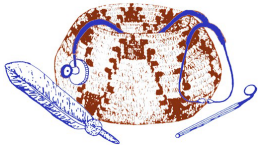


REQUEST FOR QUALIFICATIONS (RFQ)



Consolidated Tribal Health Project

**Consolidated Tribal Health Project
6991 N. State Street
Redwood Valley, CA 95470**

**P 707.485.5115
www.cthp.org**

Request for Qualifications for:

Design-Builder Services

Issued by:

CONSOLIDATED TRIBAL HEALTH PROJECT

6991 N. STATE STREET

REDWOOD VALLEY, CA 95470

(707) 485-5115

Date issued:

June 10, 2024

Due date:

**Proposals must be submitted No
later than 4:00 PM
On July 19, 2024**

REQUEST FOR QUALIFICATIONS (RFQ)



Consolidated Tribal Health Project

Consolidated Tribal Health Project
6991 N. State Street
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Request for Qualifications (RFQ)

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1.0 Introduction

Consolidated Tribal Health Project (CTHP) [Owner], a consortium of eight Tribes and Rancherias located in Mendocino County, CA, operates a comprehensive Tribal health clinic under a 93-638 compact with the Indian Health Service, including primary care, dental, and behavioral health care. The clinics operate out of a 1970s era campus which it acquired in the late 1980s. In 2023, CTHP's health clinic served an unduplicated population of nearly 5,000, and provided just over 20,000 visits. There is a significant opportunity to expand services, and improve health outcomes, through the expansion of the existing clinic, approximately 77% of whom are American Indians or Alaska Natives.

The proposed expansion project will add approximately 14,100 square feet of clinical space to the campus, together with roof top space. The additional space will consist of up to 16 dental operatories, 10 behavioral health rooms, two group therapy rooms, two waiting rooms, office space, meeting rooms, and storage. There will be some exterior work such as parking area expansion and site improvements.

2.0 Purpose

Consolidated Tribal Health Project Request for Qualification (RFQ) to solicit Statements of Qualifications (SOQ's) from General Contractors interested in providing Design-Build Services for the proposed Consolidated Tribal Health Project Expansion Project.

3.0 Notice to Submit a Statement of Qualifications

Notice is hereby given that Consolidated Tribal Health Project has issued the solicitation for Design-Build Services for the proposed Consolidated Tribal Health Project Expansion Project.

RFQ documents will be provided with this solicitation. If unable to access documents, please contact the RFQ Coordinator. Other than access to documents, no phone calls and/or verbal request/inquiries about the content of this RFQ will be accepted. Individuals or Proposers who solicit information about this RFQ either directly or indirectly from other sources, other than obtaining copies of the RFQ, will be disqualified.

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4.0 Scope of Services

4.1 The Project has been approved by Consolidated Tribal Health Project Board of Directors

4.2 The proposed Guaranteed Maximum Price (GMP) for the project is approximately \$17,750,000.

4.3 Schedule. Anticipated Notice to Proceed: January 1, 2025 .

Owner Occupancy is anticipated May 4, 2026.

4.4 Procurement Approach: Design Build (DB) delivery method for this project.

4.5 Consolidated Tribal Health Project plans to select the most qualified team based on criteria described in the RFQ.

4.6 A Price Proposal will be required including the following elements:

- A. Price to include Overhead and Profit Fee Percentages.
- B. Indian preference applies to this Project. Ten percent of the total number of available rating points will be given to qualified certified firms.

4.7 After Design-Builder is under contract, and as the design/budgets progresses, the Design- Builder will collaborate with and update Consolidated Tribal Health Project regarding the development of the Basis of Design Documents.

4.8 The Design-Builder will produce design documents for the Concept, Schematic, Design Development, 50% Construction Documents/Permit Set, 100% Construction Documents. The design documents shall be consistent with RFQ Section 4.0 Project Delivery/4.2 Project Schedule Outline duration.

Including providing a detailed estimate using CSI Master Format at each design milestone.

- Allow a minimum of two weeks for CTHP Team to review after each design milestone.

4.9 The Design-Builder shall review, analyze and validate the Owner Provided Information. Design Builder shall conduct such site investigations, environmental assessments, review of regulatory and legal authority and restrictions, and all other actions and review and assess other information as reasonably necessary to verify and validate the Owner provided information.

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- 4.10 The Design Builder shall engage and work collaboratively with the Owner and designated Project Work Groups to progress the design to a sufficient state to develop the Basis of Design, the Guaranteed Maximum Price, and Project Schedule. The timing of the GMP Proposal and the percentage complete of the designs and specifications will be jointly determined by the Owner and the Design Builder.
- 4.11 Development of the GMP: Forecasting and development of accurate project cost estimates throughout each phase of the Project is vital to the Owner's financial management and strategy. The Owner relies on the Design-Builder to provide and validate current and detailed cost estimates and forecasts that will be incorporated into the overall cost controls for the Owner.
- 4.12 Throughout the Project, the Design-Builder will update estimates and forecasts and provide data to the Owner to reflect real time information. Design-Builder will provide all pricing, estimates, and other data to develop the Commercial Terms on an open and transparent basis. The project controls system used by the Design-Builder shall be acceptable to the Owner and will be capable of being broken down and reported in a number of different work breakdown structures, including but not limited to organizing the financial data by cost element codes, subcontracts, vendors, Construction Documents packages, etc.
- 4.13 Design-Builder will attend weekly meetings with project stakeholders throughout the design and construction phase.
- 4.14 Be fully responsible for the care, custody, and control of the project during the construction phase.
- 4.15 Provide all general conditions, general requirements and temporary facilities necessary to execute the project in an active healthcare facility.
- 4.16 Design-Builder shall provide, testing, and closeout of the Project pursuant to the Contract Documents. CTHP and the Design-Builder will discuss prior to setting the GMP if commissioning will be provided by a 3rd party contracted to CTHP or provided by the Design-Builder.
- 4.17 Federal Procurement Guidelines do apply. Davis-Bacon and Related Acts Regulations Apply.
- 4.18 Be fully responsible for the project safety during the construction phase.
- 4.19 Project Goals:
 - Build a trusting relationship with an honest project team that is committed to the Project, and is committed to exceeding client expectations by performing to a high standard of care, resulting in a quality-built Project that will last for future generations.
 - Through the use of local/regional trade partners, create an efficient facility that can be maintained with local resources, and provide a long service life.
 - Expand upon the expertise of the entire Project Team to enable the development of future

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projects.

- Achieve completion of the Project within the time frame and budget while providing scope and quality that exceeds CTHP expectations, while also maintaining a safe and healthy work environment.

5.0 Project Delivery and Project Schedule Summary

5.1 Project Delivery

5.1.1 Use of the Design-Build delivery method provides an economic benefit by providing cost effective design and construction. CTHP is also using the Design-Build delivery method to contract with a single entity for both design and construction. The Design and Construction Services shall be set forth in a Design- Build Agreement. A draft form of the Design-Build Agreement is attached to this RFQ; however, it has not been vetted by Counsel and therefore CTHP reserves the right to make changes to the attachment Design-Build Agreement. Nevertheless, we anticipate using the DBIA 530 Form of the Contract as well as the DBIA 535 General Conditions, and Supplementary Conditions.

A. The Design-Builder Agreement is anticipated to follow the format below:

- 1) The Design-Builder will be compensated on the basis of the Cost of the Work plus the Overhead and Profit Percentage Fee Proposal. The Design-Builder compensation will be subject to the Not to Exceed Amount as well as an established Guaranteed Maximum Price (GMP) that will be set at or below the Design-Build budget.
- 2) The Design-Builder will have several phases. A general description of those phases are below:

B. Phase 1: During Phase 1, the Design-Builder will, among other duties, perform the following tasks:

- 1) Complete the validation of all information provided by CTHP as well as the site investigation.
- 2) Generate the deliverable set forth in the Phase 1 Scope of Services. Such deliverables are anticipated to include but not limited to: the Final Basis of Design Documents, the Final Schedule, and the fully developed GMP estimate budget, all of which shall be consistent with CTHP established GMP.

C. Phase 2: Phase 2 commences upon CTHP acceptance of the items submitted at the end of Phase 1, which form the basis of the GMP Agreement. In Phase 2, the Design-Builder completes final construction documents, secures all necessary permits, and completes construction pursuant to the Final Basis of Design Documents, the GMP and the Project Schedule.

5.2 PROJECT SCHEDULE SUMMARY

A preliminary project budget and schedule have been developed and reviewed internally by the client. A brief summary of current project schedule is as follows.

- | | |
|---|--------------------------------|
| 1. Commencement of Design-Builder Services: | Anticipated January 1, 2025 |
| 2. Design and Construction: | January 1, 2025 – June 1, 2026 |
| 3. Operations DAY 1: | May 4, 2026 |

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PROJECT SCHEDULE OUTLINE

1. Program Confirmation	2 weeks
2. Schematic Design	6 weeks
3. Design Development	6 weeks
4. Construction Documents	10 weeks
5. Permit	4 weeks
6. Pricing & Bidding	6 weeks
7. Construction	30 weeks

Please note that the proposed timeline for the RFP process outlined herein is subject to change at the discretion of Consolidated Tribal Health Project. While we endeavor to adhere to the suggested schedule, unforeseen circumstances or adjustments to our internal procedures may necessitate alterations. We appreciate your understanding and flexibility in this matter.

6.0 Proposal Content and Scoring

6.1 GENERAL INFORMATION

The Statement of Qualifications shall demonstrate the Proposers ability to undertake the Project by providing the following technical and management qualifications of the Proposer, Team Members, and individual Key Team Members. The Proposer is responsible for ensuring that contract information contained in their referenced project profiles is correct. The inability to contact a reference may have a detrimental impact on the evaluating qualifications.

Emphasis will be placed on experience and expertise in performing substantive work on projects that are of Similar Scope and Complexity, as described in the definitions above. CTHP reserves the right to award more points to projects that have more of the characteristics in the definition of Projects of Similar Scope and Complexity. CTHP also reserves the right to award more points to successful projects in which Proposer, Team Members, and/or individual Key Members had substantial responsibility for their respective scopes of work.

6.2 Statement of Qualifications – Proposer Organization and Responsibilities

A. Provide an organization chart (showing Team Members, Key Team Members and their firm affiliation) for all phases of the Project from programming through final acceptance and warranty and maintenance period. Key Team Members should include but not limited to the following individuals:

- a) Corporate executive(s) dedicated to the project.
- b) Design-Build Project Manager
- c) Construction Project Manager (if not the Design-Build Project Manager)

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- d) Lead Estimator
- e) Construction Superintendent
- f) Design Manager
- g) Lead Designer
- h) Designer Project Manager
- i) Key Design Consultants

Clearly indicate whether any individuals are proposed to fill multiple roles. CTHP reserves the right to reject the inclusion of any individual or consultant firm from the winning Design-Builder.

B. Provide a resume for all Key Team Members. Individual resumes should be no longer than one page and should include the following information:

- 1) Description of Key Team Member's proposed Project role and the percentage of effort that the Key Team Member will contribute to the Project.
- 2) Identification of Key Team Member's specialized experience and competence on Projects of Similar Scope and Complexity in the last 10 years.
- 3) If applicable, name of college attended, dates of attendance, major course of study, and degrees/certification.
- 4) If an architect or engineer, the states in which the architect or engineer is licensed to practice along with the applicable license numbers.
- 5) Provide a brief statement of the Key Team Member's past experience and employment for the past 10 years.
- 6) Design Build Institute of America (DBIA) designation, if applicable.

C. Provide a narrative describing the qualifications of Proposer's Team Members and Key Team Members and why the Team proposed in this Statement of Qualifications will exceed CTHP's Project Goals.

D. Provide litigation/dispute history for the lead Contractor and the Designer-of-record for the last five years.

6.3 Demonstrate History of Successful Projects of Similar Scope and Complexity

A. Describe the Team's experience in successfully managing design-build (or a similar integrated delivery model) Projects of Similar Scope and Complexity that include management and communications of an integrated team of design consultants, specialty subcontractors, and trade contractors. Include a description of any issues or problems that arose on the projects and how those issues or problems were resolved.

B. It is not required that all Team Members have experience with Projects of Similar Scope and Complexity or with the Design-Build delivery method. However, Proposer should cumulatively possess experience in these areas such that CTHP has confidence in the capabilities of the Proposer as a whole.

6.4 Budget Adherence

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- A. What process will the Proposer implement to ensure that the project is designed and constructed to a fixed fee and a set GMP? Include in your description projects where the Proposer creatively managed issues such as: sequencing, scheduling, site access, or other challenges factors.
- B. Describe the Proposer's approach to the following:
- Quality assurance/quality management
 - Changes in Scope.
- C. What formal and informal protocols and processes will the Proposer implement to ensure a project that is "designed to the budget" the first time. Include the Proposer's experience in commissioning and testing Projects of Similar Scope and Complexity.
- D. Describe your project buyout process and how you progress from the preliminary budget to final construction budget.

6.5 Safety

- A. Provide evidence of capacity of the Proposer to provide bonding in the amount of the estimated GMP. (An actual bond does not need to be submitted with Statement of Qualifications, but inability to provide the required bond capacity will result in disqualification).
- B. Within a three-year period immediately preceding the due date of the Statement of Qualifications, not have been determined by a final and binding citation and notice of assessment issued by department of labor and industries or through a civil judgement entered by a court of limited or general jurisdiction to have willfully violated, as defined in RCW 49.48.082, any provision of chapter 49, 46, 49.48, or 49.52 RCW.
- C. Provide the Table of Contents of the constructor's accident prevention program and a brief overview of its implementation.
- D. Provide the safety and accident prevention record of the construction members of the Proposer's team. Include other relevant information that documents their safety record, including Total Recordable Incidence Rate (TRIR)
- E. Provide a list of all OSHA, TOSHA, WISHA, or other safety agency citations and their dispositions for the past five years against the Proposer.

6.6 Past Utilization of TERO Certified Businesses

Describe the Proposer's successful past utilization of businesses certified by TERO. An Indian-Owned businesses will be given preference in accordance with CTHP By-laws but non-Indian ownership does not preclude a business from submitting a proposal or being awarded the contract.

6.7 Design-Builder Insurance Requirements

6.7.1 Insurance Types and Limits

Design-Builder shall purchase and maintain insurance of the types, with limits of liability, containing such endorsements and subject to such terms and conditions as follows, as well as Article 5 of DBIA Document No. 535, Standard Form of General Conditions of Contract Between Owner and Design-Builder.

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Design-Builder shall maintain the following insurance, naming the CTHP as an additional insured:

- a) Commercial General Liability Insurance in the amount of one million dollars each occurrence and three million dollars aggregate.
- b) Commercial Automobile Liability Insurance in an amount equal to the greater of one million dollars for all vehicles used in performance of the services or any other amount required by applicable law.
- c) Worker's Compensation Insurance, Disability Benefits Insurance and any insurance required by applicable law.
- d) No Subrogation. The Design-Builder waives all subrogation rights against CTHP and any of its Contractors, Subcontractors, Agents, Officers, Employees or Companies.
- e) CTHP Insurance. Design-Builder acknowledges that CTHP is covered under the Federal Tort Claims Act (FTCA) for tort claims for bodily injury and property damage as provided by federal law, and that CTHP acquires "gap" insurance only for tort claims caused by CTHP's negligence not covered by the FTCA. CTHP shall maintain commercially reasonable amounts of insurance or self-insurance covering its first party property damage exposure to damage to its buildings, facilities and business personal property.
- f) Professional Liability Insurance is to be provided by the Design Consultant. Such policies must provide coverage for the scope of professional services to be provided by or on behalf of the Design Consultant as set forth in the Agreement.
- g) Professional Liability Insurance is to be provided by Design-Builder. Such policies must provide coverage for the scope of professional services to be provided by or on behalf of the Design-Builder as set forth in the Agreement.
- h) Builder's Risk Insurance. Design-Builder shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located builder's risk insurance on an "all risk" or equivalent policy form 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 be the broadest coverage commercially available and shall include as additional insureds the interests of CTHP, Design-Builder, Design Consultants and Subcontractors of any tier. Such insurance shall include but not limited to 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 Construction Documents. A copy of the Builders Risk Insurance shall be made available to CTHP.
- i) Bonds and other Performance Security. 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. All bonds furnished by the Design-Builder shall be in a form satisfactory to CTHP.

6.8 Liquidated Damages

Time is of the essence. CTHP and Design-Builder mutually agree that time is of the essence

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with respect to the dates and times set forth in the Contract Documents.

Design-Builder understands that if Completion is not attained by the Scheduled Completion Date, CTHP will suffer damages which are difficult to determine and accurately specify. CTHP will levy a penalty of \$1,000/day against the Design Builder if the project is not completed by CTHP Completion date of May 1, 2026. CTHP and Design-Builder will negotiate final liquidated damages with the GMP Amendment pursuant to the Agreement.

6.9 Content

Proposals shall be no more than 25 pages. Proposer Statement of Qualifications must include a Table of Contents and be organized by discrete sections corresponding to the scoring criteria. A page is defined as an 8.5 x 11 inch (size when printed). For identification of a Project Table, Proposer may use 11x 17 inch (size when printed). Font size not to be smaller than 10 point. Statement of Qualifications not following the prescribed format will lose points. The following are excluded from the 25 page limit:

- Covers, tabs and dividers, provided that they do not contain substantive content
- Resumes
- Table of Contents
- Identification of Project Tables
- Cover Letter/Letter of Submittal

Provide the following information, in the order listed below:

- a. Title Page: State RFQ subject, full name of responding firm, mailing address, name and email address of contact person, and date of submission.
- b. Cover Letter: The cover letter should include statement indicating an understanding of the work to be performed and interest in performing the scope of work. Submittals in response to this RFP must be signed by the person in the Design-Builder organization who has the authority to commit the firm to the scope of work proposed in the submittal.
- c. Firm Background: Describe your firm including ownership structure, service area, volume, length of time in industry, financial stability and availability to the project locale. CTHP will give preference points to firms that are Native American owned, operated and controlled. If applicable, provide documentation to confirm your firm is at least 60% Native owned.
- d. Qualifications/Experience: Describe the Design-Builder experience in preparing the elements included in this RFP. Include at least three completed projects that are similar to the project described in this request. For each project, provide the following information:
 - Name and Location of project
 - Year completed
 - Name and contact information of client

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- Name and contract information of client project manager
 - Elements of the project that are similar to the scope elements of this project
- e. Approach: Provide a general discussion of your management philosophy. Include a description of your firm's involvement from the planning phase through the completion of the project. Provide specific examples of your methods to ensure quality, budget and schedule control utilizing inclusive, team-oriented processes.
 - f. Staffing Plan: This section should contain a detailed and specific discussion of your firm's proposed staffing plan. Include an organization chart, description of staff roles, resume and other relevant biographical information as deemed necessary. Describe your plan to effectively provide services on several concurrent projects.
 - g. Schedule and Cost Proposal: Provide a timeline showing the estimated length of time required for completion of the work described in the proposal. In addition, provide a detailed cost proposal that identifies all your associated costs and reimbursable for a not-to-exceed lump sum fee for this work. Also state any items not covered by your fee.

6.10 Evaluation and Scoring

All proposals received by the July 19, 2024 deadline will be reviewed and evaluated by the selection committee. Proposals will be scored using the criteria below. The committee may review references and request interviews/presentations.

The selection committee's scoring will be tabulated and proposals ranked based on the numerical scores received. CTHP will be the sole judge for ranking proposals and determining which proposal best meets the selection criteria and CTHP's needs. CTHP is not required to explain or justify its decision process to bidders. CTHP may deem proposals non-responsive and remove them from consideration if proposals are submitted late, do not follow specified format, or do not include the requested information.

The evaluation criteria, weighting and maximum points, out of 100 are as follows:

- Firm Background: Evaluation of firm's ownership structure, size, service area, financial stability, and availability to meet the project needs. (0-10)
- Experience and Qualifications: Firm's experience in successful completion of projects of similar size and scope. (0-15)
- Project Approach: Proposed strategies to meet project objectives. (0-10)
- Staffing Plan: Ability of project manager and staff assigned to this project, with consideration given to project experience and staffing levels. (0-15)
- Schedule: Firm's availability to promptly begin project follow the execution of the contract and identify a realistic and expeditious project schedule (0-20)
- Costs: Cost, while a significant criterion, is not the only factor in the selection process. Cost is particularly important when all of the other evaluation criteria are relatively equal. (0-20)
- Preference points for Native American owned firms (10)
A Native American owned firm must be able to provide proof that the Firm exercises majority control of the business and is substantially involved in day-to-day

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management and operations.

7.0 Submission Requirements

7.1 Point of Contact:

Brian Sewell, Project Manager, Consolidated Tribal Health Project, is the point of contact (POC) for all matters concerning this RFQ. Questions regarding this RFQ and materials provided in response to this RFQ must be submitted to:

Brian Sewell – Mobile: 509-200-0588
brian@palousehillsconsulting.com

All communication between the Proposer and CTHP upon receipt of this RFQ shall be with the RFQ Point of Contact (POC).

Any other communication will be considered unofficial and non-binding on CTHP. Proposers are to rely on written statements by the RFQ POC through CTHP.

Communication direct to parties other than the RFQ POC will result in disqualification of the Proposer.

Any revisions to the RFQ, if it becomes necessary to revise any part of the RFQ, an addendum will be issued to the Proposers.

7.2 Questions Regarding this RFQ:

Firm may submit questions regarding this RFQ prior to 4:00 pm PST on June 21, 2024. Only written questions submitted by email to lguzman@cthp.org will be accepted. No later than June 21, 2024, CTHP will make available by request a compilation of questions received (de-identify) and answers. Outside of this Q&A process, no additional information, other than what is included in the RFQ or is publicly available on CTHP's website, will be provided to potential bidders.

7.3 Proposal Due Date and Estimated Timeline:

7.3.1 Submission Deadline:

Proposals in response to this RFQ must be received no later than 4:00 pm on July 19, 2024. Proposals to be emailed in pdf format to lguzman@cthp.org. Electronic Submittal Only. Submittals shall be limited to the documents specified in the RFQ document and shall not include additional brochures or other sales material that are not specifically requested in the RFQ.

It is strongly recommended that you follow up with a phone call to confirm your submittal has been received prior to the closing date and time. You may contact the RFQ Point of Contact at the contact information provided in section 7.1 of this RFQ.

7.4 Timeline:

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The deadlines and timelines included in the RFQ are subject to change by CTHP.

- June 21,2024 Deadline for consultants to submit and questions regarding RFQ.
- June 28, 2024 Answers to all RFQ questions distributed to all potential bidders.
- July 19, 2024 Proposals due to CTHP by 4:00 pm PST
- July 30 CTHP Selection Committee to review and score proposals and notify all respondents.
- Aug 16-19,2024 Interviews if deemed necessary by CTHP.
- Aug 23, 2024 CTHP Design-Builder selection and notification to all bidders.

****Site Walk/Project Site Visit has not been schedule, please contact Brian Sewells if Proposer will require to schedule a site visit. See Section 7.1 of this RFQ for Point of Contact Information.**

7.5 Selection Process

The basis of selection will be a scoring of proposals by the selection committee. The selection committee may invite recommended finalists for interviews based solely upon its evaluation of the selection criteria. The selection committee, at its sole discretion may forego the interview process. Selection of the successful firm will be entirely at the discretion of CTHP and CTHP reserves the right to waive minor irregularities in the selection process and to reject any and all proposals.

CTHP accepts no responsibility for the costs and expenses incurred by Proposer responding to this RFQ.

7.6 Contract Requirements

Responding firms agree to comply with the legal requirements of the Consolidated Tribal Health Project, the standard and customary professional responsibilities for the Design-Builder Services as well as any special conditions which are made part of this solicitation or which are subsequently negotiated. Respondents also agree to comply with all applicable Federal, State, County and local ordinances, statues, rules and laws governing this project and its financing.

Respondents agrees that it will not sub-contract any part of the contract without the prior written consent of the Owner. The selection of all sub-consultants, engineers, or related services will be subject to prior approval from CTHP.

CTHP reserves the right to cancel award of a contract at any time before execution of the contract by both parties if cancellation is deemed to be in CTHP's best interest. In no event shall CTHP have any liability for the cancellation of the award.

Proposals that are incomplete or conditioned on the acceptance of additional terms by CTHP, or that contain any erasures, alterations, or that contain irregularities of any kind, or that are not in conformity with the law may be rejected.

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8.0 Attachments

Attachment 1 – Consolidated Tribal Health Project Concept Drawings*

- Concept Design
- Overall Area Plan
- Floor Plan

Attachment 2 - DBIA Contract Document #530 Standard Form of General Conditions of Contract Between Owner and Design-Builder – Cost Plus Fee with an Option for a Guaranteed Maximum Price

Attachment 3 - DBIA Contract Document #535, Standard Form of General Conditions of Contract Between Owner and Design-Build.

*The preliminary concept designs included in this RFP document are intended solely for illustrative purposes and do not represent the final design of the facility. Please be aware that these designs are subject to change, and the actual design, especially regarding interior design elements, may differ significantly. We encourage prospective bidders to consider these concepts as indicative of the project vision rather than definitive representations of the final outcome.

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Attachment 1: Consolidated Tribal Health Project – Concept Designs

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ATTACHMENT 2: DBIA Contract Document #530



**STANDARD FORM OF
AGREEMENT BETWEEN OWNER
AND DESIGN-BUILDER - COST
PLUS FEE
WITH AN OPTION FOR A
GUARANTEED MAXIMUM PRICE**

Document No. 530

Second Edition 2010
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Institute of America
Washington, D

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Design-Build Institute of America - Contract Documents LICENSE AGREEMENT

By using the DBIA Contract Documents, you agree to and are bound by the terms of this License Agreement.

- 1. License.** The Design-Build Institute of America ("DBIA") provides DBIA Contract Documents and licenses their use worldwide. You acknowledge that DBIA Contract Documents are protected by the copyright laws of the United States. You have a limited nonexclusive license to: (a) Use DBIA Contract Documents on any number of machines owned, leased or rented by your company or organization; (b) Use DBIA Contract Documents in printed form for bona fide contract purposes; and (c) Copy DBIA Contract Documents into any machine-readable or printed form for backup or modification purposes in support of your permitted use.
- 2. User Responsibility.** You assume sole responsibility for the selection of specific documents or portions thereof to achieve your intended results, and for the installation, use, and results obtained from the DBIA Contract Documents. You acknowledge that you understand that the text of the DBIA Contract Documents has important legal consequences and that consultation with an attorney is recommended with respect to use or modification of the text. You will not represent that any of the contract documents you generate from DBIA Contract Documents are DBIA documents unless (a) the document text is used without alteration or (b) all additions and changes to, and deletions from, the text are clearly shown.
- 3. Copies.** You may not use, copy, modify, or transfer any DBIA Contract Documents, or any copy, modification or merged portion, in whole or in part, except as expressly provided for in this license. Reproduction of DBIA Contract Documents in printed or machine-readable format for resale or educational purposes is expressly prohibited. You will reproduce and include DBIA's copyright notice on any printed or machine-readable copy, modification, or portion merged into another document or program.
- 4. Transfers.** You may not transfer possession of any copy, modification or merged portion of DBIA Contract Documents to another party, except that a party with whom you are contracting may receive and use such transferred material solely for purposes of its contract with you. You may not sublicense, assign, or otherwise transfer this license except as expressly provided in this Agreement, and any attempt to do so is void.
- 5. Term.** The license is effective for one year from the date of purchase. DBIA may elect to terminate it earlier, by written notice to you, if you fail to comply with any term or condition of this Agreement.
- 6. Limited Warranty.** DBIA warrants the electronic files or other media by which DBIA Contract Documents are furnished to be free from defects in materials and workmanship under normal use during the Term. There is no other warranty of any kind, expressed or implied, including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose. Some states do not allow the exclusion of implied warranties, so the above exclusion may not apply to you. This warranty gives you specific legal rights and you may also have other rights which vary from state to state. DBIA does not warrant that the DBIA Contract Documents will meet your requirements or that the operation of DBIA Contract Documents will be uninterrupted or error free.
- 7. Limitations of Remedies.** DBIA's entire liability and your exclusive remedy shall be: the replacement of any document not meeting DBIA's Limited Warranty which is returned to DBIA with a copy of your receipt, or at DBIA's election, your money will be refunded. In no event will DBIA be liable to you for any damages, including any lost profits, lost savings or other incidental or consequential damages resulting out of the use or inability to use DBIA Contract Documents even if DBIA has been advised of the possibility of such damages, or for any claim by any other party. Some states do not allow the limitation or exclusion of liability for incidental or consequential damages, so the above limitation or exclusion may not apply to you.
- 8. Acknowledgement.** You acknowledge that you have read this agreement, understand it and agree to be bound by its terms and conditions and that it will be governed by the laws of the District of Columbia. You further agree that it is the complete and exclusive statement of your agreement with DBIA which supersedes any proposal or prior agreement, oral or written, and any other communications between the parties relating to the subject matter of this agreement.

REQUEST FOR QUALIFICATIONS (RFQ)

INSTRUCTIONS

For DBIA Document No. 530 Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee with an Option for a Guaranteed Maximum Price (2010 Edition)

Checklist

Use this Checklist to ensure that the Agreement is fully completed and all exhibits are attached.

_____	Page 1	Owner's name, address and form of business
_____	Page 1	Design-Builder's name, address and form of business Page
_____	1	Project name and address
_____	Section 2.1.3	Identify other exhibits to the Agreement Section
_____	4.2	Note the optional provisions that are provided
_____	Section 4.3.2	Complete blanks for additional sum for use of Work Product
_____	Section 5.2.1	Complete blanks for calendar days and note the optional language that is provided
_____	Section 5.2.2	Insert any interim milestones (optional)
_____	Section 5.4	Complete blanks for liquidated damages and note the optional provisions that are provided
_____	Section 5.5	If the parties select the option provided they have to insert an amount
_____	Section 5.6	Complete blanks for early completion and note the optional provision that is provided
_____	Section 5.7	Note the optional provisions that are provided
_____	Section 6.1.2	Insert basis for pricing preliminary services (optional)
_____	Section 6.2.1	Choose basis for Fee and complete blanks
_____	Section 6.2.2	Insert financial arrangements for adjustments and note optional provisions
_____	Section 6.3.3	Complete blanks for make-up; insert names of personnel names, etc.
_____	Section 6.3.4	Note the optional provision that is provided
_____	Section 6.4.4	Note the optional provision that is provided
_____	Section 6.6.1.1	Complete blanks for GMP, and note the optional provision that is provided Section
_____	6.6.1.2	Complete blanks for Design-Builder's Contingency
_____	Section 6.6.3.1	Choose method for sharing savings; complete blanks Section
_____	6.7.1	Note the optional provision
_____	Section 7.1.1	Complete blanks for amount of month
_____	Section 7.2.1	Complete blanks for revenue percentage and note optional provision
_____	Section 7.2.2	Note the optional provision that is provided
_____	Section 7.4	Complete blanks for interest rate
_____	Section 8.1.1	Complete blanks for overhead/profit method for termination for convenience
_____	Section 8.2.1	Complete blanks for percentages
_____	Section 8.2.2	Complete blanks for percentages
_____	Section 9.1.1	Insert Owner's Senior Representative's name, etc. (optional)
_____	Section 9.1.2	Insert Owner's Representative's name, etc. (optional)
_____	Section 9.2.1	Insert Design-Builder's Senior Representative's name, etc. (optional)
_____	Section 9.2.2	Insert Design-Builder's Representative's name, etc. (optional) Section 10.1
_____	Section 10.1	Attachment Insurance Exhibit
_____	Section 10.2	Insert amount and conditions of bonds or other security and note the options that are provided
_____	Section 11.1	Insert any other provisions (optional)
_____	Last Page	Owner's and Design-Builder's execution of the Agreement

General Instructions

No.	Subject	Instruction
1.	Standard Forms	Standard form contracts have long served an important function in the United States and international construction markets. The common purpose of these forms is to provide an economical and convenient way for parties to contract for design and construction services. As standard forms gain acceptance and are used with increased frequency, parties are able to enter into contracts with greater certainty as to their rights and responsibilities.
2.	DBIA Standard Form Contract Documents	Since its formation in 1993, the Design-Build Institute of America ("DBIA") has regularly evaluated the needs of owners, design-builders, and other parties to the design-build process in preparation for developing its own contract forms. Consistent with DBIA's mission of promulgating best design-build practices, DBIA believes that the design-build contract should reflect a balanced approach to risk that considers the legitimate interests of all parties to the design-build process. DBIA's Standard Form Contract Documents reflect a modern risk allocation approach, allocating each risk to the party best equipped to manage and minimize that risk, with the goal of promoting best design-build practices.
3.	Use of Non-DBIA Documents	To avoid inconsistencies among documents used for the same project, DBIA's Standard Form Contract Documents should not be used in conjunction with non-DBIA documents unless the non-DBIA documents are appropriately tailored to the actual nature of legal contract. Moreover, care should also be taken when using different editions of the DBIA Standard Form Documents on the same project to ensure consistency.
4.	Legal Consequences	DBIA Standard Form Contract Documents are legally binding contracts with important legal consequences. Contracting parties are advised and encouraged to seek legal counsel in completing or modifying these Documents.
5.	Reproduction	DBIA hereby grants to purchasers a limited license to reproduce its Documents consistent with the License Agreement accompanying these Documents. At least two original versions of the Agreement should be signed by the parties. Any other reproduction of DBIA Documents is strictly prohibited.
6.	Modifications	Effective contracting is accomplished when the parties give specific thought to their contracting goals and then tailor the contract to meet the unique needs of the project and the design-build team. That reason these Documents may require modification for various purposes including, for example, to comply with local codes and laws, or to add special terms. DBIA's latest revisions to the Documents provide the parties an opportunity to customize their contractual relationship by selecting various optional contract clauses that may better reflect the unique needs and risks associated with the project. Any modifications to these Documents should be initialed by the parties. At no time should a document be re-typed in its entirety. Re-creating the document violates copyright laws and destroys one of the advantages of standard forms-familiarity with the terms.
7.	Execution	It is good practice to execute two original copies of the Agreement. Only persons authorized to sign for the contracting parties may execute the Agreement.

REQUEST FOR QUALIFICATIONS (RFQ)

Specific Instructions

Section	Title	Instruction
General	Purpose of This Agreement	DBIA Document No. 530 ("Agreement") should be used when the parties intend that Owner pay Design-Builder the Cost of the Work plus a Fee, with or without a Guaranteed Maximum Price ("GMP"). If there is uncertainty about Owner's Project Criteria, or the Project Criteria remain to be developed by Owner and Design-Builder together, a cost-plus/GMP contracting approach is desirable. If there is certainty as to Owner's Project Criteria, a lump sum fixed price for the completion of all design and construction services may be suitable, especially when the Owner procures Design-Builder's services by competitive means. In such case, DBIA Document No. 525 should be used.
General	Purpose of These Instructions	These Instructions are not part of this Agreement, but are provided to the parties in their understanding of the Agreement and in completing the Agreement.
General	Related Documents	This Agreement shall be used in conjunction with the General Conditions of Contract. Other related Contract Documents are listed in Article 2 of this Agreement.
General	Date	On Page 1, enter the date when both parties reach a final understanding. It is possible, due to logistical reasons, that the date when the parties execute the Agreement may be different. Once both parties execute the Agreement, the effective date of the Agreement will be the date recorded on Page 1. This date does not, however, determine Contract Time, which is measured according to the terms of Article 5.
General	Parties: Owner and Design-Builder	On Page 1, enter the legal name and full address of Owner and Design-Builder, as well as the legal form of entity, e.g., corporation, partnership, limited partnership, limited liability company, or other.
2.1.2	GMP Exhibit, GMP Proposal	If a GMP is established upon execution of this Agreement, the GMP Exhibit must be attached pursuant to Section 2.1.1. If a GMP is established after execution of this Agreement, the GMP Exhibit must be attached pursuant to Section 6.6.2. Both the GMP Exhibit and GMP Proposal will be based on the Basis of Design Documents Design-Builder uses as the basis for its GMP.
2.1.5	Construction Documents	After execution of the Agreement, and consistent with the requirements of Section 2.4 of the General Conditions of Contract, Design-Builder will prepare Construction Documents, subject to Owner's review and approval.
	Order of Documents	The Construction Documents are listed in Section 2.1 in the order of their precedence. The GMP Exhibit and GMP Proposal are based on the Basis of Design Documents, which are comprised of various documents. The parties should strongly consider establishing the priority of the various documents comprising the GMP Exhibit or GMP Proposal to avoid disputes should discrepancies arise among the documents. Moreover, Section 2.1.3 recognizes that there may be other exhibits attached to this Agreement. If this is the case, the parties should discuss whether these exhibits should be part of the Basis of Design Documents. If these exhibits are not made part of the Basis of Design Documents, these exhibits will not take priority over the Basis of Design Documents in the event of a conflict.
3.3	Definitions	Terms, words and phrases used in the Agreement shall have the same meanings used in the General Conditions of Contract.
3.4	Design Specifications	The Owner is cautioned that if it includes design specifications in its Project Criteria there is case law holding that the Design-Builder is entitled to rely on such information, and to the extent such information is not accurate, the Design-Builder will be entitled to an adjustment in the Contract Price and/or Contract Time. Accordingly, the Owner to avoid such potential liability should consider using performance specifications.

REQUEST FOR QUALIFICATIONS (RFQ)

Section	Title	Instruction
4.1	Work Product	This Agreement provides that the Design-Builder shall retain ownership of the Work Product it produces, but obligates Design-Builder to grant a limited license to Owner to use the Work Product according to the terms and circumstances described in Sections 4.2, 4.3, 4.4 and 4.5.
4.2	Owner's Limited License Upon Payment in Full	Design-Builder shall grant Owner, at Owner's sole risk, a limited license to use the Work Product at the completion of the Work in connection with Owner's occupation of the Project. This Section also provides the parties with the option of transferring ownership of some or all of the Work Product to the Owner upon payment in full for all work performed. Generally, where the Owner desires ownership of Work Product, it is sufficient to transfer ownership of unique architectural and design elements.
4.3	Owner's Limited License Upon Owner's Termination for Convenience or Design-Builder's Election to Terminate	Owner should not use the termination for Convenience Clause to obtain Design-Builder's valuable design concepts, and then seek lower bids from other design-builders. Therefore, where Owner terminates this Agreement for its convenience, and then decides to complete the Project with known thirdparty forces, Design-Builder shall grant Owner the rights set forth in Section 4.2 provided Owner pays Design-Builder all amounts due Design-Builder as required by the Contract Documents, including paying Design-Builder an additional sum per Section 4.3.2 for the use of the Work Product. In the event Design-Builder elects to terminate this Agreement for cause for reasons set forth in Section 11.4 of the General Conditions of Contract, these same provisions apply to Owner's use of the Work Product.
4.3.2	Additional Compensation	To minimize disputes, the parties should negotiate prior to the execution of the Agreement the amount Owner shall pay Design-Builder for the use of Design-Builder's Work Product in the event Owner terminates this Agreement for its convenience or Design-Builder elects to terminate this Agreement for cause. Enter this amount.
4.4	Owner's Limited License Upon Design-Builder's Termination	If Design-Builder is properly terminated for default, Owner is granted a limited license to use the Work Product, to complete the Project, and Owner shall thereafter have the same rights and obligations as set forth in Section 4.2.
4.5	Owner's Indemnification for Use of Work Product	Owner's use or alteration of the Work Product shall be at its sole risk, and Owner must agree to defend, indemnify and hold harmless Design-Builder and anyone working by or through Design-Builder, including Design Consultants of any tier.
5.1	Date of Commencement	Design-Builder's obligation to commence work is triggered by its receipt of a Notice to Proceed unless the parties mutually agree otherwise.
5.2.1	Substantial Completion of the Entire Work	Enter the calendar days duration by which Substantial Completion has to be achieved. The parties in this Section have the option of modifying the definition of Substantial Completion set forth in the General Conditions of Contract if they want to use a Temporary Certificate of Occupancy as the benchmark. If this option is selected, Substantial Completion will be deemed to be achieved no later than the date a Temporary Certificate of Occupancy is issued if applicable to the Project.

REQUEST FOR QUALIFICATIONS (RFQ)

Section	Title	Instruction
5.2.2	Interim Milestones	<p>It may be that some portions of the Work must be completed on or within a prescribed period of time to accommodate Owner's needs. The parties may, at their option, identify these portions of the Work to be completed prior to Substantial Completion of the entire Work. Enter the calendar days, starting from the Date of Commencement, for achieving Substantial Completion of these identified portions of the Work. If these portions of the Work are required to be substantially completed by certain milestone dates, enter those dates. As presently drafted, no remedy is provided to the Owner if an interim milestone is not met. If the Owner has special requirements as indicated to interim milestones, the Owner may want to consider a remedy for the Design-Builder's failure to meet an interim milestone, as well as providing a bonus to the Design-Builder for satisfying such interim milestones.</p>
5.4	Liquidated Damages	<p>Owner should make a good faith estimation of the amount that is reasonably necessary to compensate it for delay. Owner should not establish liquidated damages to penalize Design-Builder. Moreover, if the event amount is not established upon execution of the Agreement, it appears prudent for the parties to refrain from establishing liquidated damages until such time as the GMP is established.</p> <p>The parties should establish a grace period between the Scheduled Substantial Completion Date and the assessment of liquidated damages in order to prevent disputes as to which party bears responsibility for the first few days of delay. The parties should enter the calendar days that may pass following the Scheduled Substantial Completion Date before liquidated damages will be assessed.</p> <p>The parties also provided the option of establishing liquidated damages if the Design-Builder fails to achieve Final Completion within a specified number of days after Substantial Completion. If this option is selected, the parties have to negotiate the number of days, as well as the liquidated damages amount. The parties in negotiating liquidated damages should keep in mind that the amount of liquidated damages for failing to achieve Final Completion should be a considerably scaled down amount and should reflect the financial harm to the Owner. In no case should the total amount of liquidated damages for the Project exceed an amount that is reasonably necessary to compensate Owner for Project delay.</p> <p>The parties also have the option here of eliminating liquidated damages altogether, in which case the Owner can recover actual damages for Project delay at an amount that is capped by the parties. The Owner is cautioned that it still cannot recover consequential damages, as they are waived under Section 10.5.1 of the General Conditions of Contract.</p>
5.5	Liquidated Damages Cap	<p>The parties can agree to cap liquidated damages for delay at a negotiated amount.</p>

REQUEST FOR QUALIFICATIONS (RFQ)

Section	Title	Instruction
5.6	Early Completion Bonus	If the Project economics justify liquidated damages, then it may be appropriate to counter these liquidated damages with an early completion bonus. The parties should enter the number of calendar days prior to the Scheduled Substantial Completion Date that will set the Bonus Date. Also, enter the amount of the bonus to be paid per day that will allow the Owner to share with Design-Builder the economic benefits of early completion. Moreover, in the event a GMP is not established upon execution of the Agreement, it appears prudent for the parties to refrain from establishing an early completion bonus until such time as the GMP is established. The parties also have the option in Section 5.6 of setting the early completion bonus at a negotiated amount.
5.7	Compensation for Force Majeure Events	The parties are provided the opportunity of providing the Design-Builder the right to receive compensation for Force Majeure events. By selecting this option, the parties agree to modify Section 8.2.2 of the General Conditions of Contract, in which case the parties have to negotiate how many cumulative days of Force Majeure delays must occur before the Design-Builder is entitled to either a negotiated amount per day for delay or the direct costs it has incurred as a result of such delay.
6.1.2	Optional Pricing	The Agreement allows the parties the flexibility to establish within the Contract Price a different payment basis for certain preliminary portions of the Work which may be necessary to permit Design-Builder to furnish Owner with a GMP. Alternatively, the parties may use DBIA Document No. 520 to perform certain preliminary design services prior to setting the GMP. Enter a description of any such services, the basis for determining the price, and the price to be paid.
6.2.1	Design-Builder's Fee	Enter the amount of Design-Builder's Fee as a sum certain or as a percentage of the Cost of the Work. Design-Builder's Fee shall be commensurate with the services it provides and the risk it assumes in providing single point responsibility to Owner.
6.2.2	Adjustments to Design-Builder's Fee	For additive Change Orders, the parties have to negotiate the Fee the Design-Builder will receive. For deductive Change Orders, the parties have the option by checking the appropriate box to signify whether there will be no additional reduction or whether there will be an additional reduction based on a negotiated percentage.
6.3.3	Wages for Design-Builder's Employees at Principal or Branch Offices	DBIA endorses reimbursing salaries and associated benefits of Design-Builder's Project personnel, such as accountants, stationed at offices other than the field office, when to do so is more efficient and cost effective. Enter the percentage markup to be applied for Project-related overhead associated with such personnel. Insert, or attach as an exhibit, a list of such personnel and their job functions.
6.3.4	Employee Benefits	It may be simpler for the parties to agree on a multiplier (rather than actual costs) to compensate the Design-Builder for employee benefits. Accordingly, the parties may want to insert the multiplier to be applied to the wages and salaries of such reimbursable employees.

REQUEST FOR QUALIFICATIONS (RFQ)

Section	Title	Instruction
6.3.7	Costs for Defective/Non-Conforming Work	The Cost of the Work shall include the costs to repair or correct defective or non-conforming Work (including warranty or corrective work performed after Substantial Completion) unless caused by Design-Builder's negligence. DBIA believes that Design-Builder should not be penalized for inadvertent mistakes which are inevitable when designing and constructing a Project. To do so would encourage ultra-cautiousness in every task, the ultimate cost of which would be greater than a proactive approach to performing the Work.
6.3.23	Warranty Escrow	At this section, the parties are provided the opportunity to establish prior to Final Completion an escrow account in a negotiated amount to be used to reimburse the Design-Builder for its costs incurred in performing warranty Work. If funds remain in the escrow account after the expiration of the warranty period, the funds are returned to the Owner subject to Design-Builder's share of any savings. Note that even if the escrow account is exhausted, if funds remain under GMP, the Owner is still obligated to reimburse the Design-Builder for its warranty Work.
6.4.4	Allowance Value	This section recognizes that the parties may agree that certain items of Work should be treated as an Allowance Item and priced based on Allowance Values. The Allowance Value for which the Design-Builder will be entitled to receive compensation includes direct cost of labor, materials, equipment, transportation, taxes and insurance associated with the Allowance Item. All other costs associated with the Allowance Item, such as design fees, general conditions costs and fees, are deemed to be included in the Contract Price. However, by checking the box, the parties agree that in the event the actual cost of the Allowance Item is greater than or less than the Allowance Value by a negotiated percentage, then Design-Builder's right to Fee and markup shall be determined pursuant to Section 6.2.2.
6.0	Price Guarantee Maximum Price	<p>This Agreement provides the parties flexibility in establishing the Contract Price. Parties can establish a GMP before or after entering into this Agreement, or elect to proceed on the basis of costs plus a fee, without a GMP.</p> <p>If a GMP method is elected, the GMP should not be established until the Basis of Design Documents are sufficiently defined to make the GMP realistic and meaningful. Setting it too early does not permit reasonable opportunity for scope definition and evaluation of Project risk. On the other hand, setting it too late may not achieve Owner's objective of having an early price guarantee to enable it to make decisions relative to the Project.</p>

REQUEST FOR QUALIFICATIONS (RFQ)

Section	Title	Instruction
6.6.1.1	GMP at Agreement Execution	<p>Enter the GMP, if appropriate. Attach as an exhibit to this Agreement the Basis of Design Documents used to establish the GMP. These documents comprising the GMP Exhibit shall become a Contract Document pursuant to Section 2.1.1 of the Agreement. The Design-Builder does not guarantee any specific line items provided as part of the GMP.</p> <p>By selecting the alternate option, the Design-Builder agrees to guarantee the line item in its GMP for general conditions of work. The Design-Builder agrees that it is responsible for paying general conditions costs in excess of this line item. The Design-Builder does not guarantee any other line items in the GMP.</p>
6.6.1.2	GMP Contingency	<p>Enter the amount of Design-Builder's Contingency. The Contingency is for the exclusive use of the Design-Builder and covers unanticipated costs incurred that are not the basis of a Change Order. This section set forth by way of example only the type of costs that would be funded out of the Contingency. Other costs such as but not limited to any deductibles the Design-Builder is obligated to pay would be subject to reimbursement. The Design-Builder is also required to provide the Owner with a monthly status report accounting for the Contingency, including all reasonably foreseeable uses and potential uses of the Contingency for the upcoming time period.</p> <p>While not provided for in the Contingency provision, DBIA recognizes that there may be situations where the Owner will want to recapture the Contingency prior to Final Completion. For example, the Owner may want to use amounts in the Contingency to fund changes to the Project. The Owner's desire has to be balanced against the Design-Builder's need to use the Contingency to fund unanticipated costs for which it is liable. Accordingly, balancing these competing concerns is usually accomplished by releasing some of the Contingency to the Owner after the Design-Builder has bought out the Subcontractors, providing that the Design-Builder is not obligated to release Contingency amounts in excess of amounts identified for reasonably foreseen uses or potential uses of the Contingency.</p>

REQUEST FOR QUALIFICATIONS (RFQ)

Section	Title	Instruction
6.6.2.1	GMP Proposal After Execution of This Agreement	<p>At the request of Owner, Design-Build shall submit its GMP Proposal which shall include the items listed in Sections 6.6.2.1.1 to 6.5.2.1.9. If the parties agree to add conditions or deletions from this list, modify this Section 6.6.2.1 appropriately.</p> <p>The Agreement provides the parties with flexibility as to when the GMP Proposal will be submitted after execution of the Agreement. Prior to execution of the Agreement the parties should discuss when Owner desires Design-Build to submit its GMP Proposal.</p>
6.6.2.1.4	Schedule	<p>Given that expedited delivery is one of the primary factors leading many owners to select the design-build method, Design-Build strongly believes that the parties should discuss and understand what each party must do to support the project schedule. The entire Work, both design and construction, should be scheduled. The schedule should indicate the dates for the start and completion of various stages of the Work, including the date when Owner information and approvals are required and any Owner created constraints. The Agreement also provides flexibility to establish the Scheduled Substantial Completion Date prior to submission of the GMP Proposal.</p>
6.6.2.3	Acceptance of GMP Proposal	<p>When the parties accept the GMP Proposal the parties should amend this Agreement to add the final GMP Proposal as a Contract Document pursuant to Section 2.1.2.</p>
6.6.2.4	Failure to Accept GMP Proposal	<p>This Agreement provides three options for Owner in the event it fails to accept the GMP Proposal and two choices for Design-Build if Owner fails to exercise any of the three options. These options are specifically designed to prevent one party from receiving a windfall in the event the parties cannot agree on the GMP and the Agreement is terminated.</p> <p>The parties should take note that if Owner exercises its option to terminate for convenience, or Design-Build suspends performance, Design-Build will not be entitled to payment for uncompleted Work provided by Section 8.2. However, additional payment for Owner's use of Work Product will be due Design-Build pursuant to Section 4.3, if Owner proceeds to complete the Project using Design-Build's Work Product.</p>
6.6.3	Savings	<p>One of the benefits of a GMP approach is the possibility that with good management by Design-Build and timely support from Owner the actual Cost of the Work and Fee may be less than the GMP. This creates a savings pool that should result in a benefit to both Design-Build and Owner. Sharing these savings creates an incentive for Design-Build to save costs. Some factors to consider in determining how the Savings are shared include the timing for the establishment of the GMP and the amount of Design-Build's Fee established under Section 6.2.1.</p>
6.6.3.1	Savings Calculations	<p>This section provides that if the actual Cost of the Work and Design-Build's Fee is less than the GMP, as such GMP may have been adjusted, the savings, if any, shall be shared. The Agreement offers two choices for distributing Savings. Choose a method and enter the appropriate figures.</p>

REQUEST FOR QUALIFICATIONS (RFQ)

Section	Title	Instruction
6.7	Performance Incentives	In addition for the potential of the Design-Builder to share in the profit as set forth in Section 6.6.3, there may be other performance incentives that will increase Project success. Such incentives may include award fees tied to the Design-Builder achieving certain standards relative to client satisfaction, safety, and personnel retention. The parties are encouraged to discuss the use of such incentives during negotiation of this Agreement. An agreement on the use of incentives should be set forth in an exhibit attached to this Agreement.
7.1.1	Progress Payments	Enter the day of the month when Design-Builder shall submit its Application for Payment.
7.2.1	Retainage	Enter the percentage Owner will retain from Progress Payments to Design-Builder until fifty percent (50%) of the Work is completed. Owner should recognize that it creates undue hardship to hold retainage on subcontractors that have completed their work early in the Project. Owner should, accordingly, consider releasing retainage on Subcontractors that complete work early in the Project, providing that these Subcontractors have satisfactorily performed their portion of the Work. The parties are provided the option of modifying the retainage provision by checking the box. This option exempts from retainage the Design-Builder's General Conditions costs and amounts paid to Design-Builder Design Consultant. The rationale for selecting this option is that the Design-Builder is obligated to pay its General Conditions costs in full each month and that under the design-build delivery method, the Owner typically does not retain sums from its Designer.
7.2.2	Release of Retainage	This section requires the Owner to release retainage to the Design-Builder. If the Design-Builder and Owner have established a warranty reserve in accordance with Section 6.3.2.4, the parties shall establish an escrow account at this time.
		The parties should enter the rate at which interest will accrue on Design-Builder's payments if unpaid five (5) days after due. Late payment creates a hardship for Design-Builder, its Design Consultants and Subcontractors.
7.5	Record Keeping	The Owner is provided access to Design-Builder's accounting information as it relates to Costs of the Work. However, if the parties have agreed to multipliers or markups, the time to challenge and negotiate those percentages is at the time the parties execute the Agreement and not during the Project or after it has been completed. Accordingly, the Owner can at any time audit these percentages only to confirm that such percentage has been properly charged and not to challenge the composition of such percentage.

REQUEST FOR QUALIFICATIONS (RFQ)

Section	Title	Instruction
8.1.3	Termination for Convenience: Overhead and Profit	The parties should choose prior to execution of the Agreement a method that will be used to determine overhead and profit paid to Design-Builder in the event Owner terminates Design-Builder for its convenience. The parties may choose to set percentages for overhead and profit prior to execution of the Agreement or may choose to determine the dollar sums to be paid for overhead and profit at the time of the termination. If the parties choose to set overhead and profit rates prior to execution of the Agreement, the percentages should be entered in Section 8.1.3.
8.2	Termination for Convenience: Additional Payments	Although it is important for Owner to have a procedure for terminating this Agreement for convenience, the procedure must consider the interests of Design-Builder. If Owner terminates this Agreement for its own convenience, compensating Design-Builder for its costs will not be adequate because Design-Builder may have committed its resources for a small amount of revenue. Therefore, in addition to the overhead and profit paid in Section 8.1, Owner shall pay Design-Builder an additional sum, calculated as a percentage of the remaining balance of the Contract Price or, if Contract Price has not been established, the remaining balance of the most recent estimated Contract Price. Enter the percentages Owner shall pay Design-Builder if Owner terminates this Agreement for its own convenience prior to or after the start of construction.
8.3	Termination for Convenience: Owner's Use of Design-Builder's Work Product	Owner should include a Termination for Convenience clause to obtain Design-Builder's valuable design concepts and then seek lower bids from another design-builder. If Owner terminates this Agreement for its own convenience, and chooses to proceed with the Project using Design-Builder's Work Product, Owner should pay an additional sum for the use of Design-Builder's Work Product pursuant to Section 4.3.
Article 9	Representatives of the Parties	Enter the name, title, address and telephone number of Owner's Senior Representative and Owner's Representative at Sections 9.1.1 and 9.1.2, respectively. Enter the name, title, address and telephone number of Design-Builder's Senior Representative and Design-Builder's Representative at Sections 9.2.1 and 9.2.2, respectively. The parties can elect to establish these Representatives during the performance of the Project rather than at the time of execution of this Agreement. If Representatives are identified after execution of the Agreement, an appropriate amendment should be made to the Agreement at the time these individuals are designated.
10.1	Insurance	Attach an Insurance Exhibit setting forth in detail the insurance coverages required for the Project. Parties are advised to familiarize themselves with the terms of Article 5 of the General Conditions of Contract, Insurance and Bonds, and to consult their insurance advisor.
10.2	Bonds	Enter the type and amount of bonds or other performance security required for the Project. Where bonding is not required by statute, Owner may want to evaluate the project risks versus the bonding costs in deciding what type of performance security to require.

REQUEST FOR QUALIFICATIONS (RFQ)

Section	Title	Instruction
11.1	Other Provisions	Insert any other provisions. For example, the parties may want to have disputes resolved through litigation rather than arbitration in which case the optional language in Section should be included.

SAMPLE

Attachment 3 DBIA Contract Document #535

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SAMPLE



Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee with an Option for a Guaranteed Maximum Price

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

This **AGREEMENT** is made as of the _____ day of _____ in the year of 20____, by and between the following parties for services in connection with the Project identified below:

OWNER:

(Name and address)

DESIGN-BUILDER:

(Name and address)

PROJECT:

(Include name and location. This will appear in the Contract Documents)

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:

2.1.1 All written modifications, amendments, minor changes, 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* (2010 Edition) ("General Conditions of Contract");

2.1.2 The GMP Exhibit referenced in Section 6.6.1.1 hereof, or, if applicable, the GMP Proposal accepted by Owner in accordance with Section 6.6.2 herein;

2.1.3 This Agreement, including all exhibits (list for example, performance standard requirements, performance incentive arrangements, markup exhibits, allowances, unit prices, or exhibit detailing offsite reimbursable personnel) but excluding if applicable, the GMP Exhibit;

2.1.4 The General Conditions of Contract and

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

Article 3 **Interpretation and Intent**

3.1 Design-Builder and Owner, prior to execution of the Agreement (and again, if applicable, at the time of acceptance of the GMP Proposal by Owner in accordance with Section 6.6.2 hereof), shall carefully review all the Contract Documents, including the various documents comprising the Basis of Design Documents, for any conflicts or ambiguities. Design-Builder and Owner will discuss and resolve any identified conflicts or ambiguities prior to execution of the Agreement, or, if applicable, prior to Owner's acceptance of the GMP Proposal.

3.2 The Contract Documents are intended to permit the parties to complete the Work and all obligations imposed 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 inconsistencies, conflicts, or ambiguities between or among the Contract Documents are discovered after execution of the Agreement, or if applicable, after Owner's acceptance of the GMP Proposal, Design-Builder and Owner shall attempt to resolve any ambiguity, conflict or inconsistency informally, recognizing that the Contract Documents shall take precedence in the order in which they are listed in Section 2.1 hereof. *(Note, the parties are strongly encouraged to establish in the GMP Exhibit or GMP Proposal (as applicable) the priority of the various documents comprising such exhibit or proposal.)*

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

3.4 If Owner's Project Criteria contain design specifications: (a) Design-Builder shall be entitled to reasonably rely on the accuracy of the information represented in such design specifications and their compatibility with other information set forth in Owner's Project Criteria, including any performance specifications; and (b) Design-Builder shall 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 have been adversely impacted by such inaccurate design specifications.

3.5 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 representation 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, including such documents identified in the General Conditions of Contract, 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 but not limited to any intellectual property rights, copyrights and/or patents, subject to the provisions set forth in Sections 4.2 through 4.5 below.

4.2 Owner's Limited License upon Project Completion and Payment in Full to Design-Builder. Upon Owner's payment in full for all Work performed under the Contract Documents, Design-Builder shall grant Owner a limited license to use the Work Product in connection with Owner's occupancy of the Project, conditioned on Owner's express understanding that its alteration of the Work Product without the involvement of Design-Builder 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"), and on the Owner's obligation to provide the indemnity set forth in Section 4.5 below.

[At the parties' option, one of the following may be used in lieu of Section 4.2.]

Upon Owner's payment in full for all Work performed under the Contract Documents, Design-Builder: (a) grants Owner a limited license to use the Work Product in connection with Owner's occupancy of the Project; and (b) transfers all ownership and property interests, including but not limited to any intellectual property rights, copyrights and/or patents, in that portion of the Work Product that consists of architectural and other design elements and specifications that are unique to the Project. The parties shall specifically designate those portions of the Work Product for which ownership in the Work Product shall be transferred. Such grant and transfer are conditioned on Owner's express understanding that its alteration of the Work Product without the involvement of Design-Builder 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"), and on the Owner's obligation to provide the indemnity set forth in Section 4.5 below.

or

Upon Owner's payment in full for all Work performed under the Contract Documents, Design-Builder transfers to Owner all ownership and property interests, including but not limited to any intellectual property rights, copyrights and/or patents, in the Work Product. Such transfer is conditioned on Owner's express understanding that its alteration of the Work Product without the involvement of Design-Builder is at Owner's sole risk and without liability or legal exposure to Design-Builder or anyone working by or

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through Design-Builder, including Design Consultants of any tier (collectively the "Indemnified Parties"), and on the Owner's obligations to provide the indemnity set forth in Section 4.5 below.

4.3 Owner's Limited License upon Owner's Termination for Convenience or Design-Builder's Election to Terminate. If Owner terminates this Agreement for its convenience as set forth in Article 8 hereof, or if Design-Builder elects to terminate this Agreement in accordance with Section 11.4 of the General Conditions of Contract, Design-Builder shall, upon Owner's payment in full of the amounts due Design-Builder under the Contract Documents, grant Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights as set forth in Section 4.2 above, conditioned on the following:

4.3.1 Use of the Work Product is at Owner's sole risk without liability or legal exposure to any Indemnified Party, and on the Owner's obligation to provide the indemnity set forth in Section 4.5 below, and

4.3.2 Owner agrees to pay Design-Builder the additional sum of _____ Dollars (\$_____) as compensation for the right to use the Work Product to complete the Project and subsequently use the Work Product in accordance with Section 4.2 if Owner resumes the Project through its employees, agents, or third parties.

4.4 Owner's Limited License upon Design-Builder's Default. If this Agreement is terminated due to Design-Builder's default pursuant to Section 11.2 of the General Conditions of Contract, then Design-Builder grants Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights and obligations as set forth in Section 4.2 above. Notwithstanding the preceding sentence, if it is ultimately determined that Design-Builder was not in default, Owner shall be deemed to have terminated the Agreement for convenience, and Design-Builder shall be entitled to the rights and remedies set forth in Section 4.3 above.

4.5 Owner's Indemnification Use of Work Product. Owner is required to indemnify any Indemnified Parties based on the use or alteration of the Work Product under any of the circumstances identified in this Article 4, Owner shall defend, indemnify and hold harmless the Indemnified Parties from and against any and all claims, damages, liabilities, losses and expenses, including attorneys' fees, arising out of or resulting from the use or alteration of the Work Product.

Article 5 **Contract Time**

5.1 Date of Commencement. The Work shall commence within five (5) days of Design-Builder's receipt of Owner's Notice to Proceed ("Notice 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").

[At the parties' option, the following supplemental language may be inserted at the end of Section 5.2.1 if the Project is subject to a Temporary Certificate of Occupancy.]

The parties agree that the definition for Substantial Completion set forth in Section 1.2.18 of the General Conditions of Contract is hereby modified to read as follows:

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"Substantial Completion is the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete in accordance with the Contract Documents so that Owner can occupy and use the Project or a portion thereof for its intended purposes, provided, however, that Substantial Completion shall be deemed to have been achieved no later than the date of issuance of a Temporary Certificate of Occupancy issued by the local building official."

5.2.2 Interim milestones and/or Substantial Completion of identified portions of the Work ("Scheduled Interim Milestone Dates") shall be achieved as follows: *(Insert any interim milestones for portions of the Work with different scheduled dates for Substantial Completion)*

5.2.3 Final Completion of the Work or identified portions of the Work shall be achieved as expeditiously as reasonably practicable. Final Completion is the date when all Work is complete pursuant to the definition of Final Completion set forth in Section 1.2.7 of the General Conditions of Contract.

5.2.4 All of the dates set forth in this Article 5 (collectively the 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 _____ (_____) days after the Scheduled Substantial Completion Date (the "LD Date"), Design-Builder shall pay Owner _____ Dollars (\$_____) as liquidated damages for each day that Substantial Completion extends beyond the LD Date. *(If a GMP is not established upon execution of this Agreement, the parties should consider setting liquidated damages after GMP negotiations.)*

[The parties may want to consider the following supplemental language within Section 5.4 if they want to assert liquidated damages for failing to meet Final Completion. In this case, the first sentence in Section 5.4 and Section 5.2.3 should be deleted and replaced with the following language.]

Design-Builder understands that if Final Completion is not achieved within _____ days of the Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Final Completion is not achieved within _____ (_____) days of Substantial Completion, Design-Builder shall pay to Owner _____ Dollars (\$_____) as liquidated damages for each calendar day that Final Completion is delayed beyond the above-referenced number of days.

[In lieu of the liquidated damages specified in Section 5.4 or the alternate provided herein, the Parties may decide that the Agreement will provide for actual damages in the event of Project delay, with Owner being cautioned that there is a waiver of consequential damages under Section 10.5.1 of the General Conditions of Contract. In this case, delete Sections 5.4 and 5.5 and insert the following.]

5.4 Design-Builder and Owner have agreed not to provide for liquidated damages in this Agreement for failure of Design-Builder to achieve the Contract Time(s) set forth in this Article 5. Design-Builder understands, however, that Owner may suffer actual damages in the event the Contract Time(s) set forth herein are not timely achieved. Owner shall be able to recover such actual damages from Design-Builder to the extent it can demonstrate that actual damages have been incurred, are directly related and caused by Design-Builder's failure to meet the Contract Time(s) set forth herein, and are not

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waived by Section 10.5.1 of the General Conditions of Contract. Notwithstanding the foregoing, in no event shall Design-Builder's liability for actual damages for delays exceed _____ Dollars (\$_____).

5.5 Any liquidated damages assessed pursuant to this Agreement 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 the Contract Time(s).

[The Parties may also desire to cap the liquidated damages payable under this Agreement, in which case the following language should be included at the end of Section 5.5.]

Owner and Design-Builder agree that the maximum aggregate liability Design-Builder has for liquidated damages that may be assessed under this Agreement for failure to achieve the Contract Time(s) shall be _____ Dollars (\$_____).

5.6 **Early Completion Bonus.** If Substantial Completion is attained on or before _____ (_____) days before the Scheduled Substantial Completion Date (the "Bonus Date"), Owner shall pay Design-Builder at the time of Final Payment under Section 7.3 hereof an early completion bonus of _____ Dollars (\$_____) for each day that Substantial Completion is attained earlier than the Bonus Date. (If a GMP is not established upon execution of this Agreement, the parties shall consider the early completion bonus after GMP negotiations. If an early completion bonus is applicable to any dates set forth in Section 7.2 or 5.2 hereof, this Section 5.6 will need to be modified accordingly.)

[The Parties may also desire to cap the early completion bonus payable under Section 5.6, in which case the following language should be included.]

Owner and Design-Builder agree that the maximum aggregate amount that Design-Builder shall receive as the early Completion Bonus is _____ Dollars (\$_____).

5.7 **[The Parties may also desire to modify Article 8.2 of the General Conditions of Contract relative to compensability of delays that will cause the Contract Time to be extended. In such case, the following option can be used.]**

In addition to Design-Builder's right to a compensation for those events set forth in Section 8.2.1 of the General Conditions of Contract, Design-Builder shall also be entitled to an appropriate adjustment of the Contract Price for those events set forth in Section 8.2.2 of the General Conditions of Contract, provided, however, for Force Majeure Events, Design-Builder shall only be entitled to an increase in the Contract Price if said events exceed _____ (_____) cumulative days. Said additional compensation shall be limited to _____

[Check one box only]

_____ dollars a day for each day work is delayed beyond the Scheduled Substantial Completion Date.

or

_____ direct costs and expenses Design-Builder can demonstrate it has reasonably and actually incurred as a result of such event.

Article 6
Contract Price

6.0 Contract Price.

6.0.1 Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract a contract price ("Contract Price") equal to Design-Builder's Fee (as defined in Section 6.1 hereof) plus the Cost of the Work (as defined in Section 6.3 hereof), subject to any GMP established in Section 6.6 hereof and any adjustments made in accordance with the General Conditions of Contract.

6.0.2 For the specific Work set forth below, Owner agrees to pay Design-Builder, as part of the Contract Price, on the following basis: *(This is an optional section intended to provide the parties with flexibility to identify and price limited preliminary services, such as a lump sum or cost-plus arrangement for preliminary design, program development or services necessary to enable Design-Builder to furnish Owner with a GMP before execution of this Agreement.)*

6.1 Design-Builder's Fee.

6.1.1 Design-Builder's Fee shall be:

[Choose one of the following:]

_____ Dollars (\$ _____), as adjusted in accordance with Section 6.2.2 below.

or

_____ percent (_____ %) of the Cost of the Work, as adjusted in accordance with Section 6.2.2 below.

6.1.2 Design-Builder's Fee will be adjusted as follows for any changes in the Work:

6.1.2.1 For additive Change Orders, including additive Change Orders arising from both additive and deductive items, the parties have agreed that Design-Builder shall receive a Fee of _____ percent (_____ %) of the additional Costs of the Work incurred by that Change Order, plus any other markups set forth in Exhibit _____ hereto.

6.1.2.2 For deductive Change Orders, including deductive Change Orders arising from both additive and deductive items, the deductive amounts shall include:

[Check one box only]

No additional reduction to account for Design-Builder's Fee or any other markup.

or

An amount equal to the sum of: (a) _____ percent (_____ %) applied to the direct costs of the net reduction (which amount will account for a

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reduction associated with Design-Builder's Fee); plus (b) any other markups set forth in Exhibit _____ hereto applied to the direct costs of the net reduction.

6.2 Cost of the Work. The term Cost of the Work shall mean costs reasonably and actually incurred by Design-Builder in the proper performance of the Work. The Cost of the Work shall include only the following:

6.2.1 Wages of direct employees of Design-Builder performing the Work at the Site or, with Owner's agreement, at locations off the Site; provided, however, that the costs for those employees of Design-Builder performing design services shall be calculated on the basis of prevailing market rates for design professionals performing such services or, if applicable, those rates set forth in an exhibit to this Agreement.

6.2.2 Wages or salaries of Design-Builder's supervisory and administrative personnel engaged in the performance of the Work and who are located at the Site or working off-Site to assist in the production or transportation of material and equipment necessary for the Work.

6.2.3 Wages or salaries of Design-Builder's personnel stationed at Design-Builder's principal or branch offices, but only to the extent said personnel are identified in Exhibit _____ and performing the function set forth in said Exhibit. The reimbursable costs of personnel stationed at Design-Builder's principal or branch offices shall include _____ percent (%) markup to compensate Design-Builder for the project-related overhead associated with such personnel.

6.2.4 Costs incurred by Design-Builder for employee benefits, premiums, taxes, insurance, contributions and assessments required by law, collective bargaining agreements, or which are customarily paid by Design-Builder, to the extent such costs are based on wages and salaries paid to employees of Design-Builder covered under Sections 6.3.1 through 6.3.3 hereof.

[In lieu of the language in Section 6.3.1 above, Design-Builder and Owner may want to include the following language:]

A multiplier of _____ percent (_____%) shall be applied to the wages and salaries of the employees of Design-Builder covered under Sections 6.3.1 through 6.3.3 hereof.

6.2.5 The reasonable portion of the cost of travel, accommodations and meals for Design-Builder's personnel necessarily and actually incurred in connection with the performance of the Work.

6.2.6 Payments properly made by Design-Builder to Subcontractors and Design Consultants for performance obligations of the Work, including any insurance and bond premiums incurred by Subcontractors and Design Consultants.

6.2.7 Costs incurred by Design-Builder in repairing or correcting defective, damaged or nonconforming Work (including any warranty or corrective Work performed after Substantial Completion), provided that such Work was beyond the reasonable control of Design-Builder, or caused by the ordinary mistakes or inadvertence and not the negligence, of Design-Builder or those working by or through Design-Builder. If such costs are recoverable from insurance, Subcontractors or Design Consultants, Design-Builder shall exercise its best efforts to obtain recovery from the appropriate source and provide a credit to Owner if recovery is obtained.

6.2.8 Costs, including transportation, inspection, testing, storage and handling, of materials, equipment and supplies incorporated or reasonably used in completing the Work.

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6.2.9 Costs (less salvage value) of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by the workers that are not fully consumed in the performance of the Work and which remain the property of Design-Build, including the costs of transporting, inspecting, testing, handling, installing, maintaining, dismantling and removing such items.

6.2.10 Costs of removal of debris and waste from the Site.

6.2.11 The reasonable costs and expenses incurred in establishing, operating and demobilizing the Site office, including the cost of facsimile transmissions, long-distance telephone calls, postage and express delivery charges, telephone service, photocopying and reasonable petty cash expenses.

6.2.12 Rental charges and the costs of transportation, installation, minor repairs and replacements, dismantling and removal of temporary facilities, machinery, equipment and hand tools not customarily owned by the workers, which are provided by Design-Build at the Site, whether rented from Design-Build or others, and incurred in the performance of the Work.

6.2.13 Premiums for insurance and bonds required by this Agreement or the performance of the Work.

6.2.14 All fuel and utility costs incurred in the performance of the Work.

6.2.15 Sales, use or similar taxes, tariffs or duties incurred in the performance of the Work.

6.2.16 Legal costs, court costs and costs of mediation and arbitration reasonably arising from Design-Build's performance of the Work, provided such costs do not arise from disputes between Owner and Design-Build.

6.2.17 Costs for permits, royalties, license costs and inspections incurred by Design-Build as a requirement of the Contract Documents.

6.2.18 The cost of defending suits or claims for infringement of patent rights arising from the use of a particular design, process, or product required by Owner, paying legal judgments against Design-Build resulting from such suits or claims and paying settlements made with Owner's consent.

6.2.19 Damages which are lost, except to the extent caused by Design-Build's negligence.

6.2.20 Costs incurred in the event of damage, injury or loss in case of an emergency affecting the safety of persons and property.

6.2.21 Accounting and data processing costs related to the Work.

6.2.22 Costs reasonably and properly incurred in the performance of the Work to the extent approved in writing by Owner.

[Design-Build and Owner may want to consider adding the following Section 6.3.23 to address the payment of warranty work:]

6.2.23 Owner and Design-Build agree that an escrow account in the amount of _____ Dollars (\$_____) shall be established prior to Final Completion, which escrow shall be used to reimburse Design-Build for the Costs of the Work incurred after Final Completion to perform warranty Work. The escrow agreement will provide that any sums not used at the expiration of the warranty period shall be returned to Owner, subject to any savings Design-Build may be entitled to under this Agreement. In the event the warranty escrow account is exhausted, but funds remain under the GMP, Owner shall be obligated to pay

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Design-Builder the Costs of the Work incurred after Final Completion to perform warranty Work up to the GMP.

6.3 Allowance Items and Allowance Values.

6.3.1 Any and all Allowance Items, as well as their corresponding Allowance Values, are set forth in the GMP Exhibit or GMP Proposal and are included within the GMP.

6.3.2 Design-Builder and Owner have worked together to review the Allowance Items and Allowance Values based on design information then available to determine that the Allowance Values constitute reasonable estimates for the Allowance Items. Design-Builder and Owner shall continue working closely together during the preparation of the design to develop Construction Documents consistent with the Allowance Values. Nothing herein is intended in any way to constitute a guarantee by Design-Builder that the Allowance Item in question can be performed for the Allowance Value.

6.3.3 No work shall be performed on any Allowance Item without Design-Builder first obtaining in writing advanced authorization to proceed from Owner. Owner agrees that if Design-Builder is not provided written authorization to proceed on an Allowance Item by the date set forth in the Project schedule, due to no fault of Design-Builder, Design-Builder may be entitled to an adjustment of the Contract Time(s) and Contract Price.

6.3.4 The Allowance Value for an Allowance Item includes the direct cost of labor, materials, equipment, transportation, taxes and insurance associated with the applicable Allowance Item. All other costs, including design fees, Design-Builder's overall project management and general conditions costs, overhead and fee, are deemed to be included in the original Contract Price and are not subject to adjustment, regardless of the actual amount of the Allowance Item.

[In the alternative, the parties may want to delete Section 6.4.4 and add the following provision.]

In the event the actual direct cost of labor, materials, equipment, transportation, taxes and insurance associated with an Allowance Item is _____ percent (_____) greater than or less than the Allowance Value for such Allowance Item, Design-Builder and Owner agree that Design-Builder's right to Fee and markup shall be adjusted in accordance with Section 6.2.2.

6.3.5 Whenever the actual costs for an Allowance Item is more than or less than the stated Allowance Value, the Contract Price shall be adjusted accordingly by Change Order, subject to Section 6.4.4. The amount of the Change Order shall reflect the difference between actual costs incurred by Design-Builder for the particular Allowance Item and the Allowance Value.

Non-Reimbursable Costs.

The following shall not be deemed as costs of the Work:

6.4.1.1 Compensation for Design-Builder's personnel stationed at Design-Builder's principal or branch offices, except as provided for in Sections 6.3.1, 6.3.2 and 6.3.3 hereof.

6.4.1.2 Overhead and general expenses, except as provided for in Section 6.3 hereof, or which may be recoverable for changes to the Work.

6.4.1.3 The cost of Design-Builder's capital used in the performance of the Work.

6.4.1.4 If the parties have agreed on a GMP, costs that would cause the GMP, as adjusted in accordance with the Contract Documents, to be exceeded.

[The parties shall comply with the following Section 6.6 based upon whether the GMP is agreed upon before the execution of this Agreement or will be developed and agreed upon after execution of this Agreement. If the parties do not use a GMP, this Section 6.6 shall be deemed inapplicable and compensation to Design-Builder shall be based on those fees and costs identified in the balance of this Article 6.]

6.5 The Guaranteed Maximum Price ("GMP").

6.5.1 GMP Established Upon Execution of this Agreement.

6.5.1.1 Design-Builder guarantees that it shall not exceed the GMP of _____ Dollars (\$_____). Documents used as a basis for the GMP shall be identified in an exhibit to this Agreement ("GMP Exhibit"). Design-Builder does not guarantee any specific line item provided as part of the GMP, and has the sole discretion to apply payment due for overruns on one line item to savings due to underruns in any other line item. Design-Builder agrees, however, that it will be responsible for paying all costs of completing the Work which exceed the GMP, as adjusted in accordance with the Contract Documents. *(If the GMP Exhibit will be developed in advance or concurrently with the execution of this Agreement, it is recommended that such exhibit include the items set forth in Section 6.6.2.1 below, to ensure that the basis for the GMP is understood.)*

[In lieu of 6.6.1.1, Owner and Design-Builder may want to include the following language.]

Design-Builder guarantees that it shall not exceed the GMP of _____ Dollars (\$_____). Documents used as basis for the GMP shall be identified as an exhibit to this Agreement ("GMP Exhibit"). Design-Builder does not guarantee any specific line item provided as part of the GMP, provided, however, that it does guarantee the line item for its general project management and general conditions costs, in the amount of _____ Dollars (\$_____), and as set forth in the GMP Exhibit ("General Conditions Cap"). Design-Builder agrees that it will be responsible for paying the applicable general conditions costs up to the General Conditions Cap, as well as be responsible for all costs of completing the Work which exceed the GMP, as said General Conditions Cap and the GMP may be adjusted in accordance with the Contract Documents.

6.5.1.2 The GMP includes a Contingency in the amount of _____ Dollars (\$_____), which is available for Design-Builder's exclusive use for unanticipated costs that has incurred but are not the basis for a Change Order under the Contract Documents. By way of example, and not limitation, such costs may include: (a) travel without differentials; (b) overtime or acceleration; (c) escalation of materials; (d) correction of defective, damaged or nonconforming Work, design errors or omissions, however caused; (e) Subcontractor defaults; or (f) those events under Section 8.2.2 of the General Conditions of Contract that result in an extension of the Contract Time but do not result in an increase in the Contract Price. The Contingency is not available to Owner for any reason, including, but not limited to changes in scope or any other item which would enable Design-Builder to increase the GMP under the Contract Documents. Design-Builder shall provide Owner notice of all anticipated charges against the Contingency, and shall provide Owner as part of the monthly status report required by Section 2.1.2 of the General Conditions of Contract an accounting of the Contingency, including all reasonably foreseen uses or potential uses of the Contingency in the upcoming three (3) months. Design-Builder agrees that with respect to any expenditure from the Contingency relating to a Subcontractor default or an event for which insurance or bond may provide reimbursement, Design-Builder will in good faith exercise reasonable steps to obtain performance from the Subcontractor and/or recovery from any surety or insurance company. Design-Builder agrees that if Design-Builder is

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subsequently reimbursed for said costs, then said recovery will be credited back to the Contingency.

6.5.2 GMP Established after Execution of this Agreement.

6.5.2.1 GMP Proposal. If requested by Owner, Design-Builder shall submit a GMP Proposal to Owner which shall include the following, unless the parties mutually agree otherwise:

6.5.2.1.1 A proposed GMP, which shall be the sum of:

- i. Design-Builder's Fee as defined in Section 6.2 hereof;
- ii. The estimated Cost of the Work as defined in Section 6.5 hereof, inclusive of any Design-Builder's Contingency as defined in Section 6.6.1.2 hereof, and
- iii. If applicable, any prices established under Section 6.1.2 hereof.

6.5.2.1.2 The Basis of Design Documents, which may include, by way of example, Owner's Project Criteria, which are set forth in detail and are attached to the GMP Proposal;

6.5.2.1.3 A list of the assumptions and clarifications made by Design-Builder in the preparation of the GMP Proposal which is intended to supplement the information contained in the drawings and specifications and is specifically included as part of the Basis of Design Documents;

6.5.2.1.4 The Scheduled Substantial Completion Date upon which the proposed GMP is based to the extent such date has not already been established under Section 5.2.1 hereof or the schedule upon which the Scheduled Substantial Completion Date is based;

6.5.2.1.5 If applicable, a list of Allowance Items, Allowance Values, and a statement of their basis;

6.5.2.1.6 If applicable, a schedule of alternate prices;

6.5.2.1.7 If applicable, a schedule of unit prices;

6.5.2.1.8 If applicable, a statement of Additional Services which may be performed but which are not included in the GMP and which, if performed, shall be the basis for an increase in the GMP and/or Contract Time(s); and

6.5.2.1.9 The time limit for acceptance of the GMP Proposal.

6.5.2.2 Review and Adjustment to GMP Proposal. After submission of the GMP Proposal, Design-Builder and Owner shall meet to discuss and review the GMP Proposal. If Owner has any comments regarding the GMP Proposal, or finds any inconsistencies or inaccuracies in the information presented, it shall promptly give written notice to Design-Builder of such comments or findings. If appropriate, Design-Builder shall, upon receipt of Owner's notice, make appropriate adjustments to the GMP Proposal.

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6.5.2.3 Acceptance of GMP Proposal. If Owner accepts the GMP Proposal, as may be amended by Design-Builder, the GMP and its basis shall be set forth in an amendment to this Agreement.

6.5.2.4 Failure to Accept the GMP Proposal. If Owner rejects the GMP Proposal, or fails to notify Design-Builder in writing on or before the date specified in the GMP Proposal that it accepts the GMP Proposal, the GMP Proposal shall be deemed withdrawn and of no effect. In such event, Owner and Design-Builder shall meet and confer as to how the Project will proceed, with Owner having the following options:

6.5.2.4.1 Owner may suggest modifications to the GMP Proposal, whereupon, if such modifications are accepted in writing by Design-Builder, the GMP Proposal shall be deemed accepted and the parties shall proceed in accordance with Section 6.2.3 above;

6.5.2.4.2 Owner may authorize Design-Builder to continue to proceed with the Work on the basis of reimbursement as provided in Section 6.1 hereof without the GMP, in which case all references in this Agreement to the GMP shall not be applicable;

6.5.2.4.3 Owner may terminate this Agreement for convenience in accordance with Article 8 hereof; provided, however, in such event, Design-Builder shall not be entitled to the payment provided for in Section 8.2 hereof.

If Owner fails to exercise any of the above options, Design-Builder shall have the right to (i) continue with the Work as if Owner had elected to proceed in accordance with Item 6.6.2.4.2 above, and be paid by Owner accordingly, unless and until Owner notifies it in writing to stop the Work, or (ii) suspend performance of Work in accordance with Section 11.3.1 of the General Conditions of Contract, provided, however, that in such event Design-Builder shall not be entitled to the payment provided for in Section 8.2 hereof.

6.5.3 Savings.

6.5.3.1 If the sum of the actual Cost of the Work and Design-Builder's Fee (and, if applicable, any prices established under Section 6.1 hereof) is less than the GMP, as such GMP may have been adjusted over the course of the Project, the difference ("Savings") shall be shared as follows:

[Choose one of the following:]

_____ percent (_____) to Design-Builder
and _____ percent (_____) to Owner.

or

The first _____ Dollars (\$ _____) of Savings shall be provided to *(choose either Design-Builder or Owner)* _____, with the balance of Savings, if any, shared _____ percent (_____) to Design-Builder and _____ percent (_____) to Owner.

6.5.3.2 Savings shall be calculated and paid as part of Final Payment under Section 7.3 hereof, with the understanding that to the extent Design-Builder incurs costs after Final Completion which would have been payable to Design-Builder as a Cost of the Work, the parties shall recalculate the Savings in light of the costs so incurred, and Design-Builder shall be paid by Owner accordingly.

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6.6 Performance Incentives

6.6.1 Owner and Design-Builder have agreed to the performance incentive arrangements set forth in Exhibit __.

[The parties are encouraged to discuss and agree upon performance incentives that will influence project success. These incentives may consist of Award Fees, incentives for safety, personnel retention, client satisfaction and similar items.]

Article 7 **Procedure for Payment**

7.1 Progress Payments.

7.1.1 Design-Builder shall submit to Owner on the _____ (_____) 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 such 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.

7.1.3 If Design-Builder's Fee under Section 2.1 hereof is a fixed amount, the amount of Design-Builder's Fee to be included in Design-Builder's Application for Payment and paid by Owner shall be proportional to the percentage of the Work completed, less payments previously made on account of Design-Builder's Fee.

7.2 Retainage on Progress Payments.

7.2.1 Owner will retain _____ percent (____%) of each Application for Payment provided, however, that when fifty percent (50%) of the Work has been satisfactorily completed by Design-Builder and Design-Builder is otherwise in compliance with its contractual obligations, Owner will not retain any additional amounts from Design-Builder's subsequent Applications for Payment. Owner will also reasonably consider reducing retainage for Subcontractors completing their work early in the Project.

[Design-Builder and Owner may want to consider substituting the following retainage provision.]

Owner will retain _____ percent (____%) of the cost of Work, exclusive of general conditions costs, and any amounts paid to Design-Builder's Design Consultant, from each Application for Payment provided, however, that when fifty percent (50%) of the Work has been satisfactorily completed by Design-Builder and Design-Builder is otherwise in compliance with its contractual obligations, Owner will not retain any additional amounts from Design-Builder's subsequent Applications for Payment. Owner will also reasonably consider reducing retainage for Subcontractors completing their work early in the Project.

7.2.2 Within fifteen (15) days after 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: (a) the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion; and (b) all

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other amounts Owner is entitled to withhold pursuant to Section 6.3 of the General Conditions of Contract.

[If Owner and Design-Builder have established a warranty reserve pursuant to Section 6.3.23 above, the following provision should be included.]

If a warranty reserve has been established pursuant to Section 6.3.23 above, Owner shall at the time of Substantial Completion retain the agreed-upon amounts and establish an escrow account as contemplated by Section 6.3.24 above.

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 (less any amount the parties may have agreed to set aside for warranty work) within ten (10) days after Owner's receipt of the Final Application for Payment, provided that Design-Builder has satisfied the requirements for final payment set forth in Section 6.7.2 of the General Conditions of Contract.

7.4 Interest. Payments due and unpaid by Owner to Design-Builder, whether progress payments or final payment, shall bear interest commencing five (5) days after payment is due at the rate of _____ percent (_____%) per month until paid.

7.5 Record Keeping and Finance Controls. Design-Builder acknowledges that this agreement is to be administered on an "open book" arrangement relative to Costs of the Work. 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 at all times access to and the right to audit from time-to-time, upon reasonable notice, Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the Work, all of which Design-Builder shall preserve for a period of three (3) years after Final Payment. Such inspection shall take place at Design-Builder's offices during normal business hours unless another location and time is agreed to by the parties. Any multipliers or markups agreed to by the Owner and Design-Builder as part of the Agreement are only subject to audit to confirm that such multiplier or markup has been charged in accordance with the Agreement, with the composition of such multiplier or markup not being subject to audit.

Article 8

Termination for Convenience

8 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:

8.1.1 All Work executed and for proven loss, cost or expense in connection with the Work;

8.1.2 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;

8.1.3 [Choose one of the following:]

The fair and reasonable sums for overhead and profit on the sum of items 8.1.1 and 8.1.2 above.

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or

Overhead and profit in the amount of _____ percent (____%) on the sum of items 8.1.1 and 8.1.2 above.

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

8.2.1 If Owner terminates this Agreement prior to commencement of construction, Design-Builder shall be paid _____ percent (____%) of the remaining balance of the Contract Price, provided, however, that if a GMP has not been established, the above percentage shall be applied to the remaining balance of the most recent estimated Contract Price.

8.2.2 If Owner terminates this Agreement after commencement of construction, Design-Builder shall be paid _____ percent (____%) of the remaining balance of the Contract Price, provided, however, that if a GMP has not been established, the above percentage shall be applied to the remaining balance of the most recent estimated Contract Price.

8.3 If Owner terminates this Agreement pursuant to Section 4.2 above and proceeds to design and construct the Project through its employees, agents or third parties, Owner's right to use the Work Product shall be as set forth in Section 4.3 hereof. Such rights may not be transferred or assigned to others without Design-Builder's express written consent and such third parties' agreement to the terms of Article 4.

[The following Article 9 should only be used if Owner and Design-Builder agree to establish their respective representatives at the time the Agreement is executed rather than during the performance of the Project.]

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 Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 12.3 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

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

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-Build 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 and Owner shall procure the insurance coverages set forth in the Insurance Exhibit attached hereto and in accordance with Article 5 of the General Conditions of Contract.

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

Performance Bond.

[Check one box only. If no box is checked, then no bond is required.]

Required Not Required

Payment Bond.

[Check one box only. If no box is checked, then no bond is required.]

Required Not Required

Other Performance Security.

[Check one box only. If no box is checked, then no other performance security is required. If the “Required” box is checked, identify below the specific performance security that is being required and all salient commercial terms associated with that security.]

Required Not Required

Article 11
Other Provisions

11.1 Other provisions, if any, are as follows: *(Insert any additional provisions)*

[Section 2.3.1 of the General Conditions of Contract sets forth a traditional negligence standard as it relates to the Design-Builder's performance of design professional services. If the Basis of Design Documents identify specific performance standards that can be objectively measured, the parties, including the following language, agree that the Design-Builder is obligated to achieve such standards.]

Notwithstanding Section 2.3.1 of the General Conditions of Contract, if the parties agree upon specific performance standards in the Basis of Design Documents, the design professional services shall be performed to achieve such standards.

[In lieu of Sections 10.3.1 through 10.3.3 of the General Conditions of Contract, the Parties may want to delete such sections and include the following alternative dispute resolution clause.]

Any claims, disputes, or controversies between the parties arising out of or related to the Agreement, or the breach thereof, which have not been resolved in accordance with the procedures set forth in Section 10.2 of the General Conditions of Contract shall be resolved in a court of competent jurisdiction in the state in which the Project is located.

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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:

(Name of Owner)

(Signature)

(Printed Name)

(Title)

Date: _____

DESIGN-BUILDER:

(Name of Design-Builder)

(Signature)

(Printed Name)

(Title)

Date: _____

Caution: An original DBIA document has this caution printed in blue. This is a printable copy and an original assures that changes will not be obscured as may occur when documents are reproduced.



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

Document No. 535

Second Edition, 2010

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DC



**Design-Build Institute of America - Contract Documents
LICENSE AGREEMENT**

By using the DBIA Contract Documents, you agree to and are bound by the terms of this License Agreement.

- 1. License.** The Design-Build Institute of America ("DBIA") provides DBIA Contract Documents and licenses their use worldwide. You acknowledge that DBIA Contract Documents are protected by the copyright laws of the United States. You have a limited nonexclusive license to: (a) Use DBIA Contract Documents on any number of machines owned, leased or rented by your company or organization; (b) Use DBIA Contract Documents in printed form for bona fide contract purposes; and (c) Copy DBIA Contract Documents into any machine-readable or printed form for backup or modification purposes in support of your permitted use.
- 2. User Responsibility.** You assume sole responsibility for the selection of specific documents or portions thereof to achieve your intended results, and for the installation, use, and results obtained from the DBIA Contract Documents. You acknowledge that you understand that the text of the DBIA Contract Documents has important legal consequences and that consultation with an attorney is recommended with respect to use or modification of the text. You will not represent that any of the contract documents you generate from DBIA Contract Documents are DBIA documents unless (a) the document text is used without alteration or (b) all additions and changes to, and deletions from, the text are clearly shown.
- 3. Copies.** You may not use, copy, modify, or transfer DBIA Contract Documents, or any copy, modification or merged portion, in whole or in part, except as expressly provided for in this license. Reproduction of DBIA Contract Documents in printed or machine-readable format for resale or educational purposes is expressly prohibited. You will reproduce and include DBIA's copyright notice on any printed or machine-readable copy, modification, or portion merged into another document or program.
- 4. Transfers.** You may not transfer possession of any copy, modification or merged portion of DBIA Contract Documents to another party, except that a party with whom you are contracting may receive and use such transferred material solely for purposes of its contract with you. You may not sublicense, assign or transfer this license except as expressly provided in this Agreement, and any attempt to do so is void.
- 5. Term.** The license is effective for one year from the date of purchase. DBIA may elect to terminate it earlier, by written notice to you, if you fail to comply with any terms or conditions of this Agreement.
- 6. Limited Warranty.** DBIA warrants the electronic files or other media by which DBIA Contract Documents are furnished to be free from defects in material and workmanship under normal use during the Term. There is no other warranty of any kind, expressed or implied, including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose. Some states do not allow the exclusion of implied warranties, so the above exclusion may not apply to you. This warranty gives you specific legal rights and you may also have other rights which vary from state to state. DBIA does not warrant that the DBIA Contract Documents will meet your requirements or that the operation of DBIA Contract Documents will be uninterrupted or error-free.
- 7. Limitations of Remedies.** DBIA's entire liability and your exclusive remedy shall be: the replacement of any document not meeting DBIA's "Limited Warranty" which is returned to DBIA with a copy of your receipt, or at DBIA's election, your money will be refunded. In no event will DBIA be liable to you for any damages, including any lost profits, lost savings or other incidental or consequential damages arising out of the use or inability to use DBIA Contract Documents even if DBIA has been advised of the possibility of such damages, or for any claim by any other party. Some states do not allow the limitation or exclusion of liability for incidental or consequential damages, so the above limitation or exclusion may not apply to you.
- 8. Acknowledgment.** You acknowledge that you have read this agreement, understand it and agree to be bound by its terms and conditions and that it will be governed by the laws of the District of Columbia. You further agree that it is the complete and exclusive statement of your agreement with DBIA which supersedes any proposal or prior agreement, oral or written, and any other communications between the parties relating to the subject matter of this agreement.

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INSTRUCTIONS

For DBIA Document No. 535 Standard Form of General Conditions of Contract Between Owner and Design-BUILDER (2010 Edition)

General Instructions

No.	Subject	Instruction
1.	Standard Forms	Standard form contracts have long served an important function in the United States and international construction markets. The common purpose of these forms is to provide an economical and convenient way for parties to contract for design and construction services. As standard forms gain acceptance and are used with increased frequency, parties are able to enter into contracts with greater certainty as to their rights and responsibilities.
2.	DBIA Standard Form Contract Documents	Since its formation in 1993, the Design-Build Institute of America (DBIA) has regularly evaluated the needs of owners, design-builders, and other parties to the design-build process in preparation for developing its own contract forms. Consistent with DBIA's mission of promoting best design-build practices, DBIA believes that the design-build contract should reflect a balanced approach to risk that considers the legitimate interests of all parties to the design-build process. DBIA's Standard Form Contract Documents reflect a modern risk allocation approach, allocating each risk to the party best equipped to manage and minimize the risk, in furtherance of the goal of promoting best design-build practices.
3.	Use of Non-DBIA Documents	To avoid inconsistencies among documents used on the same project, DBIA's Standard Form Contract Documents should not be used in conjunction with non-DBIA documents unless the non-DBIA documents are appropriately modified on the advice of legal counsel. Moreover, care should also be taken when using different editions of the DBIA Standard Form Document on the same project to ensure consistency.
4.	Legal Consequences	DBIA Standard Form Contract Documents are legally binding contracts with important legal consequences. Contracting parties are advised and encouraged to seek legal counsel in completing or modifying the Documents.
5.	Reproduction	DBIA hereby grants to purchasers a limited license to reproduce its Documents consistent with the License Agreement accompanying these Documents. At least two original versions of the Agreement should be signed by the parties. Any other reproduction of DBIA Documents is strictly prohibited.
6.	Modification	Effective contracting is accomplished when the parties give specific thought to their contracting goals and then tailor the contract to meet the unique needs of the project and the design-build team. For this reason, these Documents may require modification for various purposes including, for example, to comply with local codes and laws, or to add special terms. DBIA's latest revisions to its Documents provide the parties an opportunity to customize their contractual relationship by selecting various optional contract clauses that may better reflect the unique needs and risks associated with the project. Any modifications to these Documents should be initialed by the parties. At no time should a document be re-typed in its entirety. Re-creating the document violates copyright laws and destroys one of the advantages of standard forms-familiarity with the terms.
7.	Execution	It is good practice to execute two original copies of the Agreement. Only persons authorized to sign for the contracting parties may execute the Agreement.

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Specific Instructions

Section	Title	Instruction
General	Purpose of This Document	<p>The General Conditions of Contract provide the terms and conditions under which the Work of the Project will be performed.</p> <p>This document accompanies DBIA Document No. 525 and DBIA Document No. 530 (each referred to herein generally as "Agreement"). It may also be incorporated by reference into other related agreements, as between the Design-Builder and the Design Consultant, and the Design-Builder and the Subcontractor.</p>
General	Checklist	<p>The following Sections reference documents that are to be attached to the Agreement:</p> <p>Section 3.5.1 Owner's Permit List Article 5 Insurance and Bonds Section 9.4.2 Unit Prices</p>
2.1.3	Schedule	<p>The parties are encouraged, if possible, to agree to a schedule for the execution of the Work upon execution of the Agreement or upon establishing the GMP.</p>
2.2.1	Design Professional Services	<p>The parties should be aware that in order to require compliance with state licensing laws for design professionals, some states also require that the design professional have a corporate professional license.</p>
2.3.1	Standard of Care for Design Professional's Services	<p>Design-Builder's obligation is to deliver design that meets prevailing industry standards. However, DBIA has provided the parties in Article 11 of the Agreement an optional provision whereby if Owner identifies specific performance standards that can be objectively measured, Design-Builder is obligated to design the Project to satisfy these standards if this optional provision is selected. To avoid any confusion and to ensure that the parties fully understand what their obligations are, the specific performance standards should be clearly identified and should be able to be objectively measured. The Design-Builder should recognize that this is a heightened standard of care and has insurance ramifications that should be discussed with the Design-Builder's insurance advisor.</p>
3.5.1	Government Approvals and Permits	<p>Design-Builder is responsible for obtaining all necessary permits, approvals and licenses, except to the extent specific permits, approvals, and licenses are set forth in an Owner's Permit List, which must be attached as an exhibit to the Agreement. The parties, prior to execution of the Agreement, should discuss which permits, approvals and licenses need to be obtained for the Project and which party is in the best position to do so.</p>
5.1.1	Design-Builder's Insurance Requirements	<p>Design-Builder is obligated to provide insurance coverage from insurance carriers that meet the criteria set forth in the Insurance Exhibit attached to Section 10.1 of the Agreement.</p>
5.1.2	Exclusions to Design-Build	<p>Parties are advised that their standard insurance policies may contain exclusions for the design-build delivery method. This Section 5.1.2 requires that any such exclusions be deleted from the policy.</p>
5.2	Owner's Insurance Requirements	<p>Owner, in addition to providing the insurance set forth in this Section and Section 5.3, is also obligated to procure the insurance coverages for the amounts and consistent with the terms set forth in the Insurance Exhibit made part of the Agreement.</p>
5.4	Bonds and Other Performance Security	<p>Design-Builder is only obligated to provide bonds or other forms of performance security to the extent called for in Section 10.2 of the Agreement.</p>

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Section	Title	Instruction
8.2.2	Compensability for Force Majeure Events	The parties are provided the option in the Agreement of negotiating whether the Design- Builder is entitled to compensation for Force Majeure Events.
9.4.1	Contract Price Adjustments	Unit prices, if established, shall be attached pursuant to Article 2 of the Agreement.
9.4.3	Payment/ Performance of Disputed Services	When Owner disputes Design-Builder's entitlement to a change order or disagrees with Design-Builder regarding the scope of Work, and nevertheless expects Design-Builder to perform the services, Design-Builder's cash flow and ability to complete the Work will be hampered if Owner fails to pay Design-Builder for the disputed services. This Section provides a balanced approach whereby Design-Builder is required to perform the services and Owner is required to pay fifty percent (50%) of Design-Builder's reasonable estimated direct costs of performing such services until the dispute is settled. By so doing, Owner does not forfeit its right to any total responsibility for payment, and Design-Builder does not give up its right to demand full payment. The dispute shall be resolved according to Article 10.
Article 10	Contract Adjustments and Disputes	DBIA endorses the use of partnering, negotiation, mediation and arbitration for the prevention and resolution of disputes. The General Conditions of Contract provides for the parties' Representatives and Senior Representatives to attempt to negotiate the dispute or disagreement. If this attempt fails, the dispute shall be submitted to mandatory non-binding mediation. Any dispute that cannot be resolved in mediation shall then be submitted to binding arbitration, unless the parties elect in the Agreement to submit their dispute to a court of competent jurisdiction.
10.3.4	Arbitration	The prevailing party in any arbitration shall receive reasonable attorneys' fees from the other party. DBIA supports the loser pays provision to encourage parties to negotiate or mediate their differences and to minimize the number of frivolous disputes.
10.4	Duty to Continue Performance	Pending the resolution of any dispute or disagreement, both Owner and Design-Builder shall continue to perform their respective duties under the Contract Documents, unless the parties provide otherwise in the Contract Documents.
10.5	Consequential Damages	DBIA believes that it is inappropriate for either Owner or Design-Builder to be responsible to the other for consequential damages arising from the Project. This limitation on consequential damages in no way restricts, however, the payment of liquidated damages, if any, under Article 5 of the Agreement.
11.4	Design-Builder's Right to Terminate for Cause	If Design-Builder properly terminates the Agreement for cause, it shall recover from Owner in the same way as if Owner had terminated the Agreement for convenience under Article 8 of the Agreement. Owner shall pay to Design-Builder its costs, reasonable overhead and profit on the costs, and an additional payment based on a percentage of the remaining balance of the Contract Price, all as more fully set forth in Article 8 of the Agreement.
Article 12	Electronic Data	Design-Builder and Owner shall agree on the software and format for the transmission of Electronic Data. Ownership of Work Product in electronic form is governed by Article 4 of the Agreement. The transmitting party disclaims all warranties with respect to the media transmitting the Electronic Data, but nothing in this Article is intended to negate duties with respect to the standard of care in creating the Electronic Data.

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SAMPLE

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 - Lump Sum* (2010 Edition) or DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee with an Option for a Guaranteed Maximum Price* (2010 Edition).

1.2.2 *Basis of Design Documents* are as follows: For DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee with an Option for a Guaranteed Maximum Price*, the Basis of Design Documents are those documents specifically listed in the applicable, the GMP Exhibit or GMP Proposal as being the "Basis of Design Documents." For DBIA Document No. 525, *Standard Form of Agreement Between Owner and Design-Builder - Lump Sum*, the Basis of Design Documents are the Owner's Project Criteria, Design-Builder's Proposal and the Deviation List, if any.

1.2.3 *Construction Documents* are the documents, consisting of Drawings and Specifications, to be prepared or assembled by the Design-Builder consistent with the Basis of Design Documents unless a deviation from the Basis of Design Documents is specifically set forth in a Change Order executed by both the Owner and Design-Builder, as part of the design review process contemplated by Section 2.4 of these General Conditions of Contract.

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

1.2.5 *Design-Builder Team* is composed of the Design-Builder, the Design Consultant, and key Subcontractors identified by the Design-Builder.

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

1.2.7 *Final Completion* is the date on which all Work is complete in accordance with the Contract Documents, including but not limited to, any items identified in the punch list prepared under Section 6.6.1 and the submission of all documents set forth in Section 6.7.2.

1.2.8 *Force Majeure Events* are those events 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.

1.2.9 *General Conditions of Contract* refer to this DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2010 Edition).

1.2.10 *GMP Exhibit* means that exhibit attached to DBIA Document No. 530, *Standard Form of*

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Agreement Between Owner and Design-Builder - Cost Plus Fee With an Option for a Guaranteed Maximum Price, which exhibit will have been agreed upon by Owner and Design-Builder prior to the execution of the Agreement.

1.2.11 *GMP Proposal* means that proposal developed by Design-Builder in accordance with Section 6.6 of DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee With an Option for a Guaranteed Maximum Price*.

1.2.12 *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.

1.2.13 *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.

1.2.14 *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 for Design-Builder's performance of the Work. Owner's Project Criteria may include conceptual documents, design criteria, design performance specifications, design specifications, and LEED or other sustainable design criteria and other Project-specific technical materials and requirements.

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

1.2.16 *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.

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

1.2.18 *Substantial Completion*. *Substantially complete* means the date on which the Work, or an agreed upon portion of the Work, is substantially complete in accordance with the Contract Documents so that Owner can occupy and use the Project or a portion thereof for its intended purposes.

1.2.19 *Work* comprises 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

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the Work, including (i) whether the Work is proceeding according to schedule, (ii) whether discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution, (iii) whether health and safety issues exist in connection with the Work; (iv) status of the contingency account to the extent provided for in the Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee with an Option for a Guaranteed Maximum Price; and (v) other items that 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 Unless a schedule for the execution of the Work has been attached to the Agreement as an exhibit at the time the Agreement is executed, 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 from the 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. After 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 any necessary measures, 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 any 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 to be deemed to create any legal or contractual relationship between Owner and any Design Consultant.

2.3 Standard of Care for Design Professional Services.

2.3.1 The standard of care for all design professional services performed to execute the Work shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project.

4 Design-Builder 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. Interim design submissions shall be consistent with the Basis of Design Documents, as the Basis of Design Documents may have been changed through the design process set forth in this Section 2.4.1. 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 changes to the Basis of Design Documents, or, if applicable, previously submitted design submissions. Changes to the Basis of Design Documents, including those that are deemed minor changes under Section 9.3.1, shall be processed in accordance with Article 9. Minutes of the meetings, including a full listing of all changes, will be maintained by Design-Builder and provided

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to all attendees for review. Following the design review meeting, Owner shall review and approve the interim design submissions and meeting minutes 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 and recorded in the meetings minutes. The parties shall hold a design review meeting to discuss, and Owner shall review and approve, the Construction Documents in accordance with the procedures set forth in Section 2.4.1 above. Design-Builder shall proceed with construction in accordance with the approved Construction Documents and shall submit one set of approved Construction Documents to Owner prior to commencement of construction.

2.4.3 Owner's review and approval of interim design submissions, meeting minutes, 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, meeting minutes, 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 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 its 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, any costs Design-Builder is required to make to the Construction Documents because of changes in Legal Requirements.

2.6 Government Approvals and Permits.

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

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

2.7 Design-Builder's Construction Phase Services.

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

2.7.2 Design-Builder shall perform all construction activities efficiently and with the requisite expertise,

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skill and competence to satisfy the requirements of the Contract Documents. Design-

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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 termination 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-governmental 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 injuries, losses, damages or accidents resulting from

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their performance of the Work.

2.9 Design-Builder's Warranty.

2.9.1 Design-Builder warrants to Owner that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work in a commercially reasonable manner. 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 any specific warranty included in 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 corrective Work if the nonconforming Work creates an emergency requiring an immediate response, the seven (7) day period identified herein shall be deemed inapplicable.

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

Article 3

Owner's Services and Responsibilities

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.

3.1.3 Owner shall give Design-Builder timely notice of any Work that Owner notices to be

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defective or not in compliance with the Contract Documents.

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:

3.2.1.1 Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;

3.2.1.2 Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;

3.2.1.3 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;

3.2.1.4 A legal description of the Site;

3.2.1.5 To the extent available, record drawings of any existing structures at the Site; and

3.2.1.6 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 attorney's fees, incurred in securing these necessary agreements.

3.3 Financial Information.

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

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

3.4 Owner's Representative.

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

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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 Difficult 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 shall 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 to 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 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 the 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 by 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

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whose acts they may be liable. To the fullest extent permitted by law, Design-Builder shall indemnify, defend and hold harmless Owner and Owner's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable.

4.2 Differing Site Conditions.

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

4.2.2 Upon encountering a Differing Site Condition, Design-Builder shall provide prompt written notice to Owner of such condition, which notice shall not be later than fourteen (14) days after such condition has been encountered. Design-Builder shall, to the extent it is 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 the insurance for the coverage amounts all as set forth in the Insurance Exhibit to the Agreement. Coverage shall be secured 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.

5.1.2 Design-Builder's insurance shall specifically delete any design-build or similar exclusions that could compromise coverage because of the design-build delivery of the Project.

5.1.3 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. If any of the foregoing insurance coverages are required to remain in force after final payment are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the Final Application for Payment. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by the Design-Builder with reasonable promptness according to the Design-Builder's information and belief.

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 as set forth in the Insurance Exhibit to the Agreement to protect Owner from claims which may arise from the performance of Owner's obligations under the Contract Documents or Owner's conduct during the course of the Project.

5.3 Owner's Property Insurance.

5.3.1 Unless otherwise provided in the Contract Documents, Owner shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located property insurance upon the entire Project to the full insurable value of the Project, including professional fees, overtime premiums and all other expenses incurred to replace or repair the insured property. The property insurance obtained by Owner shall be the broadest coverage commercially available, and shall include as additional insureds the interests of Owner, Design-Builder, Design Consultants and Subcontractors of any tier. Such insurance shall include but not be limited to 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. The Owner is responsible for the payment of any deductibles under the insurance required by this Section 5.3.1.

5.3.2 Unless the Contract Documents provide otherwise, Owner shall procure and maintain fire and machinery insurance that will include the interests of Owner, Design-Builder, Design Consultants, and Subcontractors of any tier. The Owner is responsible for the payment of any deductibles under the insurance required by this Section 5.3.2.

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

5.3.4 Any loss covered under Owner's property insurance shall be adjusted with Owner and Design-Builder and made payable to both of them as trustees for the insureds as their interests may appear, subject to any applicable mortgage claim. 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 contractor, Design Consultants and Subcontractors and shall require each of them to include similar waivers in their contracts. These waivers of subrogation shall not contain any restriction or limitation that will impair the full and complete extent of its applicability to any person or entity unless agreed to in writing prior to the execution of this Agreement.

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.

5.4.2 All bonds furnished by Design-Builder shall be in a form satisfactory to Owner. The surety shall be a company qualified and registered to conduct business in the state in which the Project is located.

Article 6 Payment

6.0 Schedule of Values.

6.0.1 Unless required by the Owner upon execution of this Agreement, 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 items, (ii) include values for all items comprising the Work and (iii) serve as the basis for monthly progress payments made by Design-Builder throughout the Work.

6.0.2 The Owner will timely review and approve the schedule of values so as not to delay the submission of the Design-Builder's first application for payment. The Owner and Design-Builder shall timely resolve any differences so as not to delay the Design-Builder's submission of its first application for payment.

6.1 Monthly Progress Payments.

6.1.1 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.

6.1.2 The Application for Payment shall request payment for equipment and materials not yet incorporated into the Project, provided that the Owner is satisfied that the equipment and materials are suitably stored at either the Site or another suitable 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.

6.1.3 All discounts offered by Subcontractors, Sub-Subcontractors and suppliers to Design-Builder for early payment shall accrue one hundred percent to Design-Builder to the extent Design-Builder advances payment. If the Owner advances payment to Design-Builder specifically to receive the discount, Design-Builder may, in its Application for Payment the full undiscounted cost of the item for which payment is sought.

6.1.4 The Application for Payment shall constitute Design-Builder's representation that the Work described herein 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.

6.2 Withholding Payments.

6.2.1 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 as a result of Design-Builder's failure to meet its obligations hereunder, 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.

6.2.2 Notwithstanding anything to the contrary in the Contract Documents, Owner shall pay

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Design-Builder all undisputed amounts in an Application for Payment within the times required by the Agreement.

6.3 Right to Stop Work and Interest.

6.3.1 If Owner fails to pay timely 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.

6.4 Design-Builder's Payment Obligations.

6.4.1 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 the 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.

6.5 Substantial Completion.

6.5.1 Design-Builder shall notify Owner when it believes that Work, or the portion 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 shall 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 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.

6.5.2 Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, Owner shall release Design-Builder all unpaid 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.

6.5.3 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 governmental authority 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.

6.6 Final Payment.

6.6.1 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 achieved Final Completion.

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

6.6.2.1 An affidavit that there are no claims, obligations or liens outstanding or

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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;

6.6.2.2 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;

6.6.2.3 Consent of Design-Builder's surety, if any, to final payment;

6.6.2.4 All operating manuals, warranties and other deliverables required by the Contract Documents; and

6.6.2.5 Certificates of insurance confirming that required coverage will remain in effect consistent with the requirements of the Contract Documents.

6.6.3 Upon making final payment, Owner waives all claims against Design-Builder except those relating to (i) Design-Builder's failure to satisfy its payment obligations, in which 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 special warranties required by the Contract Documents.

6.6.4 Deficiencies in the Work discovered after Substantial Completion, whether or not such deficiencies would have been included on the Punch List if discovered earlier, shall be deemed warranty Work. Such deficiencies shall be corrected by Design-Builder under Sections 2.9 and 2.10 herein, and shall not be a reason to withhold final payment from Design-Builder, provided, however, that Owner shall be entitled to withhold from the Final Payment the reasonable value of completion of such deficient work until such work is completed.

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 and agree to pay all damages and costs, including but not limited to attorneys' fees and expenses incurred 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

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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 of 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. Owner shall furnish Design-Builder with any applicable tax exemption certificates necessary to obtain such exemption, upon which Design-Builder may rely.

7.3 Payment Claim Indemnification.

7.3.1 Provided 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 all expenses, 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 claim or mechanic's lien has been filed, Design-Builder shall commence to take the steps necessary to discharge said claim or lien, including, if necessary, the furnishing of a mechanic's lien bond. If Design-Builder fails to do so, Owner will have the right to discharge the claim or lien and hold Design-Builder liable for costs and expenses incurred, including attorneys' fees.

7.4 Design-Builder's General Indemnification.

7.4.1 Design-Builder, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Owner, its officers, directors, and employees 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, and employees, 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, and Force Majeure Events.

8.2.2 In addition to Design-Builder's right to 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 Force Majeure Events unless otherwise provided in the Agreement.

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, signed by their agreement upon all of the following:

9.1.1.1 The scope of the change in the Work;

9.1.1.2 The amount of the adjustment to the Contract Price; and

9.1.1.3 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.

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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 Contract 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:

9.4.1.1 Unit prices set forth in the Agreement or as subsequently agreed to between the parties;

9.4.1.2 A mutually accepted lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by Owner;

9.4.1.3 Costs and any other markups set forth in the Agreement; or

9.4.1.4 If an increase or decrease cannot be agreed to as set forth in items 9.4.1.1 through 9.4.1.3 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.

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 cost 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

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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.

Article 10

Contract Adjustments and Disputes

10.1 Requests for Contract Adjustments and Relief.

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

10.2 Dispute Avoidance and Resolution.

10.2.1 The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Design-Builder and Owner each commit to resolving such disputes or disagreements in a 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 discussion between Design-Builder's Representative and Owner's Representative which shall conclude within fourteen (14) days of the written notice provided for in Section 10.1.1 unless the Owner and Design-Builder mutually agree otherwise.

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. Five (5) days prior to such 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 within thirty (30) days of the conclusion of the meeting of Senior Representatives 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

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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. Unless otherwise mutually agreed by the Owner and Design-Builder and consistent with the mediator’s schedule, the mediation shall commence within ninety (90) days of the submission of the dispute to mediation.

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

10.4 Duty to Continue Performance.

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

10.5 CONSEQUENTIAL DAMAGES.

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

10.5.2 The consequential damages limitation set forth in Section 10.5.1 above is not intended to affect the payment of liquidated damages or lost early completion bonus, if any, set forth in Article 5 of the Agreement which both parties recognize has been established, in part, to reimburse Owner or reward Design-Builder 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 or stoppage of the 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) (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 entering 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, fixtures and other items thereon, which have been purchased or provided for the performance of the Work, or 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 have been 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.

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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 the Work for the following reasons:

11.3.1.1 Owner's failure to provide financial assurances as required under Section 3.3 hereof; or

11.3.1.2 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 the Work unless such problem 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 the 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:

11.4.1.1 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 any order by Owner under Section 11.1.1 hereof, provided that such stoppages are not due to the act or omissions of Design-Builder or anyone for whose acts Design-Builder may be responsible.

11.4.1.2 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.

11.4.1.3 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 corrected, or reasonably commence to cure, 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:

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11.5.1.1 The Bankrupt Party, its trustee or other successor, shall furnish, upon request

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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

11.5.1.2 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 applicable 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 **Electronic Data**

12.1 Electronic Data.

12.1.1 The parties recognize that Contract Documents, including drawings, specifications and three-dimensional modeling (such as Building Information Modeling) and other Work Product may be transmitted among Owner, Design-Builder and others in electronic media as an alternative to paper hard copies (collectively "Electronic Data").

12.2 Transmission of Electronic Data.

12.2.1 Owner and Design-Builder shall agree on the software and the format for the transmission of Electronic Data. Each party shall be responsible for securing the legal rights to access the agreed-upon format, including, if necessary, obtaining appropriately licensed copies of the applicable software or electronic program to view, interpret and/or generate the Electronic Data.

12.2.2 Neither party makes any representations or warranties to the other with respect to the functionality of the software or computer program associated with the electronic transmission of Work Product. Unless specifically set forth in the Agreement, ownership of the Electronic Data does not include ownership of the software or computer program with which it is associated, transmitted, generated or interpreted.

12.2.3 By transmitting Work Product in electronic form, the transmitting party does not transfer or assign its rights in the Work Product. The rights in the Electronic Data shall be as set forth in Article 4 of the Agreement. Under no circumstances shall the transfer of ownership of Electronic Data be deemed to be a sale of the transmitting party of tangible goods.

12.3 Electronic Data Protocol.

12.3.1 The parties acknowledge that Electronic Data may be altered or corrupted, intentionally or otherwise, due to occurrences beyond their reasonable control or knowledge, including but not limited to compatibility issues with user software, manipulation by the recipient, errors in transcription or transmission, machine error, environmental factors, and operator error.

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Consequently, the parties understand that there is some level of increased risk in the use of Electronic Data for the communication of design and construction information and, in consideration of this, agree, and shall require their independent contractors, Subcontractors and Design Consultants to agree, to the following protocols, terms and conditions set forth in this Section 12.3.

12.3.2 Electronic Data will be transmitted in the format agreed upon in Section 12.2.1 above, including file conventions and document properties, unless prior arrangements are made in advance in writing.

12.3.3 The Electronic Data represents the information at a particular point in time and is subject to change. Therefore, the parties shall agree upon protocols for notification by the sender to the recipient of any changes which may thereafter be made to the Electronic Data, which protocol shall also address the duty, if any, to update such information, data or other information contained in the electronic media if such information changes prior to Final Completion of the Project.

12.3.4 The transmitting party specifically disclaims all warranties, expressed or implied, including but not limited to, implied warranties of merchantability and fitness for a particular purpose, with respect to the media transmitting the Electronic Data. However, transmission of the Electronic Data via electronic means shall not invalidate or negate any duties pursuant to the applicable standard of care with respect to the creation of the Electronic Data, unless such data is materially changed or altered after it is transmitted to the receiving party, and the transmitting party did not participate in such change or alteration.

Article 13 **Miscellaneous**

13.1 Confidential Information.

13.1.1 Confidential Information is defined as information which is determined by the transmitting party to be of a confidential or proprietary nature and: (i) the transmitting party identifies as either confidential or proprietary; (ii) the transmitting party takes steps to maintain the confidential or proprietary nature of the information; and (iii) the information is not otherwise available in or considered to be in the public domain. The receiving party agrees to maintain the confidentiality of the Confidential Information and agrees to use the Confidential Information solely in connection with the Project.

13.2 Assignment.

13.2.1 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.

13.3 Successors.

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

13.4 Governing Law.

13.4.1 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.

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13.5 Severability.

13.5.1 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.

13.6 No Waiver.

13.6.1 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.

13.7 Headings.

13.7.1 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.

13.8 Notice.

13.8.1 Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given 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.

13.9 Amendments.

13.9.1 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.