



MODIFIED STANDARD FORM OF AGREEMENT BETWEEN OWNER AND DESIGN-BUILDER - COST PLUS FEE WITH A GUARANTEED MAXIMUM PRICE

The author of this document has revised the text of the original DBIA standard form.

Document No. 530

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TABLE OF CONTENTS

Article	Name	Page
Article 1	Scope of Work.....	3
Article 3	Interpretation and Intent.....	4
Article 4	Ownership of Work Product.....	5
Article 5	Contract Time.....	5
Article 6	Contract Price and Guaranteed Maximum Price.....	7
Article 7	Procedure for Payment.....	13
Article 8	Termination for Convenience.....	14
Article 10	Bonds and Insurance.....	15
Article 11	Other Provisions.....	16

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

This **AGREEMENT** is made as of the date of execution by Owner, by and between the following parties, for services in connection with the Project identified below:

OWNER:

City of Canton, Ohio
218 Cleveland Avenue SW
Canton, Ohio 44702

Owner's Representative:

The Owner's Representative shall be the point of contact for the Design-Builder on the Project. In addition to the other requirements contained herein, all communications, submissions or notices to the Owner from the Design-Builder related to the Project shall be directed to the Owner's Representative.

CRITERIA ARCHITECT/ENGINEER:

DESIGN-BUILDER:

(Name and address)

Design Builder's Representative:

Email:

PROJECT:

Located at: , Canton, Ohio

DESCRIPTION OF THE PROJECT:

The Project is a design-build project. The Design-Builder will design and provide all of the Work necessary to complete the Project as follows: The Project consists of (the "Work").

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. The team assigned by the Design Builder to perform the services required by this Agreement shall be the same team identified in Design Builder's proposal.
- 1.1.1 Compliance with Laws and Regulations.** The Design-Builder, at its expense, will comply with all applicable federal, state, and local laws, rules, and regulations applicable to the Work, will require its Subcontractors to comply. The Design-Builder shall also comply with all federal, state, and local laws, rules, and regulations applicable to the construction of public facilities, including any applicable safety and security laws and regulations. The design will conform to all applicable codes and standards, and all other national, state, and local regulatory and statutory requirements. In the event of conflicting requirements, the Design-Builder shall comply with the more stringent requirements.
- 1.1.2 Complete Design Documents.** To the extent the design documents are incomplete following completion of the Preliminary Services, Design-Builder shall complete the design documents in accordance with the Contract Documents, including the General Conditions of Contract. Design-Builder shall be responsible for performing the following duties including, but not limited to, cost estimating, budgeting, value engineering, constructability review, scheduling, and preconstruction planning and shall submit to the Owner, a summary of its constructability review of the 100% complete Construction Documents.
- 1.2** To the extent necessary to complete the Work, Design-Builder shall be responsible for all topographic survey work, geotechnical investigation, and geotechnical recommendations as part of its scope of work. The Owner will not be responsible for contracting and separately supplying any surveying or geotechnical services to the Design-Builder.
- 1.3** Design-Builder shall not self-perform any construction trades work on the Project without the prior written permission of the Owner specific to a particular scope of work and submission of a sealed bid in accordance with all requirements of the Ohio Revised Code and the Ohio Administrative Code.
- 1.4** The Design-Builder shall secure the building permit as well as other permits, including but not limited to zoning permits, fees, licenses, and inspections by governmental agencies necessary for proper execution and completion of the Work. The Design-Builder shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. If the Design-Builder performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful order of public authorities, the Design-Builder shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

Article 2 - Contract Documents

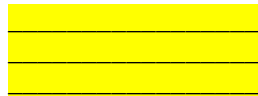
- 2.1** The Contract Documents are comprised of the following:
- 2.1.1** All written modifications, written amendments, and Change Orders to this Agreement issued in accordance with DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2010 Edition), as modified.
- 2.1.2** The Owner's Request for Qualifications dated [REDACTED], 20 [REDACTED] and the Owner's Request for Proposals, dated [REDACTED], 20 [REDACTED] (incorporated by reference to the extent not inconsistent with this Agreement.)

2.1.3 This Agreement, including the following exhibits:

Exhibit 1	Statutory Form of Bonds, per O.A.C. 153:4-1-02
Exhibit 2	Design-Builder's GMP Proposal dated [REDACTED], as modified
Exhibit 3	Notice of Claim Form
Exhibit 4	Design-Builder's Affidavit with List of Subcontractors and Suppliers with Amounts Withheld
Exhibit 5	Design-Builder's Progress Payment Waiver and Release Affidavit
Exhibit 6	Not Used
Exhibit 7	Tax Exempt Certificate
Exhibit 8	Not Used
Exhibit 9	Final Lien Waiver and Release Agreement
Exhibit 10	Design Builder's Itemized General Conditions
Exhibit 11	Prevailing Wage Rates, to be provided to the Design-Builder upon its request

2.1.4 The General Conditions of the Contract DBIA Document No. 535, Standard Form of General Conditions of Contract Between Owner and Design-Builder (2010 Edition), as modified ("General Conditions of Contract").

2.1.5 Construction Documents prepared and approved in accordance with the Contract Documents, including the DBIA 520, *Modified Standard Form of Preliminary Agreement Between Owner and Design Builder*, the General Conditions of Contract, including Plan sheets prepared by [REDACTED] and identified in the index listed below:



2.1.6 The executed DBIA Document No. 520 – *Modified Standard Form of Preliminary Agreement Between Owner and Design-Builder*.

Article 3 - Interpretation and Intent

3.1 Design-Builder, prior to execution of the Agreement, shall carefully review all the Contract Documents, including the Owner's Project criteria and the Construction 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.

3.2 The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) and 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 shall provide the better quality or greater quantity of Work or comply with the more stringent requirements. In the event of any inconsistency, the provisions of this Agreement shall control over any proposal, document, or other attachment, or exhibit.

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 All information provided by the Owner shall be verified by the Design-Builder.

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 representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

Article 4 - Ownership of Work Product

4.1 Work Product. All drawings, specifications and other documents and electronic data, including such documents identified in the General Conditions of Contract, furnished by Design-Builder to Owner under this Agreement ("Instruments of Service") 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 provision set forth below.

4.2 Upon execution of this Agreement, the Design-Builder grants to the Owner a nonexclusive license to use the Design-Builder's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Design-Builder shall obtain similar nonexclusive licenses from the Design-Builder's Design Consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the subcontractors, sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants to reproduce, including electronically, applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. This license shall survive any termination of this Agreement and any dispute relating to such termination.

Article 5 - Contract Time

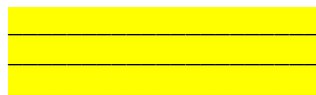
5.1 Date of Commencement. The date for commencement of the Work shall be the date of the Owner's written Notice to Proceed, which may take the form of an email, or in the absence of a written Notice to Proceed, the date this Agreement is executed by the Owner (the "Date of Commencement").

5.2 Substantial Completion and Final Completion.

5.2.1 Substantial Completion of the entire Work shall be achieved no later than [redacted] calendar days after the Date of Commencement ("Date for Substantial Completion"). The Date for Substantial Completion shall only be changed or modified by Change Order, other Modification, or a Claim that is Finally Resolved regardless of any dates in any schedules, including the Progress Schedule, created by any person, including the Design-Builder.

5.2.1.1 Substantial Completion is defined in the General Conditions of Contract.

5.2.2 Interim milestones and/or Substantial Completion of identified portions of the Work ("Scheduled Interim Milestone Dates") shall be achieved as follows: (None if none are listed) *(Insert any interim milestones for portions of the Work with different scheduled dates for Substantial Completion)*



5.2.3 The Date for Final Completion of the Design-Builder's Work will be 30 calendar days after the Date for Substantial Completion ("Date for Final Completion"). The Date for Final Completion shall only be changed or modified by Change Order, other Modification, or a Claim that is Finally Resolved regardless of any dates in any schedules, including the Progress Schedule, created by any person, including the Design-Builder.

5.2.3.1 Final Completion is defined in 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 Contract Documents.

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. If the Design-Builder does not meet the Date for Substantial Completion or the Date for Final Completion, the Design-Builder shall pay the Owner (and the Owner may set off from sums coming due the Design-Builder) Liquidated Damages in the per diem amounts as set forth in the following tables, whichever may be applicable:

SCHEDULE OF LIQUIDATED DAMAGES – SUBSTANTIAL COMPLETION

GMP of More Than	To and Including	Liquidated Damages to be Deducted for Each Calendar Day of Overrun in Time past the Date for Substantial Completion
\$0.00	\$1,000,000.00	\$500.00
\$1,000,000.01	\$2,000,000.00	\$1,000.00
\$2,000,000.01	\$5,000,000.00	\$2,000.00
\$5,000,000.01	\$10,000,000.00	\$5,000.00
\$10,000,000.01	\$20,000,000.00	\$10,000.00
\$20,000,000.01	\$50,000,000.00	\$20,000.00
More than \$50,000,000.01		\$50,000.00

SCHEDULE OF LIQUIDATED DAMAGES – FINAL COMPLETION

GMP of More Than	To and Including	Liquidated Damages to be Deducted for Each Calendar Day of Overrun in Time past the Date for Final Completion
\$0.00	\$1,000,000.00	\$50.00
\$1,000,000.01	\$2,000,000.00	\$100.00
\$2,000,000.01	\$5,000,000.00	\$200.00
\$5,000,000.01	\$10,000,000.00	\$500.00
\$10,000,000.01	\$20,000,000.00	\$1,000.00
\$20,000,000.01	\$50,000,000.00	\$1,500.00
More than \$50,000,000.01		\$2,000.00

In addition to such Liquidated Damages, the Design-Builder shall indemnify, defend and hold the Owner and its employees and agents harmless from any and all claims or losses, whether or not such claims are proven, and from all costs and expenses incurred, as a result of or related to such claims or losses, including but not limited to attorneys' and consultants' fees and expenses, provided that such claims arise out of or are related to the Design-Builder's failure to meet the Substantial Completion or Final Completion dates set forth herein. These Liquidated Damages are in addition to any other remedies available to the Owner under the Contract Documents.

The Design-Builder acknowledges that such amounts of Liquidated Damages represent a reasonable estimate of the actual damages for loss of or interference with the intended use of the Project that the

Owner would incur if the Design-Builder's Work is not Substantially Complete by its Date for Substantial Completion or Finally Complete by the required Date for Final Completion.

Article 6 - Contract Price and Guaranteed Maximum Price

6.1 Contract Price. Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract a contract price ("Contract Price") subject to the GMP established in this section and any adjustments made in accordance with the General Conditions of Contract. The Contract Price is the sum of the Design Services Fee, Preconstruction Fee, Design-Build Services Fee, and General Conditions, the actual Cost of the Work (as defined in this Agreement), and the amount of Contingency used, as each is defined in the Contract Documents, exclusive of the Preliminary Services Fee. The amounts included in the Contract Price are subject to open book pricing in accordance with Paragraph 7.5 of this Agreement.

6.2 The Guaranteed Maximum Price ("GMP") Established Upon Execution of this Agreement. Design-Builder guarantees that the Contract Price shall not exceed the GMP of _____ (\$ _____), subject to additions and deductions by changes in the Work as provided in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price or GMP. The GMP and a list of the documents used as a basis for the GMP are identified in the GMP Proposal, which is included as **Exhibit 2**. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner. The GMP includes the Design Services Fee, Preconstruction Fee, Design-Build Services Fee, General Conditions, the Contingency, and the Maximum Cost of the Work, as defined herein.

6.2.1 Design-Builder's Fee. Design-Builder's Fee shall be:

6.2.1.1 Design Services Fee. To the extent not included in the Preliminary Services Fee, the Design Services Fee is included in the GMP set forth in Paragraph 6.2 and is the compensation for services provided by the architect or engineer of record, including all sub-consultants. The Design Services Fee for the Project is \$ _____.

6.2.1.2 Preconstruction Fee. To the extent not included in the Preliminary Services Fee, the Preconstruction Fee is included in the GMP set forth in Paragraph 6.2 and is the combination of home office overhead and profit for preconstruction services. The Preconstruction Fee for the Project is \$ _____.

6.2.1.3 Design-Build Services Fee. The Design-build Services Fee is included in the GMP set forth in Paragraph 6.2 and is the combination of home office overhead and profit for services provided during the construction phase of the Project as defined in the Contract Documents. The Design-Builder's Design-Build Services Fee for the Project is _____% of the cost of the base work which equates to \$ _____ and _____% of the cost of the accepted alternates which equates to \$ _____. The total Design-Build Services Fee for the Project is \$ _____.

6.2.1.4 General Conditions. The General Conditions are included in the GMP set forth in Paragraph 6.2 and are the Design-Builder's costs for materials, services and equipment necessary to perform the Work on the Project but that are not incorporated into the Project. The amount of the Design-Builder's General Conditions costs for the Project is identified in the GMP Proposal attached hereto as **Exhibit 2** and includes Design-Builder's overhead and profit associated with such items. The General Conditions costs are not a Cost of the Work. The Design-Builder's General Conditions costs, to the extent applicable to the Project, may include:

- a. Design-Builder's home office management personnel, e.g. President, General Manager, Operations Manager, Business Development Manager, Corporate Counsel, Health and

- Safety Director, Procurement Manager, Finance and Accounting Manager, Quality Assurance Manager, Estimators;
- b. Project Management personnel (e.g., Project Executive, Project Manager, Deputy Project Manager, Construction Manager, Deputy Construction Manager, Resident Engineer, Safety Officer, Project Controls staff, superintendents, Quality Manager, contract administration staff, procurement staff, general clerical and administrative support staff, legal staff, estimators, finance and accounting staff);
 - c. progress scheduling;
 - d. compliance notices;
 - e. contract and subcontract administration;
 - f. trash removal for construction office;
 - g. project record keeping, documentation, document control, and status reporting;
 - h. fees and assessments for the building permit and for other permits, licenses and inspections for which the Design-Builder is required by the Contract Documents to pay
 - i. Ohio Utilities Protection Services/Dig Safe program notice and coordination;
 - j. Project health and safety program including but not limited to equipment, supplies, training, record keeping, plan development, incentives, audits and drills;
 - k. taxes, not including Commercial Activity Tax or income taxes which shall be the sole responsibility of Design-Builder;
 - l. staff expense allowances;
 - m. personnel and site vehicle rental/mileage, fuel and maintenance;
 - n. relocation and temporary lodging and per diem expense;
 - o. ice and water;
 - p. drug testing;
 - q. communications equipment;
 - r. field/project offices including furnishings, office equipment, utilities, heat, office supplies, telephones, facsimile machines, internet connections, computers/networks/Cadd machinery, janitorial, mail and shipping, security systems, temporary fencing and barricades, office mobilization and demobilization;
 - s. badging and site security;
 - t. photography/progress photos;
 - u. tool trailer and hand tools;
 - v. project signage;
 - w. portable toilets, lockers and washrooms;
 - x. temporary power;
 - y. business licenses;
 - z. patent fees and royalties;
 - aa. training and recruiting;
 - bb. premiums for that portion of insurance and bonds required by the Contract Documents that can be attributed to this Agreement (but not including subcontractor default insurance or bonds). Self-insurance for either full or partial amounts of the coverages required by the Contract Documents may be included, with the Owner's prior approval. The premium charges will be set forth as a line item in the Itemized General Conditions attached hereto as **Exhibit 10**.

6.2.1.5 The General Conditions costs shall not include costs for any of the items listed above that are included in subcontract agreements. Notwithstanding any other provisions to the contrary, the Design-Builder has represented that the Itemized General Conditions attached hereto as **Exhibit 10** identifies all of the costs that will be reimbursable as General Conditions for the amount set forth in the GMP Proposal (**Exhibit 2**) and that each item identified in the General Conditions will be billed on a not-to-exceed basis.

6.2.2 Cost of the Work. The Cost of the Work is included in the GMP set forth in Paragraph 6.2.

6.2.2.1 Cost of Work to Be Reimbursed Subject to GMP

Subject to the GMP, the term Cost of the Work shall mean costs necessarily incurred by the Design-Builder in the proper performance of the Work for the Construction Phase. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Section 6.2.2.1. The amounts included in Section 6.2.2.1 are subject to open book pricing in accordance with Paragraph 7.5 of this Agreement.

- .1 Where any cost is subject to the Owner's prior approval, the Design-Builder shall obtain this approval prior to incurring the cost.
- .2 Labor costs incurred by Design-Builder in self-performing Work on the Project.
 - a. Wages of construction workers directly employed by the Design-Builder to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.
 - b. [Not Used.]
 - c. Wages and salaries of the Design-Builder's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.
 - d. Costs paid or incurred by the Design-Builder for insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under subparagraphs a - c of this Section 6.2.2.1.2.
 - e. Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Design-Builder or paid to any Subcontractor or vendor, with the Owner's prior approval.
- .3 Payments made by the Design-Builder to Subcontractors in accordance with the requirements of the subcontracts.
- .4 Actual costs, without markup, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.
- .5 Actual costs, without markup of materials described in the preceding Section in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Design-Builder. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.
- .6 Costs of Other Materials, Equipment, and Related Items
 - a. To the extent not included in Design-Builder's General Conditions costs, actual costs, without markup of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site and

fully consumed in the performance of the Work. Costs of materials, supplies machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Design-Builder shall mean fair market value.

- b. Actual rental charges without markup, for machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Design-Builder-owned item may not exceed the purchase price of any comparable item. Rates of Design-Builder-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.
 - c. Actual costs, without markup of removal of debris from the site of the Work and its proper and legal disposal.
 - d. Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.
- .7 [Not Used.]
- .8 [Not Used.]
- .9 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by any provision of the Contract Documents, and which do not fall within the scope of Section 6.2.2.1.13.
- .10 [Not Used.]
- .11 [Not Used.]
- .12 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 9.5.1 of the General Conditions of Contract;
- .13 Actual costs, without markup of repairing or correcting damaged or nonconforming Work executed by the Design-Builder, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a contractual responsibility of the Design-Builder and only to the extent that the cost of repair or correction is not properly recoverable by the Design-Builder from insurance, sureties, Subcontractors, suppliers, or others.

6.2.2.2 Costs Not to be reimbursed as a Cost of the Work

The Cost of the Work shall not include the items listed below:

- .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;
- .2 Expenses of the Design-Builder's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Section 6.2.2.1;

- .4 General Conditions costs such as, but not limited to, field office expenses, temporary utilities, permits and inspections, and project management are not included in the Cost of the Work, in that they are priced separately as set forth herein;
- .5 The cost of Design-Builder's capital used in the performance of the Work;
- .6 Except as provided in Section 6.2.2.1.13 of this Agreement, costs due to the negligence or failure of the Design-Builder, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .7 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;
- .8 Costs for Preliminary Services Fee incurred during the Preliminary Services Phase.
- .9 Costs which are included in the Design-Builder's General Conditions and costs associated with mitigating against subcontractor default, such as subcontractor bonding and subcontractor default insurance, which are identified as a separate line item in the GMP;
- .10 Computers (desktop, laptop, tablet, etc.) and software unless such are acquired solely, not partially or substantially, for the beneficial use of the Project, and computers may not contain other unrelated Project or personal data unless otherwise specifically approved by Owner in writing;
- .11 Corporate accounting, data and check processing, and similar business transaction related costs related to the Work are part of Design-Builder's overhead business expenses and should have been included in Design-Builder's Fee;
- .12 [Not Used.];
- .13 Consultants to the Design-Builder not previously approved in writing by the Owner;
- .14 Unless otherwise provided in the Agreement, Owner shall not reimburse the Design-Builder for rental charges more than two weeks prior to and one week after such temporary facilities, machinery and equipment that are needed to be used directly in the Work.
- .15 Relocation and temporary living allowances of personnel required for the Work unless such relocation meets the "distance test" under the United States Internal Revenue Publication 521;
- .16 Costs resulting from an error or omission on the part of the Design-Builder or Design-Builder's consultants, subcontractors, or suppliers of any tier;
- .17 Costs resulting from the default of Design-Builder or Design-Builder's consultants, subcontractors, or suppliers of any tier; and
- .18 Any cost not specifically and expressly described in Section 6.2.2.1.

6.2.3 Contingency. A Contingency of **% of the Cost of the Work and Design-Build Fee which equates to \$** is included in the GMP set forth in Paragraph 6.2. The Contingency is available to the Design-Builder to cover those costs considered reimbursable as a Cost of the Work under the Contract Documents, provided the costs are not recoverable from a subcontractor, supplier, consultant or insurance, except as set forth below. When Contingency Work items are performed, the cost will be treated as a Cost of the Work to which the Design-Build Services Fee will be applied without any additional Fee or mark-up. The Design-Builder may use the Contingency for costs that the Design-Builder could not have foreseen or anticipated through the exercise of reasonable diligence at the time the GMP was submitted. The Design-Builder shall not use the Contingency for correction of defective, damaged or non-conforming Work, or design errors or omissions, however caused, and shall not use the Contingency to accelerate the Work if such acceleration was necessary to meet the completion dates as a result of Design-Builder's unexcused failure to timely perform its Work.

The Contingency is not available to Owner for increasing the scope of the Project. Design-Builder shall provide Owner prior notice of all anticipated charges against the Contingency, and shall provide Owner as part of the monthly status report required by the General Conditions of Contract an accounting of the Owner's Contingency, including all reasonably foreseen uses or potential uses of the Contingency in the upcoming three (3) months.

6.2.3.1 Any unused portion of the Contingency upon Final Payment shall be reallocated to the Savings and added to the remaining balance of the Savings.

6.2.3.2 The use of the Contingency by the Design-Builder is subject to open book pricing in accordance with Paragraph 7.5 of this Agreement.

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 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, if any, based on design information then available to determine that the Allowance Values constitute reasonable estimates for the Allowance Items. 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 [Not Used.]

6.3.4 The Allowance Value for an Allowance Item includes the wages of direct employees performing Work at the Site or, with Owner's agreement, at locations off the Site, employee benefits, premiums, insurance, contributions and assessments, required by law or collective bargaining agreements, materials, equipment, transportation, taxes and insurance associated with the applicable Allowance Item. If an Allowance is in the Cost of the Work, then all other associated 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 GMP, and are not subject to adjustment, regardless of the actual amount of the Allowance Item.

6.3.5 The Design-Builder will obtain written approval from the Owner prior to incurring any costs in excess of an Allowance; any approved cost in excess of an Allowance will be documented by a Change Order signed by both parties. Before final payment, an appropriate Change Order will be issued to reconcile the Contract Price so that it reflects actual amounts due to the Design-Builder on account of Work covered by Allowances. Remaining Allowance amounts not due to the Design-Builder on account of Work covered by the Allowances shall be retained by the Owner and shall not be included in any Savings.

- 6.4 Savings.** The Savings is the difference between the GMP and Contract Price. If the Contract Price is less than the GMP, as such GMP may have been adjusted over the course of the Project, the difference ("Savings") shall be retained 100% by Owner.

Article 7 - Procedure for Payment

7.1 Progress Payments.

7.1.1 Design-Builder shall submit its Application for Payment to Owner in accordance with Article 7 of this Agreement and Article 6 of the General Conditions of Contract. Payments due and unpaid by Owner to Design-Builder shall bear interest commencing thirty days after payment is due, at 0% per annum rate.

7.1.2 Each Application for Payment shall be based upon the most-recent Schedule of Values which shall allocate the entire Contract Price. Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

1. Take that portion of the Cost of the Work properly allocable to completed Work (determined by multiplying the percentage of completion of each portion of the Work by the share of the Cost of the Work allocated to that portion of the Work in the schedule of values);
2. Add that portion of the Cost of the Work properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
3. For the first 50% of the Work, subtract retainage of eight percent (8%) of the Cost of the Work (including the Work of Subcontractors and that portion of the construction Work that the Construction Manager self-performs) and subtract retainage of 8% for the materials and equipment set forth in paragraph 2 above. Retainage shall be 0% for the second 50% of the Cost of the Work, in accordance with the Ohio Revised Code;
4. Add the Design-Build Services Fee, which shall be computed upon the Cost of the Work at the rate stated herein;
5. If applicable, add the amount of the Design Fee and the Preconstruction Fee in proportion to the percentage of the Work completed. (The Design Fee and Preconstruction Fee shall be shown as separate line items.)
6. Subtract the aggregate of previous payments made by the Owner;
7. Add General Conditions earned since previous Application for Payment. (The General Conditions shall be shown as a single separate line item.)
8. Subtract the shortfall, if any, indicated by the Design-Builder in the documentation to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
9. Subtract amounts, if any, for which the Owner has withheld per Section 6.3 of the General Conditions of Contract or as otherwise provided in the Contract Documents.

7.1.3 The Design-Builder will supply the Owner with all information necessary for the Owner to verify the amounts due to the Design-Builder, including but not limited to daily job logs, employee time records, internal job cost reports, original invoices for materials and equipment and documents showing that the Design-Builder has paid for such materials and equipment, and so as to verify that amounts due laborers, Subcontractors, and Sub-Subcontractors have been paid to them. Invoices in excess of \$1,000.00 shall be submitted with the Application for Payment. Invoices of \$1,000.00 or less shall be retained by the Design-Builder and produced to the Owner upon request. The failure to provide any such information shall be justification for withholding payment to the Design-Builder.

7.1.4 The Owner intends to conduct audits of the Design-Builder's records regarding the Project at times to be determined by the Owner.

7.2 Retainage on Progress Payments.

7.2.1 The Owner will withhold retainage in accordance with Ohio Revised Code Section 153.12.

7.3 Final Payment. Design-Builder shall submit its Final Application for Payment to Owner in accordance with 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 thirty (30) days after Owner's receipt of the Final Application for Payment, provided that Design-Builder has satisfied the requirements for final payment set forth in the General Conditions of Contract.

7.4 [Not Used].

7.5 Open Book Pricing, Record Keeping and Audits. Design-Builder acknowledges that this Agreement is to be administered on an "open book" arrangement for determining actual 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. The Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control systems shall be satisfactory to the Owner. **The Owner and the Owner's accountants shall be afforded access to review and audit the Design-Builder's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda, timesheets, payroll, and other data relating to this Project, records of time spent by each person performing work on the Project and time spent on all other projects; such time and payroll records shall include the location of services, detailed description of time and work on this Project and any other projects (redacting the client name or description to the extent necessary) and the Design-Builder shall preserve these for a period of four years after final payment, or for such longer period as may be required by law.** Design-Builder shall make all such records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda, timesheets, payroll, and other data relating to this Project, available to the Owner and the Owner's accountants in the County where the Project is located or a location designated by Owner at the time of Owner's request. In the event that the Design-Builder's records are not available at the agreed upon time or place, or in the event that the Owner finds incomplete records or inaccurate accounting of paid expenses, the Design-Builder shall reimburse the Owner for its time, travel, related expenses and Design-Builder shall reimburse Owner the full amount of any discrepancies or overages.

Article 8 - Termination for Convenience

8.1 Upon three business days written notice to Design-Builder, the Owner may, without cause and without prejudice to any other right or remedy of the Owner, terminate the Agreement. Such termination shall be effective as of the date stated in the written notice. In such case, Design-Builder shall be paid for (without duplication of any items):

1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination; and
2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work.

8.2 Design-Builder shall not be paid on account of loss of anticipated overhead, profits or revenue or other economic loss arising out of or resulting from such termination.

8.3 Design-Builder shall require similar provisions contained in Article 8 in each of its subcontracts to protect Design-Builder from claims by Design Consultant, Design Sub-Consultant, Subcontractors and Sub-Subcontractors arising from the Owner's termination for convenience, or to minimize claims by such Design Consultant, Design Sub-Consultant, Subcontractors and Sub-Subcontractors. The remedy provided to Design-Builder under this Article 8 shall be the Design-Builder's sole remedy in the event of termination for convenience by the Owner.

8.4 If Owner terminates this Agreement pursuant to Section 8.1 above and proceeds to design and construct the Project through its employees, agents or third parties, Owner's rights to use the Instruments of Service shall be as set forth in Article 4 hereof.

Article 9 - Representatives of the Parties

9.1 Owner's Representative

9.1.1 The Owner's Representative shall only have such authority as is authorized by the Owner and as is permitted under the laws of the State of Ohio.

9.2 Design-Builder's Representatives.

9.2.1 Design-Builder identified individuals in its Proposal as its Key Personnel. Design-Builder's Representative(s) identified herein and Key Personnel identified in its Proposal may be replaced only with the written approval of the Owner.

9.2.2 The Design-Builder shall not replace any of the representatives listed herein without the prior consent of the Owner while such representative is employed by the Design-Builder, except with another representative who is satisfactory to the Owner's Representative. If the Design-Builder proposes to change the representative, the Design-Builder shall submit to the Owner a written request for the change, including the justification for the change and the name and qualifications for the proposed replacement. The Design-Builder shall provide promptly any related additional information the Owner requests.

Article 10 - Bonds and Insurance

10.1 Insurance. Design-Builder and Owner shall procure the insurance coverage(s) set forth in Article 5 of the General Conditions of Contract.

10.2 Bonds and Other Performance Security. Before construction begins, Design-Builder shall provide performance bond and labor and material payment bonds, each having a penal sum equal to the full amount of the GMP. Such bonds shall be in the forms in **Exhibit 1**. The surety shall be a company qualified and registered to conduct business in the state in which the Project is located. If the GMP is increased at any time after the Design-Builder provides the bond, the Design-Builder shall cause the penal sum of the bonds to be increased as necessary to equal one hundred percent of the GMP as revised. The delivery of written consent from the affected surety or sureties to the Owner by the Design-Builder confirming the increased penal sums is a condition precedent to the Owner's obligation to pay the Design-Builder for any portion of the Work associated with the increase in the GMP.

10.2.1 If the Design-Builder elects to obtain a separate payment and performance bond from any Subcontractor or Sub-Subcontractor, in addition to the Design-Builder's bonds, such bonds shall be in the forms specified in **Exhibit 1** and the Design-Builder shall ensure that the Owner is listed as a co-obligee on

all performance bonds and payment bonds obtained from Subcontractors and Sub-Subcontractors on the Project.

Article 11 - Other Provisions

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

11.1.1 Modification. No modification or waiver of any of the terms of this Agreement or of any other Contract Documents will be effective against the Owner unless set forth in writing and signed by or on behalf of the Owner. In the case of the Owner, the person executing the modification or waiver must have express authority to execute the Modification on behalf of the Owner pursuant to a resolution that is duly adopted by the Owner. Under no circumstances will forbearance, including the failure or repeated failure to insist upon compliance with the terms of the Contract Documents, constitute the waiver or modification of any such terms by the Owner. The parties acknowledge that no person has authority to modify this Agreement or the other Contract Documents or to waive any of its or their terms, except as expressly provided in this paragraph.

11.1.2 Construction. The parties acknowledge that each party has reviewed this Agreement and the other Contract Documents and voluntarily entered into this Agreement. Accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement, the other Contract Documents, or any amendments or exhibits to it or them.

11.1.3 Approvals. Except as expressly provided herein, the approvals and determinations of the Owner will be subject to the sole discretion of the Owner and be valid and binding on the Design-Builder, provided only that they be made in good faith, i.e., honestly. If the Design-Builder challenges any such approval or determination, the Design-Builder will have the burden of proving that it was not made in good faith by clear and convincing evidence.

11.1.4 Partial Invalidity. If any term or provision of this Agreement is found to be illegal, unenforceable, or in violation of any laws, statutes, ordinances, or regulations of any public authority having jurisdiction, then, notwithstanding such term or provision, this Agreement will remain in full force and effect and such term will be deemed stricken; provided this Agreement will be interpreted, when possible, so as to reflect the intentions of the parties as indicated by any such stricken term or provision.

11.1.5 Prevailing Wage Rates. Each laborer, worker, or mechanic employed by the Design-Builder, Subcontractor, or other persons performing Work on the Project shall be paid not less than the applicable prevailing wage rates pursuant to Ohio Revised Code Chapter 4115 and shall provide all related documentation required by the Contract Documents or requested by the Owner. During Preconstruction, the Design-Builder shall notify the Owner in writing of the applicable classifications for the Project and the Owner's prevailing wage coordinator will provide the rates for such classifications. The Design-Builder shall adjust and shall require its Subcontractors and Sub-Subcontractors, regardless of tier, to adjust the wage rates to conform to the current rates if the applicable wage rates change prior to completion of the Work, without increase in the GMP.

11.1.6 Ethics. By signing and entering into this Agreement with the Owner, the Design-Builder represents that it is familiar with all applicable ethics law requirements, including without limitation Sections 102.04 and 3517.13 of the Ohio Revised Code and certifies that it is in compliance with such requirements. The Design-Builder understands that failure to comply with the ethics laws is, in itself, grounds for termination of this contract and may result in the loss of other contracts with the Owner.

11.1.7 Property Tax Affidavit. The Design-Builder's affidavit given under Section 5719.042, Ohio Revised Code, is incorporated herein.

11.1.8 Entire Agreement. This Agreement and the other Contract Documents, including but not limited to DBIA Document No. 520, as modified, constitute the entire agreement among the parties with respect to their subject matter and will supersede all prior and contemporaneous, oral or written, agreements, negotiations, communications, representations, and understandings with respect to such subject matter, and no person is justified in relying on such agreements, negotiations, communications, representations, or understandings.

11.1.9 Third-Party Beneficiary. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Design-Builder. However, it is understood that the Owner is an intended third-party beneficiary of Design-Builder's agreements with the Design Consultants, and Subcontractors, and Consultants' and Subcontractors' agreements with their Design Sub-Consultants, and Sub-Subcontractors. The Design-Builder shall incorporate the obligations of this Agreement into its respective agreements and subcontracts.

11.1.10 Design-Builder's Duties in General. The Design-Builder acknowledges that the Owner is entering this Agreement in reliance on the Design-Builder's abilities to perform the design services requested under this Agreement on a timely basis. To the extent that any service hereunder shall be performed by consultants retained by the Design-Builder, the term "Design-Builder" as used in this Agreement shall be deemed to include any such consultant.

- .1 The Design-Builder acknowledges it will use its best professional skill and judgment to coordinate the design of the Project in order to (i) minimize disruption of the adjacent Owner's operations, and (ii) to ensure that the Project is coordinated as to phasing, timing, staging, design, and execution.
- .2 The Design-Builder's duties and obligations, as set forth herein, and any liabilities arising hereunder shall at no time be diminished or released by reason of any approval by the Owner of the Drawings and Specifications or any other documents prepared by the Design-Builder.
- .3 The Design-Builder, consistent with the applicable standard of care and professional skills, agrees that materials and equipment specified shall be adequate for the purposes for which they are specified.
- .4 The Design-Builder's services shall include services to investigate existing conditions and facilities or to make measured drawings thereof and other related services to verify the accuracy of drawings and any other information furnished by the Owner. The Design-Builder shall be responsible for reviewing and confirming information provided by the Owner to the extent that it is an integral part of the Project. The Design-Builder shall use reasonable diligence in confirming information supplied by the Owner.
- .5 The Design-Builder shall indemnify and hold harmless the Owner for all damages, losses, attorney fees or claims which the Owner sustains resulting from any breach of contract, negligent act, error, omission or failure to exercise reasonable care, skill or diligence on the part of the Design-Builder, its employees, its agents, or its Design Consultants, Subcontractors, Design Sub-Consultants and Sub-Subcontractors of any tier, respecting the performance of any Work or service in connection with the Project.
- .6 Consistent with its standard of care, the Design-Builder shall endeavor to anticipate problems related to zoning, building permits, availability of utilities, equipment and material shortages, and supplier delays and to take steps to address such issues while providing timely written notification to Owner of such issues.
- .7 The Design-Builder owes a duty of trust and confidence to the Owner in the performance of all duties and obligations under this Agreement

11.1.11 Counterparts. This Agreement may be executed in any number of counterparts each of which when so executed and delivered will be an original hereof, and it will not be necessary in making proof of this Agreement to produce or account for more than one counterpart hereof. This Agreement may be executed and delivered by facsimile or via electronic mail.

11.1.12 [Not Used.]

11.1.13 Design-Builder's Pledge. The Design-Builder acknowledges that this is a public project involving public funds and that the Owner expects and requires the Design-Builder to adhere to the highest ethical and performance standards. The Design-Builder pledges and agrees that (a) it will act at all times with absolute integrity and truthfulness in its dealings with the Owner and Criteria Architect/Engineer, (b) it will use its best efforts to cooperate with the Owner and at all times will act with professionalism and dignity in its dealings with the Owner, (c) it will assign only competent supervisors, designers and workers to the Project, each of whom is fully qualified to perform the tasks that are assigned to him/her, and (d) it has read, understands and will comply with the terms of the Contract Documents.

11.1.13 Confidentiality. Design-Builder shall treat all design information produced under this Agreement as strictly confidential and will restrict access to all design information to only those employees, subconsultants and subcontractors who have a clear need for access to design information. Design-Builder will require its subconsultants and subcontractors to impose the same restrictions against disclosure upon their own subconsultants and subcontractors. Design-Builder and its subconsultants and subcontractors are strictly prohibited from identifying any design or operational details in any promotional materials or in any other communications to third parties.

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

OWNER: City of Canton, Ohio

DESIGN-BUILDER:

(Signature)

(Signature)

(Printed Name)

(Printed Name)

(Title)

(Title)

Date: _____

Date: _____

CERTIFICATE

(Section 5705.41, R.C.)

The undersigned, fiscal officer of the Owner, certifies that the moneys required to pay that part of the Contract Price coming due during the current fiscal year, under this Agreement to which this Certificate is attached have been lawfully appropriated for such purpose and are in the appropriate account of the Owner, or in the process of collection to the credit of the appropriate account or fund, free from any previous encumbrances. Moneys due in excess of the Contract Price shall require an additional and separate Fiscal Officer's Certificate.

DATED: _____

Fiscal Officer

Exhibit 1

STATUTORY FORM OF BONDS, PER O.A.C. 153:4-1-02
(Signed Bond to be Attached)

Exhibit 2

GUARANTEED MAXIMUM PRICE PROPOSAL
(Accepted Proposal to be Attached)

Exhibit 3

NOTICE OF CLAIM FORM

Claim No. ____ for Contractor

1. Name of Contractor*: _____

2. Contractor representative to contact regarding the claim:

Name: _____ Title: _____

Telephone No. _____ (office) FAX No. _____

E-mail: _____

3. General description of claim:

4. Contract Documents. If the claim is based upon any part or provision in the Contract Documents, including but not limited to pages in the Drawings and/or paragraphs in the Specifications, Owner-Contractor Agreement, General Conditions or Supplementary General Conditions, state upon which parts or provisions the claim is based:

5. Delay claims:

5.1 Date delay commenced: _____

5.2 Duration or expected duration of the delay, if known: _____

5.3 Apparent cause of the delay and part of critical path affected:

5.4 Expected impact of the delay and recommendations for minimizing such impact:

6. Additional compensation. Set forth in detail all additional compensation to which the Contractor believes it is entitled with respect to this claim:

7. Truth of Claim. By submitting this claim, the _____ and its representative certify that after conscientious and thorough review and to the best of his or her knowledge and belief a) the information in this Notice of Claim is accurate, b) the _____ is entitled to recover the compensation in paragraph 7, and c) the _____ has not knowingly presented a false or fraudulent claim. The _____ by its authorized representative must acknowledge this Notice of Claim before a notary public.

CONTRACTOR: _____

By: _____

Name and Title: _____

Date: _____

*Design-Builder

CONTRACTOR'S ACKNOWLEDGMENT

State of Ohio
County of _____, ss:

The foregoing document was acknowledged before me this ____ day of _____, 20____, by _____, the Contractor identified in foregoing Notice of Claim. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified hereby.

Notary Public
My Commission Expires: _____

WHEN COMPLETED, FORWARD A COPY OF THIS NOTICE OF CLAIM FORM TO THE OWNER AND CRITERIA ARCHITECT OR ENGINEER, AS APPLICABLE, AND AS DESCRIBED IN THE INSTRUCTIONS FOR COMPLETING THE NOTICE OF CLAIM FORM.

INSTRUCTIONS FOR COMPLETING THE NOTICE OF CLAIM FORM

1. Completing the Notice of Claim Form ("Claim Form") is a material term of the Contract. The Claim Form tells the Owner and Criteria Architect/Engineer that the Contractor is making a Claim and that they need to act promptly to mitigate the effects of the occurrence giving rise to the Claim. The Claim Form also provides them with information so that they can mitigate such effects. The Contractor acknowledges that constructive knowledge of the conditions giving rise to the Claim through job meetings, correspondence, site observations, etc. is inadequate notice, because knowledge of these conditions does not tell the Owner and Criteria Architect/Engineer that the Contractor will be making a Claim and most often is incomplete.
2. The Contractor must provide the required information in all blanks in the Claim Form within the period required by the Contract Documents. If the space provided in the Claim Form is insufficient, the Contractor, as necessary to provide complete and detailed information, must attach pages with the required information to the Claim Form.
3. Paragraph 4. The Contractor must state what it wants, *i.e.*, time and/or compensation, and the reason why it is entitled to time and/or compensation.
4. Paragraph 5. The Contractor must identify the exact provisions of the Contract Documents it is relying on in making its Claim. For example, if the Claim is for a change in the scope of the Contractor's Work, the Contractor must identify the specific provisions of the Specifications, and the Plan sheets and details that provide the basis for the scope change.
5. Paragraph 6. This paragraph applies to delay claims, including delays that the Contractor believes result in constructive acceleration. The Contractor must identify the cause of the delay, party or parties responsible, and what the party did or did not do that caused the delay, *i.e.*, specific work activities. The Contractor acknowledges that general statements are not sufficient, and do not provide the Owner with sufficient information to exercise the remedies available to the Owner or to mitigate the effects of the delay.

For example, if the Contractor claims a slow response time on submittals caused a delay, the Contractor must identify the specific submittals, all relevant dates, and then show on the applicable schedule, by circling or highlighting, the activities immediately affected by the delays. Also for example, if the Contractor claims it was delayed by another Contractor, the Contractor must identify the delaying Contractor, specifically what the delaying Contractor did or did not do that caused the delay, and then show on the applicable schedule, by circling or highlighting, the activities immediately affected by the delays. Further by example, if the Contractor seeks an extension of time for unusually severe weather, the Contractor must submit comparative weather data along with a record of the actual weather at the job site and job site conditions.
6. Paragraph 6.4. Time is of the essence under the Contract Documents. If there is a delay, it is important to know what can be done to minimize the impact of the delay. It therefore is important that the Contractor provide specific recommendations on how to do so.
7. Paragraph 7. The Contractor must provide a specific and detailed breakdown of the additional compensation it seeks to recover. For future compensation, the Contractor shall provide its best estimate of such compensation.
8. Paragraph 8 and Acknowledgment. In completing the Claim Form, the Contractor and its representative certify that after conscientious and thorough review and to the best of its knowledge and belief (a) the information in this Claim Form is accurate, (b) the Contractor is entitled to recover the compensation in Paragraph 7, and (c) the Contractor has not knowingly presented a false or fraudulent claim. The Contractor by its authorized representative must acknowledge this Notice of Claim before a notary public at the time of the preliminary submission and also when making the supplemental submission.

End of Instructions

Company Name

Authorized Signature (Company Officer)

Title

Date

State of: _____ County of _____

Subscribed and sworn to before me this _____
day of _____. The notarial
act certified hereby is a jurat. An oath or affirmation was
administered to the signer with regard to the notarial act
certified to hereby.

Notary Public: _____

My Commission Expires: _____

Exhibit 5

**DESIGN-BUILDER'S PROGRESS PAYMENT WAIVER & RELEASE AFFIDAVIT
("AFFIDAVIT")**

Project: _____

The undersigned hereby acknowledges receipt of payment for all Work on the Project through the date of the prior Application for Payment by _____ (the "Owner") with whom it has a contract for the Project.

In return for said payment, and pursuant to certain contractual obligations of the undersigned, the undersigned hereby waives and releases any rights it has or may have through the date of the last Application for Payment to any and all types of claims relating to the Project, including without limitation claims of payment, Mechanic's Lien, stop notice, equitable lien, labor and material bond, breach of contract or unjust enrichment, or any other claim against the Owner, for any labor, materials, or equipment the undersigned may have delivered or provided to the Project, except for any Claims the undersigned has made by properly and timely submitting a Statement of Claim. The undersigned hereby represents and warrants that it has paid any and all welfare, pension, vacation or other contributions required to be paid on account of the employment by the undersigned of any laborers on the Project.

This Affidavit is for the benefit of, and may be relied upon by the Owner. The undersigned hereby agrees to indemnify, defend and hold harmless each of the foregoing, the Project, work of improvement, and real property from any and all claims, or liens arising out of work covered by this release.

Company Name

Authorized Signature (Company Officer)

Title

Date

State of: _____ County of _____

Subscribed and sworn to before me this _____ day of _____. The notarial act certified hereby is a jurat. An oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

Notary Public: _____

My Commission Expires: _____

Exhibit 6

Not Used

Exhibit 7

TAX EXEMPTION CERTIFICATE
(To be Attached)

Exhibit 8

[Not Used.]

Exhibit 9

**DESIGN-BUILDER'S FINAL WAIVER & RELEASE AFFIDAVIT
("AFFIDAVIT")**

Project: _____

In consideration for payment received from the _____
_____ (the "Owner") in the amount requested in Design-Builder's Final
Application for Payment to the Owner, the receipt of which is hereby acknowledged, the undersigned
Design-Builder hereby waives and releases any rights it has or may have to any and all types of claims
relating to the Project, including without limitation claims of payment, Mechanic's Lien, stop notice, equitable
lien, labor and material bond, breach of contract or unjust enrichment, or any other claim against the Owner,
for any labor, materials, or equipment the undersigned may have delivered or provided to the Project,
except for any Claims the undersigned has made by properly and timely submitting a Statement of Claim
form. The undersigned further certifies that this Affidavit covers claims by all contractors, subcontractors,
and suppliers who may have provided any labor, material, or equipment to the Project through the
undersigned or at the undersigned's request. The undersigned acknowledges that all such contractors,
subcontractors, sub-subcontractors and suppliers have signed an affidavit in the form of this Affidavit
releasing any and all claims against the Owner, except for any Claims the undersigned has made by
properly and timely submitting a written statement of its Claim. The undersigned hereby represents and
warrants that it has paid any and all welfare, pension, vacation or other contributions required to be paid on
account of the employment by the undersigned of any laborers on the Project.

This Affidavit is for the benefit of, and may be relied upon by the Owner. The undersigned hereby
agrees to indemnify, defend and hold harmless each of the foregoing, the Project, work of improvement,
and real property from any and all claims, or liens that are or should have been released in accordance
with this Affidavit.

Company Name

Authorized Signature (Company Officer)

Title

Date

State of: _____ County of _____

Subscribed and sworn to before me this _____
day of _____. The notarial
act certified hereby is a jurat. An oath or affirmation was
administered to the signer with regard to the notarial act
certified to hereby.

Notary Public: _____

My Commission Expires: _____

Exhibit 10

DESIGN BUILDER'S ITEMIZED GENERAL CONDITIONS
(To be Attached)

Exhibit 11

PREVAILING WAGE RATES
(To be Provided by Separate File During Pre-Construction)



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

The author of this document has revised the text of the original DBIA standard form.

Document No. 535

Second Edition, 2010
© Design-Build Institute of America
Washington, DC

TABLE OF CONTENTS

Article	Name	Page
Article 1	General.....	2
Article 2	Design-Builder’s Services and Responsibilities.....	3
Article 3	Owner’s Services and Responsibilities.....	16
Article 4	Hazardous Conditions and Differing Site Conditions.....	17
Article 5	Insurance and Bonds	18
Article 6	Payment	23
Article 7	Indemnification	28
Article 8	Time	30
Article 9	Changes to the Contract Price and Time	31
Article 10	Contract Adjustments and Disputes	32
Article 11	Stop Work and Termination for Cause	35
Article 12	Electronic Data	37
Article 13	Miscellaneous.....	38

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 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), as modified.

1.2.2 __[Not Used.]

1.2.3 *Claim* is defined in Section 10.1 of the General Conditions of Contract.

1.2.4 [Not Used.]

1.2.5 *Construction Documents* are the documents, consisting of Drawings and Specifications, to be prepared or assembled by the Design-Builder in consultation with and subject to the approval of the Owner and consistent with the Owner' Project Criteria and the Owner-approved Schematic Design and Design Development Documents, as set forth in the Contract Documents.

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

1.2.7 *Design-Build Team* is comprised of the Design-Builder, the Design Consultant, and key Subcontractors identified by the Design-Builder subject to the approval of the Owner.

1.2.8 *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. The Design-Builder warrants and represents that it, its Design Consultants, its Design Sub-Consultants, its Subcontractors, its Sub-Subcontractors and all of its other consultants presently have, and will at all times during the term of this Agreement maintain: (i) all skills, experience, knowledge, staffing and resources necessary to perform the services set forth herein, and (ii) all required licenses, accreditations, certifications and registrations necessary to perform the services set forth herein.

1.2.9 *Final Completion* shall mean that the Work is complete in accordance with the Contract Documents and the Design-Builder has submitted to the Owner all documents required to be submitted to the Owner for Final Completion.

1.2.10 *Force Majeure Events* are those events that are not reasonably anticipated and 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.

1.2.11 *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), as modified.

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 *Notice of Claim Form* means the Notice of Claim Form included with the Contract Documents.

1.2.15 *Notice of Delays* shall be provided by Design-Builder for all delays in accordance with Section 2.1.3.3.1 herein.

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

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

1.2.18 *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 and is prequalified in accordance with all Legal Requirements and the requirements of the Contract Documents.

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

1.2.20 *Substantial Completion* or *Substantially Complete* shall mean that the Work is complete and ready for full occupancy with only a very limited number of minor defects and/or items of incomplete or non-conforming Work that have no adverse impact on the use or occupancy of the Project. All finishes must be complete, all systems fully functional, including permanent power, and a Certificate of Occupancy (if applicable) issued by the authority having jurisdiction.

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

Article 2

Design-Builder's Services and Responsibilities

2.1 General Services.

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

2.1.2 Design-Builder shall provide Owner with a monthly status report detailing the progress of the Work, including (1) executive summary, (2) design reviews, issues and sign-off status, (3) status

of all contracts, subcontracts, purchase orders and consultant agreements, (4) budget status and forecast, (5) buyout status, (6) change order status, (7) contingency status, (8) schedule status, (9) remedial action plan for any critical area behind schedule, (10) issues log and critical issues list, (11) items requiring Owner action, (12) outlook of scheduled activities for the next 30 days, (13) drawings and photos, (14) identification of discrepancies, conflicts, or ambiguities existing in the Contract Documents that require resolution, (15) identification of health and safety issues existing in connection with the Work; (16) identification of any 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, and (17) any other information Design-Builder finds relevant to bring to the attention of the Owner.

2.1.3 Unless a schedule for the execution of the Work has been attached to the Agreement (or included in the GMP Proposal) 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 ("Progress Schedule"). The Progress Schedule shall indicate the dates for the start and completion of the various stages of Work, including reasonable dates when Owner information and approvals are required to enable Design-Builder to achieve the Contract Time(s), punch list, project close-out requirements, contract completion, and occupancy requirements. The Progress 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 only be adjusted in accordance with the Contract Documents. Owner's review of, and response to, the schedule shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work. The Progress Schedule shall be manpower loaded and utilize a critical path method network analysis and shall be accompanied by a bar chart schedule based thereon. The Progress Schedule shall be updated on a monthly basis or at any time that the Progress Schedule has been significantly impacted by any cause. A copy of the current revised Progress Schedule shall be submitted by the Design-Builder to the Owner each month with a report.

2.1.3.1 The Progress Schedule is for the purpose of coordinating the timing, phasing and sequence of the Work and shall not change or modify the Date for Substantial Completion. **The Date for Substantial Completion shall only be changed or modified by Change Order, other Modification or a Claim that is Finally Resolved, regardless of the date in any proposed schedule.**

2.1.3.2. The Design-Builder's obligation to furnish requested scheduling information is a material term of its Contract. If the Design-Builder fails to furnish requested scheduling information in writing within five (5) days of a request for such information from the Owner, the Owner may withhold processing all current and future Applications for Payment until the Design-Builder furnishes the requested information.

2.1.3.3. THE PERIODS OF TIME IN THE PROGRESS SCHEDULE ARE OF THE ESSENCE TO THIS CONTRACT. THE DESIGN-BUILDER SHALL PROSECUTE ITS WORK IN ACCORDANCE WITH THE CURRENT PROGRESS SCHEDULE.

2.1.3.3.1 Notice of Delays. As a condition precedent to any increase in the Contract Price, use of Contingency, increase in Contract Times and/or increase in the GMP, the Design-Builder shall give the Owner **verbal** notice of any delay affecting its Work within two (2) business days of the commencement of the delay. In addition and also as a condition precedent to any increase in the Contract Price, use of Contingency, increase in Contract Times and/or increase in the GMP, the Design-Builder shall give the Owner written notice of the delay within ten (10) business days of the commencement of the delay with specific recommendations about how to minimize the effect of the delay. The written notice of the delay shall conspicuously state that it is a "NOTICE OF DELAY." A notice of a delay shall not constitute the submission of a Claim. Contract Times shall only be changed as

provided in the Agreement. The Design-Builder acknowledges and agrees that these notice provisions are material terms of the Contract Documents and give the Owner the opportunity to take action to minimize the cost and/or effect of delays.

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

2.1.5 If the Owner determines that the performance of the Work has not progressed adequately and it is likely that the Design-Builder will not substantially complete its Work by its Date for Substantial Completion based upon the Design-Builder's failure to achieve specific milestone dates contained within the original construction schedule as adjusted by Excusable Delays, the Owner shall have the right to order the Design-Builder to take Corrective Measures necessary to expedite the Work, including, without limitation: (i) working additional shifts or overtime; (ii) supplying additional manpower, equipment, and facilities; and (iii) other similar measures (collectively referred to as "Corrective Measures"). If the Owner orders the Design-Builder to take such Corrective Measures, and regardless of any claims, disputes or objections, the Design-Builder shall take and continue such Corrective Measures until the Owner is satisfied that the Design-Builder is likely to substantially complete its Work by its Date for Substantial Completion. The Design-Builder shall not be entitled to adjustment in the Guaranteed Maximum Price in connection with the Corrective Measures required pursuant to this Section 2.1.5, unless the Design-Builder is able to establish that it is otherwise entitled to additional compensation under the terms of the Contract Documents.

2.1.6 Unless otherwise expressly provided in the Contract Documents, the Design-Builder shall provide typed or printed instructions covering the operation and maintenance of each item of equipment furnished in a notebook submitted to the Owner. The instructions, as applicable, shall include the following:

- .1 Any schematic piping and wiring diagrams;
- .2 Any valve charts and schedules;
- .3 Any lubrication charts and schedules;
- .4 Guides for troubleshooting;
- .5 Pertinent diagrams and maintenance instructions for all equipment;
- .6 Manufacturer's data on all equipment;
- .7 Operating and maintenance instructions for all equipment;
- .8 Manufacturer's parts list;
- .9 Any testing procedures for operating tests; and
- .10 Other instructions and materials as required by the Contract Documents.

The Design-Builder shall provide two (2) hard copies and two (2) additional copies in any electronic format requested by Owner of the above instruction books within 30 days after the Substantial Completion of the Work. The books shall describe the information to be covered clearly and in detail and shall be in form and content satisfactory to the Owner.

2.1.7 Unless otherwise provided in the Contract Documents, the Design-Builder will participate in training sessions for the Owner's maintenance personnel. These training sessions will cover the operation and maintenance of the Project's systems. The training will be of sufficient time and detail to train the Owner's maintenance personnel in how to maintain and operate these systems. Additionally, unless otherwise provided in the Contract Documents, during the first twelve (12) months following Final Completion of the Project, the Design-Builder (without additional compensation) will participate in tests on all systems as reasonably requested by the Owner. The Owner will be advised when the testing will be conducted and may observe the testing. It is intended that the testing be a comprehensive series of operation tests designed to determine whether the systems are fully operational in accordance with appropriate design standards, the Owner's Design Criteria, and the requirements of the Contract Documents. If it appears that any of the systems,

including equipment and software, do not conform to appropriate design standards, the Owner's Design Criteria, and the requirements of the Contract Documents, the Design-Builder will remedy the defective and/or non-conforming work as provided in Contract Documents and after such remedy the Design-Builder (without additional compensation) will participate in tests until the systems are fully operational in accordance with this paragraph.

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

2.1.8 The Design-Builder shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders and all other requirements of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

2.1.9 The Design-Builder shall conduct the Work in a manner that minimizes disruption to the adjacent property owners' operations and minimizes disruption to the owners, tenants and sub-tenants of existing structures. Unless expressly permitted by the Contract Documents or by the Owner in writing, the Design-Builder shall not materially interfere with the operations of any businesses or buildings adjacent or near the site, shall not permit any of its employees or its Design Consultant's, Design Sub-Consultant's, Subcontractor's or Sub-Subcontractor's employees to use any existing facilities on the Project site, including, without limitation, lavatories, toilets, entrances, and parking areas, and shall not permit its employees or its Design Consultant's, Design Sub-Consultant's, Subcontractor's or Sub-Subcontractor's employees to bring any tobacco products, alcoholic beverages, controlled substances, or firearms onto the Project site or any other property owned or controlled by the Owner. Additionally, the Design-Builder shall not permit its employees or its Design Consultant's, Design Sub-Consultant's, Subcontractor's or Sub-Subcontractor's employees to use any radios, tape or compact disc players, or sound amplification equipment that is audible outside of the immediate area where the Work is being performed.

2.1.10 The Design-Builder shall conspicuously post notice of the prohibitions listed in the preceding subparagraphs at the Project site in the same locations as OSHA notices are required to be posted, and shall verbally inform all of the Design-Builder's employees, and the employees of the Design-Builder's Design Consultants, Design Sub-Consultants, Subcontractors and Sub-Subcontractors, regardless of tier, of such prohibitions.

2.1.11 Signage. The Design-Builder and any entity for whom the Design-Builder is responsible shall not erect any sign on the Project site without the prior written consent of the Owner, which may be withheld in the sole discretion of the Owner.

2.1.12 Cutting and Patching. The Design-Builder shall be responsible for cutting, fitting or patching as required to complete the Work or to make its parts fit together properly. The Design-Builder shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction or by excavation. The Design-Builder shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner, and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

2.2 Design Professional Services.

2.2.1 Design-Builder shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by Design-Builder, or procured from qualified, independent licensed Design Consultants, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work consistent

with the Contract Documents. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant or any Design Sub-Consultant except that it is understood that the Owner is an intended third-party beneficiary of Design-Builder's agreements with the Design Consultants, and Subcontractors, and Consultants' and Subcontractors' agreements with their Design Sub-Consultants, and Sub-Subcontractors. The Design-Builder shall incorporate the obligations of this Agreement into its respective agreements and subcontracts.

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 for similar projects taking into account any unique requirements of the Owner and the location of the Project.

2.3.2 The Design-Builder shall review laws, codes, and regulations applicable to the Design-Builder's services. The Design-Builder shall respond in the design of the Project to requirements imposed by governmental authorities having jurisdiction over the Project, and shall perform Design-Builder's services and design the Project in conformance with all such laws, codes, and regulations in effect at the time of design completion. The design will conform to all applicable codes and standards including but not limited to all national, state, and local regulatory and statutory requirements. In the event of conflicting requirements, the Design-Builder shall comply with the more stringent requirements.

2.4 Design Development Services.

2.4.1 Design-Builder and the 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 Owner's Project Criteria and the Contract Documents. 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 previously submitted design submissions. Minutes of the meetings, including a full listing of all changes, will be maintained by Design-Builder and provided to all attendees for review. Following the design review meeting, Owner shall review and approve the interim design submissions and meeting minutes in a time that is consistent with any reasonable 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 have 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 During the design development, Design-Builder shall keep Owner apprised of any deviation from Owner's preliminary design documents, design criteria, or Project Criteria and respond timely to Owner's comments regarding any such deviation. 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 agreed upon by the Owner in writing and 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 Except as set forth in Section 2.3.2, the Contract Price and/or Contract Time(s) shall be adjusted to compensate Design-Builder for the effects of any changes in the Legal Requirements enacted after the date of the Agreement or Addendum at issue, to the extent that they result in revisions Design-Builder is required to make to the Construction Documents that affect the cost of the Work or the schedule.

2.6 Government Approvals and Permits.

2.6.1 Design-Builder shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project.

2.6.2 Design-Builder shall provide reasonable assistance to Owner in obtaining those permits, approvals and licenses that are Owner's responsibility, if any. The Design-Builder shall assist the Owner in communications with and addressing local and government officials with jurisdiction over the Project. Because of the sensitive nature of these communications, the Design-Builder agrees and acknowledges that all communications will be at the direction of and in the discretion of the Owner.

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, Design Consultants, Design Sub-Subconsultants, Subcontractors or Sub-Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Design-Builder to complete construction of the Project consistent with the Contract Documents.

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

2.7.3 Subcontractors.

2.7.3.1 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, Supplier, or other individual or entity. If the Design-Builder is in default because of the Subcontractor's performance, then the Design-Builder shall not be entitled to any adjustment in the Contract Price or Contract Time and shall remain liable to the Owner for any actual and direct damages or losses caused by such default. The objection or failure to object to any Subcontractor by the Owner shall not relieve the Design-Builder of its responsibility for

performance of the Work, nor shall the approval of any particular Subcontractor be construed as approval of any particular process, equipment, or material.

2.7.3.2 The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Design Consultants, Design Sub-Consultants, Subcontractors, Sub-Subcontractors and their agents and employees, and other persons or entities performing any portion of the Design-Builder's obligations under the Design-Build Documents. To the extent that any service hereunder shall be performed by consultants retained by the Design-Builder, the term "Design-Builder" as used in this Agreement shall be deemed to include any such consultant.

2.7.3.3 Design-Builder shall prequalify Subcontractors in accordance with all Legal Requirements, including the latest version of the Ohio Administrative Code 153:1-7-01. Design-Builder shall establish criteria for the prequalification of prospective bidders on subcontracts that shall:

2.7.3.3.1 include the experience of the bidder, the bidder's financial condition, conduct and performance on previous contracts, facilities, management skills, and the ability to execute the contract properly;

2.7.3.3.2 Require prospective bidders to affirmatively state that they have not violated any affirmative action or equal opportunity program during the last five years preceding the date of the prequalification application;

2.7.3.3.3 Require a prospective bidder to submit proof of current licenses held by Design-Builder, its Design Consultants, or Design Sub-Consultants to perform the work as required by the Owner or by applicable law.

2.7.3.4 The prequalification criteria established pursuant to Paragraph 2.7.3.3 by the Design-Builder are subject to the approval of the Owner. The Owner may approve or reject the criteria in whole or in part. In addition to any other remedies under the Contract Documents, the Owner shall have the right to stop payment or withhold monies due the Design-Builder until an acceptable Subcontractor is approved by the Owner.

2.7.3.5 Requirements for the award of Subcontracts.

2.7.3.5.1 All Subcontracts shall be awarded in accordance with all applicable Legal Requirements.

2.7.3.5.2 For each Subcontract to be awarded, the Design-Builder shall identify at least three prospective bidders that are prequalified to bid on each Subcontract, except that the Design-Builder shall identify fewer than three if the Design-Builder submits documentation to the satisfaction of the Owner, that fewer than three prequalified bidders are available. The Design-Builder will submit the names and qualifications of all of the qualified prospective bidders to the Owner.

2.7.3.5.3 The Owner will review the list of prospective Bidders submitted by the Design-Builder and may rely on the Design-Builder's representations to verify that the prospective Bidders meet the pre-qualifications criteria. The Owner may eliminate any prospective Bidder it determines is not qualified and will notify the Design-Builder of its decision. The Design-Builder shall solicit proposals from the remaining prospective bidders.

2.7.3.5.4 The solicitation and selection of a Subcontractor shall be conducted under an open-book pricing method consistent with Paragraph 7.5 of the Agreement.

2.7.3.5.5 Subject to the consent of the Owner, the Design-Builder is not required to award a Subcontract to a low bidder.

2.7.3.5.6 If the Design-Builder intends and is permitted by the Owner, in writing, to self-perform a portion of the Work on the Project, the Design-Builder shall submit a sealed bid for the portion of the Work prior to accepting any bids from Subcontractors for the same Work, as required by Ohio law.

2.7.3.6 For all Subcontractors on the Project, the Design-Builder shall use a form of subcontract in compliance with in Ohio Administrative Code Section 153:1-3-02. Immediately upon execution of each subcontract with a subcontractor or supplier, the Design-Builder shall provide the Owner an executed copy of such subcontract. All subcontracts on the Project shall include the following terms and conditions:

2.7.3.6.1 Mutual rights and responsibilities: The subcontract form shall contain a provision requiring:

- a. the Design-Builder and the Subcontractor to be mutually bound to the terms of the Contract Documents;
- b. the Design-Builder to assume toward the Subcontractor the rights, remedies, obligations, and responsibilities that the Owner has and assumes toward the Design-Builder;
- c. the Subcontractor to assume toward the Design-Builder the rights, remedies, obligations, and responsibilities that the Design-Builder assumes towards the Owner; and,
- d. the Subcontractor to perform its portion of the work on the Project in accordance with the Contract Documents.

2.7.3.6.2 Contingent assignment: The subcontract form shall contain a provision providing for the assignment of the subcontract to the Owner, at the Owner's option, upon the termination of the Design-Builder's contract and written notice to the Subcontractor.

2.7.3.6.3 Intended third party beneficiary: The subcontract form used for the contract with Subcontractors, Sub-Subcontractors, Design Consultants, and Design Sub-Consultants shall contain a provision indicating that the Owner is an intended third party beneficiary of the subcontract, entitled to enforce any rights thereunder for its benefit.

2.7.3.6.4 Insurance: The subcontract form shall contain a provision requiring the Subcontractor to maintain insurance in accordance with the Contract Documents.

2.7.3.6.5 Right to audit: The subcontract form shall contain a provision entitling the Owner and any agents designated by the Owner to have access to and the right to audit and copy, at the Owner's reasonable cost, all of the Subcontractor's and Sub-Subcontractor's books, records, contracts, correspondence, instructions, drawings, receipts, vouchers, purchase orders and memorandum relating to the Work for not less than ten (10) years following completion of the Work, consistent with section 149.43 of the Ohio Revised Code

2.7.3.6.6 Indemnification: The subcontract form shall contain a provision requiring the Subcontractor and its Sub-Subcontractors to indemnify, defend and hold harmless, to the fullest extent permitted by law, the Owner, its consultants, and

employees from all claims and expenses for bodily injury and property damage other than to the work itself that may arise from the performance of the subcontract work, but only to the extent caused by the negligence of the Subcontractor, its Sub-Subcontractors or a person or entity for whom the Subcontractor or Sub-Subcontractor may be liable. The subcontract form shall not require a Subcontractor to waive its immunity under the workers' compensation laws of this state from claims brought against the Subcontractor by the Subcontractor's employees. The indemnification required by this provision is in addition to, and not a limitation of, the other indemnification requirements in the Contract Documents.

2.7.3.6.7 Prompt payment: The subcontract form shall contain a provision requiring the Design-Builder, notwithstanding a contingent payment clause, to make payments to the Subcontractor in accordance with applicable law, including section 4113.61 of the Ohio Revised Code, and that progress payments to the Subcontractor for satisfactory performance of the subcontract work shall be made no later than ten days after receipt by the Design-Builder of payment from the Owner for that subcontract work.

2.7.3.6.8 Retainage: The subcontract form shall contain a provision requiring that retainage shall be at a rate equal to or less than the percentage retained from the Design-Builder's payment by the Owner for subcontract work.

2.7.3.6.9 Warranty: The subcontract form shall contain a provision requiring that the Subcontractor fully warrant, for the benefit of the Owner, that all materials and equipment shall be new unless otherwise specified, of good quality, in conformance with the Contract Documents and free from defective workmanship or materials.

2.7.3.6.10 Non-waiver of lien or payment bond rights: The subcontract form and any supplemental terms to the contract between the Design-Builder and the Subcontractor shall not include any terms or conditions that seek to prohibit a Subcontractor from exercising its rights under chapter 1311 of the Ohio Revised Code or under any payment bond provided by the Design-Builder.

2.7.3.6.11 Nondiscrimination: The subcontract form shall contain a provision specifically requiring the Subcontractor to comply with applicable law regarding equal employment opportunity and, to the extent applicable, all executive orders issued by the Governor of the state of Ohio.

2.7.3.6.12 Dispute resolution: The subcontract form shall require the contract between the Design-Builder and Subcontractor to contain a dispute resolution provision that is comparable to the dispute resolution provision in the contract between the Design-Builder and the Owner.

2.7.3.7 The Design-Builder shall not substitute a Subcontractor, person or entity previously selected if the Owner objects to such substitute. The Owner may require the Design-Builder to change any Subcontractor previously approved and, except as provided hereafter, the Contract Price shall be increased or decreased by the difference in cost resulting from such change. If the Design-Builder is in default because of the Subcontractor's performance, then the Design-Builder shall not be entitled to any adjustment in the Contract Price and shall remain liable to the Owner for any actual and direct damages or losses caused by such default.

2.7.3.8 By appropriate written agreement, the Design-Builder shall require each Subcontractor and Design Consultant to the extent of the Work to be performed by the Subcontractor or Design Consultant, to be bound to the Design-Builder by terms of the

Contract Documents, and to assume toward the Design-Builder all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Design-Builder, by these Documents, assumes toward the Owner. Each subcontract and consultant agreement shall preserve and protect the rights of the Owner under the Contract Documents with respect to the Work to be performed by the Subcontractor or Design Consultant so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor or Design Consultant, unless specifically provided otherwise in the subcontract/consultant agreement, the benefit of all rights, remedies and redress against the Design-Builder that the Design-Builder, by the Contract Documents, has against the Owner. Where appropriate, the Design-Builder shall require each Subcontractor and Design Consultant to enter into similar agreements with Sub-subcontractors or sub-consultants. The Design-Builder shall make available to each proposed Subcontractor and Design Consultant, prior to the execution of the subcontract/consultant agreement, copies of the Contract Documents to which the Subcontractor or Design Consultant will be bound. Subcontractors and Design Consultants will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors or sub-consultants.

2.7.4 Design-Builder has a duty to inspect the Work of its Subcontractors, Sub-Subcontractors, Design Consultants and Design Sub-Consultants for appropriate design and conformance with the Contract Documents and assumes responsibility to Owner for the proper performance of the Work of Subcontractors, Sub-Subcontractors, Design Consultants, and Design Sub-Consultants 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 except that the Owner is an intended third-party beneficiary of Design-Builder's agreements with its Design Consultants, Design Sub-Consultants, Subcontractors, Sub-Subcontractors and suppliers. Design-Builder shall include provisions in such subcontracts and agreements establishing Owner as a third-party beneficiary of such subcontracts and agreements.

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 shall 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 disruption.

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

2.7.7 Design-Builder shall maintain at the Project site or other location approved by Owner and accessible for review and copying by the Owner or its designee, the following items:

- .1 A set of Drawings and Specifications as approved by the Authority having Jurisdiction;
- .2 A copy of the Drawings and Specifications upon which the Design-Builder shall record changes made during the course of its Work;
- .3 The Design-Builder shall keep an accurate record of all changes made to the Drawings to show actual installation where installation varies from Work as originally shown, including the exact location and depth of underground utility lines. Any such changes shall be noted by Change Order Number, if a Change Order was issued, and drawn neatly in a contrasting color on the drawings;

- .4 The Design-Builder shall keep record of all changes to the Specifications;
- .5 When Shop Drawings are used, the Design-Builder shall cross-reference the corresponding sheet numbers on the drawings and sections of the specifications;
- .6 A daily log at the Project site in which it has recorded Project-related information, including, but not limited to, the weather, number of workers on site, identification of equipment, Work accomplished, problems encountered, and other similar relevant Project data;
- .7 As applicable to its Work, all Bulletins, Addenda, approved Shop Drawings, Product Data, Samples, manufacturers' installation, operating and/or maintenance instructions or requirements, certificates, warranties, Change Orders, Change Directives, other Modifications and complete back up data for all Change Orders, Change Directives and other Modifications; and
- .8 All the Design-Builder's communications, including but not limited to letters, memoranda, e-mail, invoices and bills of lading, arising out of or related to the Project with the Owner, other contractors, and/or its Design Consultant, Design Subconsultant, Subcontractor or Sub-Subcontractor.

2.7.8 The Design-Builder will, at the Design-Builder's expense, fully comply with all statutes and regulations regarding notification and disposal of construction and demolition debris, including, without limitation, Ohio Revised Code Chapter 3714 and the regulations enacted thereunder.

2.7.9 The Design-Builder, at least five (5) working days prior to commencing construction in an area that may involve underground utility facilities, concealed conditions, or may impact on life safety matters, shall comply with the obligations imposed upon excavators in Ohio Revised Code Sections 3781.25 to 3781.32 including but not limited to giving notice to the Owner and where underground utility facilities are involved also to the registered underground utility protection services and the owners of underground utility facilities.

2.7.10 The Design-Builder shall notify immediately the occupants of any premises near the Work and the Owner as to any emergency that it may create or discover. The Design-Builder shall notify immediately the operator of any underground utilities and the Owner of any break or leak in the lines of such operator or any dent, gouge, groove, or other damage to such lines or to their rating or cathodic protection, made or discovered in the course of excavation.

2.7.11 The Design-Builder shall perform its Work during normal business hours unless otherwise provided in the Contract Documents or approved in writing by the Owner. Any Work at other than normal business hours will be at the Design-Builder's expense without reimbursement, unless authorized by Change Order or Change Directive.

2.7.12 The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Design-Build Contract. The Design-Builder shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. The Design-Builder's employees and other persons carrying out the Design-Build Contract shall comply with all security and safety requirements of the Owner. The Design-Builder shall only assign competent supervisors and workers to the Project, each of whom is fully qualified to perform the tasks assigned. If the Owner deems any employee of the Design-Builder or of a Subcontractor, a Sub-Subcontractor, a Design Consultant, or a Design Sub-Consultant of any tier unsatisfactory, the Design-Builder will transfer or require its Subcontractor, Sub-Subcontractor, Design Consultant, or Design Sub-Consultant to transfer such employee from the Project immediately and replace or require the prompt replacement of such employee with a competent employee. The Owner, however, shall be under no obligation to do so.

2.8 Design-Builder's Responsibility for Project Safety.

2.8.1 Design-Builder shall take reasonable precautions for safety 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. The Design-Builder shall be responsible, at the Design-Builder's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein with respect to the Design-Builder's Work. The Design-Builder shall promptly repair any damage to such property or improvements at its sole cost and expense. 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, Design Consultant, Design Sub-Consultant, Subcontractor, Sub-Subcontractor and others as applicable.

2.8.2 Design-Builder, Subcontractors and its Sub-Subcontractors shall comply with all Legal Requirements relating to safety, as well as the Owner's rules, regulations, and policies including, but not limited to, the Owner's safety policies and programs. Design-Builder will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to Owner and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

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

2.8.4 When trenching, excavating or performing any other activities where the presence of a competent person is required, Design-Builder shall keep a competent person at the Site to comply with OSHA requirements. The competent person shall be one who is capable of identifying existing and predictable hazards in the surroundings, or working conditions that are unsanitary, hazardous or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them.

2.8.5 The Design-Builder shall provide the Owner with a list of names and contact information of the designated employees for the Design-Builder and for each Subcontractor to be contacted in case of emergency during non-working hours. A copy of the list will also be displayed at the jobsite by Design-Builder.

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, suitable and fit for their intended use, in conformance with the Contract Documents and free of defects in materials, design 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.

2.9.2 Design-Builder's warranty period starts at the successful startup and testing in accordance with the Contract Documents or beneficial occupancy of the Project by the Owner, whichever comes later.

2.9.3 If the Design-Builder breaches any of its warranties under Section 2.9, the Design-Builder will pay the Owner for its damages and expenses, including but not limited to attorneys' and consultants' fees and expenses, arising out of or related to such breach.

2.9.4 [Not Used.]

2.9.5 Design-Builder's warranty provided under Section 2.9 is in addition to and not limited by any other warranties provided by the Design-Builder under the Contract Documents.

2.9.6 The Design-Builder further warrants that the Project shall be designed so that it (1) is fit for its intended purpose and (2) complies with all security and safety standards and requirements for similar buildings. Additionally, the Design-Builder warrants and represents that it and/or its Design Consultants, Design Sub-Consultants, Subcontractors and Sub-Subcontractors presently have, and will at all times during the term of this Agreement maintain: (i) all skills, experience, knowledge, staffing and resources necessary to perform the services set forth herein, and (ii) all required licenses, accreditations, certifications and registrations necessary to perform the services set forth herein.

2.10 Correction of Defective Work.

2.10.1 Design-Builder shall correct any Work that is found to be improperly designed, defective or to not be in conformance with the Contract Documents within the applicable statute of limitations period, including that part of the Work subject to Section 2.9 hereof, or within such longer period to the extent required by any specific warranty included in the Contract Documents.

2.10.2 If Design-Builder fails within two (2) business days of a written notice from the Owner, or such longer time as may be stated in such notice, to correct, or take reasonable steps to commence to correct defective or nonconforming Work, or to remove and replace, or take reasonable steps to remove and replace, the Work, or if Design-Builder fails to perform the Work in accordance with the Contract Documents, or if Design-Builder fails to comply with any other provision of the Contract Documents, the Owner may correct or remedy any such deficiency. In such case an appropriate unilateral Change Order shall be issued deducting from payments then or thereafter due the Design-Builder all the costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by the Owner in exercising the rights and remedies under this Section 2.10.2. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder and its surety shall pay the difference to the Owner. If such defective and non-conforming work results in a threat to the safety of any person or property including but not limited to the Work itself, the Design-Builder shall immediately commence to correct such defective and non-conforming work upon receipt of written or oral notice thereof.

2.11 Underground Facilities

2.11.1 The cost of all of the following will be included in the Contract Price, and the Design-Builder shall have full responsibility for:

- a. protecting all Underground Facilities in a manner at least as cautious and protective of safety and underground facilities as those methods identified in Ohio Revised Code Sections 3781.25 and 3781.27.
- b. coordination of the Work with the owners of such Underground Facilities during construction; and

- c. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

Article 3

Owner's Services and Responsibilities

3.1 Duty to Cooperate.

3.1.1 Owner shall, throughout the performance of the Work, cooperate with Design-Builder and perform its responsibilities, obligations and services in a reasonably 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 any reasonable turnaround times set forth in Design-Builder's schedule.

3.1.3 Owner shall give Design-Builder notice of any Work that Owner notices to be defective or not in compliance with the Contract Documents. The failure of the Owner to provide said notice shall not relieve the Design-Builder of its obligation to correct all defective and non-conforming Work on the Project, or limit the Owner's rights under the Contract Documents.

3.2 Furnishing of Services and Information.

3.2.1 Unless expressly stated to the contrary in the Contract Documents, if available, Owner may 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 Temporary and permanent easements;

3.2.1.3 A legal description of the Site;

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

3.2.1.5 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; except that the Design-Builder shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment. Design-Builder shall provide the Owner with a copy of the agreement for use of additional land and a copy of the release confirming that restoration of the additional land has been completed to the satisfaction of the owner of the adjacent land or property.

3.3 Financial Information.

3.3.1 The Owner shall provide certification of available funds upon execution of the Agreement.

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-supplied Information.

3.4.1 Owner shall be responsible for providing Owner-supplied information and approvals in a reasonably timely manner to permit Design-Builder to fulfill its obligations under the Contract Documents.

3.5 Government Approvals and Permits.

3.5.1 Design-Builder shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees.

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

3.6 Owner's Separate Contractors.

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

Article 4

Hazardous Conditions and Differing Site Conditions

4.1 Hazardous Conditions.

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

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

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

4.1.4 If the Owner and the Design-Builder cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price and/or Contract Times, as a result of such Work stoppage or any special conditions under which Work is to be resumed by the Design-Builder, either party may make a Claim therefor as provided in the Contract Documents.

4.1.5 [Not Used.]

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, Sub-Subcontractors or anyone for 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, Sub-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 could not have been known to the Design-Builder given the exercise of reasonable diligence, taking into account the fact that the Design-Builder is responsible for all site investigations and testing, 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 and provided Design-Builder provides a timely notice of claim in accordance with Article 10 of the General Conditions.

4.2.2 Upon encountering a Differing Site Condition, as a condition precedent to any increase in the Contract Price and/or an extension of the Contract Time(s), Design-Builder shall provide immediate written notice to Owner of such condition. Design-Builder shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered. Design-Builder shall not further disturb such condition or perform any Work in connection therewith until receipt of written order to do so. Failure to provide such notice as required herein or disturbing the differing site condition shall be an irrevocable waiver of the Design-Builder's right to additional time or money arising out of the differing subsurface or physical condition.

Article 5

Insurance and Bonds

5.1 Design-Builder's Insurance Requirements.

5.1.1 Design-Builder shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Design-Builder's performance of the Work and Design-Builder's other obligations under the Contract Documents, whether it is to be performed by Design-Builder, any Subcontractor or Sub-Contractors, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

.1 claims under workers' compensation, disability benefits, and other similar employee benefit acts;

.2 claims for damages because of bodily injury, occupational sickness or disease, or death of Design-Builder's employees;

.3 claims for damages because of bodily injury, sickness or disease, or death of any person other than Design-Builder's employees;

.4 claims for damages insured by reasonably available personal injury liability coverage which are sustained:

a. by any person as a result of an offense directly or indirectly related to the employment of such person by Design-Builder, or

b. by any other person for any other reason;

.5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and

.6 claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

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

5.1.2.1 Commercial General Liability ("CGL"): Bodily injury (including death and emotional distress) and property damage with limits of \$1,000,000 each occurrence and \$2,000,000 aggregate. CGL shall include: (i) Premises-Operations, (ii) Explosion and Collapse Hazard, (iii) Underground Hazard, (iv) Independent Contractors' Protective, (v) Broad Form Property Damage, including Completed Operations, (vi) Contractual Liability, (vii) Products and Completed Operations, (viii) Personal Injury with no Employment Exclusion, (ix) Stopgap liability; (x) per project aggregate endorsement, and (xi) an endorsement or equivalent form redefining "occurrence" to include property damage arising from the faulty workmanship performed by the Design-Builder or on the Design-Builder's behalf by a Subcontractor or Subconsultant.

5.1.2.2 Automobile Liability, covering all owned, non-owned, and hired vehicles used in connection with the Work: Bodily injury (including death and emotional distress) and property damage with a combined \$1,000,000 each accident.

5.1.2.3 Workers' compensation with policy limits as established by Ohio law.

5.1.2.4 Professional Liability Insurance. Professional liability insurance coverage with a per claim limit of \$1,000,000 each occurrence and \$2,000,000 aggregate, covering claims for negligent errors, acts, and omissions by the Design-Builder arising out of the performance or failure to perform professional services under the Contract Documents.

5.1.2.5 CGL policies shall be supplemented by an umbrella policy in the amount of \$5,000,000 each occurrence and \$5,000,000 aggregate.

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

5.1.4 Prior to commencing any construction services hereunder, Design-Builder shall provide Owner and each additional insured with Owner-approved certificates, endorsements, and other documentation 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.

5.1.4.1 Failure of the Owner to demand such certificates or other evidence of full compliance with these insurance requirements or failure of the Owner to identify a deficiency from evidence provided shall not be construed as a waiver of Design-Builder's obligation to maintain such insurance.

5.1.4.2 By requiring such insurance and insurance limits herein, the Owner does not represent that coverage and limits will necessarily be adequate to protect Design-Builder, and such coverage and limits shall not be deemed as a limitation on Design-Builder's liability under the indemnities granted to the Owner in the Contract Documents.

5.1.4.3 All proof of insurance submitted to the Owner shall clearly set forth all exclusions and deductible clauses. The Design-Builder is responsible for the deductible limit of the policy and all exclusions consistent with the risks the Design-Builder assumes under the Contract Documents and as imposed by law.

5.1.5 [Not Used.]

5.1.6 The following provisions shall also apply to the insurance provided by the Design-Builder:

5.1.6.1 Design-Builder's insurance shall be primary and non-contributory.

5.1.6.2 Insurance policies shall be written on an occurrence basis only, except for the professional liability policy.

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

5.1.6.4 The Owner shall be named as an additional insured on the policies of insurance maintained by Design-Builder except for Design-Builder's professional liability insurance. The Design-Builder shall provide each additional insured with copies of the certificates of insurance.

5.1.6.5 The CGL additional insured endorsement shall be CG 20 10 07 04 and CG 20 37 07 04 or equivalent so that Completed Operations liability extends to the additional insureds.

5.1.6.6 The Design-Builder shall maintain the required insurance for a period of five (5) years following final completion of the Project. However, if professional liability and/or commercial general liability coverage is claims-made coverage, coverage must be maintained in effect for ten (10) years after Final Completion of the Work. Products and completed operations coverage shall commence with the certification of the final Certificate for Payment to the Design-Builder and extend for not less than two years beyond that date.

5.1.7 Design-Builder shall pay all deductible provisions applicable to claims related to the Project made under and paid by insurance.

5.2 Notwithstanding anything in the Agreement to the contrary, if the cause of any loss payment under any insurance or self-insurance is the fault of the Design-Builder or its Subcontractors, the Design-Builder shall pay the required insurance deductible as well as costs not covered because of such deductibles.

5.3 Property Insurance.

5.3.1. Design-Builder shall purchase and maintain property insurance upon the Work at the Site in the amount of full replacement cost thereof.

(1) This insurance shall:

- (a) include the interests of the Owner, Design-Builder, Subcontractors, Design Consultants, Sub-Subcontractors, Design Sub-Consultants and any other individuals or entities identified herein, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of any of them, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured (Insurance certificates shall specifically indicate by name the additional insureds, which are to include the Owner as well as other individuals or entities so identified.);
- (b) be written on a Builder's Risk "all-risk" form that shall at least include insurance for physical loss and damage to the Work, temporary buildings, falsework, and materials and equipment in transit and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism, malicious mischief, earthquake, collapse, wind, hail, tornadoes, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage (including that caused by flood or hydrostatic pressure), and such other perils or causes of loss as may be specifically required by these General Conditions;
- (c) include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);
- (d) cover the total value of materials and equipment supplied under the Contract from the time Design-Builder takes possession of them until they are installed and tested by Design-Builder and the Project is accepted as complete by the Owner under an endorsement to this policy or in the form of Installation Floater Insurance of the "all risk" type;
- (e) allow for partial utilization of the Work by the Owner;
- (f) shall not contain any exemption from coverage for claims between insureds.
- (g) include testing and startup; and
- (h) be maintained in effect until final payment is made unless otherwise agreed to in writing by the Owner and Design-Builder with 30 days written notice to each additional insured to whom a certificate of insurance has been issued.

5.3.2 Unless the Contract Documents provide otherwise, Owner, at its option, may procure and maintain boiler 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 may 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 may 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 or the builder's risk insurance (whether provided by Owner or Design-Builder), as applicable, shall be adjusted with Owner and Design-Builder and made payable to both of them as trustees for the insureds as their interests may appear, subject to any applicable mortgage clause. All insurance proceeds received as a result of any loss will be placed in a separate account and distributed in accordance with such agreement as the interested parties may reach. Any disagreement concerning the distribution of any proceeds will be resolved in accordance with Article 10 hereof.

5.3.5 Owner and Design-Builder waive against each other and Owner's separate contractors, Design Consultants, Subcontractors, agents and employees of each and all of them, all damages covered by property insurance provided herein, except such rights as they may have to the proceeds of such insurance. Design-Builder and Owner shall, where appropriate, require similar waivers of subrogation from Owner's separate contractors, Design Consultants and Subcontractors and shall require each of them to include similar waivers in their contracts. 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 Design-Builder shall furnish a separate Performance Bond and a Payment Bond in the amount of the GMP set forth in the Agreement as security for the faithful performance and payment of all of Design-Builder's obligations under the Contract Documents. Such bonds shall be in the form set forth in the Agreement. Design-Builder shall also furnish any other bonds as are required by the Contract Documents. If the GMP is increased at any time after the Design-Builder provides the bonds, the Design-Builder shall cause the penal sum of each bond to be increased as necessary to equal one hundred percent of the GMP as revised. The delivery of written consent from the affected surety or sureties to the Owner by the Design-Builder confirming the increased penal sums is a condition precedent to the Owner's obligation to pay the Design-Builder for any portion of the Work associated with the increase in the GMP.

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.

5.4.3 Material Default or Termination. If the Owner notifies the Design-Builder's surety that the Design-Builder is in material default, the surety will complete an investigation of the claimed material default within 21 days. The surety is advised to start looking for a replacement contractor upon notice of material default. As part of its investigation, the surety shall promptly visit the offices of the Design-Builder, and the Owner to inspect and copy the available Project records. The Owner and Design-Builder, upon written request by the surety, shall make such records available during regular business hours for such inspection and copying. The Owner's making such records available as provided herein shall satisfy the Owner's obligation to the surety to furnish documents for the investigation. The surety will provide the Owner with the results of its investigation, including any written report or documents, prepared during the investigation.

If the Owner terminates the Design-Builder and the surety proposes to take-over the Work, the surety shall do so no later than the expiration of the 21-day investigation period or 10 days after the date the Owner terminates the Contract, whichever is later. If the Owner terminates the Contract, and the surety proposes to provide a replacement contractor, the replacement contractor shall be fully capable of performing the Work in accordance with the Contract Documents. If the Design-Builder is terminated for cause, the replacement design-builder shall not be the Design-Builder or its employees, unless the Owner agrees in writing. In the event the Surety takes over the Project, the surety's obligation shall not be limited to the penal sum of the Bond.

If the surety does not propose an acceptable contractor as required by this Paragraph 5.4.3, the Owner may complete the Work by such means as it deems appropriate. In the event the Owner agrees to accept a replacement design-builder, the replacement design-builder shall furnish its own bond for the replacement design-builder's scope of work, and neither the Design-Builder nor the surety shall be relieved of their obligations under the Contract Documents.

This Paragraph 5.4.3 is in addition to any other rights of the Owner under the Contract Documents and is not intended to create any rights of the surety, including but not limited to the right to take over the Design-Builder's obligations.

In the event of the Design-Builder's termination and if the surety does not take over the Work as provided in this Paragraph 5.4.3, the Owner may take possession of and use all materials, facilities and equipment at the Project Site or stored off-site for which the Owner has paid in whole or in part.

5.4.4 If at any time prior to Final Payment, any surety providing a surety bond for the Project (1) is adjudged bankrupt or has made a general assignment for the benefit of its creditors; (2) has liquidated all assets or has made a general assignment for the benefit of its creditors; (3) is placed in receivership; (4) otherwise petitions a state or federal court for protection from its creditors; or (5) allows its license to do business in Ohio to lapse or to be revoked, then the Design-Builder shall, within twenty-one days of any such action listed above, provide the Owner with new surety bonds in the form and amount described in the Contract Documents. The delivery to the Owner by the Design-Builder of replacement bonds is a condition precedent to the Owner's obligation to make any payment to the Design-Builder.

Article 6

Payment

6.1 Schedule of Values.

6.1.1 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 parts, (ii) include values for all items comprising the Work and (iii) serve as the basis for monthly progress payments made to Design-Builder throughout the Work.

6.1.2 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. By submitting such schedule of values, the Design-Builder represents for the reliance of the Owner that the allocation of the values to the portions of the Work is a fair and reasonable estimate of such allocation.

6.1.3 Once approved by the Owner, the Design-Builder will not change the allocation of the Contract Price to the component parts of the Work without the Owner's written approval. The Owner thereafter may from time to time require the Design-Builder to adjust such schedule if the Owner determines it to be in any way unreasonable or inaccurate. The Design-Builder then shall adjust the schedule of values as required by the Owner within ten (10) days.

6.1.4 The Schedule of Values established as provided in Section 6.1 will serve as the basis for progress payments and will be incorporated into the form of Application for Payment. An Owner-approved Application for Payment form, which includes information on completed Schedule of Values items, is to be used by the Design-Builder when making an Application for Progress

Payment. Progress payments on account of Unit Price Work will be based on the number of units completed.

6.2 Monthly Progress Payments.

6.2.1 On or before the first day of the month, Design-Builder shall submit to the Owner for review an Application for Payment on the Owner's Application and Certificate for Payment Summary Sheet and a Schedule of Values, described in Section 6.1 of these General Conditions, filled out and signed by Design-Builder covering the Work completed as of the last day of the previous month, and accompanied by a properly completed Design-Builder's Payment Application Checklist, all the documentation required to be submitted with such Checklist, and any other supporting documentation required by the Contract Documents or by the Owner. The Application for Payment will be in the form and submitted with the number of copies of it and all related documents as required by the Contract Documents or requested by the Owner.

6.2.1.1 Beginning with the second Application for Payment, each Application shall include a) a Waiver and Release Affidavit for itself and a Subcontractor's – Supplier's Waiver and Release Affidavit for each of its subcontractors, and b) a Design-Builder's Affidavit with List of Subcontractors and Suppliers with Amounts Withheld.

6.2.2 The Application for Payment may request payment for equipment and materials not yet incorporated into the Project, provided that (i) Owner is satisfied that the equipment and materials are suitably stored at either the Site or another acceptable location, (ii) the equipment and materials are protected by suitable insurance and (iii) upon payment, Owner will receive the equipment and materials free and clear of all liens and encumbrances. Such materials and equipment not incorporated in the Work must be delivered and suitably stored at the Site or at another location agreed to in writing.

6.2.3 All discounts offered by Subcontractor, 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. Unless Owner advances payment to Design-Builder specifically to receive the discount, Design-Builder may include in its Application for Payment the full undiscounted cost of the item for which payment is sought.

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

6.2.5 By processing an Application for Payment, the Owner will not be deemed to have: (1) accepted the Work performed by the Design-Builder; or (2) waived any claims that the Owner may have related to the Project, including any claims related to the Work performed by the Design-Builder.

6.3 Withholding of Payments.

6.3.1 Upon receipt of each Application for Payment, the Owner will proceed with processing the Application for Payment or the Owner will, within thirty (30) calendar days after receipt of each Application for Payment, return the Application to Design-Builder indicating in writing the Owner's reasons for refusing to proceed with processing the Application for Payment. In the latter case, Design-Builder may make the necessary corrections and resubmit the Application.

6.3.1.1 By proceeding with processing of an Application for Payment, neither the Owner nor the Owner's Representative will thereby be deemed to have represented that:

- a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work; or
- b. that there may not be other matters or issues between the parties that might entitle the Owner to withhold payment to Design-Builder.

6.3.1.2 The Owner's or Owner's Representative's review of Design-Builder's Work for the purposes of determining whether to proceed with processing an Application for Payment, including final payment, will not impose responsibility on the Owner or Owner's Representative:

- a. to supervise, direct, design, or control the Work, or
- b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
- c. for Design-Builder's failure to comply with Laws and Regulations applicable to Design-Builder's performance of the Work, or
- d. to make any examination to ascertain how or for what purposes Design-Builder has used the moneys paid on account of the Contract Price, or
- e. to determine that title to any of the Work, materials, or equipment has passed to the Owner free and clear of any Liens.

6.3.1.3 When determining whether to proceed with processing an Application for Payment, the Owner may refuse to issue payment of the whole or any part of any Application for Payment, to such extent as may be necessary in the Owner's opinion to protect the Owner from loss because:

- a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
- b. the Contract Price has been reduced by Change Orders;
- c. the Owner has been required to correct defective Work or complete Work as set forth herein;
- d. of the occurrence of any of the events enumerated in Section 11.2;
- e. the Design-Builder is in default of any other Agreement it has with the Owner; or
- f. reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual damages for the anticipated delay.

6.3.1.4 Unless the Owner refuses to proceed with processing an Application for Payment under the Contract Documents, including Section 6.3.1 of the General Conditions, the amount approved by the Owner, subject to the provisions of Section 6.3.1, will become due thirty (30) calendar days after approval of the Application for Payment by the Owner and after the approval of any agencies and/or lenders, whichever comes later.

6.3.1.5 The Owner may also refuse to make payment of the full amount requested by Design-Builder in an Application for Payment because:

a. claims have been made against the Owner on account of Design-Builder's performance or furnishing of the Work;

b. Liens have been filed in connection with the Work, except where Design-Builder has delivered a specific bond satisfactory to the Owner to secure the satisfaction and discharge of such Liens;

c. there are other items entitling the Owner to a set-off against the amount recommended; or

d. the Owner has actual knowledge of the occurrence of any of the events enumerated in Section 6.3.1.3.a through 6.3.1.3.c or the failure of the Design-Builder to comply with Section 6.2.

6.3.2 If the Design-Builder disputes any determination by the Owner with regard to any progress payment application, the Design-Builder shall nevertheless continue to prosecute the Work without delay or disruption. Notwithstanding the foregoing, the Owner shall pay all undisputed amounts to the Design-Builder, retaining only amounts reasonably believed necessary to protect the Owner from defective or non-conforming Work.

6.4 Right to Stop Work and Interest.

6.4.1 Subject to the Owner's right to withhold payment pursuant to Section 6.3, 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.

6.5 Design-Builder's Payment Obligations.

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

6.6 Substantial Completion.

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

6.6.2 Upon Design-Builder's Substantial Completion of the entire Work or, if applicable, any portion of the Work, completion of punch list items, submission of all documentation, and completion of any other requirements, as set forth in the Contract Documents, Owner shall release

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

6.6.2.1 Punchlist. Prior to the release of retainage, the Design-Builder shall complete all punch list items pertaining to the scope of work within 10 days of the initial punch list date, unless other completion dates are agreed upon in writing by the Owner, at the time the punch list is provided.

6.6.3 Owner, at its option, may use a portion of the Work which has been determined to be Substantially Complete, provided, however, that (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in Section 6.6.1 above, (ii) Design-Builder and Owner have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project, and (iii) Owner and Design-Builder agree that Owner's use or occupancy will not interfere with Design-Builder's completion of the remaining Work.

6.7 Final Payment.

6.7.1 If, on the basis of the Owner's observation of the Work during construction and final inspection, and the Owner's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, the Owner is satisfied that the Design-Builder has submitted a proper and complete Application for Payment, in compliance with all of Owner's policies, procedures, and requirements as set forth in the Contract Documents and that the Project has reached Final Completion, the Owner will, within ten days after receipt of the final Application for Payment, give written notice to Design-Builder that the Work is acceptable and has reached Final Completion subject to the provisions of Sections 6.7.3 and 6.7.3.1. Otherwise, the Owner will return the Application for Payment to Design-Builder, indicating in writing the reasons for refusing to recommend final payment, in which case Design-Builder shall make the necessary corrections and resubmit the Application for Payment.

6.7.1.1 Thirty (30) calendar days after the Owner provides written notice required under Section 6.7.1 of the General Conditions, the amount requested by Design-Builder, less any sum the Owner is entitled to set off against the amount requested by Design-Builder, including but not limited to liquidated damages, will become due and will be paid by the Owner to Design-Builder.

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

6.7.2.1 A list of all Claims against the Owner that Design-Builder believes are unsettled;

6.7.2.2 A Final Design-Builder's Waiver and Release Affidavit for itself as of the date of the Final Application for Payment and Subcontractor's – Supplier's Waiver and Release Affidavits for each of its Subcontractors and Suppliers as of the date of the Final Application for Payment;

6.7.2.3 Consent of Design-Builder's surety to final payment;

6.7.2.4 Evidence that all Completion/Punchlist items have been completed;

6.7.2.5 Where applicable, keys and keying schedule;

6.7.2.6 The documents, including as-built set of Drawings and Specifications, not otherwise required by the Contract Documents to be delivered earlier;

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

6.7.2.8 All documentation called for in the Contract Documents, including but not limited to certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents and copies of all documents, records, Revit (.rvt), and CAD (.dwg) drawings for the Project.

6.7.3 Upon making final payment, Owner waives all Claims against Design-Builder except Claims relating to (i) Unsettled Liens or Design-Builder's failure to satisfy its payment obligations, (ii) Design-Builder's failure to complete the Work consistent with the Contract Documents, including defects appearing after Substantial Completion, (iii) Design-Builder's failure to comply with the Contract Documents or the terms of any warranties or special guarantees specified therein, (iv) Design-Builder's continuing obligations under the Contract Documents, (v) design defects, and (vi) the terms of any special warranties required by the Contract Documents.

6.7.3.1 Upon receipt of final payment, Design-Builder waives all Claims by Design-Builder against the Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by the Owner in writing as still unsettled.

6.7.4 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 the Contract Documents, including 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 from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Owner or Design-Builder in any such action or proceeding. Design-Builder agrees to keep Owner informed of all developments in the defense of such actions.

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

7.1.3 Sections 7.1.1 and 7.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by Owner and not offered or recommended by

Design-Builder to Owner or (ii) arising from modifications to the Work by Owner or its agents after acceptance of the Work.

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 Taxes.

7.2.1 Design-Builder shall pay all sales, consumer, use, commercial activity and other similar taxes required to be paid by Design-Builder in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

7.2.1.1 Materials purchased for use or consumption in connection with the proposed Work will be exempt from the State of Ohio Sales Tax, as provided in Section 5739.02 of the Ohio Revised Code, and also from the State of Ohio Use Tax, as provided in Section 5741.01 of the Ohio Revised Code. The Owner will provide the Design-Builder with a Construction Tax Exempt Certificate upon request, made in writing to the Owner.

7.2.1.2 Purchases by the Design-Builder of expendable items, such as form lumber, tools, oil, greases, fuel, or equipment rentals, are subject to the application of Ohio Sales or Use Taxes.

7.2.1.3 In addition to any other taxes required to be withheld by the Design-Builder, the Design-Builder shall withhold any income taxes due to the Owner for wages, salaries and commissions paid to its employees for work done under this Agreement and further agrees that any of its Subcontractors shall, by the terms of its subcontract, be required to withhold any such income taxes due for work performed under this Agreement.

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 any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work. Within three (3) days of receiving written notice from Owner that such a claim or mechanic's lien has been filed, Design-Builder shall commence to take the steps necessary to discharge said claim or lien, including the furnishing of a mechanic's lien bond in the form specified by the Ohio Revised Code. 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 laws and regulations, shall indemnify, hold harmless and defend the Owner, its officers, directors, partners, employees, agents, consultants, and subcontractors from and against all claims, demands, costs, losses, damages, and liabilities, including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs, arising out of or relating to the Work or any breach of Design-Builder's obligations under the Contract Documents, including but not limited to the breach of warranty provided in the Contract Documents.

7.4.2 If an employee of Design-Builder, Design Consultants, Subcontractors, Design Sub-Consultants, Sub-Subcontractors, or 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, Design Sub-Consultants, Sub-Subcontractors, or other entity under any employee benefit acts, including workers' compensation or disability acts.

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. Design-Builder is required to provide forty-eight (48) hours advance written notice to the Owner prior to starting any Work on the Project.

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, if a Claim is made therefor as provided in Section 10.1. 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 a time extension for those events set forth in Section 8.2.1 above, Design-Builder shall also be entitled to an appropriate adjustment of the Contract Price, where Design-Builder has provided timely notice of a claim pursuant to Article 10 of these General Conditions however, that the Contract Price shall not be adjusted for Force Majeure Events unless otherwise provided in the Agreement.

8.2.3 Weather Delays. Weather delays are excusable but not compensable delays. When the Design-Builder is prevented from completing any part of the Work on the critical path within the Contract Time due to weather conditions, and if a Claim is made therefor as provided in Section 10.1, the Contract Times will be extended by one (1) day for each work day lost due to weather that delays Work on the critical path in excess of those in the following table:

<u>Month</u>	<u>Number of Workdays Lost Due To Weather</u>
<u>January</u>	<u>8</u>
<u>February</u>	<u>8</u>
<u>March</u>	<u>7</u>
<u>April</u>	<u>6</u>
<u>May</u>	<u>5</u>
<u>June</u>	<u>4</u>
<u>July</u>	<u>4</u>
<u>August</u>	<u>4</u>
<u>September</u>	<u>5</u>
<u>October</u>	<u>6</u>
<u>November</u>	<u>6</u>
<u>December</u>	<u>6</u>

Article 9

Changes to the Contract Price and Time

9.1 Change Orders.

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

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.

9.1.4 The agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order and/or Work Directive Change, including, but not limited to, all direct, indirect and cumulative costs associated with such change and any and all adjustments to the Contract Price and/or Contract Time.

9.1.5 If the Owner and Design-Builder are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Directive Change within twenty-one (21) calendar days after the Owner issued the Work Directive Change, the Owner may unilaterally issue to Design-Builder a fully executed Change Order that includes an equitable adjustment in the Contract Price and/or Contract Time as determined by the Owner. If Design-Builder disputes the adjustment in the Contract Price and/or Contract Time pursuant to a unilateral Change Order issued by the Owner under this Section, and if Design-Builder gives timely notice pursuant to Section 10.1 of this Agreement of the original event giving rise to the entitlement or adjustment, Design-Builder may pursue a Claim therefor as provided in the Contract Documents.

9.2 Work Change Directives.

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

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

9.3 Minor Changes in the Work.

9.3.1 Minor changes in the Work do not involve an adjustment in the Contract Price and/or Contract Time(s) and do not materially and adversely affect the Work, including the design, quality,

performance and workmanship required by the Contract Documents. Design-Builder may make minor changes in the Work consistent with the intent of the Contract Documents, provided, however, that Design-Builder shall promptly inform Owner, in writing, of any such changes and record such changes on the documents maintained by Design-Builder.

9.4 Contract Price Adjustments.

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

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 applicable fees 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 the Design-Builder shall perform the Work shall submit to the Owner, on a daily basis, invoices, daily job logs and work tickets reflecting the labor, material and equipment used to complete the Work.

9.4.1.5 Except where unit prices are applicable, that Design-Builder agrees and represents to the Owner for the Owner's reliance that all Change Order or Change Directive pricing submitted by the Design-Builder shall be based on the Design-Builder's actual costs or the Design-Builder's reasonable estimate of what would be its actual costs.

9.4.2 [Not Used.]

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, adjustment in the Contract Time, or proposed changes to the Work, Owner and Design-Builder shall resolve the disagreement pursuant to Article 10 hereof. As part of the negotiation process, Design-Builder shall furnish Owner with a good faith estimate of the costs to perform the disputed services in accordance with Owner's interpretations. If the parties are unable to agree and Owner expects Design-Builder to perform the services in accordance with Owner's interpretations, Design-Builder shall proceed to perform the disputed services, conditioned upon Owner issuing a written order to Design-Builder (i) directing Design-Builder to proceed and (ii) specifying Owner's interpretation of the services that are to be performed. The Design-Builder shall keep and present, in such form as the Owner may prescribe, a true and accurate itemized accounting of all labor and material together with appropriate supporting data.

9.5 Emergencies.

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

Article 10

Contract Adjustments and Disputes

10.1 Requests for Contract Adjustments and Relief.

10.1.1 All Claims shall be submitted in accordance with Section 10.1 as a condition precedent to any exercise by the Design-Builder of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations with respect to such Claims.

10.1.2 Claim Submittal Procedure

10.1.2.1 Notice of Claim by Design-Builder. As a condition precedent to a change in the Contract Price, Contract Times, the GMP or a recovery of damages against the Owner, the Design-Builder shall give the Owner written notice of a Claim ("Notice of Claim"). The Design-Builder shall be responsible to provide a completed Notice of Claim Form, not exceeding seven (7) calendar days of the start of the event giving rise to the Claim. The Design-Builder shall be responsible for substantiating its Claim. The Notice of Claim must be delivered to the Owner, and shall provide sufficient detail to enable the Owner to investigate the matter. Failure to give Notice of Claim within the time period required shall be an irrevocable waiver of the Design-Builder's right to seek a change in the Contract Price, the Contract Times, the GMP, and/or a recovery of damages against the Owner.

10.1.3 The Owner's Action. The Owner will review each Claim and will, within forty-five (45) calendar days after receipt of the Notice of Claim Form from the Design-Builder, take one of the following actions in writing:

1. deny the Claim in whole or in part,
2. approve the Claim,
3. request additional documentation of the Claim pursuant to Section 10.1.8 of this Agreement.

10.1.4 In the event that the Owner does not take action on a Claim within said forty-five (45) calendar days, the Claim shall be deemed denied.

10.1.5 The Owner's written action under Section 10.1.3 or denial pursuant to Sections 10.1.3 or 10.1.4 will be final and binding upon Design-Builder, unless Design-Builder commences an action in a court of exclusive jurisdiction as set forth in Section 10.2.4 within thirty (30) calendar days of the Date of Substantial Completion.

10.1.6. No Claim for a change in the Contract Price, a change in the Contract Times, a change in the GMP or a recovery of damages against the Owner will be valid if not submitted in accordance with this Section 10.1.

10.1.7. False or Fraudulent Claim. The Design-Builder shall not knowingly present or cause to be presented to the Owner a false or fraudulent Claim. Knowingly shall have the same meaning as in Section 3729(b) USC of the Federal False Claims Act. If the Design-Builder knowingly presents or causes to be presented a false or fraudulent Claim, then the Design-Builder shall be liable to the Owner for the same civil penalty and damages as the United States Government would be entitled to recover under such Section 3729(a) USC and shall also indemnify and hold the Owner harmless from all costs and expenses, including the Owner's attorneys' and consultants' fees and expenses incurred in investigating and defending against such Claim and in pursuing the collection of such penalty, damages and fees and expenses.

10.1.8. Claim Documentation. Within ten (10) calendar days of written request from the Owner, Design-Builder shall make available to the Owner, for review and copying by the Owner, any and all documentation requested by the Owner, including all books, records, or other documents in its possession or to which it has access, including but not limited to Design-Builder's daily logs/reports, original estimates of Work and applicable agreements, correspondence with Design Consultants, Design Subconsultants, Subcontractors and Sub-Subcontractors, internal correspondence (including e-mail), accounting records, and other information from which the Design-Builder's costs

may be derived. To the extent permitted by law, the Owner shall keep the Project accounting records and estimate for the Project confidential. As requested by the Owner, the Design-Builder shall provide such documents and information in paper copies and/or computer format (including the format of the Design-Builder's accounting software and/or ASCII format). The Design-Builder's provision of the requested documents and information shall be a condition precedent to any further proceeding under the Contract Documents or to payment of an Application for Payment.

Failure to provide the requested documents shall be a material breach of the Contract, and Design-Builder shall indemnify the Owner for all of the Owner's costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to Design-Builder's failure to comply with this provision. If the Design-Builder fails to provide the requested documents, the Design-Builder shall be precluded from presenting such documents in any subsequent dispute resolution proceedings, if the data was reasonably available at the time of the request.

10.2 Dispute Avoidance and Resolution.

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

10.2.2 Any claim, dispute or controversy arising out of or relating to this Agreement or the breach thereof that cannot be resolved through discussions by the parties may be submitted to non-binding mediation administered by a mutually agreeable impartial mediator, if both parties agree to mediation, in writing. Unless otherwise agreed to by the parties, such mediation shall take place in the county in which the Project is located and all mediation costs shall be split equally between the parties.

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

10.2.4 If the parties do not resolve a dispute through mediation or do not mutually agree to mediation, the method of binding dispute resolution shall be litigation. Any suit, which may be brought to enforce any provision of this Agreement or any remedy with respect hereto, shall be brought in Common Pleas Court in the county where the Project is located and each party hereby expressly consents to the jurisdiction of such court. Each party waives its right to remove any such suit to federal court.

10.3 [Not Used.]

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. However, the Owner shall be under no obligation to make payments on or against any claim or

amounts in dispute during the pendency of any mediation, arbitration or litigation proceeding to resolve those claims or amount in dispute.

10.5 Waiver of Consequential Damages.

10.5.1 Design-Builder and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes:

.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the Design-Builder for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

10.5.2 This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with the Contract Documents. The consequential damages limitation set forth in Section 10.5.1 above is not intended to affect the payment of liquidated damages or direct damages, if any, set forth in Article 5 of the Agreement, which both parties recognize has been established, in part, to reimburse Owner for some damages that might otherwise be deemed to be consequential.

Article 11

Stop Work and Termination for Cause

11.1 Owner's Right to Stop Work.

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

11.1.2 Design-Builder is entitled to seek an adjustment of the Contract Price and/or Contract Time(s) if its cost or time to perform the Work has been adversely impacted by any suspension of stoppage of the Work by Owner and Design-Builder makes a Claim therefore as provided in Section 10.1.

11.2 Owner's Right to Perform and Terminate for Cause.

11.2.1 If Design-Builder fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Design Consultants or Subcontractors, (v) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time(s), as such times may be adjusted, or (vi) perform 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 three (3) business days of Design-Builder's receipt of such notice. If Design-Builder fails to cure, or reasonably commence to cure, such problem within such three (3) business day period, then Owner may declare the Agreement terminated for default by providing written notice to Design-Builder of such declaration.

11.2.3 Upon declaring the Agreement terminated pursuant to Section 11.2.2 above, Owner may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Design-Builder hereby transfers, assigns and sets over to Owner for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items. In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, if the unpaid balance of the Contract Price exceeds the cost and expense incurred by Owner in completing the Work, such excess shall be paid by Owner to Design-Builder. Notwithstanding the preceding sentence, if the Agreement establishes a Guaranteed Maximum Price, Design-Builder will only be entitled to be paid for Work performed prior to its default. If Owner's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Design-Builder shall be obligated to pay the difference to Owner. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys', engineer, architect, other professional, court or arbitration or other dispute resolution fees and expenses, incurred by Owner in connection with the re-procurement and defense of claims arising from Design-Builder's default, subject to the waiver of consequential damages set forth herein. Such termination shall be effective as of the date stated in the termination notice provided to Design-Builder.

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

11.2.5 As set forth in this section, the Owner's termination of the Design-Builder is without prejudice to any other rights and remedies of the Owner, including but not limited to the Owner's rights and remedies under the Contract Documents and at law, all of which shall survive termination.

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 upon the Owner's failure to pay amounts properly due under Design-Builder's Application for Payment for thirty (30) days after such amounts were finally determined to be due, subject to the Owner's right to withhold payment pursuant to Section 6.3.

11.3.2 Should the event set forth in Section 11.3.1 above occur, Design-Builder shall provide Owner with written notice that Design-Builder will stop the Work unless said event is cured within seven (7) days from Owner's receipt of Design-Builder's notice. If Owner does not cure the problem within such seven (7) day period, Design-Builder may stop 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 ninety (90) consecutive days because of court order, any government authority having jurisdiction over the Work, or orders by Owner under Section 11.1.1 hereof, provided that such stoppages are not due to the acts or omissions of Design-Builder or anyone for whose acts Design-Builder may be responsible.

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 ninety (90) consecutive days, 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 shall provide written notice to Owner that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Owner's receipt of such notice. If Owner fails to cure, or reasonably commence to cure, such problem, then Design-Builder shall 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 Design-Builder.

11.5.1 If 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:

11.5.1.1 The Bankrupt Party, its trustee or other successor, shall furnish, upon request of the non-Bankrupt Party, adequate assurance of the ability of the Bankrupt Party to perform all future material obligations under the Contract Documents, which assurances shall be provided within ten (10) days after receiving notice of the request; and

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 by law, including its ability to seek relief from any automatic stays under the United States Bankruptcy Code.

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 Models) 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 Design-Builder shall provide electronic data in CAD (.dwg) format or other format acceptable to the Owner. 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 display, 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 by 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. 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 author 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.

Article 13

Miscellaneous

13.1 Confidential Information.

The Design-Builder acknowledges that Owner is a public entity subject to Ohio's public records act. If the Design-Builder claims that any information submitted to the Owner is exempt from disclosure under Ohio's public records act, then the Design-Builder shall conspicuous mark on the record "NOT A PUBLIC RECORD" and include in a cover letter or transmittal an explanation, citing legal authority, of the basis of the claim. Owner reserves the right to reject Design-Builder's position and produce said documents. In the event of a dispute with any third party requesting such records, Design Builder shall undertake the defense of Owner at Design-Builder's own expense and hold harmless and indemnify the Owner for any damages, penalties, fees, or costs that the Owner may incur as a result of such a dispute.

13.2 [Not Used.]

13.3 Successorship.

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 and Jurisdiction.

This Agreement shall be governed by the laws of the State of Ohio. All questions regarding the validity, intention, or meaning of this Agreement or any modifications of it relating to the rights and obligation of the parties will be construed and resolved under the laws of the State of Ohio. Any suit, which may be brought to enforce any provision of this Agreement or any remedy with respect hereto, shall be brought in the Common Pleas Court in the County where the Project is located and each party hereby expressly consents to the exclusive jurisdiction of such court. The parties hereby waive any right that they may have to remove any action related to this agreement to Federal court.

13.5 Severability.

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.

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.

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.

Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice, (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in the Agreement, or (iii) if transmitted by facsimile, by the time stated in a machine generated confirmation that notice was received at the facsimile number of the intended recipient. All written notices required under the Contract Documents from the Design-Builder to the Owner shall be submitted to the Owner.

13.9 Amendments.

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.

13.10 Mutual Cooperation.

Each party hereto agrees to do all acts and things and to make, execute and deliver such written instruments, as shall from time to time be reasonably required to carry out the terms and provisions of the Contract Documents.

13.11 Assignment of Contract

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.

13.12 No Findings for Recovery.

No Findings for Recovery. The Design-Builder represents that the Design-Builder is not subject to a finding for recovery under Section 9.24, Ohio Revised Code, or that the Design-Builder has taken the appropriate remedial steps required under Section 9.24, Ohio Revised Code, or otherwise qualifies under this section.

13.13 Contractor's Covenant of Non-Discrimination

Design-Builder agrees:

- a. That in the hiring of employees for the performance of Work under this Agreement or in any subcontract, neither the Design-Builder, subcontractor, nor any person acting on behalf of either of them, shall by reason of race, creed, sex, handicap, or color, discriminate against any citizen of the state in the employment of labor or workers who are qualified and available to perform the Work to which the employment relates.
- b. That neither the Design-Builder, subcontractor, nor any person acting on behalf of either of them, shall, in any manner, discriminate against or intimidate any employee hired for the performance of Work under this Agreement on account of race, creed, sex, handicap, or color.
- c. That there shall be deducted from the amount payable to the Design-Builder by the Owner under this Agreement a forfeiture of twenty-five dollars (\$25.00) as required by Ohio Revised Code Section 153.60 for each person who is discriminated against or intimidated in violation of this Agreement.
- d. That this Agreement may be canceled or terminated by the Owner and all money to become due hereunder may be forfeited for a second or subsequent violation of the terms of this section of this Agreement.

13.14 Publication of Information.

The Design-Builder will not publish information regarding the Project without the Owner's prior written consent and the Owner agrees not to unreasonably withhold such consent. The Design-Builder agrees to keep confidential and not to disclose to any third party (without the advance written consent of the Owner or as otherwise permitted under this Agreement) any confidential, proprietary or privileged information or documentation of financial or strategic planning or operational information or documentation.

City of Canton – American Rescue Plan Act (ARPA) Contract Addendum

Notice: The contract or purchase order to which this addendum is attached is made using federal assistance provided to the City of Canton by the US Department of Treasury under the American Rescue Plan Act (“ARPA Funds”), Sections 602(b) and 603(b) of the Social Security Act, Pub. L. No. 117-2 (March 11, 2021). In using such funds, the City must comply with the terms of ARPA, regulations issued by the U.S. Department of the Treasury (“Treasury”) governing the expenditure of monies distributed from the ARPA Funds (including, without limitation, the Interim Final Rule (86 Fed. Reg. 26,786 (May 17, 2021) and Final Rule (87 Fed. Reg. 4,338 (Jan. 27, 2022))), the Award Terms and Conditions applicable to the ARPA Funds, and such other guidance as Treasury has issued or may issue governing the expenditure of monies distributed from the ARPA Funds (collectively, the “Regulatory Requirements”). Additionally, pursuant to the Regulatory Requirements, the City must comply with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200 other than such provisions as Treasury has determined or may determine are inapplicable to the ARPA Funds and pursuant to 2 C.F.R. §200.327 the City must include within any contract applicable provisions described in Appendix II to 2 C.F.R. Part 200, each of which is contained in this Addendum.

The following terms and conditions apply to you, the contractor or vendor, as a contractor of the City of Canton as required by ARPA and its implementing regulations; and as established by the Treasury Department.

A. Equal Employment Opportunity. If this contract is a Federally Assisted Construction Contract (as defined in 41 C.F.R. §60-1.3) exceeding \$10,000, during the performance of this contract, contractor agrees as follows:

1. Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
2. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for

- employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
3. Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with Contractor's legal duty to furnish information.
 4. Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
 5. Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
 6. Contractor will furnish to the Administering Agency (as specified in 41 C.F.R. §60-1.3) and the Secretary of Labor all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Administering Agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
 7. In the event of contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended, in whole or in part, and contractor may be declared ineligible for further government contracts or Federally Assisted Construction Contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965. Such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
 8. Contractor will include the portion of the sentence immediately preceding paragraph A.1. of this section and the provisions of paragraphs A.1. through A.7. in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor

or vendor. Contractor will take such action with respect to any subcontract or purchase order as the Administering Agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.

Provided, however, that in the event contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Administering Agency, contractor may request the United States to enter into such litigation to protect the interests of the United States.

The City further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work. Provided, that if the City so participating is a state or local government, the above equal opportunity clause is not applicable to any agency, instrumentality, or subdivision of such government which does not participate in work on or under the Contract.

9. The City agrees that it will assist and cooperate actively with the Administering Agency and the Secretary of Labor in obtaining the compliance of contractor and any subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor; that it will furnish the Administering Agency and the Secretary of Labor such information as they may require for the supervision of such compliance; and that it will otherwise assist the Administering Agency in the discharge of the agency's primary responsibility for securing compliance.
10. The City further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and Federally Assisted Construction Contracts pursuant to the Executive Order and that it will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractor and any subcontractors by the Administering Agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the City agrees that if it fails or refuses to comply with these undertakings, the Administering Agency may take any or all of the following actions: cancel, terminate, or suspend, in whole or in part, this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

B. Copeland "Anti-Kickback" Act. Contractor and any subcontractors performing work under the contract shall comply with 18 U.S.C. §874. The City shall report all suspected or reported violations to Treasury.

C. Suspension and Debarment.

1. This contract is a covered transaction for purposes of 2 CFR §180.210 and 31 CFR §19.2103000. Therefore, this Contract is a lower-tier covered transaction for purposes of 2 C.F.R. Part 180 and 31 C.F.R. Part 19 if (1) the amount of this Contract is greater than or equal to \$25,000 (2 C.F.R. § 180.220(b)(1); 31 C.F.R. § 19.220(b)(1)); (2) the Contract requires the consent of an official of the Department of the Treasury (2 C.F.R. § 180.220(b)(2); 31 C.F.R. § 19.220(b)(2)); or (3) this Contract is for federally required audit services (2 C.F.R. § 180.220(b)(3); 31 C.F.R. § 19.220(b)(3)).
2. As such, the contractor is required to verify that contractor's principals (defined at 2 CFR § 180.995) or its affiliates (defined at 2 CFR § 180.905) of both contractor and contractor's principals are not excluded (defined at 2 CFR § 180.935) and are not disqualified (defined at 2 CFR § 180.935). If any of the foregoing persons are excluded or disqualified and the Secretary of the Treasury has not granted an exception pursuant to 31 C.F.R. §19.120(a) (a) this contract shall be void; (b) City shall not make any payments of federal financial assistance to contractor; and (c) City shall have no obligations to contractor under this contract.
3. The contractor must comply with 2 CFR pt. 180, subpart C and 31 CFR pt. 19, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. This certification is a material representation of fact relied upon by the City and all liability arising from an erroneous representation shall be borne solely by the contractor.
4. If it is later determined that the contractor did not comply with 2 CFR pt. 180, subpart C and 31 CFR pt. 19, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

D. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352, as amended.

1. Contractor certifies that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. §1352. Contractor shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier, up to the recipient who in turn will forward the certification(s) to the awarding agency. This certification is a material representation of fact upon which City has relied when

entering into this contract, and all liability arising from an erroneous representation shall be borne solely by contractor.

2. ***Purchases over \$100,000 - Contractors must sign the certification on the last page of this addendum and shall cause any subcontractors with a subcontract (at any tier) exceeding \$100,000 to file with the tier above it the same certification.**

E. Access to Records.

1. Contractor agrees to provide the City of Canton, the U.S. Department of Treasury, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, investigations and transcriptions. The Contractor agrees to permit any of the foregoing parties to reproduce by any means or to copy excerpts and transcriptions as reasonably needed, and agrees to cooperate with all such requests. No language in this contract is intended to prohibit audits or internal reviews by the Treasury Department or the Comptroller General of the United States.
2. Contractor agrees to retain all records covered by this section through December 31, 2031, or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving the contract.

F. Rights to Inventions Made Under a Contract or Agreement.

1. The Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for "Government purposes," any subject data or copyright described below. "Government purposes" means use only for the direct purposes of the Government. Without the copyright owner's consent, the Government may not extend its federal license to any other party.
 - (a) Any subject data developed under the contract, whether or not a copyright has been obtained, and
 - (b) Any rights of copyright purchased by contractor using federal assistance funded in whole or in part by the Department of the Treasury.
2. Unless the Department of the Treasury determines otherwise, a contractor performing experimental, developmental, or research work required as part of this contract agrees to permit Treasury to make available to the public either (a) Treasury's license in the copyright to any subject data developed in the course of the Contract or (b) a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work which is the subject of this contract is not completed for any reason whatsoever, all data developed under the contract shall

become subject data as defined herein and shall be delivered as the Government may direct.

3. Unless prohibited by Ohio law, upon request by the Government, contractor agrees to indemnify, save, and hold harmless the Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by contractor of proprietary rights, copyrights, or right of privacy arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under the contract. Contractor shall be required to indemnify the Government for any such liability arising out of the wrongful act of any employee, official, or agent of the contractor.
4. Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.
5. Data developed by contractor and financed entirely without using federal assistance provided by the Government that has been incorporated into work required by the underlying contract is exempt from the requirements herein, provided that contractor identifies that data in writing at the time of delivery of the contract work. Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with federal assistance.
6. For the purposes of this section "subject data" means "recorded information, whether or not copyrighted, . . . that is delivered or specified to be delivered as required by the contract." Examples of "subject data" include, but are not limited to, "computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses or other similar information used for performance or administration of the contract."

G. Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327 through 333) (applies only to purchases over \$100,000, when laborers or mechanics are used.)

Where applicable, all contracts in excess of \$100,000 that involve the employment of mechanics or laborers shall include a provision for compliance with 40 U.S.C. §3702 and §3704 of the Contract Work Hours and Safety Standards Act, as supplemented by Department of Labor regulations (29 CFR part 5). Under §3702 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard workweek of 40 hours. Work in excess of the standard workweek is permissible provided that the worker is compensated at a rate of not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in the workweek. The requirements of 40

U.S.C. §3704 are applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of

supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

H. Clean Air Act & Federal Water Pollution Control Act (applies to purchases of more than \$150,000).

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §1251 et seq.
3. The Contractor agrees to report each violation of the Clean Air Act and the Water Pollution Control Act to the City of Canton and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
4. Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

I. Prohibition Contracting for Covered Telecommunications Equipment or Services.

Definitions. Unless otherwise defined in this contract, capitalized terms used in section shall have the meanings ascribed thereto in this section.

(a) "Backhaul" means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).

(b) "Covered Foreign Country" means the People's Republic of China.

(c) "Covered Telecommunications Equipment or Services" means (i) telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities); (ii) for the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities); (iii) telecommunications or video surveillance services provided by such entities or using such equipment;

or (iv) telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a Covered Foreign Country.

(d) "Critical Technology" means (i) defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations; (ii) items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations and controlled (a) pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology, or (b) for reasons relating to regional stability or surreptitious listening; (iii) specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities); (iv) nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material); (v) select agents and toxins covered by part 331 of title 7, Code of Federal Regulations; part 121 of title 9 of such Code; or part 73 of title 42 of such Code; or (vi) emerging and foundational technologies controlled pursuant to §1758 of the Export Control Reform Act of 2018 (50 U.S.C. §4817).

(e) "Interconnection Arrangements" means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

(f) "Roaming" means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.

(g) "Substantial or Essential Component" means any component necessary for the proper function or performance of a piece of equipment, system, or service.

(h) "Telecommunications Equipment or Services" means telecommunications or video surveillance equipment or services, such as, but not limited to, mobile phones, land lines, internet, video surveillance, and cloud services.

2. Prohibitions.

(a) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after August 13, 2020, from obtaining or expending

grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(b) Unless an exception in applies, contractor and any subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds (including, without limitation, Fiscal Recovery Funds) received from a federal government to:

i. Procure or obtain any equipment, system, or service that uses Covered Telecommunications Equipment or Services as a Substantial or Essential Component of any system or as Critical Technology of any system;

ii. Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses Covered Telecommunications Equipment or Services as a Substantial or Essential Component of any system or as Critical Technology of any system;

iii. Enter into, extend, or renew contracts with entities that use Covered Telecommunications Equipment or Services as a Substantial or Essential Component of any system or as Critical Technology as part of any system; or

iv. Provide, as part of its performance of this contract, any subcontract; any other contractual instrument; or any equipment, system, or service that uses Covered Telecommunications Equipment or Services as a Substantial or Essential Component of any system or as Critical Technology as part of any system.

3. Exceptions.

(a). This clause does not prohibit contractor or subcontractors from providing:

i. A service that connects to the facilities of a third party, such as Backhaul, Roaming, or Interconnection Agreements, or

ii. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(b). By necessary implication and regulation, the prohibitions also do not apply to:

i. Covered telecommunications equipment that: system and

(a) Is not used as Critical Technology of any system.

(b) Is not used as a Substantial or Essential Component of any

ii. Other telecommunications equipment or services that are not considered Covered Telecommunications Equipment or Services.

4. Reporting Requirement.

(a). In the event contractor identifies, during contract performance, covered Telecommunications Equipment or Services used as a Substantial or Essential Component of any system or as Critical Technology as part of any system, or if contractor is notified of such by a subcontractor at any tier or by any other source, contractor shall report the information in paragraph 4(b) of this section to City, unless procedures for reporting the information are established elsewhere in this contract.

(b). Contractor shall report the following information to City pursuant to paragraph 4(a) of this section:

i. Within one business day from the date of such identification or notification: contract number; order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

ii. Within ten business days of submitting the information in paragraph 4(b)(i) of this section, any further available information about mitigation actions undertaken or recommended. In addition, contractor shall describe (1) the efforts it undertook to prevent use or submission of Covered Telecommunications Equipment or Services and (2) any additional efforts that will be incorporated to prevent future use or submission of Covered Telecommunications Equipment or Services.

5. Subcontractor. Contractor shall cause to be inserted into all subcontracts and other contractual instruments relating to the performance of this contract the substance of this Section I, including this paragraph 5.

J. Buy USA - Domestic preference for certain procurements using federal funds.

Contractor should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other

manufactured products). The requirements of this section must be included in all sub-awards including all contracts and purchase orders for work or products under this award. For purposes of this section:

1. "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
2. "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

K. Procurement of Recovered Materials.

1. This section shall apply if (1) this contract involves the purchase of an item designated by the Environmental Protection Agency ("EPA") in 40 C.F.R. Part 247 that exceeds \$10,000 or (2) the total value of such designated items acquired during the City's preceding fiscal year exceeded \$10,000.
2. In the performance of this contract, the contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:
 - a. Competitively within a timeframe providing for compliance with the contract performance schedule;
 - b. Meet contract performance requirements; or
 - c. Be acquired at a reasonable price.
3. Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines website. The contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

L. Minority and Women Business Enterprises. Contractor hereby agrees to comply with the following when applicable: The requirements of Executive Orders 11625 and 12432 (concerning Minority Business Enterprise), and 12138 (concerning Women's Business Enterprise), *when applicable*. Accordingly, the contractor hereby agrees to take affirmative steps to assure that women and minority businesses are utilized when possible as sources

of supplies, equipment, construction and services. Affirmative steps shall include the following:

1. Including qualified women's business enterprises and small and minority businesses on solicitation lists;
2. Assuring that women's enterprises and small and minority businesses are solicited whenever they are potential sources;
3. When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum participation by small and minority business, and women's business enterprises;
4. Where the requirement permits, establishing delivery schedules which will encourage participation by women's business enterprises and small and minority business; and
5. Using the services and assistance of the Small Business Administration, and the U.S. Office of Minority Business Development Agency of the Department of Commerce; and the Ohio Department of Development.

For the purposes of these requirements, a Minority Business Enterprise (MBE) is defined as an enterprise that is at least 51 percent owned and controlled in its daily operation by members of the following groups: Black, Hispanic, Asian or Pacific Islander, American Indian, or Alaskan Natives. A Women Business Enterprise (WBE) is defined as an enterprise that is at least 51 percent owned and controlled in its daily operation by women. Additionally, an MBE or WBE qualifies if it is currently certified by Ohio's Department of Development and qualifies as a "small business" if it is independently owned and operated and is qualified under the Small Business Administration criteria and size standards at 13 C.F.R. Part 21.

M. Assurances of Compliance with Title VI of the Civil Rights Act of 1964. Contractor and any subcontractor, or the successor, transferee, or assignee of contractor or any subcontractor, shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. §§ 2000d *et seq.*), as implemented by the Department of the Treasury's Title VI regulations, 31 C.F.R. Part 22, which are herein incorporated by reference and made a part of this contract. Title VI also provides protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. §§ 2000d *et seq.*, as implemented by Treasury's Title VI regulations, 31 C.F.R. Part 22, and herein incorporated by reference and made a part of this contract.

N. Publications. Any publications produced with funds from this award must display the following language: "This project [is being] [was] supported, in whole or in part, by federal award number [enter project FAIN] awarded to [name of Recipient] by the U.S. Department of the Treasury."

O. Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 Fed. Reg.19216 (Apr. 18, 1997), contractor is encouraged to adopt and enforce on-the-job seat belt policies and programs for your employees when operating company-owned, rented

or personally owned vehicles.

P. Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 Fed. Reg. 51225 (Oct. 6, 2009), contractor is encouraged to adopt and enforce policies that ban text messaging while driving, and establish workplace safety policies to decrease accidents caused by distracted drivers.

Q. Conflicts and Interpretation. To the extent that any portion of this Addendum conflicts with any term or condition of this contract expressed outside of this Addendum, the terms of this Addendum shall govern.

R. Other Non-Discrimination Statutes. Contractor acknowledges that City is bound by and agrees, to the extent applicable to contractor, to abide by the provisions contained in the federal statutes enumerated below and any other federal statutes and regulations that may be applicable to the expenditure of Fiscal Recovery Funds: The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 *et seq.*), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability; Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance; The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 *et seq.*), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 *et seq.*), which prohibits discrimination on the basis of disability in programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

S. Conflicts of Interest; Gifts and Favors.

1. Contractor understands that (1) City will use ARPA Funds to pay for the cost of this contract and (2) the expenditure of ARPA Funds is governed by the *Conflict of Interest Policy* of the City, the Regulatory Requirements (including, without limitation, 2 C.F.R. § 200.318(c)(1)), and Ohio law (including, without limitation, G.S. 14-234(a)(1) and -234.3(a)).
2. Contractor certifies to City that as of the date hereof, to the best of its knowledge after reasonable inquiry, no employee, officer, elected official, or agent of City involved in the selection, award, or administration of this contract (each a "Covered Individual"); no member of a Covered Individual's immediate family; no partner of a Covered Individual; and no organization (including contractor) which employs or is about to employ a Covered Individual has a financial or other interest in, or has received a tangible personal benefit from, contractor. Should contractor obtain knowledge of any such interest or any tangible personal benefit described in the preceding sentence after the date hereof, contractor shall promptly disclose the same to City in writing.
3. Contractor certifies to City that it has not provided, nor offered to provide, any gratuities, favors, or anything of value to an officer, employee, elected official or agent of City. Should contractor obtain knowledge of the provision, or offer of any provision, of any gratuity, favor, or anything of value to an officer, employee,

elected official or agent described in the preceding sentence after the date hereof, contractor shall promptly disclose the same to City in writing.

CONTRACTOR:

By: _____

Name: _____

Title: _____

CITY:

By: _____

Name: _____

Title: _____

This form is required only for purchases of more than \$100,000

31 CFR Part 21 – New Restrictions on Lobbying

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of their knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all contractors shall certify and disclose accordingly.
4. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the contractor understands and agrees that the provisions of 31 U.S.C. Ch. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of Contractor's authorized official

Date: _____

(Print name and title of person signing above)