be performed. If this occurs, Design-Builder shall be entitled to submit in its Applications for Payment an amount equal to fifty percent (50%) of its reasonable estimated direct cost to perform the services, and Owner agrees to pay such amounts, with the express understanding

that (i) such payment by Owner does not prejudice Owner's right to argue that it has no responsibility to pay for such services and (ii) receipt of such payment by Design-Builder does not prejudice Design-Builder's right to seek full payment of the disputed services if Owner's order is deemed to be a change to the Work.

## **9.5 Emergencies**

**9.5.1** In any emergency affecting the safety of persons and/or property, Design-Builder shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time(s) on account of emergency work shall be determined as provided in this Article 9.

## **Article 10**

### **Contract Adjustments and Disputes**

#### **10.1 Requests for Contract Adjustments and Relief**

**10.1.1** If either Design-Builder or Owner believes that it is entitled to relief against the other for any event arising out of or related to the Work or Project, such party shall provide written notice to the other party of the basis for its claim for relief. Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of these General Conditions of Contract. In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed twenty-one (21) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later. Such notice shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.

#### **10.2 Dispute Avoidance and Resolution**

**10.2.1** The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Design-Builder and Owner each commit to resolving such disputes or disagreements in an

amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.

**10.2.2** Design-Builder and Owner will first attempt to resolve disputes or disagreements at the field level through discussions between Design-Builder's Representative and Owner's Representative.

**10.2.3** If a dispute or disagreement cannot be resolved through Design-Builder's Representative and Owner's Representative, Design-Builder's Senior Representative and Owner's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.

**10.2.4** If after meeting the Senior Representatives determine that the dispute or disagreement cannot be resolved on terms satisfactory to both parties, the parties shall submit the dispute or disagreement to non-binding mediation. The mediation shall be conducted by a mutually agreeable impartial mediator, or if the parties cannot so agree, a mediator designated by the American Arbitration Association ("AAA") pursuant to its Construction Industry Mediation Rules. The mediation will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by procedures established by the mediator.

#### **10.3 Arbitration**

**10.3.1** Any claims, disputes or controversies between the parties arising out of or relating to the Agreement, or the breach thereof, which have not been resolved in accordance with the procedures set forth in Section 10.2 above shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the AAA then in effect, unless the parties mutually agree otherwise.

**10.3.2** The award of the arbitrator(s) shall be final and binding upon the parties without the right of appeal to the courts. Judgment may be entered upon it in accordance with applicable law by any court having jurisdiction thereof.

**10.3.3** Design-Builder and Owner expressly agree that any arbitration pursuant to this Section 10.3 may be joined or consolidated with any arbitration involving any other person or entity (i) necessary to resolve the claim, dispute or controversy, or (ii) substantially involved in or affected by such claim, dispute or controversy. Both Design-Builder and Owner will include appropriate provisions in all contracts they execute with other parties in connection with the Project to require such joinder or consolidation.

**10.3.4** The prevailing party in any arbitration, or any other final, binding dispute proceeding upon which the parties may agree, shall be entitled to recover from the other party reasonable attorneys' fees and expenses incurred by the prevailing party.

#### **10.4 Duty to Continue Performance**

**10.4.1** Unless provided to the contrary in the Contract Documents, Design-Builder shall continue to perform the Work and Owner shall continue to satisfy its payment obligations to Design-Builder, pending the final resolution of any dispute or disagreement between Design-Builder and Owner.

#### **10.5 CONSEQUENTIAL DAMAGES**

**10.5.1** NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY (EXCEPT AS SET FORTH IN SECTION 10.5.2 BELOW), NEITHER DESIGN-BUILDER NOR OWNER SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSSES OF USE, PROFITS, BUSINESS, REPUTATION OR FINANCING.

**10.5.2** The consequential damages limitation set forth in Section 10.5.1 above is not intended to affect the payment of liquidated damages, if any, set forth in Article 5 of the Agreement, which both parties recognize has been established, in part, to reimburse Owner for some damages that might otherwise be deemed to be consequential.

### **Article 11**

#### **Stop Work and Termination for Cause**

#### **11.1 Owner's Right to Stop Work**

**11.1.1** Owner may, without cause and for its convenience, order Design-Builder in writing to stop and suspend the Work. Such suspension shall not exceed sixty (60) consecutive days or aggregate more than ninety (90) days during the duration of the Project.

**11.1.2** Design-Builder is entitled to seek an adjustment of the Contract Price and/or Contract Time(s) if its cost or time to perform the Work has been adversely impacted by any suspension of stoppage of work by Owner.

#### **11.2 Owner's Right to Perform and Terminate for Cause**

**11.2.1** If Design-Builder persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Design Consultants or Subcontractors, (v) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time(s), as such times may be adjusted, or (vi) perform material obligations under the Contract Documents, then Owner, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Sections 11.2.2 and 11.2.3 below.

**11.2.2** Upon the occurrence of an event set forth in Section 11.2.1 above, Owner may provide written notice to Design-Builder that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Design-Builder's receipt of such notice. If Design-Builder fails to cure, or reasonably commence to cure, such problem, then Owner may give a second written notice to Design-Builder of its intent to terminate within an additional seven (7) day period. If Design-Builder, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Owner may declare the Agreement terminated for default by providing written notice to Design-Builder of such declaration.

**11.2.3** Upon declaring the Agreement terminated pursuant to Section 11.2.2 above, Owner may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other

items thereon, which have been purchased or provided for the performance of the Work, all of which Design-Builder hereby transfers, assigns and sets over to Owner for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items. In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, if the unpaid balance of the Contract Price exceeds the cost and expense incurred by Owner in completing the Work, such excess shall be paid by Owner to Design-Builder. Notwithstanding the preceding sentence, if the Agreement establishes a Guaranteed Maximum Price, Design-Builder will only be entitled to be paid for Work performed prior to its default. If Owner's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Design-Builder shall be obligated to pay the difference to Owner. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by Owner in connection with the procurement and defense of claims arising from Design-Builder's default, subject to the waiver of consequential damages set forth in Section 10.5 hereof.

**11.2.4** If Owner improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Article 8 of the Agreement.

### **11.3 Design-Builder's Right to Stop Work**

**11.3.1** Design-Builder may, in addition to any other rights afforded under the Contract Documents or at law, stop work for the following reasons:

- .1 Owner's failure to provide financial assurances as required under Section 3.3 hereof; or
- .2 Owner's failure to pay amounts properly due under Design-Builder's Application for Payment.

**11.4.2** Upon the occurrence of an event set forth in Section 11.4.1 above, Design-Builder may provide written notice to Owner that it intends to terminate

**11.3.2** Should any of the events set forth in Section 11.3.1 above occur, Design-Builder has the right to provide Owner with written notice that Design-Builder will stop work unless said event is cured within seven (7) days from Owner's receipt of Design-Builder's notice. If Owner does not cure the problem within such seven (7) day period, Design-Builder may stop work. In such case, Design-Builder shall be entitled to make a claim for adjustment to the Contract Price and Contract Time(s) to the extent it has been adversely impacted by such stoppage.

### **11.4 Design-Builder's Right to Terminate for Cause**

**11.4.1** Design-Builder, in addition to any other rights and remedies provided in the Contract Documents or by law, may terminate the Agreement for cause for the following reasons:

- .1 The Work has been stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, because of court order, any government authority having jurisdiction over the Work, or orders by Owner under Section 11.1.1 hereof, provided that such stoppages are not due to the acts or omissions of Design-Builder or anyone for whose acts Design-Builder may be responsible.
- .2 Owner's failure to provide Design-Builder with any information, permits or approvals that are Owner's responsibility under the Contract Documents which result in the Work being stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, even though Owner has not ordered Design-Builder in writing to stop and suspend the Work pursuant to Section 11.1.1 hereof.
- .3 Owner's failure to cure the problems set forth in Section 11.3.1 above after Design-Builder has stopped the Work.

the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Owner's receipt of such notice. If Owner fails to



cure, or reasonably commence to cure, such problem, then Design-Builder may give a second written notice to Owner of its intent to terminate within an additional seven (7) day period. If Owner, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Design-Builder may declare the Agreement terminated for default by providing written notice to Owner of such declaration. In such case, Design-Builder shall be entitled to recover in the same manner as if Owner had terminated the Agreement for its convenience under Article 8 of the Agreement.

#### **11.5 Bankruptcy of Owner or Design-Builder**

**11.5.1** If either Owner or Design-Builder institutes or has instituted against it a case under the United States Bankruptcy Code (such party being referred to as the "Bankrupt Party"), such event may impair or frustrate the Bankrupt Party's ability to perform its obligations under the Contract Documents. Accordingly, should such event occur:

- .1 The Bankrupt Party, its trustee or other successor, shall furnish, upon request of the non-Bankrupt Party, adequate assurance of the ability of the Bankrupt Party to perform all future material obligations under the Contract Documents, which assurances shall be provided within ten (10) days after receiving notice of the request; and
- .2 The Bankrupt Party shall file an appropriate action within the bankruptcy court to seek assumption or rejection of the Agreement within sixty (60) days of the institution of the bankruptcy filing and shall diligently prosecute such action.

If the Bankrupt Party fails to comply with its foregoing obligations, the non-Bankrupt Party shall be entitled to request the bankruptcy court to reject the Agreement, declare the Agreement terminated and pursue any other recourse available to the non-Bankrupt Party under this Article 11.

**11.5.2** The rights and remedies under Section 11.5.1 above shall not be deemed to limit the ability of the non-Bankrupt Party to seek any other rights and remedies provided by the Contract Documents or by law, including its ability to seek relief from any

automatic stays under the United States Bankruptcy Code or the right of Design-Builder to stop Work under any applicable provision of these General Conditions of Contract.

## **Article 12**

### **Miscellaneous**

#### **12.1 Assignment**

**12.1.1** Neither Design-Builder nor Owner shall, without the written consent of the other assign, transfer or sublet any portion or part of the Work or the obligations required by the Contract Documents.

#### **12.2 Successorship**

**12.2.1** Design-Builder and Owner intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

#### **12.3 Governing Law**

**12.3.1** The Agreement and all Contract Documents shall be governed by the laws of the place of the Project, without giving effect to its conflict of law principles.

#### **12.4 Severability**

**12.4.1** If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

#### **12.5 No Waiver**

**12.5.1** The failure of either Design-Builder or Owner to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

#### **12.6 Headings**

**12.6.1** The headings used in these General Conditions of Contract, or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

## **12.7 Notice**

**12.7.1** Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice, (ii) four (4) days after being sent by

registered or certified mail, postage prepaid to the address indicated in the Agreement or (iii) if transmitted by facsimile, by the time stated in a machine generated confirmation that notice was received at the facsimile number of the intended recipient.

## **12.8 Amendments**

**12.8.1** The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

**BID BOND**

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned, \_\_\_\_\_  
as Principal, and \_\_\_\_\_, as Surety, are hereby held and firmly bound unto  
\_\_\_\_\_ as the OWNER in the penal sum of \_\_\_\_\_ for the  
payment of which, well and truly made, we hereby jointly and severally bind ourselves, successors and assigns.  
Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. The Principal has submitted to  
\_\_\_\_\_ a certain BID, attached hereto and hereby made a part here hereof to  
enter into a contract in writing for the \_\_\_\_\_.

NOW, THEREFORE,

- (a) If said BID shall be rejected or
- (b) If said BID shall be accepted and the principal shall execute and deliver a contract in the For of Contract attached hereto (properly completed in accordance with said BID), and shall furnish a BOND for his faithful performance of said contract, and for the payment of all persons performing labor or furnishing materials in connection therewith, and shall in all other respects perform the agreement created by the acceptance of said BID,

Then this obligation shall be void; otherwise the same shall remain in force and effect; it being expressly understood and agreed the liability of the Surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agree that the obligations of said Surety and its BOND shall be in no way impaired or affected by any extension of the time within which the OWNER may accept such BID; and said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above.

\_\_\_\_\_  
Principal (L.S.)

\_\_\_\_\_  
Surety

By: \_\_\_\_\_

IMPORTANT – Surety companies executing BONDS must appear on the Treasury Department’s most current list (Circular 570 as amended) and be authorized to transact business in the state where the project is located.

CONTRACT BOND (PAYMENT)

KNOW ALL MEN BY THESE PRESENTS:

That \_\_\_\_\_ of \_\_\_\_\_, as principals, and \_\_\_\_\_ of \_\_\_\_\_ as surety, firmly bound and held unto the City and Borough of Sitka, Alaska, in the penal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_),

\_\_\_\_\_ *100% of contract value* good and lawful money of the United States of America for the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents.

WHEREAS, the said principals have entered into written contract with said City and Borough of Sitka, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, for the construction of \_\_\_\_\_, said work to be done according to the terms of said contract.

NOW, THEREFORE, the conditions of the foregoing obligations are such that if said principals shall comply with all requirements of law and pay, as they become due, all just claims for labor performed and materials and supplies furnished upon or for the work under said contract, whether said labor be performed and said materials and supplies be furnished under the original contract, and subcontract, or any and all duly authorized modifications within the percentage of change limitations as set forth in the specifications or Special Provisions, and shall indemnify and save harmless the City and Borough of Sitka and employees thereof against any damage or loss which they or any of them may suffer or for which they or any of them become liable by the default of said principals or by any neglect or carelessness on the part of said principals, their agents, servants or employees, then those presents shall become null and void, otherwise they shall remain in full force and effect.

IN WITNESS WHEREOF, we have hereunto set our hands and seals at \_\_\_\_\_, Alaska, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

PRINCIPALS: \_\_\_\_\_  
\_\_\_\_\_

COUNTERSIGNED: \_\_\_\_\_  
\_\_\_\_\_

Resident Agent

SURETIES: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Corporation Seal)

Approved:

\_\_\_\_\_  
Administrator  
CITY AND BOROUGH OF SITKA  
\_\_\_\_\_, 20\_\_\_\_

CONTRACT BOND (PERFORMANCE)

KNOW ALL MEN BY THESE PRESENTS:

That \_\_\_\_\_ of \_\_\_\_\_, as principals, and \_\_\_\_\_ of \_\_\_\_\_ as surety, firmly bound and held unto the City and Borough of Sitka, Alaska, in the penal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), good and lawful money of the United States of America for the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents.

WHEREAS, the said principals have entered into written contract with said City and Borough of Sitka, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, for the construction of \_\_\_\_\_, said work to be done according to the terms of said contract.

NOW, THEREFORE, the conditions of the foregoing obligations are such that if said principals shall comply with all requirements of law and pay, as they become due, all just claims for labor performed and materials and supplies furnished upon or for the work under said contract, whether said labor be performed and said materials and supplies be furnished under the original contract, and subcontract, or any and all duly authorized modifications with in the percentage of change limitations as set forth in the specifications or Special Provisions, and shall indemnify and save harmless the City and Borough of Sitka and employees thereof against any damage or loss which they or any of them may suffer or for which they or any of them become liable for the default of said principals or by any neglect or carelessness on the part of said principals, their agents, servants, or employees, then those presents shall become null and void, otherwise they shall remain in full force and effect.

IN WITNESS WHEREOF, we have hereunto set our hands and seals at \_\_\_\_\_, Alaska, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

PRINCIPALS: \_\_\_\_\_

COUNTERSIGNED: \_\_\_\_\_

Resident Agent

SURETIES: \_\_\_\_\_

(Corporation Seal)

Approved:

\_\_\_\_\_  
Administrator

CITY AND BOROUGH OF SITKA

\_\_\_\_\_, 20\_\_\_\_