

## REQUEST FOR PROPOSALS

Pursuant to Article XV Sections 73-75 of the Delaware Charter, sealed proposals will be received by the City of Delaware, Ohio, City Hall, One South Sandusky Street, Delaware, Ohio 43015, until 10:00am, on May 20, 2016 at the City Manager's Office and opened immediately thereafter, for the following:

### Contract

Design/ Build Contract for Re-Roof 440 East William Street Facility

in accordance with the conceptual documents prepared by and/or for the City of Delaware and on the City of Delaware's website.

Information concerning the conceptual documents and other Contract Documents may be examined at:

City of Delaware, Ohio  
City Manager's Office  
City Hall  
Delaware, Ohio 43015

Each bid must be accompanied by a Bid Guaranty meeting the requirements 153.54 to 153.57 of the Ohio Revised Code. Bids shall be sealed and addressed to:

City of Delaware, Ohio  
Assistant City Manager  
City Hall  
One South Sandusky Street  
Delaware, Ohio 43015

A pre-proposal meeting will be held at 440 East William Street, Facility Conference Room, Delaware, Ohio at 9:00am May 11, 2016. Attendance to the pre-proposal meeting is mandatory for all interested and qualified firms.

All interested parties may address inquiries to Jacqueline M. Walker, Assistant City Manager, (740) 203-1025.

No proposal may be withdrawn within sixty (60) days after the actual date of the opening thereof. The City of Delaware reserves the right to reject any or all proposals, to waive any informalities and to award the contract to the lowest and best bid as deemed to be in the best interest of the City, as determined by the City Manager.

City of Delaware, Ohio  
R. Thomas Homan  
City Manager

Advertise on the City's website until May 20, 2016.

**City of Delaware Ohio  
Design Build Contract for**

**Re-Roofing 440 East William Street, Delaware Ohio**

**Intent:** It is the City of Delaware's intent to enter into a contract with a qualified and experienced contractor for the design and construction of the project as described in the Conceptual Design Documents included in this RFP.

**Process:**

- 1) The Notice to Bidders will be on the City's website until May 20, 2016.
- 2) A pre-proposal meeting will be held at 9:00am on May 11, 2016 at the Facility Conference Room, 440 East William Street.
- 3) All proposals are due by 10:00am on May 20, 2016
- 4) The City will evaluate the qualifications of submitted proposals and short list the respondents
- 5) Only the short listed respondents' proposals will be further reviewed unless a short listed respondent cannot continue, then the City has the right to replace that respondent.
- 6) Once a proposal has been accepted, the City will prepare a contract for execution.
- 7) A pre-construction meeting will be held and then the project will commence

**Submittal Requirements and Forms:** Each proposer must identify the design member and the construction member of the design-build team and submit with its proposal the following information, which will be used by the City to evaluate the proposals and qualifications of the proposers:

- 1) Experience with Design/Build Projects (both team members);
- 2) Past performance with design and construction for similar projects (both team members);
- 3) Key staff dedicated to this project as well as total number of staff employed (both team members);
- 4) Most recent audited financial statements (both team members);
- 5) Narrative explaining technical and creative approach to the project; and
- 6) Proposed total price for design and construction.

Also, each proposer must submit with its proposal the following:

- 7) a completed Proposal Guaranty and Contract Bond identical to the form included in this RFP, in the amount of the total proposed price for design and construction or else a certified check for 10% of the proposed total price for design and construction; and
- 8) a completed Non-Collusion Affidavit.

The complete proposal with all required documentation is to be delivered in duplicate to:

City of Delaware  
City Hall  
City Manager's Office

One South Sandusky Street  
Delaware, Ohio 43015  
Attn: Jacqueline M. Walker

All other documents included in the RFP must be completed by the proposer whose proposal is accepted, prior to entering into a contract. The Modified Form of Agreement and Modified General Conditions included in the RFP are the contract documents that the proposer is agreeing to execute if its proposal is accepted.

**Qualifications:** According to the City of Delaware Ordinances:

(a). At the time design-build services are to be provided under a Design-build Contract, a Design/Builder must be an Entity, employ an Entity, or have as a partner, member, joint venturer, or subcontractor an Entity, that is licensed, registered or otherwise qualified under Ohio law to provide the design professional services and construction services to complete the public improvement project and do business in Ohio.

(b). In accordance with this article, a Design/Builder may contract with the City to provide design professional services and construction services that the Design/Builder is not itself licensed, registered or otherwise qualified under Ohio law to perform if the Design/Builder provides the services through subcontracts with licensed, registered or otherwise qualified Entities under Ohio law.

**Approved Equals:** All materials called out in the specifications may be substituted for *as approved equals*, at the discretion of the City of Delaware.

**Proposal:**

- 1) The fee proposal shall be provided in a lump sum bid (not including Alternate #1) including all design costs, labor and materials for the entire roofing system as specified.
- 2) The design build team will also provide these costs per building. The reason being is solely cost. The City may deem in its best interest to only complete a portion of the roof system.
- 3) Finally, the design-build team must provide a price for Alternate #1. The City of Delaware will require a 15% contingency fee on this project based on the total. The City's TOTAL budget for the entire project is \$380,000.

NONCOLLUSION AFFIDAVIT

The Bidder is required to execute and submit with the Bid, the Noncollusion Affidavit.

State of Ohio

County of Delaware

Bid Name and Number \_\_\_\_\_

Contractor \_\_\_\_\_ b  
eing first duly sworn, deposes and says that he is \_\_\_\_\_ (sole owner, a  
partner, president, secretary, etc.) of \_\_\_\_\_

\_\_\_\_\_, the party making the foregoing Bid; that such Bid is not made in the interest of or on behalf of any undisclosed person, partnership, company, association, organization or corporation; that such Bid is genuine and not collusive or sham; that said Bidder has not directly or indirectly colluded, conspired, connived or agreed with any Bidder or anyone else to put in a sham Bid or that anyone shall refrain from bidding; that said Bidder has not in any manner, directly or indirectly, sought by agreement, communication or conference with anyone to fix the Bid price of said Bidder or of any Bidder, or to fix any overhead, profit or cost element of such Bid price, or that of any other Bidder, or to secure any advantage against the City of Delaware awarding the contract or anyone interested in the proposed contract; that all statements contained in such Bid are true; and further, that said Bidder has not, directly or indirectly, submitted the Bid price or any other breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid and will not pay any fee in connection therewith, to any corporation, partnership, company, association, organization, Bid depository, or to any member or agent thereof, or to any individual except to a person or persons as having a partnership or other financial interest with said Bidder in his general business.

Signed:

\_\_\_\_\_

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

Seal of Notary

\_\_\_\_\_

**PROPOSAL GUARANTY AND CONTRACT BOND**  
**(O.R.C. § 153.571)**

KNOW ALL PERSONS BY THESE PRESENTS, that we, the undersigned \_\_\_\_\_  
\_\_\_\_\_ (“Design-Builder,” aka "Contractor") as principal  
and \_\_\_\_\_ as surety are hereby held and firmly  
bound unto The City of Delaware, Ohio, as obligee in the penal sum of the dollar amount of the  
proposal submitted by the principal to the obligee on \_\_\_\_\_, 20\_\_, to undertake  
the project known as Design and Construction of Roof at 440 East William Street Delaware,  
Ohio (“Project”). The penal sum referred to herein shall be the dollar amount of the principal's  
proposal to the obligee, incorporating any additive or deductive Alternates made by the  
principal on the date referred to above to the obligee, which are accepted by the obligee. In no  
case shall the penal sum exceed the amount of \_\_\_\_\_  
Dollars (\$\_\_\_\_\_). (If the foregoing blank is not filled in, the penal sum will be the full  
amount of the principal's proposal, including add Alternates. Alternatively, if the blank is filled  
in the amount stated must not be less than the full amount of the proposal including add  
Alternates, in dollars and cents. A percentage is not acceptable.) For the payment of the penal  
sum well and truly to be made, we hereby jointly and severally bind ourselves, our heirs,  
executors, administrators, successors, and assigns.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH that whereas the above named  
principal has submitted a proposal for work on the Project.

Now, therefore, if the obligee accepts the proposal of the principal and the principal fails  
to enter into a proper contract in accordance with the proposal, plans, details, specifications,  
and bills of material; and in the event the principal pays to the obligee the difference not to  
exceed ten percent (10%) of the penalty hereof between the amount specified in the proposal  
and such larger amount for which the obligee may in good faith contract with the next lowest  
bidder to perform the work covered by the proposal; or in the event the obligee does not award  
the contract to the next lowest bidder and resubmits the project for bidding, the principal pays  
to the obligee the difference not-to-exceed ten percent (10%) of the penalty hereof between  
the amount specified in the proposal, or the costs, in connection with the resubmission, of  
printing new contract documents, required advertising, and printing and mailing notices to  
prospective bidders, whichever is less, then this obligation shall be null and void, otherwise to  
remain in full force and effect; if the obligee accepts the proposal of the principal and the  
principal within ten (10) days after the awarding of the contract enters into a proper contract  
in accordance with the proposal, plans, details, specifications, and bills of material, which said  
contract is made a part of this bond the same as though set forth herein.

Now also, if the said principal shall well and faithfully do and perform the things agreed  
by said principal to be done and performed according to the terms of said contract; and shall  
pay all lawful claims of subcontractors, materialmen, and laborers, for labor performed and  
materials furnished in the carrying forward, performing, or completing of said contract; we  
agreeing and assenting that this undertaking shall be for the benefit of any materialman or  
laborer having a just claim, as well as for the obligee herein; then this obligation shall be void;

otherwise the same shall remain in full force and effect; and surety shall indemnify the obligee against all damage suffered by failure of the principal to perform the contract according to its provisions and in accordance with the plans, details, specifications, and bills of material therefor and to pay all lawful claims of subcontractors, materialmen, and laborers for labor performed or material furnished in carrying forward, performing, or completing the contract and surety further agrees and assents that this undertaking is for the benefit of any subcontractor, materialman, or laborer having a just claim, as well as for the obligee; it being expressly understood and agreed that 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 said surety hereby stipulates and agrees that no modifications, omissions, or additions in or to the terms of the said contract or in or to the plans or specifications therefore shall in any wise affect the obligations of said surety on its bond, and does hereby waive notice of any such modifications, omissions or additions to the terms of the contract or to the work or to the specifications.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

PRINCIPAL

By: \_\_\_\_\_  
Printed Name & Title: \_\_\_\_\_

SURETY

By: \_\_\_\_\_  
Printed Name & Title: \_\_\_\_\_

Surety's Address: \_\_\_\_\_  
\_\_\_\_\_

Surety's Telephone Number: \_\_\_\_\_

Surety's Fax Number: \_\_\_\_\_  
\_\_\_\_\_

SURETY'S AGENT

Surety's Agent's Address: \_\_\_\_\_  
\_\_\_\_\_

Surety's Agent's Telephone Number: \_\_\_\_\_

Surety's Agent's Fax Number: \_\_\_\_\_

**NOTE: The Contract Bond form that follows is to be used ONLY by a Proposer that is awarded a contract and submits a form of Proposal guaranty other than the combined Proposal Guaranty and Contract Bond with its bid. If a Proposer submits a combined Proposal Guaranty and Contract Bond, then the proposal guaranty becomes the contract bond when the contract is awarded.**

**AIA Bid Bond or Payment and Performance Bond forms are not acceptable for this Project.**

**CONTRACT BOND**

(O.R.C. § 153.57)

KNOW ALL PERSONS BY THESE PRESENTS, that we, the undersigned ("Design-Builder," aka "Contractor"), as principal, and \_\_\_\_\_,

as surety, are hereby held and firmly bound unto City of Delaware, Ohio ("Owner") as obligee, in the penal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), for the payment of which well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH that whereas, the above-named principal did on the \_\_\_\_\_ day of \_\_\_\_\_, 2011, enter into a contract with the Owner for the design and construction of the project known as Design and Construction of Three Shelter Houses and Associated Improvements ("Project"), which said contract is made a part of this bond the same as though set forth herein:

Now, if the said Contractor shall well and faithfully do and perform the things agreed by the Contractor to be done and performed according to the terms of said contract; and shall pay all lawful claims of subcontractors, materialmen, and laborers, for labor performed and materials furnished in the carrying forward, performing, or completing of said contract; we agreeing and assenting that this undertaking shall be for the benefit of any materialman or laborer having a just claim, as well as for the obligee herein; then this obligation shall be void; otherwise the same shall remain in full force and effect; it being expressly understood and agreed that 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 said surety hereby stipulates and agrees that no modifications, omissions, or additions in or to the terms of the said contract or in or to the plans or specifications therefore shall in any wise affect the obligations of said surety on its bond, and does hereby waive notice of any such modifications, omissions or additions to the terms of the contract or to the work or to the specifications.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(PRINCIPAL)

\_\_\_\_\_  
(SURETY)

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

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

Printed Name & Title: \_\_\_\_\_

Printed Name & Title: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Surety's Address: \_\_\_\_\_  
\_\_\_\_\_

Surety's Telephone Number: \_\_\_\_\_

Surety's Fax Number: \_\_\_\_\_

\_\_\_\_\_  
NAME OF SURETY'S AGENT

Surety's Agent's Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Surety's Agent's Telephone Number: \_\_\_\_\_

Surety's Agent's Fax Number: \_\_\_\_\_

**CERTIFIED CHECK, LETTER OF CREDIT, OR CASHIER'S CHECK DOCUMENT**

(If not furnishing a proposal bond)

Accompanying this proposal is a: (Check one; and, the amount must be 10% of bid)

- Certified check for \_\_\_\_\_ dollars (\$\_\_\_\_\_)
- Irrevocable Letter of Credit for \_\_\_\_\_ dollars (\$\_\_\_\_\_)
- Cashier's Check for \_\_\_\_\_ dollars (\$\_\_\_\_\_)

and it is agreed that if this proposal is accepted and the undersigned fails to enter into a contract and give satisfactory bond within ten (10) days after such acceptance, the security represented in the document checked above shall be forfeited to the City of Delaware, Ohio, as liquidated damages.

The signers of this proposal, if not a corporation, are citizens of the United States.

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THE FULL name of all persons, parties, or corporations interested in the foregoing bid as principals are as follows:

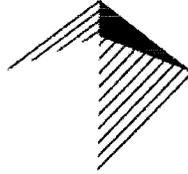
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**DBIA**



**DESIGN-BUILD  
INSTITUTE OF AMERICA**

# Standard Form of 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) as modified by the parties 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) as modified by the parties.

**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.

2.2.2 Design-Builder shall act as Owner's sole agent and sole means for achieving compliance with Section 153.64 of the Ohio Revised Code (protection of underground utility facilities) by performing duties such as but not necessarily limited to contacting all owners of underground utility facilities that could be affected by the Work and including in the Drawings the identity and location of all such underground utility facilities. Design/Builder shall also be responsible for giving all notices to utility owners required by Section 153.64 of the Ohio Revised Code.

## **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 the approved Construction Documents to Owner prior to commencement of construction the Work.

**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 any 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 (if any).

## **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. Additionally, the Design-Builder warrants that the roof and wall systems will be weather tight. 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, including without limitation the Design-Builder's warranty under Paragraph 2.9.1.

## **2.11 Site Inspection**

2.11.1 Design-Builder warrants that it has made a thorough site investigation and is familiar with all site conditions that may affect the Work, including the conditions of any structures to which the Work must interface with or connect to.

## **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 Site Plan. 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 has furnished 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 three (3) ~~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:

The minimum limits of liability for the required insurance policies shall not be less than the following unless a greater amount is required by law:

5.1.1.1 Commercial General Liability ("CGL"): Bodily injury (including death) and property damage with a combined single limit of \$1,000,000 each occurrence, with a \$5,000,000 aggregate. CGL shall include (i) Premises-

Operations, (ii) Explosion and Collapse Hazard, (iii) Underground Hazard, (iv) Independent Contractors' Protective, (v) Broad Form Property Damage, including Completed Operations, (vi) Contractual Liability, (vii) Products and Completed Operations, to be maintained for a minimum period of one (1) year after final payment, (viii) Personal Injury, (ix) Owned, non-owned, and hired motor vehicles. The general aggregate shall be endorsed to provide that it applies to this Work only.

5.1.1.2 Automobile Liability, covering all owned, non-owned, and hired vehicles used in connection with the Work: Bodily injury (including death) and property damage with a combined single limit of \$1,000,000 per person and \$5,000,000 each occurrence.

5.1.1.3 Design-Builder's insurance shall be primary to any insurance maintained by Owner. Design-Builder shall obtain an additional named insurance endorsement for the CGL and automobile liability coverage with the following named insureds for covered claims arising out of the performance of the Work under the Contract Documents:

- a) Owner;
- b) Owner Council members, executive officers, and employees; and
- c) Owner's Representative and its employees.

5.1.1.4 Insurance policies shall be written on an occurrence basis only.

5.1.1.5. Products and completed operations coverage shall commence with the certification of the final Certificate for Payment to Design-Builder and shall extend for not less than two years beyond that date.

5.1.1.6 The Design-Builder shall require all Subcontractors to provide Workers' Compensation, CGL, and Automobile Liability Insurance with the same minimum limits specified herein, unless the Owner agrees to a lesser amount.

5.1.1.7. Owner shall be named as a certificate holder on the policies of insurance maintained by Design-Builder.

- .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 Property Insurance**

**5.3.1** Unless otherwise provided in the Contract Documents, Design-Builder 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 Design-Builder 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, Design-Builder shall provide Owner with certificates evidencing that (i) all Design-Builder'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 Owner. Design-Builder's property insurance shall not lapse or be canceled if Owner occupies a portion of the Work pursuant to Section 6.6.3 hereof. Design-Builder shall provide Owner with the necessary endorsements from the insurance company prior to occupying a portion of the Work.

**5.3.4** Any loss covered under Design-Builder'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** Within ten (10) days of execution of the Agreement, Design-Builder shall submit for Owner's review and approval a schedule of values for all of the Work. The Schedule of Values will (i) subdivide the Work into its respective parts, (ii) include values for all items comprising the Work and (iii) serve as the basis for monthly progress payments made to Design-Builder throughout the Work.

#### **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 Work performed 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 To the fullest extent permitted by law, Design-Builder shall indemnify, hold harmless, and defend Owner and the officers, employees, and agents of same from and against all claims, (whether alleged or proven), demands, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, including the breach of any warranty provided in the Contract Documents.

~~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 Claims 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.

**10.1.2** Design-Builder shall not knowingly (as "knowingly" is defined in the Federal False Claims Act, 31 USC Section 3729 et seq.) present or cause to be presented a false or fraudulent Claim. As a condition precedent to Design-Builder making a Claim, the written notice of Claim shall be accompanied by an affidavit sworn before a notary public or other person authorized to administer oaths in the State of Ohio and executed by an authorized representative of Subcontractor, which states that:

"The Claim which is submitted herewith complies with Section 10.1.2 of the General

Conditions, which provide that the Design-Builder shall not knowingly present or cause to be presented a false or fraudulent Claim."

Failure to submit such affidavit with initial written notice of a Claim shall constitute an irrevocable waiver of the Claim.

10.1.3 Within ten (10) days of written request, Design-Builder shall make available to Owner or its representative any books, records, or other documents in its possession or to which it has access, (including but not limited to Design-Builder's daily logs/reports, original estimates of Work and applicable agreements, correspondence with subcontractors and suppliers, internal correspondence (including email), and accounting records.) Failure to do so shall be a material breach of the Contract and Design-Builder shall indemnify Owner for all of Owner's costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to Design-Builder's failure to comply with this provision, including its enforcement.

## **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.

10.2.4 Any dispute, claim or other matter not settled by negotiation or other means as mutually agreed upon by Owner and Design-Builder shall be determined by the Court of Common Pleas for Delaware County, Ohio, which shall have exclusive venue and jurisdiction over such matters and claims.

10.2.5 In the event that Design-Builder files a Claim against Owner, Owner shall be entitled to make an offer of settlement of the Claim to Design-Builder at any time up to the date of trial. Such offer of settlement shall not be admissible into evidence in the litigation except on the issue of entitlement to recovery of attorneys' fees, costs and expenses. If at any stage of the litigation, including any appeals, Design-Builder's claim is dismissed or found to be without merit, or if the damages awarded to Design-Builder on its claim do not exceed Owner's offer of settlement, Design-Builder shall be liable to Owner and shall reimburse Owner for all attorneys fees, costs and expenses incurred by Owner from the date of the offer of settlement until the date of the final adjudication and resolution of Design-Builder's claim.

#### **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.

**11.3.2** 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.

**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 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.

## **Public Works Facility Roof Specs: Re-Roofing Scope of Work**

### **Contractor Requirements for project:**

- All Materials as specified delivered to jobsite / freight included in overall pricing
- Unload all materials to worksite (owner to provide material lay down area.
- All equipment required to complete all aspects of the project.
- Furnish all labor required - project will require State of Ohio prevailing wages be paid for all trades involved in the project.
- Complete fastener pull out testing prior to project commencement to ensure fastener being used will provide sufficient pull out resistance for the roof assembly / manufacturer being proposed for use - there are no Factory Mutual requirements for this roof system
- Provide material submissions to owner, prior to ordering materials, including color options etc for approval - along with an approved project submission notice from the respective materials manufacturer relating to materials to be installed.
- Contractor to be registered with the City of Delaware
- Contractor to provide any permits required by the City of Delaware.
- Contractor will include all warranty costs for this project - two warranties will be required - (1) - 15 Year "No Dollar Limit" Labor and Materials warranty - including 72 mph wind speed warranty coverage & a 20 Year "Pro Rated" Membrane materials warranty - Both warranties to be written by the materials manufacturer for the terms referenced above.
- Contractor agrees to owner holding 10% of the total contract amount - until providing the owner with written notification from the materials manufacturer the installation has been accepted by the manufacturer's technical department for technical conformance, any and all punch-list items have been identified and repaired as required by the manufacturer's technical department.
- Contractor will complete work in complete compliance with all OSHA requirements - specific emphasis on fall protection / life safety. Specific plan of action will be required pre-project for addressing fall protection and fall protection of the existing translucent skylight panel locations
- All materials delivered to site - will be properly packaged, and covered with tarps until such time as the materials are transported onto the roof for installation.
- Materials shall be stored on the ground until such time as the materials are to be installed on the roof for installation - any damage (deflection) of the existing metal panels created by "overloading" of materials will be the responsibility of the contractor to repair.
- Contractor will be responsible for protecting the building's watertight integrity for all work in progress for the duration of the project - any work in progress which may become damaged by rain will be removed and replaced at contractor's expense.

- Contractor responsible for protecting the occupants and equipment within each building area during construction. Contractor to maintain all driveways, walkways and parking stalls free and clear of obstruction, materials etc. throughout the duration of the project
- Contractor will familiarize himself with the project by conducting a site visit and inspecting the premises as required - including taking roof measurements and completing all tests required to fully understand all aspects of the project, coordinate times with our superintendent.
- Contractor to have a minimum of 25 years experience working with the respective manufacturer and deploy staff capable of installing the products specified - all personnel to be employees of the contractor (no subcontractors without written authorization / approval by owner)
- Contractor to provide all temporary restroom facilities - to be serviced weekly - for the duration of the project - unit to be placed where inhabitants of building are not effected by its' placement. Contractor's personnel are not to enter inside the building without authorization by City personnel.
- Contractor to remove and dispose of all rubbish created by the project for the duration of the project. Provide dumpster for rubbish id not hauled away daily.

**Owner's Requirements for project:**

- ❖ Provide 50 AMP breaker to central power distribution box - within 250' of work area - Contractor will provide 4-Wire (Dedicated Ground and Neutral wires) # 6 gauge - "SO" - rubber coated wire to power distribution box - Power will be routed to a rooftop power box with ground fault outlet equipped "temporary power distribution box" with weather tight fittings. If contractor chooses to use a portable power generation system (generator) - cost of generator will be included in the contractor's base price - generator required will be a trailer mounted 15KW generator to supply adequate power to the roof without creating excessive noise, or power fluctuations during the re-roofing process - all fuel required for generator at contractor's expense.
- ❖ Owner will provide project Notice of Commencement
- ❖ Owner will allow contractor access to edges / alongside building to allow contractor to complete work - with the understanding any excessive rutting will be repaired by the contractor as part of the contractor's final project clean-up work.
- ❖ Provide access to the facility from 7AM to 5PM, Monday through Friday through the duration of the project. Additional access on weekends may be available by special arrangement with the City.
  
- ❖ Owner will provide tax exemption certificate for the project.
- ❖ Owner will provide an adequate level gravel staging area for receiving materials - contractor to have personnel and equipment on site to receive all

Deliveries to the worksite - UNDER NO CIRCUMSTANCES WILL THE OWNER ACCEPT ANY DELIVERIES AT THE WORKSITE.

- ❖ Owner will make final color choices for the roof system color, along with metal edge(s) / gutters, downspouts etc.
- ❖ Any modification to mechanical piping or conduits currently routed across the roof, or attached to any roof penetration scheduled for removal will be altered by the owner, at owner's expense.
- ❖ Any modification required "beneath" the roof deck to modify or disconnect utilities to be owner's responsibility.
- ❖ Any change order condition identified will be brought to the owner's attention immediately - no potential change order work is to be completed without owner's formal authorization to proceed.
- ❖ Any heater pipe penetration which is defective or "un-flash able" is to be replaced prior to roofing.

## **RE-ROOFING SCOPES OF WORK (BY ROOF SECTION)**

### **General Roof Specs for all roof sections: # 1 / # 2 / # 3 / # 4 / # 5 / # 6 / # 7 / # 8**

#### ***Building # 1, #2 and #3***

Cover the existing skylight panels with .22 gauge steel cover panels - in sufficient lengths to entirely cover the translucent panels - contractors option to provide a matching metal panel - which matches exactly the existing panels, or fabricate 22 gauge galvanized patch panels which will extend the length of the skylight, and cover the panel from major rib to major rib - patch panel will be attached with a suitable fastener into roof supports as needed to secure the new roof insulation and provide a stable roof surface.

Remove the existing gravity air vents from the roof(s) and alter the existing sheet metal ridge closure as required as needed to allow the rib fill insulation to extend to the ridgeline to achieve a smooth ridge detail at the ridge detail locations. Provide additional wood blocking equal to the height of the insulation assembly, and any sheet metal required at all ridge details as needed- all wood blocking to be # 2 - Southern Yellow pine.

Install cut polyisocyanurate insulation between metal roof major ribs, taking into consideration intermediate ribs - to fill the cavity between the ribs. Building # 1 / # 3 insulation will need to be cut at angles on both sides of the fill panel to minimize the gaps in the fill insulation board. The objective is to create a level surface for the final cover board. Building # 2 will take a rectangular block of insulation - one corner of the filler block may need to be clipped to accommodate the standing rib overlap.

Overlay the fill insulation with 1/2" ISO-GAURD HD Cover Board (or equal) and attach through the fill insulation and into the existing sheet metal roof panels at the rate of attachment required by the respective manufacturer to achieve a 72 mph wind-speed warranty and other warranties specified in the contractor's responsibility section.

At all edges of the roof install # 2 southern yellow pine blocking between the metal ribs (cut and taper between ribs) - utilize 2" X 6" blocking between ribs cut into blocks and a 5 1/2" ripped piece of # 2 CDX plywood over the blocks to equal height of insulation assembly. Blocking along rake edge sides of building should be installed to accommodate EDGE-1 sheet metal edging with 8" face height, and should seal tight to existing building edge metal. Blocking at gutter edges should be designed to accept a new flange type gutter(s).

Install 60 mil TPO Self adhering membrane over the insulation material - contractor's option to install the membrane in a horizontal or vertical layout on the roof according to membrane manufacturer's instructions.

Flash into the roof all roof penetrations which exist - any abandoned penetration shall be removed and the hole should be patched over with an adequate sheet metal patch.

New 7 1/2" - .22 gauge, flange type roll formed gutters will be installed where existing gutters are currently in place or warranted to be installed, owner to select color.- all gutters should be installed in the longest lengths possible to avoid seam overlaps - gutter expansion joints to be installed based on downspout layout no single length of gutter should extend more than 75' in length. Straps in gutters are to placed 24" O.C. in the gutter and are to be bolted into backside of gutter, with stainless steel machine screws to match the hole size in the heavy duty gutter straps - all nuts to be stainless steel, nyloc type locking nuts. All gutter seams to be pop-riveted with 1/4" domed type stainless steel rivets, all gutter seams, drops and end caps to be sealed with Top-Coat Flex seal materials. New downspouts are to replace existing owner is to choose color.

Roofing membrane along gutter edge will be rolled over the gutter edge and terminated above the gutter straps with aluminum termination bar and water block  
**- NO QUICKSEAM TYPE FLASHINGS TO BE INSTALLED, TO FLASH**

**IN GUTTER FLANGE. Any seam along gutter edge flashing to be heat welded into place.**

Along the ridge detail a final piece of TPO cap membrane will be installed the length of the roof and will extend 12" down both sides from the centerline of the ridge.

Gable ends to be finished with 12" fascia to provide weathertight seal between building siding and roofing. Color to match gutters and downspouts as selected by owner.

All penetrations will be flashed in strict accordance with manufacturer specifications, and will pass technical inspection. All field constructed seams will be welded with care to minimize the need for random patches or the repair of irregularities caused by careless installation.

***Building # 4 / # 5 (Connector Roofs)***

These roof(s) are to be detailed in accordance with the specifications listed above all existing wall flashings will be treated as roofs and covered with insulation in a vertical orientation (flashing) flashings will extend up to the underside of the upper roof and terminated underneath a metal 90 degree piece of counter- flashing internal gutters will be lined with TPO material w and tapered to the drop locations in the internal gutters. A watertight connection will be made to transition from the roof to the gutter drainpipe - if plumbing modifications are required those modifications beneath the roof are to be made by the building owner.

***Building # 6 / # 7 (East End of facility)***

These roof(s) are to be detailed in accordance with the specifications listed above. Siding will be required at these end walls to properly this section of roof into the wall of the higher roof elevation - wall siding to consist of .24 gauge Kynar finished metal panels - girted out 2' on center from the existing siding wall panel as needed for a complete installation - where the East end of Building # 3 intersects with the lower roof sections of building # 6 and # 7. All existing ventilation flue(s) to be removed - the hole in the decking repaired and patched with 20 gauge galvanized metal and stitched screwed into place prior to roof installation.

***Building # 8 (East End of Facility)***

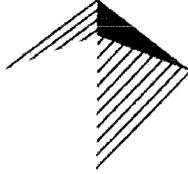
This roof(s) is to be detailed in accordance with the specifications listed above. The existing asphalt system is to be scraped as much as possible from the roof surface. A leveling layer of insulation board 1/2" HD board is to be installed between the aluminum panel connection plates. An additional layer of 1 1/2" insulation will be laid out and attached to the structure to provide a level surface to receive the new roofing material. All edge - work according to be completed in accordance with detail(s) provided on other roof sections.

**ALL WORK ON ALL ROOF SECTIONS WILL BE COMPLETED TO MEET OR EXCEED STANDARD MANUFACTURER REQUIREMENTS FOR WARRANTY PURPOSES.**

**Alternate #1:**

Installation of Sunwave Daylighting Skylight system, in buildings #1, #2 and #3. Building #2 only requires these to be installed along the western eighty (80'-0) feet of building.

**D B I A**



**DESIGN-BUILD**  
INSTITUTE OF AMERICA

## **Modified Form of Agreement Between Owner and Design-Builder – Lump Sum**

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

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

**OWNER:**

City of Delaware, Ohio  
One South Sandusky Street  
Delaware, OH 43015

**DESIGN-BUILDER:**

**PROJECT:**

Design and Construction of Three Restroom/ Concession Facilities and  
Associated Improvements

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") as modified by the parties;

~~.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 attached as Exhibit A;

.5 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;

.6 Owner's Request for Proposals, which is attached as Exhibit B, including any and all addenda;

.7 Design-Builder's Proposal, to the extent consistent with the requirements, terms, and conditions of items 2.1.1 through 2.1.8 identified herein; which is attached as Exhibit C, and

.8 Construction Documents prepared and approved in accordance with Section 2.4 of the General Conditions of Contract.

## 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 instruments of service and Design-Builder shall retain the ownership and property interests therein, including the copyrights thereto.

**4.2 Owner's Limited License.** Design-Builder hereby grants Owner a limited license to use the Work Product in connection with Owner's construction, occupancy and modification of the Project, conditioned on Owner's express understanding that its use of the Work Product is at Owner's sole risk and without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier (collectively the "Indemnified Parties"). This license shall survive the termination of this Agreement.

## 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 no later than \_\_\_\_\_ calendar days after the Date of Commencement ("Scheduled Substantial Completion Date").

**5.2.1(a)** 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.

**5.2.2** Interim milestones and/or Substantial Completion of identified portions of the Work shall be achieved as follows: None identified. Design-Builder shall make orderly progress with its work so that the Substantial Completion of the entire Work shall be achieved no later than the Scheduled Substantial Completion Date.

**5.2.3** Final Completion of the Work or identified portions of the Work shall be achieved as expeditiously as reasonably practicable and in not more than twenty five days after the Scheduled Substantial Completion Date.

**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 (5) days after the Scheduled Substantial Completion Date (the "LD Date"), Designer-Builder shall pay Owner (and Owner shall be entitled to retain from monies otherwise due Design-Builder) five hundred and 00/100 Dollars (\$500) as liquidated damages for each day that Substantial Completion extends beyond the LD Date. 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.

## 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 \_\_\_\_\_ (“Contract Price”), 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, only the following markup shall be allowed on such changes: 15% for overhead and profit.

## Article 7

### **Procedure for Payment**

#### **7.1 Progress Payments**

**7.1.1** Design-Builder shall submit to Owner on the fifteenth (15th) day of each month, beginning with the first month after the Date of Commencement, Design-Builder’s Application for Payment in accordance with Article 6 of the General Conditions of Contract.

**7.1.2** Owner shall make payment within ten (10) 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** Payment for labor shall be made at the rate of 92% of the amount invoiced up to and including the point where 50 percent of the work is complete, pursuant to Ohio Revised Code Section 153.14. After 50 percent completion there shall be no additional retainage for labor.

**7.2.2** Partial payments to Contractor for material delivered to the project or storage site approved by Owner shall be made at the rate of 92 percent of invoice cost not to exceed bid amount. The balance shall be paid when such material is incorporated into the Project.

**7.2.3** 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 twice the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion.

**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 (Reserved)**

**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; and

**.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.

**8.2** Design-Builder shall not be entitled to any lost profits (actual or anticipated) in the event of termination for convenience.

## 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:

R. Thomas Homan  
City Manager  
One South Sandusky Street  
Delaware, OH 43015

**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:

Jacqueline M. Walker  
Director of Administrative Services  
One South Sandusky Street  
Delaware, OH 43015

### 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: *(Identify individual's name, title, address and telephone numbers)*

\_\_\_\_\_

**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: *(Identify individual's name, title, address and telephone numbers)*

\_\_\_\_\_

## Article 10

### Bonds and Insurance

**10.1 Insurance.** Design-Builder shall procure in accordance with Article 5 of the General Conditions of Contract the following insurance coverages as provided in Article 5 of the General Conditions.

**10.2 Bonds and Other Performance Security.** Design-Builder shall provide a surety bond as provided in the Request for Proposals.

**Article 11**

**Other Provisions**

**11.1** Other provisions, if any, are as follows: No other provisions are identified.

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:**

City of Delaware, Ohio  
*(Name of Owner)*

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

R. Thomas Homan  
*(Printed Name)*

City Manager  
*(Title)*

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

**DESIGN-BUILDER:**

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

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

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

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

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

Approved As To Form

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

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

City Attorney  
*(Title)*