



# AWHP HVAC SYSTEM DESIGN PROPOSAL

West Tisbury Library

Jean-Paul Vandeputte  
jpvandeputte@RISEengineering.com

RISE  
1341 Elmwood Avenue  
Cranston, Rhode Island 02910

October 3, 2023

Jennifer Rand  
Town Administrator  
P.O. Box 728  
West Tisbury, MA 02575

RE: Proposal to provide mechanical and electrical design services a new HVAC system at the West Tisbury Library

Dear Ms. Rand,

Thank you for the opportunity to submit this proposal for a Mechanical and Electrical design for a new Air to Water Heat Pump (AWHP) system at 1042 State Road in West Tisbury.

### Project Scope

RISE and our sister company, Creative Environment Corp, (CEC) agree to provide the following under this scope of work for the facility.

1. The scope of mechanical design work includes new heating, cooling, and ventilation systems for the building. This shall include eliminating electric heat where possible and replace the existing VRF heat pump system with an AWHP system for heating and cooling. Ventilation systems will be improved where necessary but the existing ERV units may remain with improved accessibility for service. Mechanical specifications will be provided.
2. The design of electrical work required for connections to all new HVAC equipment are included. Electrical plans and specifications are included.
3. All drawings shall be prepared using AUTODESK AutoCAD software.
4. Mechanical and electrical site visits during the design process.
5. Demolition and new work plans will be provided along with detail plans, schematic piping and new equipment schedules.
6. Participate in one (1) virtual meeting during Design Development and one during Construction Document phases.
7. Coordinate activities with Cape Light Compact including potential rebates that may be available for the proposed system(s).
8. Detailed cost estimating by Fennessy Consulting Services is included at the point of 75% design documents.
9. Provide construction plan and specification documents for public bid and construction.
10. Provide Construction Administration services.
  - a. Attendance at one (1) meeting for the contractor bid walk-through is included.
  - b. Provide responses to contractor questions and review the contractor bids.
  - c. Review of shop drawings to determine adherence to the specifications and drawings.
  - d. Provide construction document clarifications as needed.
  - e. Review and approval of M-E-P sub-contractor payment requisitions are included.

- f. Periodic site visits to review the installation of our designed system(s) shall include two (2) in-progress and one (1) final site visit during construction to be used to generate a final punch-list. Re-inspection after providing final punch list will be billed on a "Time and Material Basis."
- g. Review of acceptance test reports and responses to Contractor RFI's.
- h. Review of project closeout documents.
- i. Review of monthly certification of payments.
- j. Building Code Affidavits.

Project Assumptions / Clarifications / Exclusions:

1. LEED review, documentation or certification is not required.
2. Design or analysis of possible sustainable strategies (i.e. geothermal, solar thermal, wind, steam, CHP, photovoltaic, etc.) will not be included.
3. Post construction CAD As-built documentation shall be by the contractor with RISE review.
4. The scope of work shall not include detailed design of a facility building or energy management system and associated graphic user interface.
5. Preparation of plans or specifications for the legal removal or abatement of hazardous materials are not included. Hazardous location classifications will be determined by the project code consultant retained by others and furnished to the design team in writing.
6. Front end general bid specifications will be provided by others.
7. Additional site meetings and/or punch list inspections are available at an additional cost.
8. Submittal review will be limited to three (3) reviews of each system component. RISE will not be responsible for the time it takes to respond to repeated submittals that do not meet the project specifications.
9. Radon mitigation devices and system design are not included.
10. Architectural, Structural and Civil Engineering are not included.
11. Our on-site work during construction will be for the purpose to inspect the installation of the systems to confirm that they meet the design requirements. It does not include the full commissioning of the system or continuous monitoring of the installation process.
12. This project will be designed as a single project with a single bid phase and a single construction phase with one contractor.
13. Cost-saving redesign (value engineering) services after the plans have been issued and approved or bid would be an additional charge.
14. Plan printing would be an additional charge.
15. Fire Protection
16. Fire alarm witness testing.
17. Security Engineering, Telecommunication Engineering, Audio/Visual or Information Technology Engineering.
18. Electrical testing or services to measure electrical loads is not included.
19. Sanitary system camera inspections or concrete X-ray/scanning/imaging.
20. If the design or construction phase of the project stops for more than 90 days, we reserve the right to revise the proposal fees for remobilization.
21. General demolition plans will be provided; selective demolition documentation will not be provided.
22. Services of a qualified licensed electrician are necessary for the opening of equipment or switching of any electrical equipment. We cannot examine exposed live electrical parts. If information regarding this is needed, an electrician may be required. The cost of an electrician's services is not included in this proposal and shall be a reimbursable expense.

- 23. Conversion of Revit model files to CAD trade floor plans for contractor use in as-built creation is not a part of the base fee scope of services but is available as an additional service.
- 24. RISE will be provided with safe access to various areas of the retained portion of the existing building necessary to ascertain a reasonable evaluation of the existing conditions. This shall include the use of on-site ladders where necessary.
- 25. Design plan services include Design Development and Construction Documents with each provided once.
- 26. The design of the HVAC system graphics for a digital networked energy management control system is not part of the scope of this project. We will provide specifications and sequence of operations for the digital EMS upgrades as needed, but not a design of the EMS screen view of the HVAC components.
- 27. We assume the electrical systems being extended have adequate capacity and are in good working order. We do not include engineering design services to replace these main building systems, except if explicitly stated under the scope of work.
- 28. The Standard Terms and Conditions attached shall apply to this entire contract.
- 29. HVAC system commissioning is not included.

Fee:

For the engineering services described above, RISE Engineering proposes to bill at a fixed fee as noted below.

BASIC SCOPE OF SERVICE FEE	
Schematic and Design Development	\$34,650
Construction Documents	\$42,575
Construction Administration	\$19,275
Total: \$96,500	

\*Change orders or amendments to the scope of work and additional requested time or resources may be obtained at hourly rates with prior approval from the customer.

The following hourly rates shall apply:

Principal	\$225/hr.	Sr. Engineer/Project Manager/Sr. Tech. Spec.	\$175/hr.
Engineer	\$125/hr.	Designer	\$100/hr.
Computer Technician	\$75/hr.	Clerical/Spec Writer	\$60/hr.

This proposal is valid for 100 days from the date written.

Deliverables

Deliverables will consist of electronic sets of 36" x 24" mechanical plans with the associated specifications.

Schedules:

Commencement of work would start in approximately two (2) weeks after receiving written request for services.

Thank you again for giving us the opportunity to submit this proposal. Please direct any questions you may have regarding this proposal to me at (401) 784-3700 extension 6129 or at [jpvandeputte@RISEngineering.com](mailto:jpvandeputte@RISEngineering.com).

Sincerely,



Jean-Paul Vandeputte, PE, CEM, GBE, CDSM, LEED AP  
Director of Engineering  
RISE

Terms and Conditions

Commencement: Within two (2) weeks upon contract approval

Payment: Due upon delivery of each phase. DD, CD and CA phases (NET 30)

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1. Upon receipt and approval by RISE and Customer, Customer agrees to remit amount due in full. Interest of 1.5% will be charged monthly on any unpaid balance after 30 days.
  2. All work to be completed in a workmanlike manner according to standard practices.
  3. Any change from the above specifications involving extra costs will be executed only on written orders and will become an extra charge over and above the contract amount.
  4. Pricing is valid for 100 days from the proposal date.
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NOTE: THIS CONTRACT MAY BE WITHDRAWN IF NOT EXECUTED WITHIN 100 DAYS.

RISE AUTHORIZED SIGNATURE:

DATE: 10/03/2023



Client Certification

Please indicate the desired services:

Acceptance of Contract – The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payments will be made as outlined above. The undersigned has initialed each of the following Standard Terms and Conditions four (4) pages at the lower right hand corner.

PRINTED NAME: \_\_\_\_\_

CUSTOMER SIGNATURE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE OF ACCEPTANCE: \_\_\_\_\_

**STANDARD TERMS AND CONDITIONS  
TO LETTER AGREEMENT**

**1. Definitions**

- a. "CEC" shall mean Creative Environment Corp., a Rhode Island corporation.
- b. The "Client" shall mean the party or parties identified in the "Agreement" (as hereafter defined) as having entered into a contract with CEC.
- c. The "Agreement" shall mean the written agreement pursuant to which CEC has agreed to perform services for the Client, whether in the form of a proposal or otherwise, including any General Conditions appended thereto or incorporated by reference therein.
- d. The "Services" shall mean the services which CEC is to perform under the Agreement, including any "Additional Services".
- e. The "Representative" shall mean any person or entity actually or apparently acting on behalf of the Client with respect to the "Project" (as hereinafter defined), including, without limitation, (i) employees of the Client, (ii) in the event the Client is engaged in the practice of architecture or engineering, persons employed by the person or entity which has retained the Client's services in connection with the Project, and (iii) any architect, engineer, contractor or construction manager retained by the Client, directly or indirectly.
- f. The "Project" shall mean the design, construction, rehabilitation, or other work in connection with which CEC is providing the Services to the Client.

**2. Standard of Care**

In accepting this agreement for engineering services you acknowledge the inherent risks associated with construction. In performing our professional services, we will use the degree of care and skill ordinarily exercised under similar circumstances by members of the profession (the generally accepted professional standard of care) practicing under similar circumstances and at the time of the subject services.

**3. Authorization, Acceptance or Approval of Services**

- a. Approval by any Representative of any of the Services performed by CEC, or authorization given by any Representative for CEC to perform any part of the Services or any Additional Services or to incur any Reimbursable Expenses, may be either oral or written. Such approval or authorization shall be effective, whether given before, during or after the performance of the Additional Services or the incurrence of the Reimbursable Expenses. In the event that the Agreement allocates the Services into phases, authorization given by any Representative to CEC to proceed with any phase of the Services shall be deemed to constitute acceptance and approval of all work performed by CEC in connection with the prior phase of the Services.
- b. Successors or assigns of the Client shall be bound by approvals, authorizations or acceptances previously given by any Representative.
- c. In the event any law, statute, ordinance, rule, regulation or order, Factory Mutual or Board of Fire Underwriters standard is adopted, revised or interpreted such that CEC is required to change, revise or supplement designs or other work performed by CEC prior to the effective date of such adoption, revision, or interpretation, any such change, revision or supplement shall be deemed to constitute an Additional Service, for which additional compensation shall be paid to CEC.

**4. Payments**

Payments are due within thirty (30) days after CEC submits the invoice to the Client. In the event that the Client fails to pay when due any invoice delivered to it by CEC, CEC shall thereupon suspend performance of services under the agreement and have a lien upon all of the drawings, specifications, plans, documents or other materials or writings prepared by CEC, or at its direction, and then in its possession, and shall be entitled to withhold all such materials from the Client until such time as payment in full of the invoice is made. This lien shall be in addition to, and not in lieu of, any rights or remedies which CEC may have under the Agreement, or at law, equity or otherwise. The Client hereby releases CEC from any right pursuant to this Paragraph 5, including, without limitation, any consequential damages, lost profits, additional financing or other expenses or claims for delay in completion.

CEC will be entitled to reimbursement of all costs actually incurred by it in collecting overdue accounts, including reasonable legal fees, collection agency fees, and interest at a rate equal to the highest rate allowed by State Law.

If applicable, within a reasonable period of time after submitting out invoices to the Client, CEC reserves the right to contact the Owner directly for assistance and/or have payment made directly from the Owner to CEC in lieu of receiving payments from the Client.

**5. Reimbursable Expenses**

Transportation, lodging, postage and delivery charges; reproduction of plotting costs; automobile travel; miscellaneous items, and sub consultants/subcontracts (if required) will be invoiced as stated in the agreement. Mileage charges for automobiles will be invoiced at the prevailing rate established by the IRS. In those situations where reimbursable expenses are invoiced separately, backup for expenses will be provided only if required contractually by the Client or Owner.

**6. Retainage**

No retainage will be held from payment of CEC's invoices, unless agreed upon in writing in advance of notice to proceed.

**7. Separate Consultants**

If a firm or firms are separately engaged by the Client or the Owner to provide services under the general direction of CEC, CEC will have no responsibility or liability for the performance or technical sufficiency of the services of separately engaged firms,

**8. No Deduction**

No deduction will be made from CEC's compensation on account of claims of negligence in performance of professional services by CEC, except in the case where the finder-of-fact has made a determination of professional negligence by CEC and assessed damages caused by CEC's negligence. In such case, the compensation to CEC may be offset by the damages (or any part of damages) assessed by the finder-of-fact.

**9. Documents**

All documents including reports, electronic media, and drawings, prepared or furnished by CEC and its subconsultants pursuant to this Agreement are instruments of service in respect of this Project and CEC will retain an ownership and property interest therein whether or not the Project is completed. The Client may make and retain copies of such documents for information and reference in connection with the Project; however, such documents are not intended or represented to be suitable for reuse by the Client, including extensions of the project or on any other project, nor are they to be relied upon by anyone other than the Client. Accordingly, the Client will, to its fullest extent permitted by law, defend, indemnify and hold harmless CEC from and against any and all costs expenses, fees, losses, claims, demands, liabilities, suits, actions and damages whatsoever arising out of or resulting from any unauthorized reuse of the documents or disbursement by Client to third parties. If it is necessary to distribute any documents to an unrelated third party, both the third party and Client agree:

- 1) The third party is bound by all the conditions and limitations of this Agreement and related documents;
- 2) The third party is bound by all limitations of liability or indemnity provisions.

CEC reserves the right to remove its professional seal and title block from documents turned over to the Client.

**10. Indemnification**

The Client shall indemnify CEC and its principals, officers and employees against any liability, claim or expense (including payment of attorneys' fees and disbursements as incurred) in connection with actions, proceedings or claims by any person or entity for monetary losses (and, to the extent permitted by law, property damages and personal injuries) alleged to have occurred in connection with the performance of the Services, unless the sole cause for such losses, damage or injuries was negligence by CEC. The foregoing shall not affect any rights of CEC to contribution or indemnification from Client. In addition, the Client hereby agrees that CEC, its principals, officers, agents and consultants are hereby released of and from any and



D/B/A Creative Environment Corp.

Initialed by Client: \_\_\_\_\_



all liability or responsibility (i) for the discovery, presence, investigation, examination, testing, sampling or other review of any asbestos, PCB's, or other toxic/hazardous-containing materials which may be located in or about the project, (ii) for any work undertaken with respect to the handling, removal, disposal of, encapsulation or other treatment of any such asbestos, PCB's, or other toxic/hazardous-containing materials within the project, or (iii) for compliance with any laws, orders, rules or regulations imposed by any federal, state, city or other governmental entity, agency or instrumentality, except to the extent that CEC has expressly agreed in this agreement to undertake responsibility thereof. The Client does hereby agree to indemnify and hold harmless CEC from and against any and all liability, fines, suits, damages, losses, demands, costs and expenses of any kind or nature whatsoever incurred in connection with any claim or proceeding brought against CEC by any party and in any way related to any aspect of items (i), (ii), or (iii) of the immediately preceding sentence. Indemnification shall include the defense of any claims, suits, demands or fines arising therefrom, by counsel approved by CEC in writing that may be brought by the Client or by any third party. The foregoing provisions hereof shall survive the expiration or earlier termination of this agreement.

Client shall cause any and all Contractors, Subcontractors, Material Suppliers and other entities or persons (hereinafter "Contractor") actually responsible for construction to indemnify CEC to the extent permitted by law against risk which are not normally borne by the engineering profession in the form of AIA Document A-201 – General Conditions of the Contract for Construction (1987 Edition), Section 3.18. Client shall also cause Contractor to name CEC as an additional insured on Contractor's Comprehensive General Liability policy.

**11. Dispute Resolution**

After attempting to negotiate among themselves in good faith, and prior to the initiation of any legal proceedings, the parties agree to submit all claims, disputes or controversies arising out of or in relation to the interpretation, application or enforcement of this Agreement to non-binding mediation. Mediation will be conducted under the auspices of a mediation service or professional mediator as the parties agree upon. The party seeking to initiate mediation shall do so by submitting a formal written request to the other party to this Agreement. This Article will survive completion or termination of this Agreement, but under no circumstances will either party call for mediation of any claim or dispute arising out of this Agreement after such period of time would normally bar the initiation of legal proceedings to litigate such a claim or dispute under State Law. The parties agree that all causes of action against each other shall accrue no later than the date of substantial completion of the project. The losing party shall pay all mediation services.

**12. Delays and Extensions of Time**

- a. If CEC, at any time, is prevented from, or delayed in, providing the Services by any act or omission by the Client, any of its Representatives, the Architect for the Project, or any employee of or contractor for any of the foregoing or by changes ordered in the Services, or by labor disputes, governmental entities, fire, unusual delay in transportation, adverse weather conditions not reasonably foreseeable, unavoidable casualties, or any cause beyond CEC's control, or by delay authorized by the Client (or its Representative) pending arbitration, or by any other cause which CEC reasonably determines may justify the delay, then (i) CEC may, on notice to the Client, extend the term of the Agreement for such reasonable time as CEC may determine, and (ii) the payments to be made to CEC for each phase of the Services or for any Additional Services shall be increased by 1% for each additional thirty-day period (or part thereof) added to the original term of the Agreement.
- b. In the event that the Client does not commence and thereafter continue the Project in accordance with the time schedule described in the Agreement or described by the Client to CEC prior to entering into the Agreement, or otherwise prevents CEC from performing any phase of the Services in accordance with such time schedule, CEC may, at its option, (i) exercise its rights pursuant to Subparagraph 7 (a) hereof, or (ii) terminate the Agreement without incurring any liability to the Client for such termination, in which event the Client shall pay for all Services performed, in whole or in part, by CEC prior to termination, at the contract price established in the Agreement.
- c. The remedies described in Subparagraphs 7(a) and 7(b) shall be in addition to, and not in lieu of, any rights or remedies which CEC may have under this Agreement, or at law, equity or otherwise.

**13. Adequacy of the Funding for the Project**

The Client represents and warrants that it has secured, or will secure in a timely fashion, funding adequate to commence and to complete the Project, within the time schedule referred to in the Agreement or described to CEC prior to entering into the Agreement. Cancellation or revision of the Project as result of the Client's

failure to secure funding in a timely fashion or any other reason shall not, in any event, permit the Client to terminate the Agreement or excuse the Client from performing its obligations to CEC in a timely manner.

**14. Certain Limitations on Responsibility**

CEC does not assume responsibility for construction means, methods, techniques, sequence of procedures, or for safety precautions and programs in connection with the work. CEC does not assume responsibility for the contractors' failure to carry out the work in accordance with the contract requirements or for stopping the work in the event of such failure. CEC's review of the contractors' performance is not intended to include review of the adequacy of safety measures, in, on or near the construction site. CEC is responsible for design only and is not liable for unsatisfactory performance of the designed systems resulting from code constraints, improper installation, operation and maintenance. The above applies also to projects where sister companies of Thielsch Engineering Inc. may be the Contractor.

**15. Verification of existing Conditions**

Inasmuch as the remodeling and/or rehabilitation of the existing structure requires that certain assumptions be made by CEC regarding existing conditions, and because some of these assumptions may not be verifiable without the Client's expending substantial sums of money or destroying otherwise adequate or serviceable portions of the structure, the Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless CEC, its principals, officers, directors, employees and sub-consultants (collectively, CEC) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising out of or in any way connected with this Project, excepting only those damages, liabilities or costs attributable to the sole negligence and willful misconduct by CEC.

**16. Information Provided by Others**

The Client shall furnish, at the Client's expense, all information, requirements, reports, data, surveys and instructions required by this Agreement. CEC may use such information, requirements, reports, data, surveys and instructions in performing its services and is entitled to rely upon the accuracy and completeness thereof. CEC shall not be held responsible for any errors or omissions that may arise as a result of erroneous or incomplete information provided by the Client and/or the Client's consultants and contractors.

**17. Ownership and Work Product**

All calculations, reports, drawings, specifications, computer files, field data, notes and other documents and instruments prepared by CEC as instruments of service shall remain the property of CEC. CEC shall retain all common law, statutory and other reserved rights, including, without limitation, the copyrights thereto, whether the project for which they are intended is executed or not. They are not to be used by anyone on other projects except by written agreement with CEC. The drawings may be deposited in the Client's file with the other drawings for the project.

**18. Inconsistent Provisions: Changes in the Terms Hereof**

- (a) Notwithstanding any inconsistent provisions in any Agreement (including any AIA form contract or general conditions annexed thereto) between CEC and the Client, the provisions hereof shall be controlling; provided, however, that the final written proposal, if any, as submitted by CEC to the Client or any handwritten or typewritten inserts or riders made or approved by CEC to the printed contract for General Conditions, if any, annexed to such proposal shall for General Conditions, if any, annexed to such proposal shall supersede any inconsistent provisions hereof.
- (b) Execution of the Agreement by the Client shall be deemed an acceptance of each and every term of the Agreement and of these Standard Terms and Conditions. All provisions of the Agreement and these Standard Terms and Conditions, in the form and with the contents as submitted by CEC to the Client, shall be binding contractual obligations of the Client, and may be modified, changed or waived only with the specific written consent of CEC. In the event that the Client, without the written consent of CEC, modifies or deletes any provision (or part of any provision) of the Agreement or these Standard Terms and Conditions, such provision (or part thereof) in the form and with the contents as submitted by CEC to the Client shall nonetheless be deemed to constitute a term of the contract between CEC and the Client.

**19. Limitation of Liability**

In recognition of the relative risks and benefits of the Project to both the Client and CEC, the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of CEC and CEC's principals, officers, directors, partners, employees, shareholders, owners and sub-consultants for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorneys' fees and costs and expert-witness fees and costs, so that the total aggregate liability of CEC and CEC's principals, officers,





directors, partners, employees, shareholders, owners and sub-consultants shall be limited to the amount of our fee. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the Client nor CEC, their respective principals, officers, directors, partners, employees, contractors or sub-consultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected any way to the Project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation and any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both the Client and CEC shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this project.

**20. Terrorist Acts (in general)**

In addition to other commercial risks, CEC makes no claims that its design or other professional services are intended to prevent or survive acts of terrorism, war, civil unrest, or theft.

**21. Assignment**

Neither party to this Agreement shall transfer, sublet or assign any rights or duties under or interest in this Agreement, including but not limited to monies that are due or monies that may be due, without the prior written consent of the other party. Subcontracting to subconsultants, normally contemplated by CEC as a generally accepted business practice, shall not be considered an assignment for purposes of this Agreement.

**22. Interest on Past Due Invoices**

CEC's policy requires monthly payments for professional services and expenses in proportion to the progress of our work. In addition to any other remedies available to it, CEC reserves the right to charge interest at the rate of one-and-one-half (1.5) percent per month (18% per annum) or the maximum rate allowed by law, whichever is less, of the outstanding balance. In the event CEC files suit to enforce overdue payments, Client will reimburse all court costs and reasonable attorneys' fees.

**23. Cost Estimates**

As CEC has no control over construction costs or contractor's process, any reasonable estimate of construction costs made by CEC will be on the basis of CEC's experience and judgement as design professionals. CEC cannot and does not warrant or guarantee that contractor's proposals, bids or costs will not vary from our estimates. The above applies also to projects where sister companies of Thielsch Engineering, Inc. may be the contractor.

**24. Energy Estimates/Modeling**

CEC has no control over building and equipment operation and/or maintenance, or climatic conditions. Accordingly, any energy estimates and/or models are made on the basis of CEC's experience and judgement as design professionals. CEC cannot and does not warrant or guarantee that actual building or system operating costs will not vary from our estimates and/or models.

**25. Client's Responsibilities**

The Client will provide CEC with all existing, reliable, and accurate information relating to the Project, but not limited to the existing conditions, soils investigations, and program data. If the Client becomes aware of any fault or defect in the Project or CEC's services, he/she will promptly notify CEC. The Client will furnish required information or services as expeditiously as necessary for the orderly performance of the services.

**26. Owner's Representative**

If the owner retains an Owner Representative of the project, the Owner shall provide to CEC, in writing, a list of duties, responsibilities and authority (DR&A list) the Owner Representative has been assigned by the Owner. CEC shall be entitled to rely upon the proper performance by the Owner Representative for the items in the DR&A list and shall bear no responsibility to the Owners or its representative(s) for any opinions, directions or decisions given by the Owner and Owner Representative that are in conflict with DR&A. In the event the Owner makes any changes to the Owner Representative's DR&A list, the Owner shall notify CEC, in writing, in a timely manner. CEC shall be entitled to rely upon the Owner Representative's decisions and directions as to all areas listed in the DR&A list. If any Owner-directed changes to the Owner Representative's DR&A list result in additional time or expense in order for CEC to prepare, coordinate or respond to changes to the plans or

specification, CEC shall be entitled to an equitable adjustment in fees and schedule for the performance of these additional services.

**27. Value Engineering**

If the Client and/or Owner retain the services of a Value Engineer (VE) to review the design prepared by CEC, these services shall be at the Client's and/or Owner's sole expense and shall be performed in a timely manner so as not to delay the orderly progress of CEC's services. The Client and/or Owner shall promptly notify CEC of the identity of the VE and shall define the VE's scope of services. All recommendations of the VE shall be given to CEC for review, and adequate time will be provided for CEC to respond to these recommendations.

If CEC objects to any recommendations made during the VE process, it shall so state in writing to the Client and/or Owner, along with the reasons for objecting. If the Client and/or Owner, in spite of CEC's objections or without CEC's knowledge, requires the incorporation of changes into reports, drawings, specifications, bidding, or other documents, the Client and/or Owner agrees to waive all claims against CEC and to indemnify and hold harmless CEC from any damages, liabilities or costs, including reasonable attorney's fees and costs of defense, which arise in connection with or as a result of the incorporation of such design changes required by the Client and/or Owner.

In addition, CEC shall be compensated for services necessary to incorporate recommended value engineering changes into reports, drawings, specifications, bidding, or other documents. CEC shall be compensated as Additional Service for all time spent to prepare for, review and respond to the recommendations of the VE. CEC's time for performance of its services shall be equitably adjusted.

**28. Indemnification for Mold Claims**

It is understood by the parties that existing and newly constructed buildings may, as a result of its construction, use, maintenance, occupation or otherwise, contain or be caused to contain mold substances which can present health hazards and result in bodily injury, property damage and/or necessary remedial measures. If, during the Project, CEC is made aware of any such substances, CEC will, without assuming liability for consequential or any other damages, suspend performance of services until the Client retains a qualified specialist to abate and/or remove the mold substances. The client agrees to release and waive all claims against CEC and its subconsultants arising from nor in any way connected with the existence of mold on or about the project site whether during or after completion of construction. The client further agrees to indemnify and hold CEC harmless from and against all claims, costs, liabilities and damages, including reasonable attorney's fees, arising in any way from the existence of mold on the project site whether during or after completion of construction, except for those claims, liabilities, costs or damages caused by the negligent acts of CEC.

**29. Green/LEED Design**

If the project includes any level of LEED, Green Building Rating System and other similar environmental guidelines (collectively "LEED"), the Client and/or Owner recognize that the achievement of such certification is subject to third parties over which CEC has no control, and may require the cooperation of the Client, Owner, Contractor, and others. The Client and/or Owner acknowledge and understand LEED is subject to various and possible contradictory implementation. Therefore, the Parties agree that if LEED certification is the stated goal of the Project, CEC shall use reasonable care in its design to achieve the goal but makes no warranty or guarantee that the Project, when complete, will actually achieve LEED certification. In addition, the Client and/or Owner acknowledge that its desire to achieve LEED may impact the available design and product options and may impact the overall cost, schedule, and performance of the complete project. The Client and/or Owner have accepted these potential impacts in the recognition of the importance it has placed on the values of a LEED project.

**30. Waiver of Consequential damages**

To the fullest extent permitted by law, the Client shall not make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or this Agreement. This waiver of consequential damages shall include, but not be limited to loss of use, loss of profit, loss of business, loss of income, loss of reputation, increased energy, water, and other operational costs, unrealized tax incentives, credits, deductions and/or rebates, and any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract, and breach of strict or implied warranty.

**31. Contingency**

The Client and/or Owner and CEC agree that certain increased costs and changes may be required because of possible omissions, ambiguities, or inconsistencies in



the drawings and specifications prepared by CEC and, therefore, that the final construction cost of the Project may exceed the contracted construction cost. The Client and/or Owner further agrees to set aside a reserve in the amount of five percent (5%) of the Project construction cost as a contingency to be used, as required, to pay for any such increased costs and changes. The Client and/or Owner further agrees to make no claim by way of direct or third party action against CEC or its subconsultants with respect to any increased costs within the contingency because of such changes. Not included in the contingency are typical change orders for owner requested changes, unforeseen conditions, substitution of equipment, changes in design, and/or code official required changes.

**32. Termination or Abandonment**

The agreement may be terminated by either party upon no less than seven (7) days written notice, should the other party fail substantially to perform in accordance with the terms of this agreement through no fault of the party initiating the termination.

**33. Controlled Inspection or Full-Time Project Representation Services**

If included in CEC's Scope of Services, shall mean that CEC shall endeavor to provide further protection for the Client against defects in work, but the furnishing of such controlled defects in work, but the furnishing of such controlled inspection or full-time project representation services shall not make CEC responsible for construction means, methods, techniques, sequences or procedures, or auctions and programs. CEC shall not have control or charge of and shall not be responsible for the acts or omissions of the Contractor, Subcontractors or any other persons performing any of the work, or for the failure of any of them to carry out the work in accordance with the Contract Documents.

**34. Review of Shop Drawing Submittals**

If included in CEC's Scope of Services, is not conducted for the purpose of determining the accuracy and completeness of details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designed by the Contractor, all of which remain the responsibility of the Contractor to the extent required by the Contract Documents. CEC's review shall not constitute approval of safety precautions or of construction means, methods, techniques, or sequences of procedures. CEC's review of a specific item shall not indicate approval of an assembly of which the item is a component. When professional certification of performance characteristic of materials, systems or equipment is required by the Contract Documents. CEC shall be entitled to rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by the Contract Documents.

**35. Standard Condition Terms Survival**

If any of CEC's Standard Conditions, or portions thereof, shall be adjudged null and void, it is agreed that the remaining Standard Conditions, or portions thereof, shall remain intact and be given full force and effect.

**36. State Law Governing Agreement**

This Contract shall be governed by and construed in accordance with, the laws of the State of Rhode Island. The Client agrees and consents to the exclusive jurisdiction of the courts of the State of Rhode Island for all purposes regarding this Contract and further agrees and consents that venue of any action brought hereunder shall be exclusively in the County of Providence.