

## **EXHIBIT 9**

### **SCOPE OF DESIGN-BUILD FIRM'S LEED® SERVICES AND WORK**

Capitalized terms used herein shall have the meaning assigned to such terms in the Contract, unless expressly provided otherwise herein.

#### **Section 1 – General LEED® Requirements**

- 1.1 Design-Build Firm acknowledges that the Owner has advised the Design-Build Firm of the Owner's requirement that the Project achieve no less than the minimum credits necessary to attain the Minimum Certification Level. Accordingly, the Design-Build Firm's performance of the Services and Work shall be conducted and completed in accordance with all applicable requirements of these credits related to design and construction in order for the Project to achieve no less than the minimum credits necessary to attain the Minimum Certification Level.
- 1.2 The Design-Build Firm represents and warrants that, as part of its LEED® Services and Work, it (i) will coordinate with the Project Team, including the Program Manager's Commissioning Agent, throughout all phases of the Project, and (ii) implement the LEED® credits necessary to demonstrate achievement of the Owner's Minimum Certification Level in accordance with the requirements of the Design-Build Services Agreement (the "Agreement") and this Exhibit, as further set forth herein.

#### **Section 2 - LEED® Equivalency Services**

- 2.1 The Design-Build Firm's DPOR shall review applicable criteria for achieving the Minimum Certification Level and shall advise the Owner with regard to achieving such Certification Level. The DPOR's LEED® Coordinator, as designated in Design-Build Firm's Staffing Plan (Exhibit 5), shall schedule and conduct meetings during the Design and Construction Phases, communicate with members of the Project Team, and issue progress reports on a monthly basis to manage and facilitate the process of achieving LEED® equivalency for the Project.
- 2.2 The Design-Build Firm shall manage and coordinate the LEED® Services provided by the DPOR and the other Design-Build Firm Personnel's with those services provided by the Owner and the Owner's consultants, including the Program Manager, Architectural Representative and the Program Manager's Commissioning Agent. The Design-Build Firm shall verify the accuracy and completeness of any services and information furnished by the Owner and the Owner's consultants related to demonstration of the LEED® equivalency of the Project. The Design-Build Firm shall provide prompt written notice to the Owner if the Design-Build Firm becomes aware of any error, omission or inconsistency in such services or information related to the LEED® equivalency of the Project.

2.3 NOT USED.

#### 2.4 **LEED® Equivalency Workshop**

No later than the conclusion of the Schematic Design Phase, the Design-Build Firm and its DPOR shall conduct a LEED® Equivalency Workshop with the Owner, the Program Manager, the Architectural Representative, the Program Manager's Commissioning Agent and the Owner's other consultants, during which the attendees will: (1) review the LEED® Green Building Rating System; (2) examine LEED® credits to be targeted, utilizing the appropriate Green Building Rating System Project Checklist, and identify potential LEED® points associated with those credits; (3) examine strategies for implementation of the targeted LEED® credits; and (4) discuss the potential impact of the targeted LEED® credits on the Project schedule and Owner's program and budget. Design-Build Firm shall evaluate and inform Owner and Program Manager of the costs, benefits and return-on-investment analysis of each potential LEED® credit, and prepare cost estimates for achievement of each such credit.

#### 2.5 **LEED® Equivalency Plan**

2.5.1 Following the LEED® Equivalency Workshop, the DPOR shall prepare a LEED® Equivalency Plan based on the targeted LEED® credits. The LEED® Equivalency Plan shall consist of, at a minimum: (1) the appropriate Green Building Rating System Project Checklist indicating the targeted LEED® credits; (2) the Owner's Minimum Certification Level requirement; (3) information describing the Design-Build Firm's, the Design-Build Firm Personnel's, and the Commissioning Agent's responsibilities for each LEED® requirement, prerequisite and credit; (4) a list of the LEED® documentation required from each of them; and (5) all information required by the criteria established for the LEED Equivalency Report, which criteria is attached hereto and incorporated by reference herein as Attachment A. The Design-Build Firm shall submit the updated LEED® Equivalency Plan to the Owner and Program Manager for the Owner's approval with each Design Phase submittal. The Design-Build Firm shall update and submit to the Owner the LEED® Equivalency Plan, in accordance to this Agreement, at regular intervals for the duration of the Project to reflect any Approved changes thereto.

2.5.2 Following the Owner's approval of the LEED® Equivalency Plan, the Design-Build Firm and Design-Build Firm Personnel shall provide the services identified as the responsibility of the Design-Build Firm in the LEED® Equivalency Plan, as may only be changed by the Design-Build Firm after receipt of Owner's written approval of any changes to the LEED® Equivalency Plan. The Design-Build Firm shall make adjustments to the LEED® Equivalency Plan, as the design and construction of the Project progresses, to reflect any changes approved by the Owner. Throughout the Design and Construction Phases, the DPOR shall conduct monthly LEED® status work sessions with the Owner and Program Manager to: (i) review, evaluate, and update as

necessary the LEED® Equivalency Plan; (ii) and confirm each applicable Project participant is fulfilling its responsibilities pursuant to the LEED® Equivalency Plan.

2.5.3 The DPOR shall prepare Construction Documents that incorporate the requirements of the LEED® Equivalency Plan.

2.6 **NOT USED.**

2.7 **LEED® Services during Construction**

2.7.1 The DPOR shall review, and respond in writing to, written requests by the Design-Build Firm, Design-Build Firm Personnel, Program Manager or Owner for additional information about the Construction Documents related to LEED® equivalency and shall include the Owner and Program Manager on all such correspondence. The DPOR shall include the Owner and Program Manager on any such correspondence with the Design-Build Firm.

2.7.2 The DPOR shall prepare supplemental Drawings, Specifications and other information in response to requests for information (RFIs) by the Design-Build Firm or any Design-Build Firm Personnel related to LEED® equivalency, and shall submit copies of such documents to the Program Manager.

2.7.3 The DPOR's designated LEED® professional, as a representative of the Owner, shall visit the site at the intervals required by the Agreement, to become generally familiar with and to keep the Owner informed about the progress of the portions of the Work related to LEED® equivalency, and shall submit a field report of each visit verifying that the Project is being constructed in accordance with the LEED® Equivalency Plan.

2.7.4 The DPOR shall review and approve or take other appropriate action upon the Design-Build Firm's submittals such as Shop Drawings, Product Data and Samples for the purpose of checking for conformance with applicable LEED® credit requirements. The DPOR's action shall be taken with such reasonable promptness as to cause no delay in the Work, in the Project Schedule or in the activities of the Owner, Program Manager, Owner's consultants or Design-Build Firm, and in no event shall exceed the amount of time for review of submittals allowed by the Agreement.

2.7.5 The DPOR shall review requests by the Owner, Design-Build Firm, Design-Build Firm Personnel, Program Manager, Commissioning Agent, or Owner's or Program Manager's subcontractors or consultants for changes in the Work that may affect LEED® equivalency. The DPOR shall be responsible for making a determination whether the requested changes in the Work are materially different from the requirements of the LEED® Equivalency Plan. If the DPOR determines that implementation of a requested change in the Work would result in a material effect on achievement of the Minimum Certification Level, the DPOR shall notify the Owner and Program Manager, who may

authorize further investigation of such change. Based upon the DPOR's investigation and information furnished by the Project participant requesting the changes, if any, the DPOR shall make recommendations to the Owner regarding the implementation of the requested changes.

### **Section 3 - Project Commissioning**

- 3.1 The Parties agree that the Program Manager's Commissioning Agent shall act as Commissioning Authority (CxA) to lead, review, and oversee the completion of all commissioning process activities for LEED® equivalency. The CxA shall conduct, consistent with the review requirements of the LEED® rating system, the necessary commissioning design reviews of the DPOR's Basis of Design Documents and design documents prior to completion of the Construction Documents, and back-check the review comments in the DPOR's subsequent design submissions. The CxA shall also review the Design-Build Firm's submittals applicable to systems being commissioned for compliance with the DPOR's LEED® Basis of Design Documents. Without impacting the GMP, the Design-Build Firm and its DPOR shall cooperate with the CxA and make revisions to design documents throughout the design and construction phases of the Project, as required by the CxA to comply with the LEED® Equivalency Plan.

### **Section 4 – Miscellaneous Provisions**

- 4.1 The Design-Build Firm represents and warrants, which representation and warranty shall survive the execution and delivery of this Agreement, any termination of this Agreement and the Final Completion of the Work, that it has the expertise, experience and knowledge to construct the Project in accordance with the USGBC's LEED® current standard for New Construction and Major Renovations in order for the Project to achieve the minimum credits necessary to attain the Minimum Certification Level.
- 4.2 Design-Build Firm acknowledges and understands the Owner will suffer irreparable financial and other harm unless the Project achieves the minimum credits necessary to attain the Minimum Certification Level.
- 4.3 The Design-Build Firm hereby represents and warrants to the Owner that the Design-Build Firm accepts responsibility for the coordination and implementation of all LEED® credits required by the LEED® Equivalency Plan and the Design-Build Firm further guarantees to undertake its best efforts in order to achieve the minimum credits necessary to attain the Minimum Certification Level.
- 4.4 Notwithstanding anything contained herein or in the Agreement to the contrary, Owner and Design-Build Firm agree that any additional construction interest and financing costs, lost rental income, lost property value, and increased construction costs incurred by

Owner as a result of Design-Build Firm's default under the Contract Documents with respect to LEED® requirements shall constitute actual damages and shall not be considered consequential damages.

- 4.5 It shall be a condition precedent to Final Completion that the DPOR shall have submitted to the Program Manager the Approved LEED® Equivalency Report in accordance with the requirements of Attachment A, evidencing that the Project has achieved the minimum credits necessary to attain the Minimum Certification Level. The issuance of a Certificate of Final Completion shall be subject to revocation by Owner if it is determined within two (2) years of Substantial Completion that Design-Build Firm failed to demonstrate achievement of the minimum credits necessary to attain the Minimum Certification Level in accordance with Attachment A.

## ATTACHMENT A TO EXHIBIT 9

### LEED® EQUIVALENCY REPORT CRITERIA

The final version of the LEED® Equivalency Plan shall be submitted to the Owner prior to Final Completion as a LEED® Equivalency Report in a three-ring binder with a table of contents, section dividers, and all documentation and information required hereunder and by Exhibit 10. The report shall include information supporting each of the LEED® referenced credits that have been incorporated into the Project pursuant to the LEED® Equivalency Workshop to enable Owner to attain the required certification level if Owner should later elect to complete the LEED® templates and documentation and submit the Project for certification to the GBCI for a LEED® Silver rating under CURRENT LEED® STANDARDS for New Construction and Major Renovations. The supporting information included in the report will include the following for each prerequisite and credit as applicable.

1. USGBC credit or prerequisite name.
2. USGBC reference guide intent.
3. USGBC reference guide requirements.
4. A general description of implementation of each credit into the Project and a narrative explaining how compliance with the credit requirements has been achieved, based on the Design Build Firm's interpretation and experience, with such requirements.
5. For credits and prerequisites requiring calculations to determine achievement (for example, water use reduction, optimize energy performance, minimum energy performance, maximize open space), calculations will be included.
6. For credits requiring certain types of materials (for example, recycled content, low-emitting materials), the report will reference specifications and shop drawings/submittals for materials incorporated into the Project, with verification those materials were installed by Design-Build Firm.
7. For credits where USGBC documentation would require diagrams, drawings or photography prepared specifically for USGBC format/templates (for example, daylighting, views), the report will reference Drawings included in the Construction Documents.
8. For Sustainable Site credits requiring offsite drawings for identification of adjacent services, the report will indicate that compliance has been evaluated and determined and will, in narrative form, define specific services and distances that confirm this

evaluation.

9. For credits requiring the Owner to adopt certain processes (for example, use of “green cleaning products”), report will include recommended process/procedure/implementation.
10. For credits requiring sustainability programs, report will identify recommended Owner exhibits or education programs (“green education exhibits” to be posted in building as an example).
11. During construction, Design-Build Firm will track and submit information required to obtain credits from USGBC. Credits requiring contractor input include:
  - a. SS Pre. 1 SWPPP.
  - b. MR 2 Construction Waste Management.
  - c. MR 4 Recycled Content.
  - d. MR 5 Regional Materials.
  - e. MR 7 Certified Wood.
  - f. IEQ 3.1 IAQ During Construction.
  - g. IAQ 3.2 IAQ Before Occupancy.
  - h. IAQ 4.1-4.5 Low Emitting Materials.

All construction-related LEED® credits will be documented and verified in accordance with the requirements set forth herein, as applicable.

12. The Design-Build Firm shall collect and include with the report any documentation required of the Commissioning Agent or Owner’s other consultants such that all documentation related to LEED® compliance is included in the LEED® Equivalency Report.
13. As part of Design-Build Firm’s Final Pay Application, Design-Build Firm shall prepare and submit a final report for all of the above, demonstrating how the Project satisfies the requirements to attain a LEED® Silver rating in the event Owner later elects to make an independent submission of the Project to the USGBC. Design-Build Firm shall include in the final report the following certification of the information to be contained in such report:

“The Design-Build Firm and the DPOR hereby certify that (i) each portion of this report prepared by any Design-Build Firm Personnel that are design professionals has been sealed by such professional as a duly licensed design professional, (ii) all information contained in this report is accurate, true and correct, and (iii) it is the professional opinion of the DPOR and as such the professional opinion of the Design-Build Firm, that the Project will qualify for LEED® Silver certification under CURRENT LEED® STANDARDS for New Construction and Major Renovations if Owner elects to prepare a full submission of the Project to the USGBC/GBCI based on the information included in the report.”