

CITY OF AVON LAKE

REQUEST FOR QUALIFICATIONS

AVON LAKE PLAY SPACE (ALPS)



PUBLIC WORKS DEPARTMENT
150 AVON BELDEN ROAD
AVON LAKE, OHIO
Phone: 440-930-4101
Fax: 440-930-4105

Request for Qualifications

This **REQUEST FOR QUALIFICATIONS** ("RFQ") from the Owner named below invites the submittal of a Statement of Qualifications ("SOQ") from firms interested in providing design-build services for the Project described below. By submitting an SOQ, the Offeror represents that it has carefully read the terms and conditions of this RFQ and all attachments and Addenda and agrees to be bound by them. This RFQ is not an offer to enter into a contract, but merely a solicitation of persons interested in submitting SOQ to the Owner for the Project.

OWNER:

The City of Avon Lake, Ohio

PROJECT:

ALPS (Avon Lake Play Space), Bleser Park, 150 Avon Belden Rd, Avon Lake OH 44012

OWNER CONTACT PERSON:

Offerors shall submit the SOQ to

Erin Fach, Recreation Director at the City of Avon Lake. Address: Avon Lake Recreation Department, 150 Avon Belden Rd, Avon Lake OH 44012

All other questions regarding the project shall be directed to

Criteria Architect: Sixmo Architects | Engineers. Address: 1101 Auburn Ave, Cleveland OH 44113; Contact Person: Katalin Tomaschek, ktomaschek@sixmoae.com

SOQ DUE DATE AND TIME

Offeror's SOQ shall be submitted no later than:

2:00 pm 30th of June 2023.

All SOQs must be submitted pursuant to the instructions below. It is the Offeror's sole responsibility to ensure that the SOQ is delivered in the manner required by this RFQ by the Due Date and Time. Owner has the right to reject any SOQs not properly delivered.

SECTION 1: OWNER DESCRIPTION

1.1 General

The City of Avon Lake, Ohio invites the submittal of a Statement of Qualifications (SOQ) from firms interested in providing design-build services for the design, procurement, and construction of an outdoor public plays space in accordance with the Criteria Architect's conceptual design. All work to be completed in the City of Avon Lake, unless noted otherwise. All labor, material, and equipment needed for a complete and operational project shall be provided by the Design-Build Firm.

SECTION 2: OVERVIEW OF PROJECT

2.1 General

"Project" is the construction of a new playground for the City of Avon Lake in place of the demolished playground at Bleser Park (32800 Electric Blvd, Avon Lake, OH 44012). The proposed project will include the design and construction of new play spaces with a combined 85,000 +/- SF in area.

2.2 Project Objectives

- Design and construct a project that meets the Community and the Owner's vision of an ideal play space, outlined in the Design Criteria, with accessibility and inclusivity woven through all aspects of the design, a concept that creates a destination recreational space for the community of Avon Lake and nearby communities as well.
- Establish a collaborative relationship between the Owner, the Criteria Architect, and the Design-Build Team to deliver quality design and construction on time and within the Owner's budget.

2.3 Scope of Work

The Design-Build Firm is responsible for providing all design and construction services required for the project inclusive of, but not limited to the following: landscaping, architectural, electrical, structural, mechanical, plumbing and any other required specialty.

See Attachment A for Design Criteria information.

2.4 Estimated Budget

The estimated budget for the Scope of Work referenced in Section 2.3 and as further set forth in Attachment A is currently \$607,600. The target budget may be exceeded if proposed solutions enhance overall value.

2.5 Project Procurement Schedule

The following is the Project Procurement Schedule. The Owner reserves the right to modify the Project Procurement Schedule via Addenda issued prior to the date set forth below.

Date	Activity
2023.06.12	Issue RFQ
2023.06.16 – 10:00 am at City Hall	Non-Mandatory Project Information Meeting
2023.06.23	Last Date to Submit Questions Regarding the RFQ
2023.06.30	SOQ Due Date
2023.07.21	Notification of Short Listed Offerors
2023.07.21	Issue RFP
2023.07.27 – 10:00 am on Site	Non-Mandatory Site Walk Through for Short Listed Offerors
2023.08.10	Last Date to Submit Proposed Changes to Contract or Alternative Technical Concepts
2023.08.17	Last Date to Issue Owner Addenda
2023.08.31	Proposal Due Date
2023.09.14	Interviews with Short Listed Offerors
2023.09.28	Notification of Preferred Offeror

2.6 Definitions

- 2.6.1 Business Day:** any day on which the Owner is open for regularly conducted business.
- 2.6.2 Design-Builder:** The entity with the prime design-build contract with the Owner.
- 2.6.3 Design-Build Team:** All entities listed by the Design-Builder as providing services or construction on the Project. The Design-Builder is not required to list all members of the Design-Build Team in the SOQ. Members of the Design-Build Team may also be referred to as "Team Members."
- 2.6.4 Design Excellence:** Design Excellence is achieved with design solutions that meet the Community and the Owner's vision of an ideal play space, with accessibility and inclusivity woven through all aspects of the design, a concept that creates a destination recreational space for the community of Avon Lake and nearby communities as well.
- 2.6.5 Interview:** Discussion held with each Short Listed Offeror after the Owner receives the Proposals, to further investigate Offeror's pricing proposal, and technical proposal, including the scope and nature of the Offeror's proposed services and potential technical approaches. The interviews have a time limit of 45 minutes each.
- 2.6.6 Key Team Member:** Individuals who will be assigned to the Project who play an important role in the design, construction, or management of the Project.
- 2.6.7 Preferred Offeror:** The Offeror that the Owner determines achieves the apparent best overall value.
- 2.6.8 Procurement:** The Owner's process for selecting a Design-Build Team for this Project.
- 2.6.9 Procurement Documents:** All documents issued by the Owner in connection with the Procurement or Project.
- 2.6.10 Projects of Similar Scope and Complexity:** Projects that had completion dates within the last 3 years and that have many or all of the following characteristics:
- a. Projects of a similar size and budget that include design and construction of outdoor recreational spaces.
 - b. Projects that utilize an integrated delivery method that require strong coordination and integration of the design and construction professionals and early involvement of the construction professionals during design;
 - c. Projects where the Design-Builder was selected prior to the establishment of the final price and schedule and where the Design-Builder collaborated with the Owner to develop the final price and schedule.
- 2.6.11 RFP:** The Owner's Request for Proposals, which will be issued to those Short Listed Offerors who are selected to proceed to the next phase of this Procurement.

SECTION 3: PROCUREMENT PROCESS

3.1 General Information

3.1.1 **Compliance with Legal Requirements**

This Procurement will be in accordance with all applicable federal, state, and local laws, and Owner policies and procedures.

3.1.2 **Conflict of Interest and Communications with the Owner**

The Offeror shall warrant that no official or employee of the City of Avon Lake has an interest, has been employed or retained to solicit or aid in the procuring of the resulting contract, nor that any such person will be employed in the performance of such contract without immediate divulgence of such fact to the Owner. The Owner has the right to reject any Offeror or subsequent Proposal in which a conflict is disclosed or cancel the Contract if any interest is later discovered that could give the appearance of a conflict.

- a. Consultants who assisted the Owner in the RFQ/RFP preparations may not propose or participate on any Design-Build Team on this Project.

- b. Offerors are required to conduct the preparation of their SOQs with professional integrity and free of lobbying activities. Communication with the Owner regarding this Project shall be via email or regular mail only and directed to the following Owner's Representative: Sixmo, Criteria Architect (*Contact person: Katalin Tomaschek, 1101 Auburn Ave, Cleveland OH 44113, ktomaschek@sixmoae.com*). Do not communicate about the Project or the Procurement with any other Owner employees, representatives, or consultants. Communication with other Owner employees, representatives, or consultants regarding the Procurement may cause the firm involved to be disqualified from submitting under this Procurement. Any verified allegation that a responding Offeror or Team Member or an agent or consultant of the foregoing has made such contact or attempted to influence the evaluation, ranking, and/or selection of short-listed Offerors may be the cause for Owner to disqualify the Offeror team from submitting an SOQ or Proposal, to disqualify the Team Member from participating in the Procurement, and/or to discontinue any further consideration of such Offeror or Team Member.
- c. Following the Owner's approval of the Short Listed Offerors, the Owner anticipates that certain communications and contacts will be permitted. The RFQ, RFP and/or other written communications from Owner will set forth the rules and parameters of such permitted contacts and communications. To the extent any Offeror intends at any time to initiate contact with the general public regarding the Project, the nature of such intended contact and the substance thereof must be approved in writing by the Owner prior to the commencement of such activities.

3.1.3 Expenses of Offeror

The Owner accepts no liability for the costs and expenses incurred by firms in responding to this Procurement. Each Offeror that enters into the Procurement process shall prepare the required materials, the SOQ, and the Proposal at its own expense and with the express understanding that the Offeror cannot make any claims whatsoever for reimbursement from the Owner for the costs and expenses associated with the process, even in the event the Owner cancels this Project or rejects all Proposals.

3.1.4 Public Disclosure

All documentation and submittals provided to the Owner may be considered public documents under applicable laws and may be subject to disclosure. Offerors recognize and agree that the Owner will not be responsible or liable in any way for any losses that the Offeror may suffer from the lawful disclosure of information or materials to third parties.

Any materials requested to be treated as confidential documents, proprietary information, or trade secrets must be clearly identified and readily separable from the balance of the SOQ or Proposal. Such designations will not necessarily be conclusive, and Offerors may be required to justify why such material should not, upon written request, be disclosed by the Owner under the applicable public records act. The Owner will endeavor to provide at least two (2) Business Days' notice of a public records request for material submitted pursuant to this Procurement. Offerors must respond to the notice in writing with any objection to the production of the documents within two (2) Business Days of receipt of the notice. All costs incurred by Offerors associated with any public records request are the responsibility of the Offerors.

3.1.5 Protest Procedures

The following protest procedures will apply:

- a. All Protests will be directed to:

Gary Ebert, Director of Law (150 Avon Belden Road, Avon Lake, OH 44012)
- b. Any Protest based on the form or content of the Procurement documents, which is or should have been apparent prior to the date established for submittal of the SOQ or Proposal, will not be considered if received by the person set forth above later than ten (10) calendar days prior to the specified submittal date.
- c. Protests based on any other circumstances must be received by the person noted above within five (5) business days from the date the Offeror or Short Listed Offeror was notified of any selection decision; however, in no event will a protest be considered if all SOQ or Proposals are rejected or if the Protest is received after award of the Contract.

- d. To be considered, a Protest shall be in writing and shall include: (1) the name, street address, and email address of the aggrieved party; (2) the name of the Project for which the Protest is submitted; (3) a detailed description of the specific grounds for the Protest and any supporting legal and/or factual documentation; and (4) the specific ruling or relief requested.
- e. In computing any period of time prescribed by this procedure, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period shall be included. Any document received after the close of regular business hours (8:00 a.m. to 5:00 p.m.) shall be deemed received the following Business Day.
- f. By submitting an SOQ and/or Proposal in response to this Procurement, the Offeror acknowledges that it has reviewed and acquainted itself with the protest procedures herein and agrees to be bound by such procedures as a condition of submitting an SOQ and/or Proposal.

3.1.6 Identification of Projects

For each Project identified in the SOQ, provide the following information. The information required in this section can either be provided in a separate section of the SOQ, in the narrative for each of the evaluative criteria in Section 5.3, or the Offeror can provide a separate table for the identified Projects. The identification of Projects will not be evaluated separately. Rather, the Projects will be evaluated in the context of the criteria set forth in Section 5.3.

- a. Name of Project;
- b. Owner/Customer;
- c. Location of Project (include address);
- d. Description of the delivery method and integration of design and construction, identifying the firm(s) role as a prime consultant, subconsultant, contractor, subcontractor, or other;
- e. Project description and applicability and relevance of the referenced Project to the evaluation criteria for this Project;
- f. Name of each Key Team Member who is proposed for this Project who played a significant role on the Project example, including a description of their Project responsibilities and functions;
- g. The initial contract price, the final contract price, and an explanation for any difference between the two amounts;
- h. The initial date scheduled for substantial completion, the actual date of substantial completion, and an explanation for any difference between the two dates; and
- i. Project contact of the owner or customer (current address, e-mail, and phone number) who can verify the characteristics of the submitted Project example.

3.2 Owner Rights and Procurement Conditions

3.2.1 The Owner reserves without limitation, and may exercise at its sole discretion, the following rights and conditions with regard to this Procurement process:

- a. To cancel the Procurement process and reject any and all SOQs and/or Proposals;
- b. To waive any informality or irregularity;
- c. To revise the Procurement Documents and Schedule via an Addendum;
- d. To reject any Offeror that submits an incomplete or inadequate response or is not responsive to the requirements of this RFQ;
- e. To require confirmation of information furnished by an Offeror, require additional information from an Offeror concerning its SOQ or Proposal and require additional evidence of qualifications to perform the work described in this RFQ or a subsequent RFP;
- f. To provide clarifications or conduct discussions, at any time, with one or more Offerors;
- g. To contact references who are not listed in the Offeror's SOQs and investigate statements on

- the SOQs and/or qualification of the Offeror and any firms or individuals identified in the SOQ;
- h. To consider Alternative Technical Concepts and/or approaches identified by Offerors;
- i. To take any action affecting the RFQ process, the RFP process, or the Project that is determined to be in the Owner's best interests; and
- j. Approve or disapprove of the use of particular Subconsultants, Subcontractors, or Key Team Members and/or substitutions and/or changes to Subconsultants, Subcontractors, or Key Team Members from those identified in the SOQ or Proposal. Such approval or disapproval shall not be unreasonably exercised.

3.3 Outline of the Procurement Process

3.3.1 Request for Qualifications (RFQ).

- a. This RFQ invites firms to submit SOQs describing in detail their technical, management, and financial qualifications to design, permit, construct, commission, and close out the Project. The issuance of this RFQ is the first phase of the Procurement process.
- b. The Owner will conduct a non-mandatory Project Information Meeting for firms interested in the contract. Any discussed changes or clarifications to the project will be issued as an Addendum.
- c. Offerors will submit their SOQ and other deliverables required pursuant to this Procurement at the time and in the manner set forth in this RFQ and any Addenda. The Owner will not consider SOQ or other deliverables that are submitted after the Time set forth in the RFQ. Offerors are solely responsible for making sure that the Owner receives the SOQ in a timely fashion.
- d. The Owner will evaluate the information submitted by each Offeror to 1) determine whether the Offeror meets the mandatory minimum requirements set forth in Section 5.2, and 2) evaluate the SOQ provided by each Offeror pursuant to the evaluation system described below. Any Offeror who fails to meet the mandatory minimum requirements set forth in this SOQ will be deemed non-responsive and will not be considered further by the Owner in this Procurement.
- e. All SOQ will be evaluated in accordance solely with the criteria established in the RFQ and any Addenda issued thereto. The evaluation criteria are listed below, including the relative weight or importance given to each criterion.
- f. Not less than three (3) and not more than four (4) responsive and responsible firms will be selected and ranked as Short Listed Offerors. Only those firms that have been short-listed will be invited to submit a Proposal in response to the RFP.
- g. The results of the SOQ evaluations will be carried forward and included in the final evaluation and selection.
- h. Design-Build Team Members and individual Key Team Members will be used as a basis for selection. Once shortlisted, neither the Offeror nor Team Members that are submitted to the Owner as part of the SOQ or Proposal may substitute a listed consultant, subconsultant or subcontractor, or any individual listed as a Key Team Member.

3.3.2 Request for Proposal (RFP), Confidential Individual Meetings & Selection Process

- a. The Owner will issue the RFP to the Short Listed Offerors. The RFP will further explain the evaluation criteria, interviews, and other elements of the RFP process.
- b. Prior to the submission date for Proposals, written questions will be accepted as defined in the RFP.
- c. The Owner will conduct a non-mandatory Site Walk Through with all Short Listed Offerors.
- e. A Short Listed Offeror may submit in writing suggested proposed changes to the Contract provisions or Alternative Technical Concepts no later than the date set forth in the Schedule, see Section 2.5. The Owner, at its sole discretion, may revise the RFP, the contract provisions, and/or program documents and issue an Addendum to all Short Listed Offerors. In no event shall proposed changes be communicated in person or via oral means to Owner or any of its

representatives involved in the Procurement.

- f. Short Listed Offerors will submit a Technical Proposal and Price Proposal in accordance with the Procurement schedule.
- g. The Price Proposal will be submitted electronically (via email and/or flash drive) in a separate PDF file from the Technical Proposal.
- h. The Owner will establish an RFP Evaluation Committee to review and evaluate the Technical Proposal. The RFP Evaluation Committee may be the same as the RFQ Evaluation Committee. The RFP Evaluation Committee will evaluate the Proposals in accordance with the published evaluation criteria.
- i. The RFP Evaluation Committee representing the Owner will conduct Interviews with each Short Listed Offeror to further investigate Offeror's pricing proposal and technical proposal, including the scope and nature of the Offeror's proposed services and potential technical approaches.
- j. At its sole discretion, the Owner may ask written questions of Offerors, seek written clarifications on Proposals.
- k. The Owner will provide written notification to all Short Listed Offerors of the selection decision and make a selection summary available to all Offerors at the conclusion of the Procurement.
- l. The Owner shall negotiate a contract with the Preferred Offeror to perform the required services. If the Owner is unable to execute a contract with the Preferred Offeror, the Owner shall inform the Preferred Offeror in writing of the termination of negotiations. The Owner then may proceed to negotiate with the next Preferred Offeror. The Owner may continue in accordance with this procedure until a contract agreement is reached or the selection process is terminated. Negotiations are at the Owner's sole discretion. By submitting a Proposal pursuant to the RFP, the Offeror represents and warrants that it will enter into the contract provided by the Owner subject to the terms set forth in its Proposal.

3.3.3 Price Proposal

Short Listed Offerors shall submit a Price Proposal pursuant to the instructions set forth in the RFP.

3.3.4 Evaluation and Ranking of Offerors

In the evaluation and ranking of Offerors, the Owner will consider the information submitted in the SOQ, the Technical and Price Proposals as well as the meetings with the Offerors with respect to the evaluation criteria set forth in the RFQ and RFP. The result of the evaluation will be a comparative ranking of Offerors.

For the purpose of selecting and evaluating Offerors, the evaluation criteria will be given the following relative weights:

SOQ		
	Team Organization (see Section 5.3.1)	0-10
	Demonstrated Past Performance with Successful Projects of Similar Scope and Complexity (see Section 5.3.2)	0-15
	Design-Build Design, Engineering and Permitting Past Performance (see Section 5.3.3)	0-10
	Design-Build Construction Past Performance (see Section 5.3.4)	0-10
Technical Proposal		
	Unique Challenges / Potential Solutions	0-10
	Value Added Suggestions	0-10
	Project Timeline	0-15
Interview		0-5
Price Proposal		0-15
Total Score		/100

3.4 **Contract Format**

The Owner will enter into negotiations for the Design-Build Agreement with the Preferred Offeror. The Design-Build Agreement is anticipated to utilize the DBIA Contract Document #525 – Standard Form of Agreement Between Owner and Design-Builder – Lump Sum (See sample attached.).

SECTION 4: SOQ DOCUMENTATION REQUIREMENTS

4.1. **SOQ Format Requirements**

The SOQs shall comply with the following format requirements:

- 4.1.1 SOQs shall be formatted in searchable .pdf format.
- 4.1.2 The body of the SOQ shall be organized in accordance with the Evaluation Criteria.
- 4.1.3 The body of the SOQ, when printed, shall be limited to a maximum of __twenty__ (20) single-sided pages.
 - a. The **only** documentation that is **not** included in the page count is the following:
 - i. Letter of interest or cover letter;
 - ii. Statement of Offeror's Ability to Provide a Proposal Bond, or Performance, Guarantee and Payment Bond;
 - iii. Statement of Offeror's Ability to Meet the Owner's Insurance Requirements;
 - iv. Corporate Structure Questionnaires;
 - v. Resumes of Key Team Members;
 - vi. Divider tabs, provided that they contain no substantive content; and
 - vii. Cover pages, provided that they contain no substantive content.
 - b. **SOQs that exceed the page limit may be rejected.** The Owner, at its sole discretion, reserves the right to remove pages from the sections of any non-conforming SOQ submittals to bring each non-conforming SOQ submittal within the page count requirement.

- c. A “page” shall be defined as one single-sided piece of paper that has words, charts, tables, pictures, or graphics. Pages shall be 8.5 x 11 inches, with the exception of _6_ pages, which may be presented in 11 x 17-inch format; however, larger pages may only contain graphics and/or designs and may not be used for an Offeror’s narrative.
- d. The font shall be no smaller than 10 point.

4.2 SOQ Organization

SOQs shall consist of the following parts:

4.2.1 Letter of Interest

4.2.2 Minimum Qualifications

- a. Statement of Offeror’s Ability to Provide a Proposal Bond, or Performance, Guarantee and Payment Bond. (See Section 5.2.1 and Attachment B)
- b. Statement of Offeror’s Ability to Meet the Owner’s Insurance Requirements. (See Section 5.2.2 and Attachment C)

4.2.3 Technical & Management Qualifications

- a. Team Organization
- b. Design-Build Engineering, Permitting, and Design Past Performance
- c. Design-Build Construction Past Performance
- d. Design-Build Project Management Past Performance
- e. Demonstrated History of Successful Projects Similar in Scope and Complexity

4.2.4 Corporate Structure Questionnaire(s)

SECTION 5: SOQ EVALUATION CRITERIA AND SUBMITTAL INFORMATION

5.1 Letter of Interest (No points)

The SOQ must include a cover letter containing the name, address, telephone number, fax number, and e-mail address of the Offeror and the principal contact person. The Letter of Interest shall also include the following: (1) name, address, telephone number, fax number, and e-mail address for all listed consultants, subconsultants and/or subcontractors for the Project; and (2) the type of firm or organization (corporation, partnership, joint venture, etc.) that will serve as the prime contracting party. The letter of interest may be a maximum of two (2) pages.

5.2 Minimum Qualifications

5.2.1 Statement of Offeror’s Ability to Provide Performance, Payment, and Guarantee Bonds (Pass/Fail)

As a **mandatory minimum requirement**, the Offeror must have the ability to obtain performance, payment, and guarantee bonds in amounts equal to the total contract price. Offeror shall provide a letter signed by an authorized representative of Offeror’s surety company (or agent) confirming that the Offeror can meet this minimum requirement. Any Offeror who fails to meet this mandatory minimum requirement will be considered non-responsive and will not be considered further by the Owner in this Procurement process. The surety shall be a company authorized to conduct business in the state where the Project is located. Letters indicating “unlimited” bonding capability are not acceptable.

5.2.2 Statement of Offeror’s Ability to Meet the Owner’s Insurance Requirements. (Pass/Fail)

As a **mandatory minimum requirement**, the Offeror must document that it has the ability to meet the minimum insurance requirements as set forth in the attached draft Insurance Requirements (Attachment C). Offeror shall provide a letter from Offeror’s insurance company or broker indicating that the Offeror is capable of complying with the insurance requirements specified in Attachment C. Any Offeror who fails to

meet this mandatory minimum requirement will be considered to be non-responsive and will not be considered further by the Owner in this Procurement. The insurer shall be a company authorized to conduct business in the state where the Project is located.

5.3 Technical and Management Qualifications

The SOQ shall demonstrate the Design-Build Team's ability to undertake the Project by providing the following technical and management qualifications of the Offeror, Team Members, and individual Key Team Members. The Offeror is responsible for ensuring that contact information contained in their referenced Project profiles is correct. The inability to contact a reference may have a detrimental impact on the evaluating qualifications.

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

The SOQ will be evaluated on the following technical and management qualifications:

5.3.1 Team Organization

- a. Provide an organization chart (showing Team Members, Key Team Members and their firm affiliation) for all phases of the Project from design through final acceptance and warranty and maintenance period. Be certain to identify specific individuals for key functions and show interrelationships and reporting hierarchy. Note whether individuals are performing multiple functions. At a minimum, identify the Key Team Members performing the functions identified below. To the extent that the Design-Builder has additional Key Team Members on their team, the Design-Builder should include those individuals.
 - i. Person responsible for the overall management of the Project and design-build contract;
 - ii. Designer of Record;
 - iii. Person responsible for overall construction management;
 - iv. Person responsible for on-site field supervision and direction and construction (Superintendent);
 - v. Person responsible for safety;
 - vi. Person responsible for quality assurance;
 - vii. Person responsible for cost controls and budgeting;
 - viii. Person responsible for scheduling; and
 - ix. Person responsible for systems testing, configuration, and commissioning.
- b. Provide a resume for all Key Team Members. Resumes should be no longer than 1 page and should include the following information:
 - i. Description of the individual's proposed Project role;
 - ii. Identification of employer and number of years employed by the firm;
 - iii. Educational background, professional licenses, and/or certifications;
 - iv. Experience relevant to their proposed role on the Project and how their past performance on previous projects will benefit this Project; and
 - v. Based on the information available to the Design-Builder, proposed percentage of time that the Design-Builder intends to assign this individual to the Project.
- c. Describe the corporate structure of the Design-Builder and complete the corporate structure questionnaire for the Design-Builder and all Team Members in the form set forth in Attachment

D. If the prime Design-BUILDER is a Joint Venture, all Joint Venture partners must have functional responsibilities for the Project. Describe the duties of each Joint Venture partner.

5.3.2 Demonstrated Past Performance with Successful Projects of Similar Scope and Complexity

- a. Describe the Team's past performance in successfully managing design-build (or a similar integrated delivery model) Projects of Similar Scope and Complexity that include management and communications of an integrated team of design consultants, specialty subcontractors, and trade contractors. Include a description of any issues or problems that arose on the projects and how those issues or problems were resolved.
- b. Describe the Team's past performance in developing integrated design and construction schedules for Projects of Similar Scope and Complexity.
- c. Describe the Team's past performance in developing and/or managing costs within a Guaranteed Maximum Price / Lump Sum Price.
- d. Describe the Team's past performance working together and/or describe the steps the Team has taken to promote integration and a collaborative working environment. The Owner reserves the right to award more points to those teams who have worked together in a collaborative delivery model.

5.3.3 Design-Build Design, Engineering, and Permitting Past Performance

- a. Describe the Design-BUILDER's past performance in managing the design process.
- b. Describe the Team's past performance with designing and permitting Projects of Similar Scope and Complexity. Include a description of any issues or problems that arose on the project and how those issues or problems were resolved.
- c. Describe the software used by the Team for design services, including a description of the Building Information Modeling system or other specialized software the Team would utilize for this Project.
- d. List all professional registrations and/or certifications that are relevant to the work associated with the Project.

5.3.4 Design-Build Construction Past Performance

- a. Describe the Team's past performance with construction management and construction of Projects of Similar Scope and Complexity. Include a description of any issues or problems that arose on the projects and how those issues or problems were resolved.
- b. Include in the narrative the Team's approach to the following:
 - i. Sequencing construction activities to maximize efficiency and minimize impact on the Owner;
 - ii. Assessing whether the Design-BUILDER has achieved performance requirements;
 - iii. Change orders; and
 - iv. Configuration, commissioning, and testing Projects of Similar Scope and Complexity.

5.3.5 Corporate Structure Questionnaire

Submit a completed Corporate Structure Questionnaire for Design-BUILDER and each Team Member.

SECTION 6: LIST OF ATTACHMENTS

- A. Design Criteria
- B. Proposal, Performance, Guarantee and Payment Bond Instructions
- C. Insurance Requirements and Instructions
- D. Corporate Structure Questionnaire

Attachment A

Design Criteria

A-1. SCOPE

Project is the construction of a new playground for the City of Avon Lake in place of the demolished playground at Bleser Park (32800 Electric Blvd, Avon Lake, OH 44012). The proposed project will design and build new play spaces with a combined 85,000+/- SF in area.

The Design-Build Contractor (DBC) is responsible for providing all design and construction services required for the project inclusive of, but not limited to the following: landscaping, architectural, electrical, structural, mechanical and any other required specialty.

Design shall comply with all applicable standards, codes and regulations.

A-2. EXISTING CONDITIONS. CONNECTIONS

Existing site elements to be preserved, protected and repaired:

- The two towers from the previous ALPS structure to be preserved, protected and renovated, the “ALPS” sign replaced.
- The existing brick path to be preserved, protected, missing brick pieces to be replaced. New walking path needs to connect to the existing brick path, with the two towers serving as an entrance to the new playground.
- The location of the planned fence (by the City) to be considered when determining the layout of new paths and play areas.
- The existing bridge will be relocated by the City. The new walking path to connect to the new bridge. Planned location of the bridge to be provided by the City.
- The existing concrete pad of the picnic area, the existing pavilion and the two existing parking lots (North and South side of park) to remain.
- The existing asphalt path connecting the two parking lots to be demolished.
- The existing mound to remain with grading changes, new surfacing to be added on East side. For more details see section C-3.

A-3. GENERAL SITE REQUIREMENTS

1. SURFACING

- All areas to be fully accessible via walking path / running track with ADA accessible surfacing.
- All areas to have ADA accessible surfacing where it is needed for the appropriate use of play equipment.
- Accepted surfacing options for each area (when substitute options are available, they are listed as “Best”, “Better” and “Acceptable”):
 - **Outdoor Gym**
 - Best: poured-in-place rubber
 - Better: rubber tiles
 - Acceptable: asphalt, concrete
 - **Infant & Toddler Play Area**
 - poured-in-place rubber and artificial turf combined
 - **Sensory & Music Garden**
 - Best: poured-in-place rubber
 - Accepted: asphalt, concrete

- **Ninja Warrior Course**
 - poured-in-place rubber or artificial turf
- **Big Kids Play Area**
 - poured-in-place rubber
- **Swings**
 - Best: poured-in-place rubber
 - Better: rubber tiles
 - Acceptable: asphalt, concrete (not acceptable in equipment specific fall zones)
- **Zipline Course**
 - Best: poured-in-place rubber (only acceptable option in equipment access zones)
 - Better: rubber tiles
 - Acceptable: asphalt, concrete, natural lawn, gravel (not acceptable in equipment specific fall zones)
- **Mound**
 - West slope (sledding hill): natural lawn
 - East slope (climbing hill, large slides): poured-in-place rubber
- **Running track**
 - Outdoor sport track system (poured-in-place rubber surface with flexible base layer/basemat)
- **Path**
 - Best: poured-in-place rubber
 - Better: gravel properly treated to provide sufficient surface integrity and resilience
 - Acceptable: asphalt, concrete

2. ACCESSIBILITY

All surfaces, routes, play areas shall comply with the respective sections of the ADA Accessibility Standards (Chapter 10, 1008 Play Areas).

The accessible surface area shall include the accessible route from the entry of the play area, at least one connection to each accessible play component (points of entry and egress) and any clear space requirements adjacent to accessible play components.

Accessibility and the option for inclusive play is expected throughout the design. Each play area shall include at least one component that complies with the ADA Accessibility Standards. When designing accessible play areas both children and adult visitors' abilities shall be taken into account.

3. LANDSCAPING

All existing trees, shrubs to be included in design, and to be preserved and protected during construction. Any changes made in landscaping shall be in conjunction with the Avon Lake Tree Commission and comply with the corresponding sections of the Codified Ordinances of the City of Avon Lake, Ohio.

New trees and shrubs as natural shading elements shall be planted throughout the playground, their location integrated into the overall layout of play areas. Natural shading elements are especially needed on the West side of the playground to provide protection from the afternoon sun.

When determining the type of trees planted, both deciduous and coniferous tree varieties shall be considered. Natural lawn to be used throughout the playground where accessibility is not required. Shrubs and other greenery shall be planted between and around the play areas and seating areas as long as they don't disrupt visibility. Natural lawn to be maintained on West side of slope to provide appropriate surface for the sledding hill.

4. GRADING

Existing grading shall be modified to provide flat surface for new play areas and to meet the accessibility

requirements of routes throughout the playground.

The footprint, surface area and height of the existing mound to be increased to better accommodate sledding and climbing functions. The top of the hill to serve as lookout point and create the highlight element of the playground. The West slope shall be modified to create a 30-degree average slope that is recommended for sledding hills. The face (sledding area) should have a method of channeling sledders toward the bottom and away from obstacles (trees, light poles, play equipment and site furniture).

5. SITE LIGHTING

Site lighting to be designed to provide at code minimum along all paths. Lighting to turn on with photocell and off with timeclock 1 hour after park closes. Verify operation times and protocol with city representative. The contractor is to carry ten (10) site lighting fixtures including poles, conduit, wire, photocells and timeclocks, and all other required accessories in their bid.

Power source provided by the city at the storage shed South of the pavilion.

6. SITE FURNITURE

Site furniture (benches, picnic tables, litter receptacles, bicycle racks) to be included in the design. All products to be of good quality, durable and aesthetically tie into to rest of the concept.

Park benches with armrest and full back are preferred for better accessibility and support.

The contractor is to carry a minimum of twenty (20) outdoor benches, eight (8) trash cans and eight (8) bicycle racks in their bid. The existing picnic tables may be used, with two (2) ADA accessible picnic tables added.

7. SITE PLANNING

Please refer to A1.0 Park Concept Plan regarding general areas, path layout, approximate size, proportions and connections. Final design may differ from Concept Plan provided.

A-4. DESCRIPTION OF AREAS

1. OUTDOOR GYM

Outdoor workout equipment for ages 12 and up. Equipment types shall include both fixed elements (eg. pull-up / push-up bars, frames, benches, etc.) and machines with moving parts (eg. rowing machine, walker, cross trainer, press and pull machine, etc.).

For surfacing information see Section C-3./1.

Approximate area: 1800 SF

2. INFANT & TODDLER PLAY AREA

A variety of play equipment, landscaping elements and seating for ages 0-5 years. Good visibility of this play area is crucial, especially from the surrounding seating areas and the existing picnic area.

For surfacing information see Section C-3./1.

Approximate area: 4500 SF

The equipment list provided in the bid shall include but not limited to:

- One (1) climbing element with slide appropriate for ages 2-5 years
- One (1) see-saw appropriate for ages 2-5 years
- One (1) small spinning element appropriate ages 2-5 years
- One (1) hiding element with peeking holes (can also serve as climbing element)
- Two (2) picnic tables or two (2) benches or four (4) stools appropriate for ages 2-5 years
- Area with small mounds (w/ poured-in-place rubber or artificial turf surfacing) complete with tunnels, slides and climbing aides.

3. SENSORY & MUSIC GARDEN

Play area for all ages and all abilities that also serves as an entry plaza for the playground. Shade sails to be included in the design to provide protection from the elements. All equipment to be accessible from the ground, heights to accommodate visitors in a wheelchair.

For surfacing information see Section C-3./1.

Approximate area: 3000 SF

The equipment list provided in the bid shall include but not limited to:

- Four (4) musical elements (eg. percussion, xylophone, chimes, etc.)
- Four (4) sensory panels and/or sensory tables
- One (1) set of talking tubes

4. NINJA WARRIOR COURSE

Challenge course for ages 5-12 years. Shall include a combination of the following equipment types: monkey bars, bouldering wall, stepping stones, rope climbing, tunnel, etc.

For surfacing information see Section C-3./1.

Approximate area: 4000 SF

5. BIG KIDS PLAY AREA

Play area for ages 5-12 years. The highlight of the space is the large climbing element with a lookout tower, connected to the mound with a bridge. The highest point shall be made ADA accessible with ramps.

For surfacing information see Section C-3./1.

Approximate area: 5800 SF

The equipment list provided in the bid shall include but not limited to:

- One (1) large climbing element with slides appropriate for ages 5-12, accessible with ADA ramps, connected to mound with a bridge.
- One (1) medium to large rope climbing structure.
- One (1) ADA accessible spinner component.
- Two (2) medium to large spinner components.
- One (1) ADA accessible see-saw or one (1) ADA accessible sway swing.

6. SWINGS

Multiple swing sets with a variety of seats accommodating all ages and capabilities. Swing set frames to be angled to provide the best view of the lake. A minimum of sixteen (16) swing seats combined.

For surfacing information see Section C-3./1.

Approximate area: 4200 SF

The equipment list provided in the bid shall include but not limited to:

- Four (4) bucket seats appropriate for ages 1-4 years.
- One (1) molded bucket seat with harness appropriate for ages 2-5 years.
- One (1) molded bucket seat with harness appropriate for ages 5-12 years.
- One (1) nest (saucer) seat.
- One (1) generation (parent & child) swing seat.
- Four (4) belt seats.

7. ZIPLINE COURSE

Two-bay (including one assisted bay) zipline course with different types of seats for ages 5-12 years. Two-way mechanism preferred, but not required.

For surfacing information see Section C-3./1.

Approximate area: 4400 SF

The equipment list provided in the bid shall include but not limited to:

- One (1) zipline bay with molded bucket seat w/ harness.
- One (1) zipline bay with disc seat.

8. MOUND

Existing mound to be used as climbing hill (East slope) and sledding hill (West slope). For more information see Section C-3/4.

For surfacing information see Section C-3./1.

Approximate area: 10000 SF

The equipment list provided in the bid shall include but not limited to:

- Three (3) large stainless steel slides following the East slope of the mound (straight half tube slide, tube slide, curvy half tube slide, etc.) starting at the top of the mound
- One (1) shorter stainless steel slide starting at mid-height to bottom of mound
- Climbing aides mounted on slope (half spheres)
- One (1) climbing rope leading to top of mound

A-5. CONCEPT PLAN

See attached Drawing dated 02. 10. 2023. – Park Concept Plan - A1.0

End of Document

Attachment B

Bond Instructions

1. Offerors are required to provide a Proposal Bond upon being shortlisted for this Procurement. The following shall apply:
 - a. The Proposal Bond equal to 100% of the proposed price payable to the City of Avon Lake, Ohio, or a certified check equal to 10% of the proposed price shall accompany the Proposal.
 - b. The Proposal Bond shall be in the form attached hereto.
 - c. The Proposal Bond must be submitted within (14) days of the date that the Offeror is shortlisted for the Project. Failure to timely submit a Proposal Bond will result in the disqualification of Offeror from this procurement. In such a case, and at the Owner's sole option, the Owner may add another Offeror to the shortlist.
2. The selected Design-Builder will be required to provide the following bonds for this Project:
 - ☒ Payment Bond shall be in accordance with the final contract price.
 - ☒ Performance Bond shall be in accordance with the final contract price.
 - ☒ Guarantee bond shall be in accordance with the final contract price.

If any of the boxes above are selected, the following shall apply:

- a. Offerors must submit a statement from their bonding company that the Offeror can meet the bonding requirements set forth above.
- b. The Payment, Performance, and Guarantee Bond(s) shall be in the form attached hereto.

BID GUARANTY AND CONTRACT BOND

(O.R.C. 153.571)

(Not to be filled out if certified check is submitted)

AVON LAKES PLAY SPACE (ALPS)

KNOWN ALL MEN BY THESE PRESENTS, that we, the undersigned

_____, (Here insert full name
or legal title of D-B Contractor and Address)

hereinafter called the Principal, and the of _____,

(Here insert full name or legal title of Surety)

and Corporation duly organized under the laws of the State of _____, hereinafter called the
Surety, as Surety, are hereby held and firmly bound unto the City of Avon Lake, Ohio, 150 Avon
Belden Road, hereinafter called the Oblige, in the penal sum of the dollar amount of the bid
submitted by the Principal to the Oblige on _____ to

undertake the project know as: **AVON LAKE PLAY SPACE (ALPS)**

The penal sum referred to herein shall be the dollar amount of the Principal's bid to the Oblige,
incorporating any additive or deductive alternate proposals made by the Principal on the date referred to
above to the Oblige, which are accepted by the Oblige. In no case shall the penal sum exceed the
amount of _____

_____ dollars (\$_____). (If the above line is left
blank, the penal sum will be the full amount of the Principal's bid, including alternates. Alternatively, if
completed, the amount stated must not be less than the full amount of the bid, including alternates, in
dollars and cents. A percentage is not acceptable.) For the payment of the penal sum well and truly to be
made, the said Principal and the Surety, bind ourselves, our heirs, executors, administrators, successors,
and assigns, jointly and severally, firmly by these present.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that whereas the above named Principal
has submitted a bid on the above referred to project;

NOW, THEREFORE, if the Oblige shall accept the bid of the Principal and the Principal fails to enter
into a proper contract in accordance with the bid, plans, details, specifications, and bill of materials; and
in the event the Principal pays to the Oblige the difference not to exceed ten percent of the penalty hereof
between the amount specified in the bid and such larger amount for which the Oblige may in good faith
contract with the next lowest bidder to perform the work covered by the bid; or in the event the Oblige
does not award the contract to the next lowest bidder and resubmits the project for bidding, the Principal
will pay the Oblige the difference not to exceed ten percent of the penalty hereof between the amount
specified in the bid, or the costs, in connection with the resubmission, of printing new contract
documents, required advertising and printing and mailing notices to prospective bidders, whichever is
less, then this obligation shall be null and void, otherwise to remain in full force and effect. If the Oblige
accepts the bid of the Principal and the Principal within ten days after the awarding of the contract, enters
into proper contract in accordance with the bid, plans, details, specifications, and bills of material, which

said contract is made a part of this bond the same as though set forth herein; and

IF THE SAID Principal shall well and faithfully perform each and every condition of such contract; and indemnify the Obligees against all damage suffered by failure to perform such contract according to the provisions thereof and in accordance with the plans, details, specifications, and bills of materials therefore; and shall pay all lawful claims of subcontractors, materialmen, and laborers; for labor performed and materials furnished in the carrying forward, performing or completing of said contract; we agreeing and assenting that this undertaking shall be for the benefit of any materialman or laborer having a just claim, as well as for the Obligees herein; then this obligation shall be void; otherwise the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall in no event exceed the penal amount of this obligation as herein stated.

THE SAID Surety hereby stipulates and agrees that no modifications, omissions, or additions, in or to the terms of said contract or in or to the plans and specifications therefore shall in any wise affect the obligations of said Surety on this bond, and it does hereby waive notice of any such modifications, omissions or additions to the terms of the contract or to the work or to the specifications.

SIGNED AND SEALED This _____ day of _____, 2023

PRINCIPAL:

SURETY COMPANY ADDRESS:

BY: _____

Street

TITLE: _____

City State Zip

SURETY: _____

SURETY AGENT'S ADDRESS:

Agency Name

BY: _____
Attorney-in-Fact

Street

City State Zip

LABOR AND MATERIAL PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS, that we whereas, the City of Avon Lake, State of Ohio has

awarded to _____ a _____
Name of Contractor Corporation, Partnership or Individual

hereinafter designated as the "Principal", a Contract Agreement, a copy of which is hereto attached and made part hereof for the construction of: _____ and,
Project Name

WHEREAS, said principal is required under the terms of said Contract to furnish a bond in connection with said Contract Agreement, providing that if said Principal, or any of his or its subcontractors, shall fail to pay for any materials, provisions, provender or other supplies or teams used in, upon, for or about the performance of the Work contracted to be done, or for any Work or labor done thereon of any kind, the Surety on this bond will pay the same to the extent hereinafter set forth; **NOW THEREFORE**, we the Principal and _____ as Surety, are held and firmly bound unto the City of Avon Lake, Ohio in the penal sum of _____ DOLLARS (\$) lawful money of the United States, for the payment of which sum well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, legal representatives or assigns jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if said Principal, has or its heirs, executors, administrators, successors, or assigns, shall fail to pay for any materials, provisions, or other supplies or teams used in upon or about the performance of the Work contracted to be done or for any labor thereon of any kind, as required by the provisions of all laws of the State of Ohio to secure the payment of claims of persons employed by contractors upon public works, and the claim of persons who furnish materials, supplies, teams, implements, or machinery used or consumed by such contractors in the performance of such work, and provided that the persons, companies, or corporations so furnishing said materials, provisions, or other supplies, teams, appliances or power used, in, upon, for or about the performance of the Work contracted to be executed or performed, or any person, company or corporation renting or hiring teams or implements or machinery or power for or contributing to said Work to be done, or any person who performs Work or labor upon the same of any person who supplies both Work and materials therefore, shall have complied with provisions of said laws, then Surety shall pay the same in or to an amount not exceeding the amount hereinabove set forth, and will also pay in case suit is brought upon this bond, such reasonable attorney's fee, as shall be fixed by the Court, awarded and taxed as in the laws of the State of Ohio provided.

This bond shall insure to the benefit of any and all persons, companies and corporation entitled to file claims under said laws, so as to give a right of action to them or their assigns in any suit brought upon this bond.

And the Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Agreement, or to the Work to be performed there under, or the Specifications accompanying the same, shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension or time, alteration or addition to the terms of the Contract Agreement or to the Work or to the Specifications.

WITNESS our signature, this _____ day
of _____ 2023 _____.

Principal

Surety

PERFORMANCE BOND

KNOWN ALL MEN BY THESE PRESENTS, that we, the undersigned _____
_____ as Principal, and
_____ as Surety, are hereby held and
firmly bound unto the CITY OF AVON LAKE, OHIO in the penal sum of _____
_____ dollars (\$ _____) for the payment of
which well truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators,
successors, legal representatives and assigns by these presents.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT, whereas the above named Principal, did
on the _____ day of _____, 20____, enter into the Contract hereto attached with the said, the CITY
OF AVON LAKE, OHIO which said Contract is made a part of this Bond the same as if fully set forth herein:

Now, if the said party of the second part in the aforesaid Contract shall well and truly execute all and singular the stipulations by it to be executed, and shall fully perform the work therein specified, in a good and workmanlike manner and do and perform all and singular the terms, conditions, requirements of the Plans, Specifications and Contract, and shall indemnify and save harmless the City of Avon Lake, Ohio from all suits and actions of every name and description brought against the City, its directors, or any officer of said City, for, or on account of any injury or damage to persons or property arising from, or growing out of the construction of the work in said Contract specified to be done, or the doing of any of the work therein described, and shall indemnify and save harmless the City of Avon Lake, Ohio, from any and all suits and expense over and above the expense included in the Contract Price, for royalties or infringements on patents that may be involved in the construction of the appliances contracted for, or any of the parts thereof, or in the use of said appliances or any of the parts thereof, and if said party of the second party shall defend, at its proper cost and expense any and all suits, actions of every kind whatsoever, that may be brought against the City of Avon Lake by reason of the use of said appliances or any of the parts thereof, and future from all liens, charges, claims, demands, loss, costs and damages of every kind and nature whatsoever, and shall pay all lawful claims of sub-contractors, materialmen and laborers for labor performed, and for materials furnished in the carrying forward, performing or completing of said Contract, then this obligation shall be void, otherwise shall be and remain in full force and virtue in law; we hereby agreeing and consenting that this undertaking shall be for the benefit of any laborer or material men having a just claim as aforesaid as for the City of Avon Lake; and further that the parts of the foregoing Contract may, from time to time, and as often as they see fit, make any additions to, omissions from, or modifications of the work, Plans or Specifications and the said Surety herein stipulates and agrees that no modifications, omissions or additions, in or to the terms of the said Contract, or in or to the Plans or Specifications, therefore, shall in anyway affect the obligations of said Surety on its Bond; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall in no event exceed the penal amount of this obligation as herein stated.

WITNESS OUR SIGNATURE: this _____ day of _____, 20____

Principal

Surety

NOTE: Surety attorney power authorizing signatures of Surety herein, to be attached.

GUARANTEE BOND
10% of Contract Price

KNOWN ALL MEN BY THESE PRESENTS, that _____

_____, Contractor, as Principal, and _____,

As Surety, are held and firmly bound unto the **City of Avon Lake, Ohio, 150 Avon Belden Road, Avon Lake, Ohio 44012-1699**, hereinafter called the Owner, in the sum of

_____(Dollars) (\$____) Good and lawful money of the United States of America, to be paid to said Owner, its legal representatives and assigns, for which payment well and truly to be made, we bind ourselves, our heirs, executors, and severally, firmly by these presents.

WHEREAS, the above-named Principal has entered into a certain written Contract

With the Owner, dated the _____ day of _____ A.D. 2023, for design and construction of work entitled: **AVON LAKE PLAY SPACE Space (ALPS)** (hereinafter called the Contract) which Contract and Specifications for said work shall be deemed a part hereof as fully as if set out herein.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION ARE SUCH, that by and under said Contract, the above-named Principal has agreed with the Owner that for a period of two year, to keep in good order and repair any defect in all the work done under said Contract either by Principal or their subcontractor, or their material suppliers, that may develop during said period due to improper materials, defective equipment, workmanship, or arrangements, and any other work affected in making good such imperfections, shall also be made good all without expense to the Owner, excepting only such part or parts of said work as may have been disturbed without the consent or approval of the Principal after the final acceptance of the work, and that whenever directed so to do by the Owner by notice service in writing, either personally or by mail on the

Principal at _____

Or _____

Legal representatives, or successors, or on the Surety at _____

WILL PROCEED at once to make such repairs as directed by said Owner; and in case of failure so to do within one week from the date of service of such notice, or within reasonable time not less than one week, as shall be fixed in said notice, then the Owner shall have the right to purchase such materials and employ such labor and equipment as may be necessary for the purpose, and to undertake, do and make such repairs, and charge the expense thereof, to and receive same from said Principal or Surety. If any repair is necessary to be made at once to protect life and property, then and in that case, the Owner may take immediate steps to repair or barricade such defects without notice to the Contractor. In such accounting, the Owner shall not

be held to obtain the lowest figures for the doing of the work, or any part thereof, but all sums actually paid therefore shall be charged to the Principal or Surety. In this connection, the judgment of the Owner is final and conclusive. If the said Principal for a period of two years, shall keep said work so constructed under said work which may have been disturbed without the consent of approval of said Principal after the final acceptance of same, and shall whenever notice is given as hereinbefore specified, at once proceed to make repair as in said notice directed, or shall reimburse said Owner for any expense incurred by making such repairs, fully indemnify, defend, and save harmless the Owner from all suits and actions for damages of every name and description brought or claimed against it for or on account of any injury or damage to person or property received or sustained by any party or parties, by or from any of the acts or omissions or through the negligence of said Principal, servants, agents, or employees, in the prosecution of the work included in said Contract, then the above obligation shall be void, otherwise to remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their respective authorized officers this

_____ day of _____ A.D. 2023.

Signed, Sealed and Delivered in the Presence of:

Witnesses:

_____	_____ (Principal)
_____	_____ (Seal)
_____	_____
_____	_____ (Seal)

I hereby approve the form of the foregoing Bond.

Owner's Legal Officer
Gary A. Ebert, Director of Law

Date

Attachment C

Insurance Requirements and Instructions

1. The Selected Design-Builder will be required to provide insurance as set forth below:

The Design-Builder shall procure and shall maintain during the life of this Contract, Worker's Compensation and Employers Liability Insurance (including Ohio Stop Gap Liability) for all of their employees engaged in the Work under this Contract, and in case any such Work is sublet, the Design-Builder shall require the subcontractor to provide insurance for all of the latter's employees engaged in such Work unless such employees are covered by the protection afforded by the Design-Builder's insurance.

The minimum coverages are as follows:

- a. State Worker's Compensation - Statutory
- b. Applicable Federal Worker's Compensation - Statutory
- c. Employers Liability (including Ohio Stop Gap Liability) - \$1,000,000.

The Design-Builder shall maintain Comprehensive General Liability and Comprehensive Automobile Liability, Pollution Liability and Professional Liability during the life of this Contract. The Comprehensive General Liability Coverage shall include Independent Contractors, Completed Operations-Products Coverage, Personal Injury Coverage, Fire/Water Legal Liability – Real Property and **Contractual Liability Coverage including Defense to satisfy the Indemnification Clause**, included in these Specifications. **The Indemnification Clause shall be typed on the certificates**. The Comprehensive Automobile Liability Coverage shall include Non-ownership and Hires Cars coverage. The Design-Builder shall maintain during the life of this Contract, Owners' and Contractors' Protective Liability coverage in the name of the owner.

This coverage shall include the entire Work. The Design-Builder shall furnish a Certificate of Insurance certifying that their Owners' and Contractors' Protective Liability Insurance includes all subcontractors engaged in the Work.

The minimum limits of liability for all coverages above shall be as follows, unless otherwise specifically required by special provision in the Specifications:

Bodily Injury Liability

- | | |
|-------------------|---------------|
| - Each Person | \$ 1,000,000. |
| - Each Occurrence | \$ 1,000,000. |
| - Aggregate | \$ 1,000,000. |

Property Damage Liability

- | | |
|---------------------------|---------------|
| - Each Occurrence | \$ 1,000,000. |
| - Aggregate (except auto) | \$ 1,000,000. |

In the event that the policies contain a Combined Single Limit of liability, the Combined Single Limit shall not be less than \$1,000,000.

In the event that an Umbrella Liability Policy is used to meet the limit requirements of the Specifications, the total limits available under the underlying coverage and the umbrella coverage shall not be less than \$2,000,000.

The City reserves the right to reject any policy due to terms (conditions, exclusions, limitations, etc.) that are deemed unacceptable.

The original policy shall be filed with the Owner or their designated representative.

All materials entering into this Contract are exempt from Federal Transportation Tax under Internal Revenue Code, Section 3475(b), as amended. The Offeror shall have all shipping papers clearly show that the construction material is consigned to the Owner, in care of the Offeror. No certificates of exemption are required.

Design-Builder shall purchase and maintain such comprehensive general liability and other insurance from the Work being performed to provide protection for:

- Claims under Workers' or Workmen's' Compensation, disability benefits and similar employee benefit acts;
- Claims for damages because of bodily injury, occupational sickness or disease, or death of Offeror's employees;
- Claims for damages because of bodily injury, sickness or disease, or death of any person other than Offeror's employees;
- Claims for damages insured by 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;

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;

Claims arising out of operation of Laws or Regulations for damages because of bodily injury or death of any person or for damage to property; and

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.

The comprehensive general liability insurance shall include complete operations insurance. **All of the policies of insurance so required to be purchased and maintained (or the certificates or other evidence thereof) shall contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty (30) days' prior written notice has been given to Owner and Recreation Director by certified mail.** The Insurance Company shall be required (not just endeavor) to provide the (30) day written notice mentioned above. All such insurance shall remain in effect until final payment and at all times thereafter when Design-Builder may be correcting, removing, or replacing defective Work. In addition, Design-Builder shall maintain such completed operations insurance for at least two (2) years after final payment and furnish Owner with evidence of continuation of such insurance at final payment and one (1) year thereafter. The Owner and/or Recreation Director make no guarantee that the above listed insurance requirements are adequate to fully protect the interests of the Design-Builder.

Attachment D

Corporate Structure Questionnaire

1. Offerors shall complete the following information for the Proposed Design-Builder and all proposed Design-Build Team Members:

Legal Name	
Street Address	
Mailing Address	
Point of Contact	
Position	
Email	
Telephone Number	
Fax Number	
Type of Business	
D-U-N-S Number	
Federal Tax Identification Number	
State Contractor's Registration Number (if applicable)	
State Business License Number (if applicable)	

2. If the Proposed Design-Builder is a Joint Venture, Offerors must:
- Submit the above information the Joint Venture as well as for each member of the Joint Venture; and
 - Attach a copy of the Joint Venture Agreement to this form.

Standard Form of Agreement Between Owner and Design- Builder – Lump Sum

SAMPLE

Document No. 525

Third Edition, 2022

© Design-Build Institute of America
Washington, D.C.



Design-Build Institute of America - Contract Documents

LICENSE AGREEMENT



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

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

For DBIA Document No. 525 Standard Form of Agreement Between Owner and Design-Builder - Lump Sum (2022 Edition)

Checklist

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

_____	Page 1	Owner's name, address and form of business
_____	Page 1	Design-Builder's name, address and form of business
_____	Page 1	Project name and address
_____	Section 2.1.3	Identify other exhibits to the Agreement
_____	Section 4.2	Note the optional provisions that are provided
_____	Section 4.3.2	Complete blanks for additional sum for use of Work Product
_____	Section 5.2.1	Complete blanks for calendar days and note the optional language that is provided
_____	Section 5.2.2	Insert any interim milestones (optional)
_____	Section 5.4	Complete blanks for liquidated damages and note the optional provisions that are provided
_____	Section 5.5	If the parties select the option provided they have to insert an amount
_____	Section 5.6	Complete blanks for early completion bonus and note the optional provision that is provided
_____	Section 5.7	Note the optional provisions that are provided
_____	Section 6.1	Complete blanks for Contract Price
_____	Section 6.2	Insert markups for changes and note optional provisions
_____	Section 6.3.4	Note the optional provision that is provided
_____	Section 6.4.1	Note optional provision
_____	Section 7.1.1	Complete blanks for day of month
_____	Section 7.2.1	Complete blanks for retention percentage and note optional provision
_____	Section 7.4	Complete blanks for interest rate
_____	Section 8.1	Choose overhead/profit method for termination for convenience
_____	Section 8.2.1	Complete blanks for percentages
_____	Section 8.2.2	Complete blanks for percentages
_____	Section 9.1.1	Insert Owner's Senior Representative's name, etc. (optional)
_____	Section 9.1.2	Insert Owner's Representative's name, etc. (optional)
_____	Section 9.2.1	Insert Design-Builder's Senior Representative's name, etc. (optional)
_____	Section 9.2.2	Insert Design-Builder's Representative's name, etc. (optional)
_____	Section 10.1	Attach Insurance Exhibit
_____	Section 10.2	Insert amount and conditions of bonds or other security and note the options that are provided
_____	Section 11.1	Insert any other provisions (optional)
_____	Last Page	Owner's and Design-Builder's execution of the Agreement

General Instructions

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

Specific Instructions

Section	Title	Instruction
General	Purpose of This Agreement	<p>DBIA Document No. 525 ("Agreement") should be used only when the parties intend that Owner pay Design-Builder a lump sum fixed price for the completion of all design and construction services. There will be greater mutual understanding and cooperation if the lump sum is established based on Owner's Project Criteria that are well defined.</p> <p>If there is uncertainty about Owner's Project Criteria, or it remains to be developed by Owner and Design-Builder jointly, a cost-plus/guaranteed maximum price ("GMP") contracting approach may be more suitable. In such case, the parties should use DBIA Document No. 530.</p>
General	Purpose of These Instructions	These Instructions are not part of this Agreement, but are provided to aid the parties in their understanding of the Agreement and in completing the Agreement.
General	Related Documents	This Agreement shall be used in conjunction with the General Conditions of Contract. Other related Contract Documents are listed in Article 2 of this Agreement.
General	Date	On Page 1, enter the date when both parties reach a final understanding. It is possible, due to logistical reasons, that the dates when the parties execute the Agreement may be different. Once both parties execute the Agreement, the effective date of the Agreement will be the date recorded on Page 1. This date does not, however, determine Contract Time, which is measured according to the terms of Article 5.
General	Parties: Owner and Design-Builder	On Page 1 enter the legal name and full address of Owner and Design-Builder, as well as the legal form of each entity, e.g., corporation, partnership, limited partnership, limited liability company, or other.
2.1.2	Basis of Design Documents	The Basis of Design Documents are critical in establishing the scope of work. These documents include the Owner's Project Criteria and may include Design-Builder's Proposal, and the Deviation List, if any, contained in the Design-Builder's Proposal. Prior to the execution of this Agreement, Design-Builder will have submitted its Proposal based on Owner's Project Criteria. To avoid ambiguities or conflicts between Owner's Project Criteria and Design-Builder's Proposal, Design-Builder's Proposal shall specifically list any deviations from Owner's Project Criteria. Design-Builder's Deviation List shall, if accepted by Owner, become a Contract Document and shall have precedence over Owner's Project Criteria.
2.1.5	Construction Documents	After execution of the Agreement, and consistent with the requirements of Section 2.4 of the General Conditions of Contract, Design-Builder will prepare Construction Documents subject to Owner's review and approval.
3.2	Order of Precedence	The Contract Documents are listed in Section 2.1 in the order of their precedence. This hierarchy of documents reflects DBIA's belief that the Basis of Design Documents are critical documents that take precedence over other Contract Documents existing at the time the Agreement is executed. This section also makes clear that if a Deviation List exists it takes precedence over the Owner's Project Criteria. Moreover, Section 2.1.3 recognizes that there may be other exhibits attached to this Agreement. If this is the case, the parties should discuss whether these exhibits should be part of the Basis of Design Documents. If these exhibits are not made part of the Basis of Design Documents, these exhibits will not take priority over the Basis of Design Documents in the event of a conflict.

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

Section	Title	Instruction
5.2.2	Interim Milestones	It may be that some portions of the Work must be completed in phases or within a prescribed period of time to accommodate Owner's needs. The parties may, at their option, identify these portions of the Work to be completed prior to Substantial Completion of the entire Work. Enter the number of calendar days, starting from the Date of Commencement, for achieving Substantial Completion of these identified portions of the Work. If these portions of the Work are required to be substantially completed by certain milestone dates, enter those dates. The form does not provide a remedy to the Owner if an interim milestone is not met. If the Owner has special requirements as it relates to interim milestones, the Owner may want to consider a remedy for the Design-Builder's failure to meet an interim milestone, as well as providing a bonus to the Design-Builder for satisfying such interim milestone.
5.4	Liquidated Damages	<p>Owner should make a good faith evaluation of the amount that is reasonably necessary to compensate it for delay. Owner should not establish liquidated damages to penalize Design-Builder.</p> <p>Section 5.4 establishes a grace period between the Scheduled Substantial Completion Date and the assessment of liquidated damages in order to prevent disputes as to which party bears responsibility for only a few days of delay. The parties should enter the calendar days that may pass following the Scheduled Substantial Completion Date before liquidated damages will be assessed. The parties are also provided the option of establishing liquidated damages if the Design-Builder fails to achieve Final Completion within a specified number of days after Substantial Completion. If this option is selected, the parties must negotiate both the number of days and the liquidated damages amount. In negotiating liquidated damages, the parties should keep in mind that the amount of liquidated damages for failing to achieve Final Completion should be a considerably scaled down amount and should reflect the financial harm to the Owner. In no case should the total amount of liquidated damages for the Project exceed an amount that is reasonably necessary to compensate Owner for Project delay.</p> <p>The parties also have the option here of eliminating liquidated damages altogether, in which case the Owner can recover actual damages for Project delay at an amount that is capped by the parties. The Owner is cautioned that even if this option for actual damages is selected it still cannot recover consequential damages, as these are waived under Section 10.5.1 of the General Conditions of Contract.</p>
5.5	Liquidated Damages Cap	The parties can agree to cap liquidated damages for delay at a negotiated amount.
5.6	Early Completion Bonus	If the Project economics justify liquidated damages, then it may also be appropriate to couple these liquidated damages with an early completion bonus. The parties should enter the number of calendar days prior to the Scheduled Substantial Completion Date that will set the Bonus Date. Also, enter the amount of the bonus to be paid per day that will allow Owner to share with Design-Builder the economic benefits of early completion. The parties also have the option in Section 5.6 of capping the early completion bonus at a negotiated amount.
5.7	Compensation for Force Majeure Events	The parties are provided the opportunity of providing the Design-Builder the right to receive compensation for Force Majeure Events. By selecting this option, the parties agree to modify Section 8.2.2 of the General Conditions of Contract, in which case the parties have to negotiate how many cumulative days of Force Majeure delays must occur before the Design-Builder is entitled to either a negotiated amount per day for delay or the direct costs it has incurred as a result of such delay.

Section	Title	Instruction
6.1	Contract Price	Enter the lump sum price Owner will pay Design-Builder for the Scope of Work. The Contract Price should compensate Design-Builder for the services it provides and the risk it assumes in providing single point responsibility to Owner.
6.2	Markups for Changes	Enter the markups agreed upon by Design-Builder and Owner to be used for pricing Changes to the Work. Prior to negotiating or agreeing to these markups, both parties should familiarize themselves with Article 9 of the General Conditions of Contract, Changes to the Contract Price and Time. For additive Change Orders, the parties have to negotiate the Fee the Design-Builder will receive. For deductive Change Orders, parties have the option by checking the appropriate box of whether there will be no additional reduction or whether there will be an additional reduction based on a negotiated percentage.
6.3.4	Allowance Value	This section recognizes that the parties may agree that certain items of Work should be treated as an Allowance Item and priced based on Allowance Values. The Allowance Value for which the Design-Builder will be entitled to receive compensation includes direct cost of labor, materials, equipment, transportation, taxes and insurance associated with the Allowance Item. All other costs associated with the Allowance Item, such as design fees, general conditions costs and fee, are deemed to be included in the Contract Price. However, the parties agree that in the event the actual cost of the Allowance Item is greater than or less than the Allowance Value by a negotiated percentage, then Design-Builder's right to Fee and markup shall be determined pursuant to Section 6.2.
6.4	Performance Incentives	There may be performance incentives that will influence Project success. Such incentives may include award fees tied to the Design-Builder achieving certain standards relative to client satisfaction, safety and personnel retention. The parties are encouraged to discuss the use of such incentives during negotiation of this Agreement. Any agreement on the use of incentives should be set forth in an exhibit attached to this Agreement.
7.1.1	Progress Payments	Enter the day of the month when Design-Builder shall submit its Application for Payment.
7.2.1	Retainage	<p>Enter the percentage Owner will retain from Progress Payments to Design-Builder until fifty percent (50%) of the Work is completed. Owner should recognize that it creates undue hardship to hold retainage on Subcontractors that have completed their work early in the Project. Owner should accordingly consider releasing retainage on Subcontractors that complete work early in the Project, providing that these Subcontractors have satisfactorily performed their portion of the Work.</p> <p>The parties are provided the option of modifying the retainage provision by checking the box. This option excludes from retainage the Design-Builder's General Conditions costs and amounts paid to Design-Builder's Design Consultant. The rationale for selecting this option is that the Design-Builder is obligated to pay its General Conditions costs in full each month and that under the design-bid-build delivery method, the Owner typically does not retain sums from its designer.</p>
7.4	Interest	The parties should enter the rate at which interest will accrue on Design-Builder's payments if unpaid five (5) days after due. Late payment creates a hardship for Design-Builder, its Design Consultants and Subcontractors.
7.5	Record Keeping	The Owner is provided access to Design-Builder's accounting information as it relates to changes to the Work. However, if the parties have agreed to multipliers or markups for changes, the time to challenge and negotiate those percentages is at the time the parties execute the Agreement and not during the Project or after it has been completed. Accordingly, the Owner can at any time audit these percentages only to confirm that such percentage has been properly charged and not to challenge the composition of such percentage.

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

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Standard Form of Agreement Between Owner and Design-Builder - Lump Sum

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

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

OWNER:
(Name and address)

DESIGN-BUILDER:
(Name and address)

PROJECT:
(Include Project name and location as it will appear in the Contract Documents)

In consideration of the mutual covenants and obligations contained herein, Owner and Design-Builder agree as set forth herein.

Article 1

Scope of Work

1.1 Design-Builder shall perform all design and construction services, and provide all material, equipment, tools and labor, necessary to complete the Work described in and reasonably inferable from the Contract Documents.

Article 2

Contract Documents

2.1 The Contract Documents are comprised of the following:

2.1.1 All written modifications, amendments, minor changes and Change Orders to this Agreement issued in accordance with DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2022 Edition) ("General Conditions of Contract");

2.1.2 The Basis of Design Documents, including the Owner's Project Criteria, Design-Builder's Proposal and the Deviation List, if any, contained in the Design-Builder's Proposal, which shall specifically identify any and all deviations from Owner's Project Criteria;

2.1.3 This Agreement, including all exhibits and attachments, executed by Owner and Design-Builder (List for example, performance standard requirements, performance incentive requirements, markup exhibits, allowances, or unit prices);

2.1.4 The General Conditions of Contract; and

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

Article 3

Interpretation and Intent

3.1 Design-Builder and Owner, prior to execution of the Agreement, shall carefully review all the Contract Documents, including the various documents comprising the Basis of Design Documents, for any conflicts or ambiguities. Design-Builder and Owner will discuss and resolve any identified conflicts or ambiguities prior to execution of the Agreement.

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) 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, Design-Builder and Owner shall attempt to resolve any ambiguity, conflict or inconsistency informally, recognizing that the Contract Documents shall take precedence in the order in which they are listed in Section 2.1 hereof. Conflicts existing within Section 2.1.2

shall be resolved by giving precedence first to the Deviation List, if any, then the Owner's Project Criteria, and then the Design-Builder's Proposal.

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

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

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 ("Work Product") are deemed to be instruments of service and Design-Builder shall retain the ownership and property interests therein, including but not limited to any intellectual property rights, copyrights and/or patents, subject to the provisions set forth in Sections 4.2 through 4.5 below.

4.2 Owner's Limited License Upon Project Completion and Payment in Full to Design-Builder. Upon Owner's payment in full for all Work performed under the Contract Documents, Design-Builder shall grant Owner a limited license to use the Work Product in connection with Owner's occupancy of the Project, conditioned on Owner's express understanding that its alteration of the Work Product without the involvement of Design-Builder is at Owner's sole risk and without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier (collectively the "Indemnified Parties"), and on the Owner's obligation to provide the indemnity set forth in Section 4.5 below.

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

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

4.3 Owner's Limited License upon Owner's Termination for Convenience or Design-Builder's Election to Terminate. If Owner terminates this Agreement for its convenience as set forth in Article 8 hereof, or if Design-Builder elects to terminate this Agreement in accordance with Section 11.4 of the

General Conditions of Contract, Design-Builder shall, upon Owner's payment in full of the amounts due Design-Builder under the Contract Documents, grant Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights as set forth in Section 4.2 above, conditioned on the following:

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

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

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

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

Article 5

Contract Time

5.1 Date of Commencement. The Work shall commence within five (5) days of Design-Builder's receipt of Owner's Notice to Proceed ("Date of Commencement") unless the parties mutually agree otherwise in writing.

5.2 Substantial Completion and Final Completion.

5.2.1 Substantial Completion of the entire Work shall be achieved no later than _____ (_____) calendar days after the Date of Commencement ("Scheduled Substantial Completion Date").

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

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

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

Temporary Certificate of Occupancy issued by the local building official.”

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

5.2.3 Final Completion of the Work or identified portions of the Work shall be achieved as expeditiously as reasonably practicable. Final Completion is the date when all Work is complete pursuant to the definition of Final Completion set forth in Section 1.2.8 of the General Conditions of Contract.

5.2.4 All of the dates set forth in this Article 5 (collectively the “Contract Time(s)”) shall be subject to adjustment in accordance with the General Conditions of Contract.

5.3 Time is of the Essence. Owner and Design-Builder mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

5.4 Liquidated Damages. Design-Builder understands that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Substantial Completion is not attained by _____ (_____) days after the Scheduled Substantial Completion Date (the “LD Date”), Design-Builder shall pay Owner _____ Dollars (\$) as liquidated damages for each day that Substantial Completion extends beyond the LD Date.

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

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

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

☐ **5.4** Design-Builder and Owner have agreed not to provide for liquidated damages in this Agreement for failure of Design-Builder to achieve the Contract Time(s) set forth in this Article 5. Design-Builder understands, however, that Owner may suffer actual damages in the event the Contract Time(s) set forth herein are not timely achieved. Owner shall be able to recover such actual damages from Design-Builder to the extent it can demonstrate that actual damages have been incurred, are directly related and caused by Design-Builder’s failure to meet the Contract Time(s) set forth herein, and are not waived by Section 10.5.1 of the General Conditions of Contract. Notwithstanding the foregoing, in no event shall Design-Builder’s liability for actual damages for delays exceed _____ Dollars (\$ _____).

5.5 Any liquidated damages assessed pursuant to this Agreement shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or

consequential, and of whatsoever nature incurred by Owner which are occasioned by any delay in achieving the Contract Time(s).

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

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

5.6 Early Completion Bonus. If Substantial Completion is attained on or before _____ (_____) days before the Scheduled Substantial Completion Date (the "Bonus Date"), Owner shall pay Design-Builder at the time of Final Payment under Section 7.3 hereof an early completion bonus of _____ Dollars (\$ _____) for each day that Substantial Completion is attained earlier than the Bonus Date. *(If an early completion bonus is applicable to any dates set forth in Section 5.2.2 or 5.2.3 hereof, this Section 5.6 will need to be modified accordingly.)*

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

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

5.7 ***[The Parties may also desire to modify Article 8.2.2 of the General Conditions of Contract relative to compensability of delays that would cause the Contract Time(s) to be extended. In such case, the following option can be used.]***

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

[Check one box only.]

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

or

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

5.8 Owner's Review Time. The parties have established the following maximum and minimum amount of time for the Owner to review Design Submissions and the Project Schedule or any updates thereto unless the parties agree in writing otherwise.

5.8.1 The Owner shall have a minimum of _____ days of receipt by the Owner to review all Design Submissions, the Project Schedule, and any updates thereto.

5.8.2 The Owner shall review and (if applicable) provide a response to Design-Builder on all Design Submissions, the Project Schedule, and any updates thereto within _____ days of receipt by the Owner.

Article 6

Contract Price

6.1 Contract Price. Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract the sum of _____ Dollars (\$ _____) ("Contract Price"), subject to adjustments made in accordance with the General Conditions of Contract. Unless otherwise provided in the Contract Documents, the Contract Price is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

6.2 Markups for Changes. If the Contract Price requires an adjustment due to changes in the Work, and the cost of such changes is determined under Sections 9.4.1.3 or 9.4.1.4 of the General Conditions of Contract, the following markups shall be allowed on such changes:

6.2.1 For additive Change Orders, including additive Change Orders arising from both additive and deductive items, it is agreed that Design-Builder shall receive a Fee of _____ percent (_____%) of the additional costs incurred for that Change Order, plus any other markups set forth at Exhibit _____ hereto.

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

[Check one box only.]

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

☐ An amount equal to the sum of: (a) _____ percent (_____%) applied to the direct costs of the net reduction (which amount will account for a reduction associated with Design-Builder's Fee); plus (b) any other markups set forth at Exhibit _____ hereto applied to the direct costs of the net reduction.

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 an Exhibit hereto.

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

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

6.3.4 The Allowance Value for an Allowance Item includes the direct cost of labor, materials,

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

[In the alternative, the parties may want to delete Section 6.3.4 and add the following provision.]

☐ In the event the actual direct cost of labor, materials, equipment, transportation, taxes and insurance associated with an Allowance Item is _____ percent (_____%) greater than or less than the Allowance Value for such Allowance Item, Design-Builder and Owner agree that Design-Builder's right to Fee and markup shall be adjusted in accordance with Section 6.2.

6.3.5 Whenever the actual costs for an Allowance Item is more than or less than the stated Allowance Value, the Contract Price shall be adjusted accordingly by Change Order, subject to Section 6.3.4. The amount of the Change Order shall reflect the difference between actual costs incurred by Design-Builder for the particular Allowance Item and the Allowance Value.

6.4 Performance Incentives.

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

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

Article 7

Procedure for Payment

7.1 Progress Payments.

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

7.1.2 Owner shall make payment within ten (10) days after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with Article 6 of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the General Conditions of Contract.

7.2 Retainage on Progress Payments.

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

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

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

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

☐ Owner will retain _____ percent (_____%) from Design-Builder's Applications for Payment pursuant to applicable state law.

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

☐ Because Owner has obtained a performance bond and payment bond pursuant to Article 10 below, Owner will not retain retainage from Design-Builder on this Project.

7.2.2 Within fifteen (15) days after Substantial Completion of the entire Work or, if applicable, any portion of the Work, pursuant to Section 6.6 of the General Conditions of Contract, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to (a) the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion and (b) all other amounts Owner is entitled to withhold pursuant to Section 6.3 of the General Conditions of Contract.

7.3 Final Payment. Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section 6.7 of the General Conditions of Contract. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment within thirty (30) days after Owner's receipt of the Final Application for Payment, provided that Design-Builder has satisfied the requirements for final payment set forth in Section 6.7.2 of the General Conditions of Contract.

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

7.5 Record Keeping and Finance Controls. With respect to changes in the Work performed on a cost basis by Design-Builder pursuant to the Contract Documents, Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of three (3) years after Final Payment, Owner and Owner's accountants shall be afforded access to, and the right to audit from time-to-time, upon reasonable notice, Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to changes in the Work performed on a cost basis in accordance with the Contract Documents, all of which Design-Builder shall preserve for a period of three (3) years after Final Payment. Such inspection shall take place at Design-Builder's offices during normal business hours unless another location and time is agreed to by the parties. Any multipliers or markups agreed to by the Owner and Design-Builder as part of this Agreement are only subject to audit to confirm that such multiplier or markup has been charged in accordance with this Agreement, with the composition of such multiplier or markup not being subject to audit.

Article 8

Termination for Convenience

8.1 If Design-Build is terminated for convenience pursuant to Section 11.6 of the General Conditions, and the parties have agreed to a payment to Design-Build in the case of such termination for convenience, Owner shall pay Design-Build for the following in addition to the amount set forth in Section 11.6.1 of the General Conditions:

[Choose one of the following.]

☐ The fair and reasonable sums for overhead and profit on the sum of items set forth in Section 11.6.1 of the General Conditions.

or

☐ Overhead and profit in the amount of _____ percent (_____%) on the sum of items set forth in Section 11.6.1 of the General Conditions.

8.2 In addition to the amounts set forth in Section 8.1 above and Section 11.6.1 of the General Conditions, Design-Build shall be entitled to receive one of the following if the parties agree to an additional payment:

8.2.1 If Owner terminates this Agreement prior to commencement of construction, Design-Build shall be paid _____ percent (_____%) of the remaining balance of the Contract Price.

8.2.2 If Owner terminates this Agreement after commencement of construction, Design-Build shall be paid _____ percent (_____%) of the remaining balance of the Contract Price.

8.3 The total amount to be paid to Design-Build, exclusive of costs described in section 11.6.1.2 of the General Conditions, shall not exceed the Contract Price.

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

Article 9

Representatives of the Parties

9.1 Owner's Representatives.

9.1.1 Owner designates the individual listed below as its Senior Representative ("Owner's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers.)*

9.1.2 Owner designates the individual listed below as its Owner's Representative, which individual has the authority and responsibility set forth in Section 3.4 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers.)*

9.2 Design-Builder's Representatives.

9.2.1 Design-Builder designates the individual listed below as its Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers.)*

9.2.2 Design-Builder designates the individual listed below as its Design-Builder's Representative, which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers.)*

Article 10

Bonds and Insurance

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

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

Performance Bond.

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

☐ Required ☐ Not Required

Payment Bond.

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

☐ Required ☐ Not Required

Other Performance Security.

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

☐ Required ☐ Not Required

Article 11

Other Provisions

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

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

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

[Section 2.9.1 of the General Conditions contains an option for the parties to establish a limited time frame for the Design-Builder's warranty. If the parties agree to such a limited time frame, the parties may insert it below.]

☐ The parties have agreed to limit the time frame that the Owner can make a claim pursuant to Section 2.9.1 of the General Conditions. Owner must make all claims pursuant to Section 2.9.1 of the General Conditions within _____ years of the date of Final Completion of the Project.

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:

DESIGN-BUILDER:

(Name of Owner)

(Name of Design-Builder)

(Signature)

(Signature)

(Printed Name)

(Printed Name)

(Title)

(Title)

Date: _____

Date: _____

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