



**Request  
For  
Proposals**

**Transfer and Recycling Center  
Design-Build-Finance-Operate**

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## INTRODUCTION

Project Name: Delaware County Transfer and Recycling Center (“TRC”)  
Project Location: 1020 US Highway 42 N, Delaware, Ohio 43015  
Owner: Delaware County Board of Commissioners  
Project Delivery: Design-Build, Finance, Operate  
Submit Responses to: Brad Stanton, Delaware County Sewer District  
50 Channing Street  
Delaware, Ohio 43015

Responses Due: September 12, 2019 at 10:00 AM

Respondents shall submit Pricing Proposals directly to Brad Stanton at 50 Channing Street, Delaware, OH 43015.

All questions regarding this RFP shall be submitted in writing to Brad Stanton at [BStanton@co.delaware.oh.us](mailto:BStanton@co.delaware.oh.us) with the Project Name included in the subject line. Questions will be answered and posted at <https://regionalsewer.co.delaware.oh.us/rfp/> on a regular basis until one week prior to the response due date. The name of the party submitting a question will not be included in the posted answer.

## I. PROJECT DESCRIPTION

Delaware County (County) is soliciting Pricing Proposals from solid waste operators to design, build, finance, and operate (DBFO) a new Delaware County Transfer and Recycling Center (TRC). The recipients of this RFP were ranked as the most qualified firms pursuant to the Request for Qualifications for this Project. The TRC will provide for the transferring of municipal solid waste, recyclables, and other materials to support the County residents, businesses, and institutions in their efforts to manage their waste along with some out of County solid waste and recyclables. In addition, the TRC will support the efforts of the Delaware, Knox, Marion, and Morrow (DKMM) Solid Waste District to achieve the recycling and diversion goals as established in the Ohio Environmental Protection Agency (OEPA) approved DKMM solid waste plan.

This Project includes a long-term contract for the operation of the TRC. The operating contract will provide for maintenance of the facility and cost of service for the County. It is understood that the long-term operating contract will provide services and a cost of service that will provide the financial return for the Respondent to commit significant resources to permit, design, finance, build and operate the TRC. **The operating contract will be for an initial five (5) year period commencing on the first day the TRC is operational, with three (3) potential five (5) year renewals (if agreed to by both parties).**

The Respondents will be evaluated by their ability to achieve the best overall proposal to meet certain key benchmarks including but not limited to;

- The best design to provide infrastructure to support solid waste management, recycling, and other programs to best manage Municipal Solid Waste (MSW).
- The best design to provide such services in the most economically advantageous manner.
- Financing for the TRC that results in the lowest cost of service, as defined by the operating contract for County residents, businesses, and institutions.
- Integrating and complementing existing and future DKMM recycling programs and services to leverage their impact and lower their overall cost of service.

- Support and enhance operational practices that improve efficiency, safety, or other factors.
- Support innovative technologies and equipment.

## **Project Understanding**

The County has a population of 200,464 and is one of the fastest growing counties in Ohio. The County is included in the Columbus, Ohio, Municipal Statistical Area and shares the northern border of Franklin County where Columbus, Ohio is located. The Solid Waste Authority of Central Ohio (SWACO) is the solid waste district serving Franklin County. There are three communities that are part of SWACO that extend into the southern area of the County, Columbus, Dublin, and Westerville. SWACO utilizes solid waste flow control to support their solid waste facilities and implement the SWACO solid waste plan. Thus, the waste for the three cities, including the areas of the cities located in the County is delivered to SWACO facilities.

The largest municipality in the County is the City of Delaware with a population of 38,643. The City of Delaware currently hauls its solid waste to the current Delaware County Transfer Station (Transfer Station) and the new TRC will provide the infrastructure to support The City of Delaware solid waste disposal, recycling, and other special waste programs.

The County owns the current Transfer Station which is located at 888 U.S. Route 42 North near the City of Delaware, Ohio. In 2016, the Transfer Station received approximately 50,000 tons of solid waste from generators in Delaware County and close to 1,600 tons from other counties located in the Delaware, Knox, Marion and Morrow Joint Solid Waste Management District (DKMM). The Transfer Station also received over 2,000 tons of waste from communities outside of DKMM.

From the totals above, the Transfer Station receives waste from several sectors including:

- Residential generators: approximately 43,000 tons
- Industrial generators: 5,153 tons
- Construction and demolition debris: 6,202 tons

The Transfer Station has been privately operated by Central Ohio Contractors (COC) for several years. The COC operational contract ends May 31, 2019 but is scheduled to be extended until the new operator assumes operation.

The County manages the Transfer Station as an enterprise fund with the primary revenue coming from tipping fees paid by generators who deliver solid waste to the Transfer Station. The gate rate is \$59.35 per ton for MSW disposal (effective on June 1, 2019). The 2019 budget projects revenues to be \$240,000 and expenditures to be \$240,840.07 including \$93,040.07 for capital outlays and equipment. The cash balance of the enterprise fund as of May 24, 2019, amounted to approximately \$2,127,000.

The County recently completed a master plan study for the existing facility. The master plan reviewed modifications to the existing facility and various combinations of ownership and operation for a new facility. In addition, multiple potential sites were reviewed to identify the best location with respect to OEPA and DKMM siting criteria. Based upon the findings of the master plan, the County is pursuing construction of a new TRC that will include a long-term operating agreement for the facility. **The new TRC will be located at 1020 US Highway 42 N, Delaware, Ohio 43015.**

Proposals should include all information to fully evaluate the Respondent's ability to deliver the Project as described in this RFP at the best value to the County.

Design criteria has been produced for this Project by the County's Criteria Engineer, GT Environmental, Inc., and that design criteria is included herein.

Specific issues that will need to be addressed in the design of the new TRC include the following:

- Adequate throughput capacity (the amount of material and vehicles that can be processed within a certain timeframe) to reduce customer delay and avoid long traffic queue's;
- Enhanced provisions for customer, County, and staff health and safety;
- Repurposing of existing Transfer Station to complement the new TRC services;

- Adequate space within the TRC to accommodate self-haul customers separating traffic patterns and unloading areas from the collection vehicles;
- Adequate administrative office facilities, operator facilities, equipment parking, and maintenance facilities;
- Adequate employee, customer, and visitor parking;
- Efficient entrance and exit traffic patterns;
- Observation area for education and outreach for schools and adults;
- Offices for operational use and outreach. Example, two story inside TRC, operational offices and bathrooms on first floor. Second floor observation/training room for outreach and education with an office.
- Tipping floor, processing, drop-off areas, and loadout areas utilized to support recycling programs for residents, businesses, and other haulers;
- Cameras for the exterior of the facility, entrances, exits, scales, and tipping floor.
- Plans for landscaping and screening of facility and entrance/exit.
- New scale houses, scales and installation of data management infrastructure to provide detailed reporting to the County of daily, monthly, and annual activity;
- Designed to control air emissions (Odor/Dust) both inside and outside the TRC; and
- Designed to meet and/or exceed Ohio Transfer Station regulations OAC 3745-555-01 thru 700. This must include all the siting criteria for locating the facility in OAC 3745-555-110-thru 150.

The Respondent is expected to take over operation of the existing Transfer Station upon Award, or at a time designated by the County. The existing facility is located at 888 US

Highway 42 N, Delaware, Ohio 43015. By taking over operation of the existing facility in the interim, the County can continue to provide uninterrupted services to customers while the new TRC is being constructed. The Respondent will manage the startup of the new facility so as to provide no interruption in solid waste services to customers.

## II. FINANCE

The County has structured the design-build project delivery model to include 100% financing by the design-build firm, subject to payment of the residual value, if any, as set forth herein. Therefore, the anticipated guaranteed maximum price for the project is ZERO DOLLARS, plus a residual value, if any, the amount of which is to be fully scheduled and documented in the Proposal.

The County will maintain ownership of the facility during the operator contract period and at the conclusion of the operator agreement. The contract will be an initial five-year agreement with three (3) five-year options. The County, in its sole discretion, has the option to renew the operating agreement for the three (3) three five-year options. If the option years are not renewed, the County will pay the operator a residual amount for the cost of construction, ending the agreement. The operator will provide a residual value on the operator bid tab on Attachment I representing the value the County would pay the contractor at the end of each of the four (4) five year periods. This residual value is not guaranteed and is subject to the condition of the property as verified by an inspection of an independent, licensed engineering firm.

During year four in each of the four (4) five-year terms, a licensed engineering firm will perform a detailed inspection of the TRC campus, including access roads. This inspection will be performed at the cost of the County. This inspection will provide a detailed list of repairs required to maintain the facility in good working order. This inspection will include, but is not limited to, the roof, foundation, roadways, scales, offices, tipping floor, building, doors, lighting, data lines, and all other fixed equipment. The licensed engineering firm will also make a determination whether each repair needed is the result of normal use or negligence/misuse or mismanagement by the Operator. The licensed engineering report will be completed and presented to the Operator at the conclusion of year four (4) for each of the five-year terms. The Operator is expected to make repairs that are the result of Operator mismanagement, misuse, or negligence, sixty-days prior to the start dates of each of the three (3) five-year option renewals. If repairs are not made the County will have the option to make repairs and bill the operator for any unpaid repairs or deduct the unpaid repairs from the residual value at completion



of the contract or any combination of the above. Any repairs not completed, as required, may negatively affect the operating agreement renewal.

The County understands that the operator will be making a significant investment in the design build of the TRC, and it is understood that the operating agreement will provide for the return on investment for the operator. The residual value at the completion of each five-year term provides the County with the option to terminate the operating agreement and pay the operator an amount to achieve a desired return on the design build while maintaining ownership of the TRC.

The cost per ton residual is calculated as follows: divide the total Cost of the Facility, as proposed, by tons required for Operator desired ROI. The total residual due at the end of each of the five-year terms is the total tons required for desired ROI less tons received, since inception, times the cost per ton residual. Once total tons required have been received, the residual is \$1.

**See Table 1**, for Example of Residual Calculation

For repairs needed due to the normal use of the facility or improvements to the facility the residual value can be adjusted as agreed to by the Operator and the County. The Cost of the Facility and the expected volumes can be re-negotiated and adjusted to calculate the cost per ton residual to be used to calculate the residual at the conclusion of the subsequent terms.

**See Table 2**, for Example of Residual Calculation with additional investments for improvements and repairs caused by normal usage.

If the County and the operator cannot agree upon necessary improvements caused by normal use and or improvements or upgrades to the TRC then the County has the right to not exercise the option years, pay the residual value as set forth in the contract or amended by agreement, and take possession of the TRC.

The County will evaluate all proposals cost of operations along with the residual value in selecting the best proposal.

**Table 1 Residual Calculation**

<b>Residual Value Example</b>				
No Upgrades or Normal Usage Repairs				
		Proposed Investment	Proposed Total Tons	Depreciation Per ton
	Year 0	\$ 7,500,000	2,115,000	\$ 3.55
<b>Contract Year</b>		<b>Amortized Investment</b>	<b>Actual Tons (yr)</b>	
	EOY			
	Year 1	\$ 7,216,312	80,000	
	Year 2	\$ 6,932,624	80,000	
	Year 3	\$ 6,631,206	85,000	
	Year 4	\$ 6,329,787	85,000	
<b>Term 1</b>	Year 5	\$ 6,010,638	90,000	(\$) Residual Value
			420,000	Total tons
	Year 6	\$ 5,673,759	95,000	
	Year 7	\$ 5,336,879	95,000	
	Year 8	\$ 4,982,270	100,000	
	Year 9	\$ 4,609,929	105,000	
<b>Term 2</b>	Year 10	\$ 4,219,858	110,000	(\$) Residual Value
			925,000	Total tons
	Year 11	\$ 3,829,787	110,000	
	Year 12	\$ 3,421,986	115,000	
	Year 13	\$ 3,014,184	115,000	
	Year 14	\$ 2,588,652	120,000	
<b>Term 3</b>	Year 15	\$ 2,163,121	120,000	(\$) Residual Value
			1,505,000	Total tons
	Year 16	\$ 1,737,589	120,000	
	Year 17	\$ 1,312,057	120,000	

	Year 18	\$ 868,794	125,000	
	Year 19	\$ 425,532	125,000	
Term 4	Year 20	\$ 1	120,000	(\$) Residual Value
			2,115,000	Total tons

**Assumptions**

*Proposed Initial Investment and tons are agreed per contract and our fixed Actual tons means all tonnage processed at TRC(MSW, Recycling, yard waste, etc). Does not include tonnage from programs managed by DKMM. Assumes no facility improvement or investments. Excludes significant repairs caused by normal usage. Excludes repairs caused by mismanagement, misuse, or negligence. Excludes routine repairs & maintenance.*

**Table 2 Residual Value Adjusted for Improvements and Normal Usage Repairs.**

Negotiated Residual Adjustment				
Year	Description	Investment	Negotiated tons	Depreciation Per ton
Year 10	Repair tipping floor(normal usage)	\$ 300,000	3,000,000	\$ 0.10
Year 15	Additional Scale	\$ 100,000	500,000	\$ 0.20

EOY Repair Tipping Floor				
Contract Year		Amortized Investment	Actual Tons (yr)	
	Year 11	\$ 289,000	110,000	
	Year 12	\$ 277,500	115,000	
	Year 13	\$ 266,000	115,000	
	Year 14	\$ 254,000	120,000	
Term 3	Year 15	\$ 242,000	120,000	(\$) Residual Value

			580,000	Repair tons
			1,505,000	Total tons
	Year 16	\$ 230,000	120,000	
	Year 17	\$ 218,000	120,000	
	Year 18	\$ 205,500	125,000	
	Year 19	\$ 193,000	125,000	
Term 4	Year 20	\$ 181,000	120,000	(\$) Residual Value
			1,190,000	Repair tons
			2,115,000	Total tons

EOY		Additional Scale		
	Year 16	\$ 78,000	110,000	
	Year 17	\$ 55,000	115,000	
	Year 18	\$ 32,000	115,000	
	Year 19	\$ 8,000	120,000	
Term 4	Year 20	\$ 1	40,000	(\$) Residual Value
			500,000	scale upgrade tons
			2,115,000	Total tons

Residual Value End Of Term 4	
Initial Investment	\$ 1
Repair Tipping Floor	\$ 181,000
Additional Scale	\$ 1
Residual Value	\$ 181,002

**Assumptions**

*Year ten repairs & scale upgrade negotiated investment and tons*  
*Proposed Initial Investment and tons are agreed per contract and our fixed*  
*Actual tons means all tonnage processed at TRC(MSW, Recycling, yard waste, etc).*  
*Does not include tonnage from programs managed by DKMM.*  
*Excludes significant repairs caused by normal usage.*  
*Excludes repairs caused by mismanagement, misuse, or negligence.*  
*Excludes routine repairs & maintenance.*

### III. ANTICIPATED SCHEDULE

The County proposes the following schedule:

Description	Date
RFP Issuance Date	July 1, 2019
Proposals Due	August 15, 2019
Complete Evaluation of Proposals	September 9 , 2019
Estimated Operating Contract and Design Build Project Start Date	November 1, 2019
TRC Operational By	January 1, 2021

The Respondent may propose an alternative schedule to more effectively and efficiently complete the design build.

### IV. EVALUATION CRITERIA

Criteria: The DB will be selected on a “best value” standard. The best value criteria used in evaluating proposals from short listed firms will include such factors that are determined to derive or offer the greatest value to the County, combining both qualifications and fee. Firms shall submit pricing proposals containing their proposed preconstruction stage compensation, construction stage personnel costs, itemized construction stage general conditions costs, construction stage contingency percentage, construction stage design fee percentage, and design-build fee percentage. This RFP provides the following: (i) form of the Agreement with the County containing the contract terms and conditions, (ii) set of the most recent criteria documents and (iii) proposed Project schedule. Proposals shall also include the following: (i) a list of key personnel and consultants for the project; (ii) design concepts adhering to the design criteria produced by the criteria engineer under section 153.692 of the Revised Code; (iii) the design-build firm's statement of general

conditions and estimated contingency requirements; and (iv) a preliminary project schedule.

Pre-Proposal Meeting: Prior to submitting a response to the RFP, the short-listed firms will be invited to meet individually with the County. The purpose of the pre-proposal meeting is to permit the short-listed firms an opportunity to ask the County questions in an individual setting to help the firms prepare their responses to the RFP. The County will notify each short-listed firm to schedule individual times for the pre-proposal meetings.

Interview: After submitting responses to the RFP, the short-listed firms may be interviewed by the County, at the County’s discretion. The purpose of the interview will be to meet the proposed Project team, become familiar with key personnel, and understand the project approach and ability to meet the stated objectives for the Project.

Cancellation and Rejection: The County reserves the right to reject all proposals and cancel at any time for any reason this solicitation, any portion of this solicitation or any phase of the Project. The County shall have no liability to any Respondent arising out of such cancellation or rejection. The County reserves the right to waive minor variations in the selection process.

The County’s Evaluation Committee will review all valid RFP submittals received and evaluate the submittals on the following criteria.

<b>RFP Evaluation Criteria</b>		
<b>Item</b>	<b>Description</b>	<b>Points</b>
1	Firm and Individual Qualifications Number of years in business, number of employees, and who will be the project manager. Litigation history.	10
2	Location of Offices Respondent currently has offices and provides services in central Ohio.	5
3	Responsiveness Addressing all RFP provisions and adherence to minimum qualifications.	10
4	Similar Project Successes Evidence of similar project success as outlined in RFP.	10

5	Design of TRC Innovation of design, capacity, diversion/recycling capabilities.	25
6	Design/Build and Operational Cost of TRC Projected Tonnage Cost of disposal and recycling. 5 year, 10 year, and 15 year Residual Value. Rebates for recycling Pricing of transload.	40
<b>Total</b>		<b>100</b>

## V. DESIGN CRITERIA

The design-build work will include all management, permitting, architecture, engineering, construction, construction management, and all other services, equipment purchase and placement, materials and supply purchase and placement, commissioning and acceptance testing necessary to provide for a completely operational TRC.

### A. Sustainable Design and Construction

Sustainable design and construction incorporate principals, techniques, and materials that conserve natural resources and improve environmental quality through the entire life cycle of the built environment. This includes the planning, design, construction, operation and maintenance, and demolition or disassembly phases of a building's life. Designing and building in a sustainable manner incorporates the following:

- **Energy Efficiency:** Building Envelope, HVAC, Lighting systems, Day lighting, orientation;
- **Water Conservation:** Building Fixtures, Landscape Design, Irrigation Efficiency.
- **Solid Waste Management:** Source Reduction, Reuse, and Recycling.
- **Resource-Efficient Building Materials:** Recycled Content Products, Salvaged Materials, and Resource Efficient Materials.
- **Environmental Quality:** Indoor Air Quality, Pollution Prevention.

The County expects the selected firm will incorporate sustainable practices in the TRC design and construction and will consider designs that lend themselves to sustainable operations.

### B. Hours of Operation

The Operator/contractor shall have the site open Monday thru Friday 8am to 4:30pm and Saturday 8am to 12pm at a minimum. Extended hours are available but require prior approval from the County. The Operator/contractor may conduct the construction of the



new TRC during these hours but must not interfere with current operations. The operator must get approval from the District regarding any activities that may impact the existing Transfer Station operations. The County will make every effort to accommodate reasonable requests to assist Operator/contractor during the design build.

## **C. Design/Build**

### **1. Project Scope**

The objectives of the RFP are to select the best operator to design/build and operate a new TRC for the County. The proposer will be responsible for the following:

- a. The operator will provide the design engineering, shop drawings submittals, surveying, permitting, equipment and materials, construction, installation, commissioning, start-up, testing, and all other tasks associated with the construction of the TRC
- b. The TRC shall be designed to allow for future expansion.
- c. Electrical power, gas service and communications (telephone and Data) construction costs and usage shall be paid by the operator. The TRC will have meters for all utilities. All utilities will be owned by the County and the operational cost during construction will be paid by the operator.
- d. The operator and their contractors will be responsible for the security of the project work area, including but not limited to all equipment, materials, tools, facilities, and vehicles while performing the work of the contract. This requirement shall be effective twenty-four hours (24) hours per day for the duration of the design/build.
- e. Project survey work shall utilize State Plane Coordinates and provide Appropriate Baseline with control for construction staking to be accomplished by the operator and their contractors.
- f. Stormwater design shall follow the established Policies of the Ohio EPA Stormwater permitting and plans, other requirements by Delaware Township and Delaware County and integrate into the existing infrastructure.

- g. Delegated design: Design and calculations by an Engineer of Record or Architect Licensed in the state of Ohio as required to provide all design and secure permits from the Delaware County Building Department for the Recycling Center and all other local approvals.

## **2. County Responsibility**

The County will be responsible for the following:

- Assign a project manager who will be the duly authorized representative of the County for the purpose of inspecting the project, issuing instructions, giving approvals and to generally verify the work
- Provide all available data, maps, reports, records and other pertinent material as necessary to accomplish the required services.
- Cooperate with the Operator/contractor in the preparation of the construction work.
- Provide the site location.

## **3. Supplementary Services**

The County may desire to have some other services provided by the Operator/contractor. These supplementary services might include significant changes in the general scope of the design/build project or its design; furnishing additional copies of plans and specifications; preparing to serve or serving as an expert witness for the County in any litigation or resident inspection. Supplementary services will be handled as a Task Order/Change Order to the original contract and will be handled as additional services outside the contract. All supplementary services will be compensated at prevailing labor rates with material costs at market pricing.

## **4. Project Tasks**

The design-build services are separated into five Tasks as follows:

Task I	Project Management and Administration
Task II	Data Collections and Review
Task III	Prepare Detailed Construction Plans and Specifications
Task IV	Contractor Services During Construction

## Task V Facility Startup and Project Closeout

### **Task I Project Management and Administration**

The Operator will provide the administration, coordination and management of the design/build project. The Operator shall assign a “Project Manager” to directly oversee the administration of this project. If the initial Project Manager must leave the Project, the County shall have the right to review the credentials of the proposed replacement for the project manager. Any new Project Manager must be approved by the County prior to the placement in the position. Should an acceptable Project Manager not be available the County shall have the option of terminating the contract.

#### 1.1 Project Administration

Prepare and submit for approval of the County, a project work schedule detailing for each task; it's duration, target dates for all submittals and meetings, person day estimates, personnel to be used, contact list, direct cost and expenses and total estimated cost.

#### 1.2 Kick-off Meeting

Operator shall schedule and facilitate a project kick-off meeting. The meeting shall cover both technical and administrative project issues. The Operator/contractors shall include all key team members covering each major project element. The County will have representatives attending who shall provide input and inspect the construction process. An agenda shall be prepared and submitted for review that will, at a minimum, contain the following items for discussion:

- Introduction of team members.
- Summarize scope for each project, schedules and key issues.
- Develop a list of key information requirements from the County, including dates information is needed.
- Proposed format for progress reports.
- Develop communication protocols.
- Schedule for monthly progress meetings.
- Protocols and procedures for field review activities.

The Operator/contractor shall prepare detailed minutes highlighting decisions and action items. These minutes shall be submitted to the County after the meeting for review and approval.

### 1.3 Progress reports

Prepare and submit a monthly report which includes the following:

- A narrative of work performed by major task.
- A summary in percentages of overall project completion.
- An updated project work schedule depicting the current status of the project, including revisions to the schedule and detailing any modifications or impacts to milestone dates.
- A list of issues and/or anticipated problems to be discussed.
- A copy of all correspondence, logs of significance telephone conversations.

### 1.4 Client Liaison Meetings

The Operator/contractor will conduct project review meetings with County representatives in attendance weekly/biweekly as required by the County. The Operator/contractor shall prepare an agenda, in consultation with County staff, for each meeting, including the initial project meeting. Advise and discuss with the County staff important development and decisions needed between meetings as needed.

## **Task II Data Collection and Review**

The Operator/contractor shall collect and analyze the data necessary for the completion and subsequent tasks.

### 2.1 Review of Preliminary Alignments and Right of Way

The Operator/contractor shall develop and submit an initial prioritized list of required data and information to the County. The Operator/contractor shall then meet with County staff to determine the specific material to be reviewed. Collect and review all relevant drawings, easements and preliminary alignments done for and /or by the County. All requests should be submitted well in advance of the dates that data are needed.

### 2.2 Control of Documents

All County documents provided to the Operator/contractor or their sub-contractors for their use shall be maintained within the US offices of contractor. No documents provided to the contractor by the County or developed by Operator/contractor as part of this project shall be transported outside of the United States by hard copy or electronic means.

### 2.3 Evaluation

The Operator/contractor shall evaluate all relevant data and make recommendations for additional data to be collected to complete projects.

## **Task III Prepare Detailed Construction Plans and Specifications**

The Operator/contractor's design task shall include the following:

### 3.1 Field Investigation

Operator/contractor shall, as required, meet individual project scope complete topographic field investigations to obtain detailed site requirements, including topographic surveys to determine existing structure and piping locations.

### 3.2 Geotechnical Investigation

Soil borings have not been completed and are the responsibility of the Operator/contractor.

### 3.3 Prepare Preliminary Design Drawings

Prepare preliminary design drawings for review and approval by County staff, the Delaware County Building Department and utility approving personnel.

### 3.4 Prepare Detailed Construction Plans and Specifications

Operator/contractor is responsible for the preparation of detailed construction plans and specifications. Detailed design shall include the following elements as applicable; Civil, Structural, Electrical, Process, Traffic Control, Roadway, and Storm Water. Each set shall be complete as to plans and specifications. The detailed construction plans shall be in accordance with the Ohio Building codes and Ohio EPA Transfer Station regulations.

Finals Construction Plans are to be prepared in AutoCAD format with X,Y,Z coordinates for all appurtenances. The Contractor shall submit them on CD ROM media, readable by Auto CAD, version 2010 or later version.

### 3.5 Obtain Appropriate Approvals

The Operator\contractor shall coordinate and obtain approvals with all appropriate governmental and public utility authorities, specifically DCRSD, Natural Gas, and Electrical suppliers prior to the completion of detailed construction plans.

**The Delaware County Building Department will review all plans and issue all appropriate construction permits. Delaware County staff will provide final approval of all construction and plans. The OEPA must review pertinent plans and provide approvals as necessary in accordance with 3745-555-200,210,215,216. Operator/contractor must obtain appropriate OEPA permit approvals.**

Scale(s) must meet industry standards for accuracy and calibration. Scales(s) must be capable of being calibrated to pass inspection by the Delaware County Auditor and the state of Ohio.

## **Task IV Operator/Contractor During Construction**

### 4.1 Participate in Preconstruction meeting

Operator/contractor and/or their project manager will participate in all Preconstruction and construction meetings.

### 4.2 Attend Progress Meetings

Attend weekly or biweekly progress meetings, as project requires, with the County inspector to address any issues with respect to the design and contract documents. Prepare and distribute written minutes of the meeting.

### 4.3 Shop Drawings, Test Reports, Etc.

Submit and gain County representation approval of shop drawings, operation and Maintenance Manual Production and test reports from testing laboratories and other such documents and other such documents as appropriate.

#### 4.4 Perform Construction Staking of Base Lines and Bench Marks

Perform construction staking consisting of base lines with offsets, bench marks and easement and property boundaries for the construction of the project. All construction staking is to be tied to existing monuments for property lines and right of ways. All ties shall be shown on construction drawings using state plane coordinates NAD 83 for project control points.

#### 4.5 Building construction

The Operator/contractor shall manage and perform the construction of the TRC in compliance with all applicable codes, and safety regulations. The TRC will be completed in accordance with the request for proposal documents and drawings, as well as all approved detailed design documents with approved Shop Drawings. All Quality Control Testing will be included in the Design/Build plans including, but not limited to Concrete and Compaction testing certified by a third-party testing firm.

#### 4.6 Prepare "Construction Record" Drawings

Prepare Electronic record drawings. Record Drawings will be corrected to accurately reflect all modifications made in the field. Mylar plots and digital files of the final drawings shall be provided to the District.

#### 4.7 Subcontracts Awarded by Design-Builder; Self-Performed Work

The Design-Builder shall establish and follow prequalification criteria in accordance with R.C. 153.502. All subcontracts to be awarded by the Design-Builder shall be in the form required by applicable Ohio law and shall be submitted to the County for acceptance or rejection. If the Design-Builder intends to self-perform any work, the Design-Builder shall first seek permission from the County and shall submit a sealed bid for such work prior to accepting and opening bids from any subcontractor.

### **Task V Facility Start-up and Project Closeout**

#### 5.1 TRC Center Start-Up

The Operator/contractor will be responsible for acceptable TRC Start-Up and operational testing. Any deficiencies discovered shall be immediately repaired to the satisfaction of

the County. Third party commissioning is not required but Operator/contractor is required to verify operations with County staff.

## 5.2 Project Closeout

The Operator/contractor will provide final certification for all materials and labor on the project in the form of Release of Liens, as well as Affidavits of Contractor and subcontractors. The operational and maintenance training shall be completed for County staff. Final permits for operation of the facility shall be obtained and submitted to the County.



## VI. OPERATION REQUIREMENTS

### **A. Solid Waste Characteristics**

The solid waste to be transferred and disposed at the current Transfer Station is primarily MSW from urban/suburban, commercial, and industrial community. This includes solid waste generated in private households and therefore may include broken furniture, roofing, privately generated construction and demolition debris and other solid wastes typically generated in suburban and urban residential areas.

Construction and Demolition Debris (CD&D), Scrap Tires and source separated recyclables may also be delivered to the transfer station for transfer, recycling, and disposal.

The solid wastes that are to be transferred, recycled, and disposed of under the terms of this specification shall not include those covered by special waste disposal permits such as pathogenic or hazardous materials. The County will attempt to ensure that these types of waste are not accepted, but it cannot provide absolute guarantee.

All source separated recyclables received by the facility must be outlined in the proposal. All source separated recyclables delivered to facility, as identified in the proposal, must be transferred to a MRF or recycling processor to be recycled.

MSW is as defined by OEPA and ORC 3734 and OAC 3745. CD&D is as defined by OEPA in ORC 3734 and OAC 3745. Scrap Tires is as defined by OEPA in ORC 3734 and OAC 3745.

### **B. Required Operation**

The Operator shall operate and maintain the TRC, provide hauling services to the disposal site and a Material Recovery Facility (MRF). The Operator shall provide disposal and recycling services for the period of this agreement. The Operator will provide administrative control of the TRC including control and type of waste to be accepted at the TRC (within the Parameters of the contract) and the collection of the tipping fees as established by the TRC gate rates.

The operator shall haul away the waste from the TRC on a timely basis as required by OEPA regulatory requirements to the disposal facility. The Operator must guarantee disposal and recycling capacity for the solid waste defined herein.

The contractor shall provide all vehicles, equipment, materials, labor and permits necessary to operate and maintain the TRC, haul solid wastes to a disposal site and MRF, and provide a reliable means to dispose and recycle waste.

The Operator will operate the TRC in compliance with all state and federal laws and regulations, including but not limited to United States Environmental Protection Agency (USEPA), OEPA, and Delaware County Board of Health. The Operator will permit the County and its agents to make inspections of the TRC and will cooperate with local fire department in establishing emergency response procedures.

The Operator shall also provide hauling and disposal of solid wastes in compliance with all Federal, State, and local laws and regulations.

Operator will provide services on a first come first serve basis.

Operator shall have a common form and an electronic web-based system available to all users, so they might be able to comment on the service and general state of the TRC. All customer responses shall be provided to the County. The County will approve of all customer feedback forms and systems.

Contractor is responsible for all Permits to install and operate and other permits to maintain the TRC.

The County does not and will not guarantee a minimum or maximum volume of solid waste nor guarantee any specific customers or communities to utilize the facility. The TRC is a public facility that will accept solid waste and recycling from all residents, businesses, cities, townships, and all other institutions who have generated waste inside the boundaries of the State of Ohio. No out-of-state waste may be accepted at the TRC.

### **C. Delivery and Acceptance of Wastes**

The Operator shall accept without discrimination at the TRC for transfer, transportation, and ultimate disposal all MSW, source separated recycling, and CD&D delivered to the facility.

The Operator shall accept and recycle all white goods (appliances) and tires. Removal and recycling of CFC will be included in the charge.

Operator shall have the right to deny access to the TRC to any firm, person, or corporation who has failed to comply with operating practices, make payment of fees, or comply with applicable rules and regulations. Denial of services by the Operator will be immediately reported to the County.

#### **D. Ownership**

Under terms of the Contract, title to MSW, Source Separated Recycling and CD&D shall pass to the contractor when removed from the vehicle at the TRC. The Operator is responsible for the proper loading, transportation, disposal, and recycling of such material as defined in the RFP and contract.

#### **E. Required Equipment**

The Operator will provide all equipment to handle the operation of the TRC in a timely manner. The proposer needs to include with its design, a complete list of equipment planned for the TRC. The Operator must use tarps on transfer trailers or boxes and/or a combination of both. If waste flows increase, Operator will be required to provide additional equipment to handle peak waste flows at no additional cost to the County.

Scales: Capable of accurately measuring the tonnage hauled into the TRC. Scale shall be capable of handling all type of vehicles using the TRC to transfer solid waste and recyclables to the tipping floor. This includes, but is not limited to, passenger cars, pickup trucks, and solid waste route collection vehicles.

Scales must be capable of being calibrated to pass inspection by The Delaware County Auditor and the State of Ohio. Scales must be equipped with computer software package capable of meeting specifications as delineated in the contract documents.

Sufficient auxiliary equipment or parts shall be made available to permit continued operation in the event of equipment breakdown or increases in volume of material and collection of tipping fees.

#### **F. Hours of Operation**

The Operator shall have the TRC open Monday thru Friday 8am to 4:30pm and Saturday 8am to 12pm at a minimum. Operator should provide expected hours of operation in their proposal. Extended hours beyond the minimum is allowable with prior approval from the County. The Operator must get approval from the County regarding any activities that may impact the TRC operations. At the end of each day, all areas of the TRC shall be clear of all refuse and recyclables including but not limited to the tipping floor, driveways, and tunnel. If the TRC is an enclosed facility, the operator may store materials provided they comply with all OEPA and Delaware Health Department regulations. The County shall have access to the TRC for structural maintenance or other needs Monday through Sunday, 24 hours per day. Under no circumstances shall the Operator have less than the minimum hours specified herein unless approved by the County. Premature closure of the facility may be used by the County as cause for termination of the contract as it will be viewed as unprofessional operation of the facility. The operator will credit the County for lost revenue over the portion of time the TRC is prematurely closed outside specified operation.

#### **G. Holidays**

The following shall be holidays for purposes of the Contract:

- New Year's Day
- Labor Day
- Memorial Day
- Thanksgiving Day
- Independence Day
- Christmas Day

The Operator must observe the above-mentioned holidays by suspension of operations at the TRC on those days. The facility must be open to receive MSW and recyclables on all other days. The Operator may request approval from the County to operate the TRC on the above-mentioned holidays.

#### **H. Maintenance of Facility**

The County reserves the right to perform inspections of the TRC at any time provided a 24 hour notice is given to the operator. The inspections can be performed on all areas of the TRC. The County will make every effort to conduct inspections with minimal impact on the operation and may perform inspections after or before normal hours of operation.

The operation of the TRC, in addition to the handling of solid wastes and recyclables, includes the operation, maintenance and repair of all equipment; the general maintenance and repair of all buildings, tipping floor, driveways, fencing, drains, and lighting and the maintenance and grounds of the TRC area. The Operator will be responsible for the normal repairs to the facility.

Entrances to the TRC must be maintained in good condition. All access roads to the scales and unloading area shall be maintained in good condition and passable during all seasons, regardless of weather conditions.

Damage to the facility, including but not limited to the tipping floor, building and roads, due to negligence of the Operator shall be the Operator's responsibility to repair. Such repair shall be made within 30 days of written notice of the need thereof, unless otherwise agreed in writing by the County. The Operator shall present a letter of credit in the estimated amount of the repairs as to guarantee the repairs. Estimates for repairs will be performed by the Operator and approved by the County prior to any action. Operator will report all damage to the TRC immediately to the County.

The Operator shall maintain permanent fences, and take such measures as may be necessary, to control the blowing of paper and other materials from the TRC, and to provide security of the TRC.

The Operator shall maintain the entrance road and pavements within the TRC campus. Maintenance of pavements includes the filling of potholes with the same material used to first construct the pavement. Also, includes deicing, plowing and blowing of snow, and general cleaning. County will determine when a repair of pavement is no longer needed, and the damaged pavement needs replaced in whole.

#### **I. Transfer and Recycling Center Repairs**

From time to time repairs and improvements may be necessary on the facility. All repairs are the responsibility of the Operator. For significant repairs or improvements to the TRC the Residual Value of the facility will be negotiated and agreed by both parties. The Operator will propose the repairs and the impact on the operation for approval to proceed from the County. The County reserves the exclusive right to authorize the closure of the facility or restrict the amount of MSW received to make all necessary and required repairs to the TRC. The County may require the TRC to be in operation and accept MSW and recyclables while any repairs are being performed to the extent not prohibited or limited by said repairs. The Operator will be required to accommodate the change in volume

and operation needs that may arise because of any work. All temporary improvements necessary to complete the repairs shall be the responsibility of the Operator. If the County requires the TRC to be in operation during construction, the Operator shall accommodate all construction activities during the normal working hours and maintain the operation of the facility during proposed construction.

Throughout the first term of this contract, the Operator will remain liable and responsible for the repair and/or replacement of any on-site fixtures, including the tipping floor and any structure needed for compliance with the environmental laws and regulations of the State of Ohio and any structural repairs for the continuation of a transfer station license. The Operator agrees to repair or replace any element of the site required for compliance with OEPA rules or regulations or solid waste management rules and regulations, whether local, state or federal. Should structures need repair or replacement, the Operator will do so promptly upon notice by the County or governmental entity that such repair or replacement is required.

At the conclusion of the first term, significant repairs because of normal usage and or upgrades will be negotiated and agreed upon prior to exercising subsequent option years. Residual calculations will be modified to include effects of any agreed upon repairs or upgrades.

#### **J. Use of Subcontractors**

The Operator, in its sole discretion, may employ subcontractors for the performance of any of the work associated with the operation of the TRC upon completion of construction and required to be performed by the Operator under the Contract Documents. Said subcontractor, shall need prior approval by the County, provided however that said approval shall not be unreasonably withheld.

#### **K. Administrative Requirements**

The Operator shall designate a TRC supervisor who shall be responsible for the day to day communication with the County and the operation of the facilities. The Operator shall have a designated responsible person in charge during the hours that the TRC is open for receipt and transfer of MSW and recyclables.

The TRC shall be equipped with a listed telephone number. The Operator shall provide an answering system that announces the name and address of the facility, hours of operation and gate rates. The answering system shall be operating 24 hours per day and

7 days per week. The County may provide additional information to be provided on the announcement. The Operator is responsible for all permits, licenses, and charges for utility services utilized by the operator in connection with its operation.

The Operator shall carry on the operation and maintain the TRC during all disputes or disagreements with the County. No work shall be delayed or postponed pending resolution of any disputes or disagreements, except as the operator and County may otherwise agree in writing.

The County may authorize minor changes in the operation not involving an adjustment in the Contract Price or the Contract term, which are consistent with the overall intent of the Contract Documents. These may be accomplished by a Field Order and shall be binding on the County, and also on the Operator who shall perform the change promptly. If the Operator believes that a Field Order justifies an increase in the contract Price, the operator may make a claim therefor.

The Operator will be responsible for all the violations related to operations, recycling and/or disposal of MSW. More than three (3) violations per year will be considered by the County to be an operation in an “unworkmanlike” or “unprofessional manner” and in violation of the Contract Documents.

#### **J. Wage Rates**

The Operator shall comply with the applicable regulations of the Ohio Department of Labor and the United States Department of Labor.

#### **K. Operations Meetings**

The Operator (site superintendent and area manager) shall attend periodic meetings for discussing the operations of the TRC. These meetings shall be held as determined by the County. The proceedings of the meetings will be recorded by the County and a copy of the meeting minutes will be subsequently furnished to the Operator.

#### **L. Tipping Fees**

The Public gate rate per ton will be posted at the scale house. The Operator will post the gate rate and all pass thru fees detailed out in a conspicuous location. The Operator can utilize the TRC for all internal transfers of MSW and recycling provided all applicable fees are paid and can negotiate rates lower than the public gate rate for specific customers.

The Operator is responsible to collect and remit all local and state fees on solid waste.

The Operator is expected to comply with all laws of the state of Ohio.

The tipping fees (gate rates are set per the agreement and shall be firm for the term of the contract), except as explained below. The Operator will be responsible for collecting the total tipping fees on a per ton basis. The total tipping fees are determined by adding together the disposal or recycling rate and pass thru fees as well as the County Surcharge. Pass-through fees are local, and state fees, including out-of-district fees, district fees and host community fee. The Operator may increase that portion of the tipping fee which is attributable to the pass-through fees not in existence at the time of this agreement or any increases in pass-thru-fees. Any reduction in pass-thru fees during the term of the contract must be passed back to the County and the gate rate reduced by the amount of the pass thru reduction.

The County is requesting a transload rate per ton in the proposal. The transload rate will be available to governmental entities as authorized by the County. Only governmental entities or their contracted hauler with a tonnage of 10,000 tons or more annually may be authorized to use the transload service. The entity (or its contracted hauler) using the transload rate will deliver MSW or recycling to the TRC and the Operator will load the entities transfer trailers. The participating governmental entity or their hauler is responsible for paying for transportation and disposal or recycling fees and will contract for those services independent of the delivery of the material to the TRC. The transload per ton fee is only for the utilization of the TRC and the loading of the governmental entity or their contracted hauler trailers. The transload rate will also be available to governmental residential consortiums with an aggregate volume delivered to the TRC of 10,000 or more tons annually. Operator is responsible for collecting all pass thru fees for transloaded material.

A \$3.50/per ton surcharge (County Surcharge) will be placed on the aggregate of all tons delivered to the TRC. However, the County Surcharge will be \$0 for source separated recyclable materials that are delivered to the facility at a zero public gate rate tipping fee. The Operator's internal transfer of the same recyclables would have a \$0 surcharge also. The Operator must describe in detail all recyclables to be received at a \$0 tipping fee in their proposal. In addition, all source separated recyclables received by the facility must be outlined in the proposal. All source separated recyclables delivered to facility, as identified in the proposal, must be transferred to a MRF or recycling processor to be recycled. The Operator will pay the County Surcharge for all MSW tonnage received



each month to the County by the (10<sup>th</sup> ) day of the following month. A late fee of 10% will be assessed if not paid by the deadline. The County reserves the right to increase or decrease the County Surcharge at the conclusion of each five year term. The county will provide notice of such increase 90 days in advance and operator will adjust the gate rate accordingly.

If the operator proposes a recycling index or adjustment method to adjust the cost for recycling either up or down consistent with market changes, the Operator shall provide the County at least 60 business days-notice of the proposed change in recycling rates prior to the implementation of the increase or decrease to TRC customers. Such changes in the recycling gate rate can be made annually. Any recycling index or adjustment method must include elements of commodity pricing indexes that are used on the open market.

If the operator proposes a fuel index or adjustment method to adjust the fuel cost for recycling and/or MSW gate rates either up or down consistent with market changes, the Operator shall provide the County at least 60 business days-notice of the proposed change in recycling rates prior to the implementation of the increase or decrease to TRC customers. Such changes in the recycling or MSW gate rate can be made annually. Any fuel index or adjustment method must include elements of fuel pricing indexes that are used on the open market and distance for each material.

All customers of the TRC will be charged by the ton. The County reserves the right to allow customers to be charged by the cubic yard. A minimum charge shall be levied on all MSW and/or CD&D that is delivered to the TRC. The minimum charge will be set by the contract. Conversion of cubic yards to tons will be done in accordance with applicable industry standards and state law.

The Operator shall maintain appropriate books and records from which the County can determine the daily tonnage of MSW and recyclables delivered to the TRC and transported from the TRC to the disposal or recycling facilities. The operator shall provide full access to such information, records and data bases to the County at all times. These records must also include documentation regarding all appropriate payments of pass through fees.

#### **M. Receipt Tickets**

The operator shall provide a standard computer package for processing solid waste and recycling receipt tickets and recording data to measure the tonnage of MSW delivered to

the disposal sites, MRFs, and received by the TRC on a daily basis. The Operator shall provide tickets approved for use by the County for such records. The tickets shall indicate the name of the customer, vehicle identification, route number, waste generation point, tons of MSW delivered, date of delivery, the name of the scale clerk, and any other information that the County may require (including but not limited to, monthly reports showing the solid waste tonnage from each sector of the County and/or DKMM/County, and regulatory inspections). The County prefers either a picture of all scale transactions or video of all transactions.

The receipt tickets should be in at least four copies distributed as follows:

- 1) To Driver
- 2) Retained by County (County prefers electronic copies provided monthly.)
- 3) To Operator
- 4) To Operator for billing

The computer system must be capable of generating electronic files of all transactions for the County's use and shall be compatible with County's existing computer system.

Moreover, direct terminal access to all data is preferred. The County requires computer access to the TRC data base to run operation reports to determine volume of materials by type, number of customers, and fees collected.

#### **N. Inspection**

The Operator must, if requested, allow County representatives to visit the TRC and/or the disposal site and MRF that is accepting County MSW and recyclables. County shall full access to the TRC at the times it deems necessary.

#### **O. Rules and Regulations**

The Operator is responsible for being familiar with and must comply with the rules and regulations made by the County, State, and Local Board of Health pursuant to Chapter 343 of the Ohio Revised Code for the Construction, maintenance, protection, use of MSW collection and disposal, refuse recycling, and resource recovery facilities in effect, as well as other laws, rules and regulations affecting the operations of a landfill, MRF, or other disposal facility.

Substantial changes in existing Federal, State, and/or local laws may be cause for termination of the contract by the County.

**P. Contract Exit Plan**

The Operator is responsible for preparing an implementation plan for the exit of the facility for all equipment, supplies and administrative items. The implementation plan shall be provided as a part of the RFP submission. The County retains all ownership of the facility structure and surrounding infrastructure. All materials, supplies and equipment provided by the Contractor shall be removed unless a separate agreement was obtained between the County and the Contractor. The plan for removal must allow for a transitional period with any new Contractor or County operator.

**VII. CONTRACTUAL PROVISIONS AND REQUIRED FORMS**

**A. Compliance with Laws**

The Operator shall conduct operations under this Contract in compliance with all applicable laws.

**B. Scope of Work**

The Operator agrees to perform the design/build embodied in the Scope of Work for permitting, design, construction and finance of the TRC.

The Operator agrees to furnish, unto the County, operation, hauling, recycling, and disposal services for the TRC.

**C. Effective Date**

The Contract shall be effective upon the execution of the Contract and, unless otherwise agreed to in writing by the Contractor and the District.

**D. Nondiscrimination**

In accordance with R.C. 153.59, the Contractor agrees to both of the following: (1) that, in the hiring of employees for the performance of work under the contract or any subcontract, no contractor, subcontractor, or any person acting on a contractor's or subcontractor's behalf, by reason of race, creed, sex, disability or military status as defined in section 4112.01 of the Revised Code, or color, shall discriminate against any citizen of the state in the employment of labor or workers who is qualified and available to perform the work to which the employment relates; and (2) that, no contractor, subcontractor, or any person on a contractor's or subcontractor's behalf, in any manner, shall discriminate against or intimidate any employee hired for the performance of work under the contract on account of race, creed, sex, disability or military status as defined in section 4112.01 of the Revised Code, or color. Any breach of these nondiscrimination provisions shall result in a forfeiture as set forth in R.C. 153.60.

**E. Indemnification**

The Contractor will indemnify, save harmless, and exempt the County, its officers, agents, servants, and employees from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, expenses and attorney fees incident to any work done in the performance of this Contract arising out of a willful or negligent act or omission of the Operator, its officers, agents, servants, or employees; provided that the Operator shall not be liable for any suits, damages, cost, expenses and attorney fees arising out of willful or negligent act or omission of the, the County, its officers, agents servants, and employees.

**F. Insurance**

For the purpose of the contract, the Operator shall carry the following types of insurance in at least the limits specified below:

<u>Coverage</u>	<u>Limits of Liability</u>
Workmen’s Compensation	Statutory
Automobile Liability	\$1,000,000 each occurrence
Automobile Bodily Injury	\$1,000,000 each person
General Liability	\$1,000,000 each occurrence
General Liability	\$2,000,000 annual aggregate
Excess Umbrella Liability	\$10,000,000

**G. Performance/Payment/Subcontractor Bonds**

All required bonds shall be issued by a Surety Company or Corporation licensed in the State of Ohio to provide said surety. Premiums of the bonds shall be paid by the Contractor. A certificate from the surety showing that the bond premiums are paid in full shall accompany the bond.

Upon execution of the design-build Contract, the Contractor shall provide separate performance and payment bonds in the forms required by the Ohio Facilities Construction Commission. (Attachment B)

**H. Power of Attorney**

Attorneys-in-fact who sign bonds or Contract bonds must file with each bond a certified and effectively dated copy of their power of attorney.

**I. Transferability of Contract**

No assignment of the Contract or any right accruing under this Contract shall be made in whole or in part by the Operator without consent of the County, which consent shall not be unreasonably withheld; in the event of any assignment, the assignee shall assume the liability of the Contract.

**J. Prevailing Wages**

Prevailing wages are required for this project as outlined in the Delaware County prevailing wage rates for skilled crafts for the State of Ohio.

**ATTACHMENT A**  
**Contractor Information Sheet**

**Local Service Center/Office Information:**

Name of Company: \_\_\_\_\_

Local Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Title: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

E-Mail: \_\_\_\_\_

**Corporate/Headquarters Information:**

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

President: \_\_\_\_\_

Controller: \_\_\_\_\_

Business Type: Corporation: \_\_\_\_\_ Limited Liability Company: \_\_\_\_\_

Joint Venture: \_\_\_\_\_ Other: \_\_\_\_\_

Publicly Held Company: \_\_\_\_\_ Privately Held Company: \_\_\_\_\_

Partnership: \_\_\_\_\_ List all Partners/Individuals with >10%  
Interest: \_\_\_\_\_

If awarded this Contract, is the local office or corporate headquarters responsible and  
liable for the Contract? \_\_\_\_\_

Signed by Corporate Officer or Designee: \_\_\_\_\_

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

**ATTACHMENT B**  
**Required Bond Forms**

**Document 00 61 13.13 - Performance Bond Form**  
**State of Ohio Standard Requirements for Public Facility Construction**

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( Form of Performance Bond prescribed by Ohio Administrative Code Section 153:4-1-02 )

KNOW ALL PERSONS BY THESE PRESENTS, that we, the undersigned \_\_\_\_\_  
\_\_\_\_\_, as Principal,  
and \_\_\_\_\_ as Sureties,  
are hereby held and firmly bound unto \_\_\_\_\_  
\_\_\_\_\_ as Obligee(s), in the penal sum of \_\_\_\_\_ dollars,  
for the payment of which well and truly to be made, we jointly and severally bind ourselves, our heirs, executors,  
administrators, successors, and assigns.

SIGNED AND SEALED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that whereas the above-named Principal did on the  
\_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, enter into a Contract with the Obligee, which said Contract is  
made a part of this Bond the same as though set forth herein and which is more fully described as:

Project Number: \_\_\_\_\_

Project Name: \_\_\_\_\_

Contract Description: \_\_\_\_\_  
(e.g., Construction Manager at Risk, Design-Build)

NOW, THEREFORE, if the above-named Principal shall well and faithfully do and perform the things agreed by the  
Principal to be done and performed according to the terms of said Contract 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 way affect the obligations of said Surety on its  
bond, and it does hereby waive notice of any such modifications, omissions or additions in or to the terms of the Contract, the  
Work or the Contract Documents, including without limitation the Plans and Specifications.



**PRINCIPAL:**

\_\_\_\_\_  
Principal Signature

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

Title: \_\_\_\_\_

**SURETY:**

\_\_\_\_\_  
Surety Signature

By: \_\_\_\_\_  
Attorney-in-Fact

**SURETY INFORMATION:**

\_\_\_\_\_  
Street

\_\_\_\_\_  
City State Zip

\_\_\_\_\_  
Telephone Number

**SURETY AGENT'S INFORMATION:**

\_\_\_\_\_  
Agency Name

\_\_\_\_\_  
Street

\_\_\_\_\_  
City State Zip

\_\_\_\_\_  
Telephone Number

**END OF DOCUMENT**

# Document 00 61 13.16 - Payment Bond Form

## State of Ohio Standard Requirements for Public Facility Construction

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( Form of Payment Bond prescribed by Ohio Administrative Code Section 153:4-1-02 )

KNOW ALL PERSONS BY THESE PRESENTS, that we, the undersigned \_\_\_\_\_  
\_\_\_\_\_, as Principal,  
and \_\_\_\_\_ as Sureties,  
are hereby held and firmly bound unto \_\_\_\_\_  
\_\_\_\_\_ as Obligee(s), in the penal sum of \_\_\_\_\_ dollars,  
for the payment of which well and truly to be made, we jointly and severally bind ourselves, our heirs, executors,  
administrators, successors, and assigns.

SIGNED AND SEALED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that whereas the above-named Principal did on the  
\_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, enter into a Contract with the Obligee, which said Contract is  
made a part of this Bond the same as though set forth herein and which is more fully described as:

Project Number: \_\_\_\_\_

Project Name: \_\_\_\_\_

Contract Description: \_\_\_\_\_  
(e.g., Construction Manager at Risk, Design-Build)

NOW, THEREFORE, if the above-named Principal shall pay all lawful claims of subcontractors, material suppliers,  
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 material supplier or laborer having a  
just claim, as well as for the Obligee(s) 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 its  
bond, and said Surety hereby waives notice of any such modifications, omissions or additions in or to the terms of the  
Contract, the Work or the Contract Documents, including without limitation the Plans and Specifications.

**PRINCIPAL:**

\_\_\_\_\_  
Principal Signature

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

Title: \_\_\_\_\_

**SURETY:**

\_\_\_\_\_  
Surety Signature

By: \_\_\_\_\_  
Attorney-in-Fact

**SURETY INFORMATION:**

\_\_\_\_\_  
Street

\_\_\_\_\_  
City State Zip

\_\_\_\_\_  
Telephone Number

**SURETY AGENT'S INFORMATION:**

\_\_\_\_\_  
Agency Name

\_\_\_\_\_  
Street

\_\_\_\_\_  
City State Zip

\_\_\_\_\_  
Telephone Number

**END OF DOCUMENT**

**ATTACHMENT C**

**NON-COLLUSION AFFIDAVIT**

STATE OF OHIO, COUNTY OF DELAWARE: ss

\_\_\_\_\_, being first duly sworn, deposes and states that he/she is the \_\_\_\_\_ of \_\_\_\_\_, the party making the foregoing **Proposal or Bid**; that such **Bid** is genuine and not a collusive sham; that said bidder has not colluded, conspired, connived or agreed, directly or indirectly, with any bidder or person, to put in a sham bid, or that such other person shall refrain from bidding, and has not in any manner, directly or indirectly, sought by agreement or collusion, or communication or conference, with any person, to fix the price of affiant or any other bidder, or to fix any overhead profit or cost element of said bid price, or of that any other bidder, or to fix any overhead, profit or cost element of said bid price, or of that of any other bidder, or to fix any overhead, profit or cost element of said bid price, or of that of any other bidder, or to secure any advantage against the **Delaware County Board of Commissioners**, or any person or persons interested in the proposed **Contract**, and that all statements contained in said **Proposal or Bid** are true; and further, that such bidder has not, directly or indirectly, submitted this **Bid**, or the contents thereof, or divulged information or data relative thereto any association or to any member or agent thereof.

By: \_\_\_\_\_  
Signature of Affiant

\_\_\_\_\_  
Printed Name

(SEAL – if bid by a corporation)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Business Name

\_\_\_\_\_  
Address/Zip Code

Sworn to and subscribed before me by the above named person this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

**ATTACHMENT D**

**STATEMENT AS TO DELINQUENT TAXES  
OHIO REVISED CODE 5719.042**

(Contractor to submit statement as to delinquent taxes, incorporation.)

After the award by a taxing district of any contract let by competitive bid and prior to the time the contract is entered into, the person making a bid shall submit to the district's fiscal officer a statement affirmed under oath that the person with whom the contract is to be made was not charged at the time the bid was submitted with any delinquent personal property taxes on the general tax list of personal property of any county in which the taxing district has territory or that such person was charged with delinquent personal property taxes on any such tax list, in which case the statement shall also set forth the amount of such due and unpaid delinquent taxes and any due and unpaid penalties and interest thereon. If the statement indicates that the taxpayer was charged with any such taxes, a copy of the statement shall be transmitted by the fiscal officer to the county treasurer within thirty days of the date it is submitted.

A copy of the statement shall also be incorporated into the contract, and no payment shall be made with respect to any contract to which this section applies unless such statement has been so incorporated as a part thereof.

This statement must be completed in its entirety and shall become a part of the contract hereto.

I HEREBY CERTIFY that \_\_\_\_\_ :  
(name of bidder)

\_\_\_\_\_ does not owe any delinquent personal property taxes in the Delaware County Taxing District.

\_\_\_\_\_ does owe delinquent taxes in the Delaware County Taxing District,

in the amount of: \$ \_\_\_\_\_; with penalties and interest

in the amount of: \$ \_\_\_\_\_.

Company: \_\_\_\_\_ Address: \_\_\_\_\_

Signature: \_\_\_\_\_ Print Name: \_\_\_\_\_

Phone: \_\_\_\_\_

STATE OF \_\_\_\_\_ :

ss:

COUNTY OF \_\_\_\_\_ :

On this day personally appeared before me \_\_\_\_\_ to be known to be the individual

described in and who executed the within and foregoing instrument, and acknowledged that he/she signed the same as his/her free and voluntary act and deed for the uses and purposes therein mentioned.

Given under my hand the official seal this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

---

Notary Public

## ATTACHMENT E

### NON-DISCRIMINATION CLAUSE

In the performance of this and all Contracts, the Contractor will be bound by the following *Non-Discrimination Clause*, by this reference hereby made a binding condition of the Contract:

1. The Contractor will not discriminate against any employee or applicant for employment because of **race, creed, color or national origin or physical or mental handicap**. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their **race, creed, color, national origin or physical or mental handicap**. Such actions shall include, but not be limited to, the following: **employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection or training, including apprenticeship**. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this *Non-discrimination Clause*.
2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applications will receive consideration for employment without regard to **race, color, creed, national origin, or physical or mental handicap**.
3. The Contractor further affirms that he will incorporate or cause to be incorporated into any construction subcontract, the regulations on **Equal Employment Opportunity** during the performance of this Contract.

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

\_\_\_\_\_  
Printed Name

(SEAL – if by a corporation)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Business Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip

**ATTACHMENT F**

**Affidavit of Authority**

I, \_\_\_\_\_, certify that I am the \_\_\_\_\_ of the corporation named as Contractor herein; that \_\_\_\_\_ who signed this Agreement on behalf of the Contractor, was then \_\_\_\_\_ of said corporation; that said Agreement was duly signed for in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

\_\_\_\_\_ Corporate

\_\_\_\_\_ SEAL



**ATTACHMENT G**

**Design Build Contract General Conditions**

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# Document 00 72 53 - General Conditions (Design-Build Project)

## State of Ohio Standard Requirements for Public Facility Construction

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### ARTICLE 1 - DB'S RESPONSIBILITIES

#### 1.1 Nondiscrimination

1.1.1 The DB shall comply with Applicable Law regarding equal employment opportunity, including ORC Section 153.59.

1.1.1.1 As required under ORC Section 153.59, the DB agrees to both of the following:

1. "in the hiring of employees for the performance of work under the contract or any subcontract, no contractor, subcontractor, or any person acting on a contractor's or subcontractor's behalf, by reason of race, creed, sex, disability or military status as defined in section 4112.01 of the Revised Code, or color, shall discriminate against any citizen of the state in the employment of labor or workers who is qualified and available to perform the work to which the employment relates; and"
2. "no contractor, subcontractor, or any person on a contractor's or subcontractor's behalf, in any manner, shall discriminate against or intimidate any employee hired for the performance of work under the contract on account of race, creed, sex, disability or military status as defined in section 4112.01 of the Revised Code, or color."

1.1.1.2 The DB shall cooperate fully with the County's Equal Opportunity Coordinator ("EOC"), with any other official or agency of the state or federal government that seeks to eliminate unlawful employment discrimination, and with all other state and federal efforts to assure equal employment practices under the Contract.

1.1.1.3 In the event the DB fails to comply with these nondiscrimination clauses, the Contracting Authority shall deduct from the amount payable to the DB a forfeiture of the statutory penalty pursuant to ORC 153.60 for each person who is discriminated against or intimidated in violation of this **Section 1.1.1**.

1.1.1.4 The Contract may be terminated or suspended in whole or in part by the Contracting Authority and all money to become due hereunder may be forfeited in the event of a subsequent violation of this **Section 1.1.1**.

#### 1.1.2 Hiring Under Public Improvement Contracts.

1.1.2.1 Any provision of a hiring hall contract or agreement which obligates the DB to hire, if available, only employees referred to the DB by a labor organization shall be void as against public policy and unenforceable with respect to employment under any public works contract unless at the date of execution of the hiring hall contract or agreement, or within 30 days thereafter, the labor organization has in effect procedures for referring qualified employees for hire without regard to race, color, religion, national origin, military status as defined in ORC Section 4112.01, or ancestry and unless the labor organization includes in its apprentice and journey person's membership, or otherwise has available for job referral without discrimination, qualified employees, both whites and non-whites (including African-Americans).

#### 1.2 Prevailing Wages

1.2.1 The DB shall comply with the prevailing wage requirements described under ORC Chapter 4115 that include, without limitation, the requirements described under this **Section 1.2**.

1.2.2 If the Project is subject to payment of prevailing wage rates, the DB shall:

1.2.2.1 pay to laborers and mechanics performing Work on the Project the prevailing wage rates of the Project locality, as determined by the Ohio Department of Commerce, Wage and Hour Bureau;

1.2.2.2 post in a prominent place readily accessible by all workers on the Site, a legible listing of the current classifications of laborers, workers, and mechanics employed under this Contract;

1.2.2.3 ensure that the rates posted are current and remain posted in legible condition during the period of the Contract; and

1.2.2.4 not be entitled to an increase in the Contract Sum on account of an increase in prevailing wage rates, except as otherwise provided by Applicable Law.

1.2.3 The DB may access the Ohio Department of Commerce, Wage & Hour Bureau at its website, <http://198.234.41.198/w3/webwh.nsf/pages/PrevailingWageBid>, to obtain the current wage rates.

#### 1.3 Royalties and Patents

**1.3.1** The DB shall pay all royalties, license fees, and assume all costs incident to the use, in the performance of the Work or the incorporation in the Work, of any invention, design, process, product, or device that is the subject of patent rights or copyrights held by others.

**1.3.2** If the DB has reason to believe that use of the specified item is subject to patent or copyright protection, the DB shall immediately notify the Contracting Authority.

#### **1.4 Assignment of Antitrust Claims**

**1.4.1** By signing the Agreement, the DB assigns, conveys and transfers to the Contracting Authority any right, title, and interest to any claims or causes of action it may have or acquire under state or federal antitrust laws relating to any goods, products, or services purchased, procured, or rendered to the County pursuant to the Contract.

#### **1.5 [NOT USED]**

#### **1.6 Drug Free Safety Program Participation**

**1.6.1** Throughout the performance of the Work, the DB shall have and adhere to a drug-free workplace and safety program or a comparable program approved by the OBWC that meets the requirements specified in ORC Section 153.03.

#### **1.7 [NOT USED]**

#### **1.8 [NOT USED]**

#### **1.9 Owner Work Rules**

**1.9.1** The DB shall consult with the Owner to obtain full knowledge of the Owner's rules, regulations, or requirements affecting the Project.

#### **1.10 Emergency**

**1.10.1** In the event of an emergency affecting the safety of the Project, other property, or individuals, the DB, without special instruction or authorization, shall act to prevent the threatened damage, injury, or loss.

#### **1.11 Testing and Inspection Services**

**1.11.1** Unless otherwise specified in the Contract Documents, the DB shall apply for, secure, and pay for the costs of structural testing and special inspections under Chapter 17 of the Ohio Building Code; testing including geotechnical analysis, environmental testing and analysis, concrete, masonry, structural steel, reinforcing steel, welding, bolts, steel connections, HVAC systems and controls, plumbing and piping, air and water balancing and testing, or other testing; or approval required by Applicable Law.

#### **1.12 DB's Standard of Care**

**1.12.1** The DB shall perform the professional design services portion of the Work consistent with the professional skill and care ordinarily provided by registered architects, landscape architects, professional engineers, and professional surveyors regularly providing comparable services in the same or similar locality under the same or similar circumstances.

**1.12.1.1** The DB shall also perform the professional design services portion of the Work in accordance with the applicable rules established by the applicable state boards of registration, including, but not limited to, OAC Section 4703-3-07 for registered architects, OAC Section 4703-3-07 for landscape architects, and OAC Section 4733-35 for professional engineers and professional surveyors.

**1.12.2** The DB shall perform the portion of the Work, which does not involve professional design services, in a competent manner, consistent with the standards of skill and care exercised by entities licensed to perform (where required under Applicable Law) and regularly performing comparable work in the same or similar locality under the same or similar circumstances.

**1.12.3** The DB shall perform the Work as expeditiously as is consistent with the skill and care required under **Sections 1.12.1** and **1.12.2** and the orderly progress of the Project.

#### **1.13 AOR's Agreement and Standard of Care**

**1.13.1** The agreement between the DB and AOR shall include the **Supplementary Scope Statement (AOR)**, which is

attached as **Exhibit A** of the DB's Agreement.

**1.13.2** The AOR shall perform the professional design services portion of the Work consistent with the professional skill and care ordinarily provided by registered architects, landscape architects, professional engineers, and professional surveyors regularly providing comparable services in the same or similar locality under the same or similar circumstances.

**1.13.3** The AOR shall also perform the professional design services portion of the Work in accordance with the applicable rules established by the applicable state boards of registration, including, but not limited to, OAC Section 4703-3-07 for registered architects, OAC Section 4703-3-07 for landscape architects, and OAC Section 4733-35 for professional engineers and professional surveyors.

#### **1.14 Limit of DB's Responsibility**

**1.14.1** The DB is not responsible for the Criteria A/E's negligence or the Criteria A/E's failure to properly perform the Criteria A/E's contract.

#### **1.15 [NOT USED]**

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**ARTICLE 2 - COUNTY'S RIGHTS AND RESPONSIBILITIES****2.1 Contracting Authority**

**2.1.1** The Contracting Authority shall designate a Project Manager for the Project. The Project Manager is authorized to act on behalf of the Contracting Authority to perform specific responsibilities under the Contract.

**2.1.2** The Contracting Authority shall furnish information and services required of it in a timely manner.

**2.1.3** The Contracting Authority shall have access to the Work at all times whenever the Project is in preparation or progress.

**2.1.4** The Contracting Authority is not responsible for construction means, methods, manners, techniques, sequences, procedures, or for safety precautions and programs in connection with the Work, or for the DB's failure to carry out the Work in conformity with the Contract Documents.

**2.1.5** Upon issuance of the Notice to Proceed, the Contracting Authority shall provide the Site to the DB in a condition to permit the DB to perform the Work.

**2.2 Approval of Owner/Contracting Authority**

**2.2.1** The Owner/Contracting Authority's review and approval of the Work and any information the DB submits to them is for the sole purpose of determining whether the Work and information are generally consistent with the Contract's intent, and will not relieve the DB of its sole responsibility for the performance, preparation, completeness, and accuracy of the Work and information.

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## ARTICLE 3 - CRITERIA A/E'S RESPONSIBILITIES

### 3.1 Criteria A/E's Site Visits and Observations

**3.1.1** The Criteria A/E may notify, advise, and consult with the Contracting Authority and Owner throughout completion of the Project, which includes the Correction Period.

**3.1.1.1** The Criteria A/E may designate a field representative, subject to the Contracting Authority's approval, to attend to the Project.

**3.1.2** The Criteria A/E is authorized to disapprove or reject Defective Work. The Criteria A/E shall immediately notify the Contracting Authority any time the Criteria A/E disapproves or rejects an item of Work.

**3.1.3** The Criteria A/E is not responsible for design or construction means, methods, manners, techniques, sequences, procedures, or for safety precautions and programs in connection with the Work, or for the DB's failure to carry out the Work in conformity with the Contract Documents.

### 3.2 Approval of Criteria A/E

**3.2.1** The Criteria A/E's review and approval of the Work and any information the DB submits to the Criteria A/E is for the sole purpose of determining whether the Work and information are generally consistent with the Contract's intent, and will not relieve the DB of its sole responsibility for the performance, preparation, completeness, and accuracy of the Work and information.

### 3.3 Delegation to the Criteria A/E

**3.3.1** Except as otherwise prohibited by Applicable Law, the Contracting Authority may delegate to the Criteria A/E any of the Contracting Authority's rights and responsibilities under the Contract. No such delegation will be subject to the DB's consent or approval.

### 3.4 Limitation of Criteria A/E's Authority

**3.4.1** Under no circumstances is the Criteria A/E authorized to:

**3.4.1.1** bind the Owner or Contracting Authority to any authorizations under, modifications of, or amendments to any contract;

**3.4.1.2** accept any defective or non-conforming services, Work, or vendor-furnished items;

**3.4.1.3** make any settlements on behalf of the Owner or Contracting Authority; or

**3.4.1.4** assume any responsibilities of the DB, Consultants, or Subcontractors.

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**ARTICLE 4 - SUBCONTRACTORS****4.1 Applicability of Requirements**

**4.1.1 Sections 4.3, 4.4, and 4.5** apply to all Work during the Construction Stage (including the DB's procurement of long-lead-time items before the Date of Commencement) except:

**4.1.1.1** the DB's management and administration of the entire Work, including administration of Subcontracts;

**4.1.1.2** General Conditions Work;

**4.1.1.3** non-specialty Work valued in the aggregate for the Project at less than \$200,000 if the DB obtains the Contracting Authority's written approval before the commencement of that Work;

**4.1.1.4** the balance of the Work under a Subcontract where the DB terminated the Subcontract for cause and the DB obtains the Contracting Authority's written approval before commencement of that portion of the Subcontract Work;

**4.1.1.5** Work performed under a design-assist contract authorized by the Contracting Authority and entered into by the DB as described under **Section 4.8**; and

**4.1.1.6** Construction Stage Design Services.

**4.2 Subcontracting Plan**

**4.2.1** The DB shall place development, review, and approval of the Subcontracting Plan on the Project Schedule.

**4.2.2** Before soliciting Bids for any particular Subcontract, the Subcontracting Plan shall **(1)** include a proposed list of prequalified prospective Bidders for that Subcontract and a proposed Bidding Schedule for that Subcontract and **(2)** be submitted to and approved by the Contracting Authority.

**4.3 Prequalification Criteria**

**4.3.1** The DB shall establish criteria for prequalification of prospective Bidders on Subcontracts that shall:

**4.3.1.1** include the experience of a prospective Bidder, the prospective Bidder's financial condition, conduct and performance on previous contracts, facilities, management skills, and ability to execute the associated Subcontract properly; and

**4.3.1.2** require a prospective Bidder to submit proof of current licenses to perform the associated Work as required by the Contracting Authority or by Applicable Law.

**4.3.2** The DB shall include any additional criteria for specific Subcontracts required by the Owner or Contracting Authority that are consistent with the scope and needs of the Project.

**4.3.3** The DB shall submit its proposed prequalification criteria for each Subcontract to the Contracting Authority and place establishment of prequalification criteria on the Project Schedule.

**4.3.4** The Contracting Authority shall approve or reject, in whole or in part, the prequalification criteria submitted by the DB. The Contracting Authority will use the approved prequalification criteria for any future analysis it may conduct concerning a prospective Bidder's responsibility to perform a Subcontract.

**4.4 Prequalification Process**

**4.4.1** The DB shall complete the Prequalification Process for each Subcontract no later than 10 days before the DB intends to solicit Bids for that Subcontract unless the Contracting Authority agrees otherwise in writing.

**4.4.2** During the Prequalification Process, the DB shall develop prospective Bidders' interest in the Project and invite at least 3 prospective Bidders to submit qualifications for evaluation. The Contracting Authority or Owner may require the DB to invite and evaluate more than 3 prospective Bidders, including specifically those prospective Bidders (if any) the Owner or Contracting Authority asks the DB to contact.

**4.4.2.1** To reach prospective Bidders, the DB may place a notice on **(1)** the official website of the Owner or Contracting Authority, **(3)** on other websites such as appropriate trade association websites, news media, or other public media websites, or **(4)** any combination of the foregoing.

**4.4.3** The DB shall evaluate the qualifications of each prospective Bidder that timely submits its qualifications and notify each of them whether they are qualified. The DB's determination that a Bidder that timely submits its qualifications does not meet the prequalification criteria shall be final.

**4.4.4** The DB shall submit the names and qualifications of at least 3 qualified prospective Bidders to the Contracting Authority. The DB may submit the names of fewer than 3 qualified prospective Bidders if the DB submits to the Contracting Authority satisfactory documentation that fewer than 3 qualified prospective Bidders are available. The

Contracting Authority, Owner, and DB may meet to review the qualifications of the prospective Bidders on the list the DB submits to the Contracting Authority.

**4.4.4.1** Notwithstanding **Section 4.4.4**, the Contracting Authority may require the DB to submit the names and qualifications of more than 3 qualified prospective Bidders for all or any particular Bid package. In that case, the DB may submit the names of fewer than the required number of qualified prospective Bidders if the DB submits to the Contracting Authority satisfactory documentation that fewer than the required number of qualified prospective Bidders are available.

**4.4.5** The Contracting Authority shall review the list the DB submits, and may rely on the DB's representations to verify that prospective Bidders meet the prequalification criteria. The Contracting Authority shall complete its review within the period agreed between the Contracting Authority and DB or otherwise with reasonable promptness. The Contracting Authority may eliminate any prospective Bidder it determines is not qualified and notify the DB of the Contracting Authority's determination and the basis for it. The DB shall promptly notify the prospective Bidder in writing of the Contracting Authority's decision to eliminate the prospective Bidder and the basis for the Contracting Authority's determination that the Bidder does not meet the prequalification criteria. The Contracting Authority's determination that the Bidder does not meet the prequalification criteria shall be final.

## 4.5 Subcontract Bidding Process

**4.5.1** The DB shall create a Bid package for each Subcontract and solicit Bids from qualified prospective Bidders identified under **Section 4.4** for that Bid package in accordance with the Project Schedule. Execution of a GMP Amendment concerning the Work for which the DB is soliciting Bids is not a condition precedent to commencement or completion of the Subcontract Bidding Process.

**4.5.2** At completion of the Subcontract Bidding Process for each Subcontract and no later than 15 days before the Work is scheduled to begin under that Subcontract, the DB and Contracting Authority will meet to review Bids of qualified prospective Bidders identified under **Section 4.4** for that Subcontract and determine to which prospective Bidder the DB will award the Subcontract. During the review meeting, the DB shall identify the prospective Bidder to whom the DB proposes to award the Subcontract.

**4.5.2.1** Each Bidder to whom the DB proposes to award a Subcontract shall to the DB's reasonable satisfaction **(1)** be qualified to perform the subcontracted portion of the Work and **(2)** have submitted a Bid that conforms to the requirements of the Contract Documents.

- .1** For the purpose of evaluating and reconciling the Bids, the DB may conduct scope-review meetings with Bidders that are usual and customary within the Bidders' trade. Bids that have been reconciled with other Bids for the same scope of Work through that review process will be considered in conformance with the Contract Documents.
- .2** The DB is not required to propose to award the Subcontract to the Bidder that submitted the lowest Bid. Subject to **Section 4.7**, the DB may also propose to self-perform the Work in a Bid package even if the DB did not submit the lowest Bid for that Work.

**4.5.2.2** If the Contracting Authority does not reject the DB-proposed Bidder, the DB shall enter into the Subcontract with the selected Bidder.

- .1** All Subcontracts shall be on the **State of Ohio Subcontract Form** prescribed by OAC Section 153:1-03-02.
- .2** No less than 10 days before Work is to be performed by the Subcontractor, or within a shorter period as mutually agreed by the DB and Contracting Authority, the DB shall submit to the Contracting Authority a **Subcontractor and Material Supplier Declaration** form through which the DB identifies the Subcontractor. After receiving the form and Subcontract, the Contracting Authority shall verify that they are complete and deliver them to the Owner. If the Contracting Authority finds the form and Subcontract are incomplete, the Contracting Authority shall return them to the DB and identify the incomplete information.
- .3** Execution of a GMP Amendment concerning the Work to be performed by the Subcontractor is a condition precedent to the DB entering into the Subcontract with that Subcontractor.
- .4** No less than 10 days before Work is to be performed by the Subcontractor, or within a shorter period as mutually agreed by the DB and Contracting Authority, the DB shall submit to the Contracting Authority a complete copy of the executed Subcontract between the DB and Subcontractor.
- .5** If the Project is administered using the State's web-based project management software, the DB shall identify its Subcontractors and submit its Subcontracts through the "Subcontractor Supplier Declaration" business process.

**4.5.2.3** If the Contracting Authority rejects any DB-proposed Bidder, the DB shall propose a replacement Bidder,



which shall be evaluated as described above.

#### 4.6 Evaluation of Lower-Tier Subcontractors

**4.6.1** As used in this **Section 4.6**, a “lower-tier Subcontractor” is any Subcontractor not in privity with the DB.

**4.6.2** No less than 10 days before Work is to be performed by any lower-tier Subcontractor, or within a shorter period as mutually agreed by the DB and Contracting Authority, the DB shall submit to the Contracting Authority a **Subcontractor and Material Supplier Declaration** form through which the DB identifies lower-tier Subcontractors.

**4.6.3** The DB’s failure to timely submit the information regarding a proposed lower-tier Subcontractor may result in withholding payment in accordance with **Section 9.2.14**.

**4.6.4** After receiving the **Subcontractor and Material Supplier Declaration** form, the Contracting Authority shall verify that it is complete and deliver it to the Owner. If the Contracting Authority finds the form incomplete, the Contracting Authority shall return it to the DB and identify the incomplete information.

**4.6.5** If the Contracting Authority rejects any proposed lower-tier Subcontractor, the DB shall propose a replacement lower-tier Subcontractor with no adjustment of the Contract Sum. The proposed replacement lower-tier Subcontractor will be evaluated as described above.

#### 4.7 Self-Performed Work

**4.7.1** Neither the DB nor a DB Affiliated Entity shall directly perform with its own employees or other resources any Work on the Project during the Construction Stage except:

**4.7.1.1** Work not subject to Bidding as described under **Section 4.1**; and

**4.7.1.2** as otherwise provided in this **Section 4.7**.

**4.7.2** If the DB or a DB Affiliated Entity intends to Bid on any Work subject to Bidding as described under **Section 4.1**:

**4.7.2.1** During preparation of the Subcontracting Plan, the DB shall notify the Contracting Authority that the DB or DB Affiliated Entity may Bid on a portion of the Work. The Contracting Authority and DB shall review that Work in detail and agree on its scope before the DB finalizes the Subcontracting Plan.

**4.7.2.2** At least 14 days before issuing Bidding Documents for the scope of Work the DB or a DB Affiliated Entity intends to Bid on, the DB shall, in writing, seek the Contracting Authority’s permission for the DB or DB Affiliated Entity to Bid on that particular Work.

**4.7.3** If the Contracting Authority permits the DB or DB Affiliated Entity to submit a Bid for a particular scope of Work:

**4.7.3.1** The DB or DB Affiliated Entity (as applicable) shall meet in all respects the Bidder prequalification criteria approved by the Contracting Authority under **Section 4.3**.

**4.7.3.2** The Bidding Documents shall specifically state that the DB or a DB Affiliated Entity may submit a Bid for that Work.

**4.7.3.3** The DB shall ensure strict separation of the personnel of the DB or DB Affiliated Entity involved with Bidding on the Work from the personnel of the DB or DB Affiliated Entity otherwise involved in the Project. That separation includes, without limitation, prohibiting any communication (other than communication that is permitted by all Bidders) between those two groups before the Contracting Authority opens the associated Bids.

**4.7.3.4** The DB or DB Affiliated Entity (as applicable) will be subject to all requirements applicable to the other Bidders for that Work.

**4.7.3.5** The DB or DB Affiliated Entity (as applicable) shall submit its sealed Bid to the Contracting Authority no less than 4 hours before the deadline for submission of Bids to the DB for that scope of Work.

**4.7.4** If the DB or a DB Affiliated Entity submits a Bid as described under **Section 4.7.3** and less than two other Bidders submit Bids for the same Work, the Contracting Authority may require that Work to be rebid.

**4.7.5** If the Contracting Authority awards to the DB or DB Affiliated Entity the right to self-perform a particular scope of Work by operation of **Sections 4.7.2** and **4.7.3**, the DB may not use DB Contingency for that Work. The foregoing prohibition applies specifically but not exclusively to using DB Contingency to make up for the DB’s underestimation of that scope of Work in the DB’s detailed estimate of the Cost of the Work described under **Section 5.7.6.5**.

**4.7.6** If the Contracting Authority awards to a DB Affiliated Entity the right to self-perform a particular scope of Work by operation of **Sections 4.7.2** and **4.7.3**, the DB Affiliated Entity will be a Subcontractor under the Contract and the DB’s Subcontract with the DB Affiliated Entity shall be on the **State of Ohio Subcontract Form** prescribed in OAC 153:1-03-02.

#### 4.8 Design-Assist Firms

**4.8.1 Authorization.** After receipt of a written request from the DB, the Contracting Authority may authorize the DB to engage a Design-Assist Firm to perform a scope of design-assist services and associated Work agreed upon by the Contracting Authority and DB.

**4.8.1.1** The DB may request authorization to engage a Design-Assist Firm at any point in the Project that is appropriate or necessary to facilitate the Project's design and construction.

.1 The DB may not provide design-assist services directly or through a DB Affiliated Entity.

**4.8.1.2** The DB shall include in its request **(1)** a detailed description of the scope of the design-assist services and associated Work, which the DB proposes to be performed by a Design-Assist Firm; **(2)** the date that the DB will be required to establish an estimated price for the scope of Work to be performed by the selected Design-Assist Firm; **(3)** the target date that the selected Design-Assist Firm will be required to propose a price to perform the associated Work.

**4.8.1.3** If the Contracting Authority authorizes the DB to engage a Design-Assist Firm, the DB shall **(1)** follow the procedures described in this **Section 4.8** and **(2)** identify in the Project Schedule the dates described in **Section 4.8.1.2**.

**4.8.1.4** If the DB fails to comply with this **Section 4.8**, the Contracting Authority may revoke the DB's authorization to engage a Design-Assist Firm in addition to other remedies available to the Contracting Authority and Owner under the Contract and Applicable Law.

**4.8.1.5** Notwithstanding any provision of this **Section 4.8** to the contrary, at any time before entering into the authorized design-assist contract, the DB may abandon the effort to engage a Design-Assist Firm to perform the scope of design-assist services and associated Work agreed upon by the Contracting Authority and DB.

**4.8.2 Design-Assist Firm Selection.** The DB shall award authorized design-assist contracts on the basis of the DB's evaluation of a submission to the DB from each potential Design-Assist Firm that establishes the qualifications of the potential Design-Assist Firm to provide the associated design-assist services and Work.

**4.8.3 Design-Assist Contract Requirements.** All design-assist contracts shall:

**4.8.3.1** include the **State of Ohio Subcontract Form** prescribed by OAC Section 153:1-03-02;

**4.8.3.2** provide that the Design-Assist Firm does not assume any professional design liability by virtue of performing the design-assist services; and

**4.8.3.3** provide that **(1)** the DB may terminate the design-assist contract without cause if the DB and Design-Assist Firm fail to reach agreement on the compensation to be paid by the DB to the Design-Assist Firm on account of the Design-Assist Firm's performance of the Work associated with the design-assist contract and **(2)** in the event of that termination, **(a)** the DB shall be obligated to pay the Design-Assist Firm for design-assist services the Design-Assist Firm performed before the date of termination but **(b)** the DB shall not be obligated to pay any compensation to the Design-Assist Firm for design-assist services or the associated Work that the Design-Assist Firm did not perform on account of the termination.

**4.8.4 Additional Design-Assist Requirements.** Unless the Contracting Authority agrees otherwise in writing the DB shall not be entitled to any adjustment of the Contract Sum or Contract Times on account of the DB's effort to engage or engagement of a Design-Assist Firm.

**4.8.4.1** In order to facilitate compensation of the Design-Assist Firm and establishment of the Contract Sum through the GMP Amendment, every Design-Assist Firm the DB engages shall be considered a Consultant under the Contract during the Preconstruction Stage and a Subcontractor during the Construction Stage.

.1 If the DB and Design-Assist Firm agree that the DB will compensate the Design-Assist Firm for design-assist services the Design-Assist Firm performs during the Preconstruction Stage, **(1)** the DB and Design-Assist Firm shall set forth that agreement in their design-assist contract, **(2)** that compensation shall be paid solely by DB, and **(3)** the DB will not be entitled to an increase in the Contract Sum on account of the DB's engagement of the Design-Assist Firm.

.2 The compensation to be paid by the DB to the Design-Assist Firm on account of the Design-Assist Firm's performance of Work during the Construction Stage shall be included in the Contract Sum.

**4.8.4.2** No less than 10 days before design-assist services are to be performed by a Design-Assist Firm during the Preconstruction Stage, or within a shorter period as mutually agreed by the DB and Contracting Authority, the DB shall submit to the Contracting Authority a **Subcontractor and Material Supplier Declaration** form through which the DB identifies the Design-Assist Firm as a Subcontractor. After receiving the form, the Contracting Authority shall verify that it is complete and deliver it to the Owner. If the Contracting Authority finds the form incomplete, the Contracting Authority shall return it to the DB and identify the incomplete information.

**4.8.4.3** No less than 10 days before Work is to be performed by a Design-Assist Firm during the Construction Stage, or within a shorter period as mutually agreed by the DB and Contracting Authority, the DB shall submit to the Contracting Authority a detailed estimate of the Work to be performed by the Design-Assist Firm and a complete copy of the executed Subcontract between the DB and Design-Assist Firm. After receiving the estimate and Subcontract, the Contracting Authority shall verify that they are complete. If the Contracting Authority finds the estimate and Subcontract incomplete, the Contracting Authority shall return them to the DB and identify the incomplete information.

#### **4.9 Replacement of Subcontractors and Design-Assist Firms**

**4.9.1** The DB shall not replace any Subcontractor after execution of the Subcontract without the prior written approval of the Contracting Authority.

**4.9.2** The DB shall not replace any Design-Assist Firm after execution of the design-assist contract without the prior written approval of the Contracting Authority.

#### **4.10 DB's Responsibility**

**4.10.1** The DB is fully responsible for all acts and omissions of its Subcontractors and is responsible for scheduling and coordinating the Work of its Subcontractors.

**4.10.1.1** The DB is fully responsible for any delay, interference, disruption, or hindrance attributable to its Subcontractors.

**4.10.1.2** The DB shall require that each of its Subcontractors have a competent supervisor at the Site whenever the Subcontractor is performing Work.

**4.10.1.3** The DB shall bind its Subcontractors to the terms of the Contract Documents, so far as applicable to the Work of the Subcontractor, and shall not agree to any provision, which seeks to bind the State to terms inconsistent with or at variance from the Contract Documents.

**4.10.2** The DB will not be relieved of its full responsibility for Subcontractors and their performance of the Work by (1) the participation of the Owner and Contracting Authority in the processes described under this **Article 4** or other related provisions of the Contract Documents or (2) the Contracting Authority's rejection of a Bidder or failure to reject a Bidder under **Section 4.4.5**.

#### **4.11 Contingent Assignment of Subcontracts**

**4.11.1** The DB hereby assigns its agreement with each Subcontractor to the Contracting Authority provided that the assignment is effective only after termination of the Contract by the Contracting Authority and only for those agreements that the Contracting Authority accepts by notifying the DB and applicable Subcontractor in writing. The Contracting Authority may re-assign accepted agreements.

#### **4.12 Prompt Payment**

**4.12.1** The DB shall make payments to Subcontractors in accordance with Applicable Law, including ORC Section 4113.61 that include, without limitation, the requirements described under this **Section 4.12**.

**4.12.2** In order to establish lien rights, Subcontractors shall comply with Applicable Law, including ORC Sections 1311.26, 1311.261, and 1311.29.

**4.12.3** If the Contracting Authority receives a Claim Affidavit from a Subcontractor, it shall proceed as required by Applicable Law, including ORC Sections 153.63 and 1311.31.

**4.12.4** Laborers, Subcontractors, and Material Suppliers may secure payment rights in accordance with Applicable Law, including ORC Section 153.56.

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**ARTICLE 5 - PRECONSTRUCTION SERVICES**
**5.1 General Requirements****5.1.1 Commencement.**

**5.1.1.1** The DB's Preconstruction Services will begin on the date set forth in a notice that the Contracting Authority will issue to the DB ("Notice to Commence Services").

**5.1.2 Scope of Preconstruction Services.**

**5.1.2.1** The DB shall perform the Preconstruction Services, which consist of the activities and stages set forth in **Sections 5.2** through **5.7**, inclusive. The DB shall provide its services according to a Staffing Plan approved by the Contracting Authority.

**5.1.3 Consultation.**

**5.1.3.1** The DB and AOR shall jointly schedule and attend regular meetings with the Contracting Authority and Owner. The DB shall consult with the Contracting Authority and Owner regarding Site use and improvements and the selection of materials, building systems, and equipment. The DB shall provide recommendations to the Contracting Authority and Owner on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost, including estimates of alternative designs or materials, budgets and possible economies.

**5.1.3.2** At all appropriate times throughout the performance of the Work, the DB shall contact, meet, consult, and otherwise coordinate with the Contracting Authority, Owner, governmental authorities with jurisdiction over the Project, and others for the purpose of facilitating the Project's design and construction.

**5.1.4 Project Schedule.**

**5.1.4.1** The DB shall provide and maintain a Project Schedule with a logical sequence of events; reasonable periods of time for the Contracting Authority, Owner, and Criteria A/E to review the DB's deliverables and for the DB to revise and resubmit those deliverables and for approvals of governmental authorities having jurisdiction over the Project; and sufficient detail to properly anticipate and monitor progress on the Project.

**5.1.5 Long-Lead-Time Items.**

**5.1.5.1** The DB shall recommend to the Contracting Authority and Owner a schedule for procurement of long-lead-time items that will constitute part of the Work as required to meet the Project Schedule.

**5.2 Organizational Meeting**

**5.2.1** Unless the Contracting Authority agrees otherwise in writing, the DB's Preconstruction Services will begin with an organizational meeting between the Contracting Authority, Owner, Criteria A/E, DB, and AOR. All of the DB and AOR's key personnel involved in the Project shall attend the organizational meeting.

**5.2.2** During the organizational meeting, the attendees will:

**5.2.2.1** review the responsibilities of each of the Contracting Authority and Owner's key personnel involved in the Project;

**5.2.2.2** review the scope of the Criteria A/E's services and the responsibilities of each of the Criteria A/E's key personnel involved in the Project;

**5.2.2.3** review the scope of the DB's services and the responsibilities of each of the DB's key personnel involved in the Project;

**5.2.2.4** review the scope of the AOR's services and the responsibilities of each of the AOR's key personnel involved in the Project;

**5.2.2.5** review and establish lines of communication between the Contracting Authority, Owner, Criteria A/E, DB, and AOR;

**5.2.2.6** review then-available programming and other documents which reflect the current status of the Project's design;

**5.2.2.7** review the various periods of time established in **Article 4** and **Article 5** to determine whether any adjustments are needed in view of the Project's scope, schedule, and budget requirements while providing reasonable periods for the Contracting Authority, Owner, and Criteria A/E if applicable, to review the DB's deliverables and for the DB to revise and resubmit those deliverables;

**.1** If the parties agree to adjust the periods as described under **Section 5.2.2.7**, they will promptly enter into an

associated Modification.

**5.2.2.8** review and reach agreement on the number and timing of GMP Amendments and GMP Proposal and Amendment processes for the Project in view of the Project's scope, schedule, and budget requirements; and

- .1 Unless the parties agree otherwise, there will be one GMP Amendment and one GMP Proposal and Amendment process, which will commence on the date that marks expiration of 50 percent of the time allotted in the Project Schedule for the Construction Documents Stage.
- .2 If the parties agree to adjust the number and timing of the GMP Amendments and GMP Proposal and Amendment processes to other than as described under **Section 5.2.2.8.1**, they will promptly enter into an associated Modification. Through that Modification, the parties shall (1) memorialize their agreement regarding the number and timing of the GMP Amendments and GMP Proposal and Amendment processes and (2) identify the anticipated scope of Work subject to each GMP Amendment. Through that Modification, the parties may also agree to (1) adjust the documentation requirements under **Section 5.7.6** as it applies to each GMP Amendment and (2) adjust the periods under **Section 5.7** as it applies to the GMP Proposal and Amendment process for each GMP Amendment.

**5.2.2.9** review and reach agreement on timing and sequencing requirements for the DB's deliverables and related review and revision periods.

**5.2.3** If the DB has not submitted a proposed Project Schedule to the Contracting Authority and Owner before the organizational meeting or if the organizational meeting resulted in changes to a previously submitted Project Schedule, within 5 days after the organizational meeting is adjourned the DB shall submit a proposed or revised Project Schedule to the Contracting Authority and Owner.

**5.2.3.1** The Contracting Authority, Owner, and DB will promptly thereafter consult with one another as necessary to reach agreement on the initial Project Schedule, which shall be used as the basis for moving forward with the Project subject to revision as described elsewhere in the Contract.

**5.2.4** Within 5 days after the organizational meeting is adjourned, the DB shall prepare and distribute the meeting's minutes.

### 5.3 Program Verification

**5.3.1** Commencement. Unless the Contracting Authority directs otherwise in writing, the Program Verification Stage will begin upon completion of the activities described under **Section 5.2**.

**5.3.2** In addition to performing those services required to comply with **Sections 5.3.3** and **5.3.4**, during the Program Verification Stage, the DB shall:

**5.3.2.1** advise the Contracting Authority and Owner in writing if at any time it appears that the Project Schedule or Construction Budget may be exceeded and make recommendations for corrective action;

**5.3.2.2** if a GMP Amendment has been entered into, notify the Contracting Authority and Owner in writing of any revision of the Project that would cause a change in the established Contract Sum or Contract Times;

- .1 If the Contracting Authority and the Owner approve of any such revision, the parties shall promptly enter into an associated Modification.

**5.3.2.3** meet with the Contracting Authority and Owner at intervals acceptable to the Contracting Authority and Owner, to review drawings and other documents that depict the current status of the Program Verification Stage of the Project;

**5.3.2.4** review the preliminary building needs, design, schedule, budget, and other information furnished by the Contracting Authority or Owner and arrive at a mutual understanding of the Project's requirements with the Contracting Authority and Owner;

**5.3.2.5** investigate existing conditions and verify of the accuracy of Owner-provided information about existing conditions, as appropriate;

**5.3.2.6** evaluate the Project's impact on adjacent properties and rights-of-way; and

**5.3.2.7** evaluate Site use and improvements, selection of materials, building systems and equipment, constructability, logistics, availability and suitability of labor and materials, time requirements, costs of alternative designs or materials, and possible economies.

#### **5.3.3** DB's Program Verification Submission.

**5.3.3.1** Based upon a mutual understanding of the Project's preliminary requirements, the DB and AOR shall jointly prepare the Program Documents.

- .1 The DB shall submit the provisional Program Documents to the Contracting Authority, Owner, and Criteria

A/E on or before the date identified in the Project Schedule for that submission.

**5.3.3.2** The provisional Program Documents shall be in the form of a written report, which may include graphics, but shall include:

- .1 an executive summary of the Program Documents;
- .2 a narrative description of the Project and the design goals;
- .3 a description of space requirements, including a listing of desired spaces and identification of each space's basic criteria such as dimensions, proportions, ceiling heights, and service, equipment, storage, utility, access, flexibility, configuration, security, adjacency, aesthetic, and other requirements;
- .4 a description of planning and design criteria such as workstation, office/room standards; clustering and layout criteria; circulation criteria; applicable space-planning modules; dimensional criteria; building systems interface criteria; envelope criteria; accessibility requirements; and a description of performance criteria applicable to building components such as envelope, structure, interior construction, and mechanical, electrical, and plumbing systems;
- .5 a preliminary evaluation of the Program, Project Schedule, and Construction Budget requirements, each in terms of the other including a description of the distribution of the Construction Budget between major Project components, contingencies, and other categories the Contracting Authority may designate;
- .6 preliminary recommendations regarding selection of materials, building systems, and equipment;
- .7 a review of feasible alternative approaches to design and construction of the Project, if any, including the estimated budget and schedule impacts of those alternative approaches;
- .8 an identification of any unresolved issues related to compliance with Applicable Law;
- .9 a written description of all modifications of the Owner-provided program information;
- .10 a preliminary Construction Progress Schedule ("Program Schedule") for the Project in accordance with the requirements described under **Section 6.5** to the extent appropriate during the Program Verification Stage;
- .11 an updated Staffing Plan;
- .12 at the DB's option but without additional compensation unless otherwise agreed in writing by the Owner and Contracting Authority, study models, perspective sketches, electronic modeling, or combinations of those media; and

**5.3.3.3** If not all of the Work is subject to an executed GMP Amendment at the time the DB submits its provisional Program Documents, the DB shall also include a preliminary estimate of Construction Cost ("Program Estimate") using area, volume or similar conceptual estimating techniques.

- .1 For any Work that is subject to an executed GMP Amendment at that time, the DB shall include associated line items for the DB's Fee, Construction Stage Design Services Fee, and DB's Contingency.
- .2 For any Work that is not subject to an executed GMP Amendment at that time, the DB shall include reasonable contingencies for design development/refinement and price escalation, and line items for the estimated DB's Fee, Construction Stage Design Services Fee, and DB's Contingency.
- .3 If the Program Estimate exceeds the Construction Budget, the Contracting Authority may require the DB to immediately develop viable proposals to reconcile the estimate with the Construction Budget. The DB will present those proposals as an addendum to its provisional Program Documents.

#### **5.3.4 Program Documents Review.**

**5.3.4.1** After the Contracting Authority, Owner, and Criteria A/E have had a reasonable period to review the provisional Program Documents, the Contracting Authority, Owner, Criteria A/E, and DB shall meet to discuss the provisional Program Documents and reach agreement on any Contracting Authority-authorized adjustments to the Project Schedule, Construction Budget, or Project Budget and any necessary clarifications of the provisional Program Documents.

**5.3.4.2** Unless the Contracting Authority agrees otherwise in writing, within 5 business days after the review meeting, the DB shall revise its provisional Program Documents to reflect the adjustments and clarifications agreed upon in the review meeting, and resubmit those documents to the Contracting Authority and Owner.

**5.3.4.3** When the Contracting Authority and Owner approve the revised Program Documents and sign the related Design Review Acceptance form, the revised Program Documents shall become the Approved Program of Requirements.

## **5.4 Schematic Design**

**5.4.1 Commencement.** Unless the Contracting Authority agrees otherwise in writing, the Schematic Design Stage will begin upon completion of the activities described in **Section 5.3**.

**5.4.2** In addition to performing those services required to comply with **Sections 5.4.3** and **5.4.4**, during the Schematic Design Stage, the DB shall:

- 5.4.2.1** advise the Contracting Authority and Owner in writing if at any time it appears that the Project Schedule or Construction Budget may be exceeded and make recommendations for corrective action;
- 5.4.2.2** if a GMP Amendment has been entered into, notify the Contracting Authority and Owner in writing of any revision of the Project that would cause a change in the established Contract Sum or Contract Times;
  - .1** If the Contracting Authority and Owner approve of any such revision, the parties shall promptly enter into an associated Modification.
- 5.4.2.3** meet with the Contracting Authority and Owner at intervals acceptable to the Contracting Authority and Owner, to review drawings and other documents that depict the current status of the Schematic Design Stage of the Project;
- 5.4.2.4** identify and analyze requirements of Applicable Law;
- 5.4.2.5** investigate existing conditions and verify the accuracy of Owner-provided information about existing conditions, as appropriate;
- 5.4.2.6** coordinate the location of new grading, drainage, and Site utilities;
- 5.4.2.7** update and re-issue the Project Schedule as necessary to keep the Contracting Authority and Owner apprised of the schedule's current status;
- 5.4.2.8** prepare a preliminary analysis of the types and quantities of labor required for the Project;
- 5.4.2.9** make recommendations to the Contracting Authority and Owner for actions designed to minimize adverse effects of labor shortages;
- 5.4.2.10** review and provide recommendations concerning Site use and improvements, and alternative approaches to selection of materials, building systems, and equipment; and
- 5.4.2.11** provide recommendations on value engineering, constructability, logistics, site use and improvements, availability and suitability of materials, equipment, and labor and systems, long-lead items, safety and security plans, quality control, time requirements for construction, and factors related to Project cost, including costs of alternative designs or materials, preliminary budgets, and possible economies of scale.

**5.4.3** [NOT USED]

**5.4.4** DB's Schematic Design Submission.

- 5.4.4.1** On the basis of the Approved Program of Requirements and of DB-gathered and Contracting Authority-provided information, the DB and AOR shall jointly prepare the Schematic Design Documents.
  - .1** The DB shall submit the provisional Schematic Design Documents to the Contracting Authority, Owner, and Criteria A/E on or before the date identified in the Project Schedule for that submission.
- 5.4.4.2** The provisional Schematic Design Documents shall include:
  - .1** a conceptual site plan and preliminary building plans, sections, and elevations illustrating the Project's scale and the relationship of Project components to one another and the relationship of the Project to surrounding properties;
  - .2** if not noted on the drawings, a written description of preliminary selections of major building systems and construction materials;
  - .3** a written description of all modifications of the Approved Program of Requirements;
  - .4** a preliminary Construction Progress Schedule ("Schematic Design Schedule") for the Project, to the extent appropriate during schematic design, that shall identify preliminary workforce requirements by critical trade;
  - .5** cost evaluations of alternative materials and systems;
  - .6** an identification of any unresolved issues related to compliance with Applicable Law;
  - .7** if agreed in writing by the Contracting Authority, the DB will develop study models, perspective sketches, electronic modeling, or combinations of those media;
  - .8** a schedule analysis of alternative phasing and sequencing;
  - .9** a preliminary Site Logistics Plan indicating how the DB intends to use the Site and illustrating things such as areas to be used for lay down of material and equipment; office and storage trailer locations; vehicular access gates with ingress and egress routes; locations of wheel wash and concrete truck wash-out activities; and offloading and hoisting locations;
  - .10** an updated Staffing Plan.

**5.4.5 Schematic Design Documents Review.**

**5.4.5.1** After the Contracting Authority, Owner, and Criteria A/E have had a reasonable period to review the provisional Schematic Design Documents, the Contracting Authority, Owner, Criteria A/E, and DB shall meet to discuss the provisional Schematic Design Documents and reach agreement on any Contracting Authority-authorized adjustments to the Approved Program of Requirements, Project Schedule, or Construction Budget and any necessary clarifications of the provisional Schematic Design Documents.

**5.4.5.2** Unless the Contracting Authority agrees otherwise in writing, within 5 business days after the review meeting, the DB shall revise its provisional Schematic Design Documents to reflect the adjustments and clarifications agreed upon in the review meeting, and resubmit those documents to the Owner and Contracting Authority.

**5.4.5.3** When the Contracting Authority and Owner approve the revised Schematic Design Documents and sign the related Design Review Acceptance form, the revised Schematic Design Documents shall become the final Schematic Design Documents.

**5.5 Design Development**

**5.5.1 Commencement.** Unless the Contracting Authority agrees otherwise in writing, the Design Development Stage will begin upon completion of the activities described in **Section 5.4**.

**5.5.2** In addition to performing those services required to comply with **Section 5.5.3** and **5.5.4**, during the Design Development Stage, the DB shall:

**5.5.2.1** advise the Contracting Authority and Owner in writing if at any time it appears that the Project Schedule or Construction Budget may be exceeded and make recommendations for corrective action;

**5.5.2.2** if a GMP Amendment has been entered into, notify the Contracting Authority and Owner in writing of any revision of the Project that would cause a change in the established Contract Sum or Contract Times;

.1 If the Contracting Authority and Owner approve of any such revision, the parties shall promptly enter into an associated Modification.

**5.5.2.3** meet with the Contracting Authority and Owner at intervals acceptable to the Contracting Authority and Owner, to review drawings and other documents that depict the current status of the Design Development Stage of the Project;

**5.5.2.4** further evaluate and refine the Approved Program of Requirements;

**5.5.2.5** resolve all issues related to compliance with Applicable Law;

**5.5.2.6** coordinate the location of new grading, drainage, and Site utilities;

**5.5.2.7** develop the Construction Progress Schedule in increasing detail taking into account Owner-provided information and the Owner's occupancy requirements;

**5.5.2.8** update and re-issue the Project Schedule as necessary to keep the Contracting Authority and the Owner apprised of the schedule's current status;

**5.5.2.9** analyze the types and quantities of labor required for the Project and review the availability of appropriate categories of labor required for critical portions of the Work;

**5.5.2.10** make recommendations to the Contracting Authority and Owner for actions designed to minimize adverse effects of labor shortages; and

**5.5.2.11** provide recommendations on value engineering, constructability, logistics, site use and improvements, availability and suitability of materials, equipment, labor and systems, long-lead items, safety and security plans, quality control, time requirements for construction, and factors related to the cost of the Project including costs of alternative designs or materials, preliminary budgets, and possible economies of scale.

**5.5.3 DB's Design Development Submission.**

**5.5.3.1** On the basis of the Approved Program of Requirements and of DB-gathered and Contracting Authority-provided information, the DB and AOR shall jointly prepare the Design Development Documents.

.1 The DB shall submit the provisional Design Development Documents to the Contracting Authority, Owner, and Criteria A/E on or before the date identified in the Project Schedule for that submission.

**5.5.3.2** The provisional Design Development Documents shall include:

.1 plans, sections, elevations, typical construction details, and equipment layouts that illustrate and describe the refinement of the Project's design and the size and character of the Project in terms of architectural,



- structural, mechanical, plumbing, and electrical systems, materials, and other elements as may be appropriate;
- .2 specifications sufficient to identify the quality and other characteristics of the proposed or selected materials, equipment, finishes, fixtures, and systems;
  - .3 a written description of all modifications of the Approved Program of Requirements;
  - .4 an updated Project Schedule;
  - .5 a written description of all proposed or previously agreed upon Alternates (if any), which description may be included in the specifications rather than as a separate document;
  - .6 a written description of all proposed or previously agreed upon Allowances (if any);
  - .7 an identification of any unresolved issues related to compliance with Applicable Law;
  - .8 a developed Construction Progress Schedule (“Design Development Schedule”) for the entire Project;
  - .9 a cash-flow forecast for the Project;
  - .10 a Site Logistics Plan indicating how the DB intends to use the Site and illustrating things such as areas to be used for lay down of material and equipment; office and storage trailer locations; vehicular access gates with ingress and egress routes; locations of wheel wash and concrete truck wash-out activities; and offloading and hoisting locations;
  - .11 an updated Staffing Plan.

#### **5.5.4 Design Development Documents Review.**

**5.5.4.1** After the Contracting Authority, Owner, and Criteria A/E have had a reasonable period to review the provisional Design Development Documents, the Contracting Authority, Owner, Criteria A/E, and DB shall meet to discuss the provisional Design Development Documents and reach agreement on any Contracting Authority-authorized adjustments to the Approved Program of Requirements, Project Schedule, or Construction Budget and any necessary clarifications of the provisional Design Development Documents.

**5.5.4.2** Unless the Contracting Authority agrees otherwise in writing, within 5 business days after the review meeting, the DB shall revise its provisional Design Development Documents to reflect the adjustments and clarifications agreed upon in the review meeting, and resubmit those documents to the Owner and Contracting Authority.

**5.5.4.3** When the Contracting Authority and Owner approve the revised Design Development Documents and sign the related Design Review Acceptance form, the revised Design Development Documents shall become the final Design Development Documents.

## **5.6 Construction Documents**

**5.6.1 Commencement.** Unless the Contracting Authority agrees otherwise in writing, the Construction Documents Stage will begin upon completion of the activities described in **Section 5.5**.

**5.6.2** In addition to performing those services required to comply with **Sections 5.6.3** through **5.6.5**, during the Construction Documents Stage, the DB shall:

- 5.6.2.1** advise the Contracting Authority and Owner in writing if at any time it appears that the Project Schedule or Construction Budget may be exceeded and make recommendations for corrective action;
- 5.6.2.2** if a GMP Amendment has been entered into, notify the Contracting Authority and Owner in writing of any revision of the Project that would cause a change in the established Contract Sum or Contract Times;
  - .1 If the Contracting Authority and Owner approve of any such revision, the parties shall promptly enter into an associated Modification.
- 5.6.2.3** meet with the Contracting Authority and Owner at intervals acceptable to the Contracting Authority and Owner, to review Drawings and other documents that depict the current status of the Construction Documents Stage of the Project;
- 5.6.2.4** update and re-issue the Project Schedule and Construction Progress Schedule as necessary to keep the Contracting Authority and Owner apprised of the schedules’ current status;
- 5.6.2.5** develop, prepare, and compile all forms and information needed to properly bid and complete the Project including without limitation the “front-end” of the Project Manual;
- 5.6.2.6** prepare Division 01 of the Specifications (the DB shall not amend the General Conditions except by Supplementary Conditions approved as provided under **Section 12.4.1**);
- 5.6.2.7** ensure that the scopes of Work of the various Subcontractors is coordinated, all requirements for the Project have been assigned to the appropriate subcontract, the likelihood of jurisdictional disputes between trades has been

minimized, and proper coordination has been provided for Phased construction (if any);

**5.6.2.8** refine the analysis of the types and quantities of labor required for the Project and review the availability of appropriate categories of labor required for critical portions of the Work;

**5.6.2.9** make recommendations to the Contracting Authority and Owner, for actions designed to minimize adverse effects of labor shortages;

**5.6.2.10** file documents required for the approvals of governmental authorities with jurisdiction over the Project; and

**5.6.2.11** provide recommendations on value engineering, constructability, logistics, site use and improvements, availability and suitability of materials, equipment, labor and systems, long-lead items, safety and security plans, quality control, time requirements for construction, and factors related to the cost of the Project including costs of alternative designs or materials, preliminary budgets, and possible economies of scale.

**5.6.3** During the DB's completion of the Construction Documents:

**5.6.3.1** The DB shall verify that the Construction Documents include requirements and assignment of responsibilities for safety precautions and programs and for temporary facilities for common use of the DB and Subcontractors.

**5.6.3.2** The DB shall prepare the Construction Documents for each Bid package to minimize areas of conflict, gaps, and overlaps in the Work to be performed by various Subcontractors.

**5.6.3.3** The DB shall prepare the Drawings and Specifications to encourage competition except where otherwise required to comply with the Approved Program of Requirements.

**5.6.3.4** The DB shall identify areas that the DB recognizes as having incomplete documentation and uncoordinated multi-discipline Work.

**5.6.3.5** With the prior written consent of the Owner, which may have been given in a GMP Amendment, the DB shall develop and include Alternates in the Construction Documents.

**5.6.4** DB's Construction Documents Submission.

**5.6.4.1** On the basis of the Approved Program of Requirements and of DB-gathered and Contracting Authority-provided information, the DB shall prepare the provisional Construction Documents.

- .1 The DB shall submit the provisional Construction Documents to the Contracting Authority and Owner on or before the date identified in the Project Schedule for that submission.

**5.6.4.2** The provisional Construction Documents shall include:

- .1 as appropriate for a design-build project delivery system, Drawings setting forth in detail the requirements for the construction of the Project;
- .2 as appropriate for a design-build project delivery system, Specifications that establish in detail the quality levels of all materials and systems required for the Project and include all stipulations pertaining to the furnishing and installation of the Work as required for completion of the Project;
- .3 an updated Staffing Plan;
- .4 an updated Project Schedule;
- .5 a fully developed Construction Progress Schedule;
- .6 a revised cash-flow forecast for the Project; and
- .7 a fully developed Site Logistics Plan.

**5.6.5** Construction Documents Review.

**5.6.5.1** After the Contracting Authority, Owner, and Criteria A/E have had a reasonable period to review the provisional Construction Documents, the Contracting Authority, Owner, and DB shall meet to discuss the provisional Construction Documents and reach agreement on any Contracting Authority-authorized adjustments to

the Approved Program of Requirements, Project Schedule, or Construction Budget and any necessary clarifications of the provisional Construction Documents.

**5.6.5.2** Unless the Contracting Authority agrees otherwise in writing, within 5 business days after the review meeting, the DB shall revise its provisional Construction Documents to reflect the adjustments and clarifications agreed upon in the review meeting, and resubmit those documents to the Owner and Contracting Authority.

**5.6.5.3** When the Contracting Authority and Owner approve the revised Construction Documents and sign the related Design Review Acceptance form, the revised Construction Documents shall become the final Construction Documents, subject to **(1)** execution of an appropriate Modification to incorporate adjustments into the Contract and **(2)** further revisions as provided in the General Conditions.

## 5.7 GMP Proposal and Amendment

**5.7.1** Commencement. Unless the Contracting Authority agrees otherwise in writing as provided under **Section 5.2.2.7** or **Section 5.7.1.1**, the GMP Proposal and Amendment process will begin the date that marks expiration of 50 percent of the time allotted in the Project Schedule for the Construction Documents Stage.

**5.7.1.1** This **Section 5.7** and related provisions of this Contract are based upon the assumption that there will be only one GMP Amendment for the Project. The parties recognize, however, that during the Preconstruction Stages, they may decide to use more than one GMP Amendment for the Project in order to accommodate Phased construction. In that case, the parties will execute a GMP Amendment for each Phase with each amendment after the first one supplementing the previous amendment(s).

**5.7.2** The purpose of the GMP Amendment is to establish the commercial terms of the Contract rather than to modify its substantive terms.

**5.7.3** At the beginning of the GMP Proposal and Amendment process, the Contracting Authority, Owner, Criteria A/E, and DB shall agree upon and identify in writing which documents will be the starting point for the Basis Documents. Those Basis Documents may be revised and developed further throughout the GMP Proposal and Amendment process.

**5.7.4** If the GMP Proposal and Amendment process takes place before the completion of the Construction Documents Stage for the associated Work:

**5.7.4.1** within 14 days after commencement of the GMP Proposal and Amendment process, the AOR shall prepare and submit the Design Intent Statement to the Contracting Authority and Owner, through the DB;

**5.7.4.2** within 14 days after receiving the Design Intent Statement, the DB shall prepare and submit the GMP Proposal to the Contracting Authority and Owner; and

**5.7.4.3** the DB shall provide in the GMP Proposal for the further development of the Construction Documents consistent with and reasonably inferable from the Design Intent Statement and then-current design documents, Construction Budget, and Project Schedule.

**5.7.5** If the GMP Proposal and Amendment process takes place after the completion of the Construction Documents Stage for the associated Work, within 14 days after the start of the GMP Proposal and Amendment process, the DB shall prepare and submit the GMP Proposal to the Contracting Authority and Owner.

**5.7.6** Unless the Contracting Authority agrees otherwise in writing as described under **Section 5.2.2.7**, the DB shall include the following documents and information in the GMP Proposal:

**5.7.6.1** a completed and signed proposed GMP Amendment, through which the DB proposes the Contract Sum and the Contract Times (the required form of the GMP Amendment is attached to the Agreement);

**5.7.6.2** a complete list of the Basis Documents which, at a minimum, identifies each of those documents by number, title, and date;

**5.7.6.3** a detailed constructability review of the Construction Documents;

**5.7.6.4** a complete list of the assumptions and clarifications made by the DB in the preparation of the GMP Proposal;

**5.7.6.5** a detailed estimate of the Construction Cost for the Work;

**5.7.6.6** the current Project Schedule, which shall be fully developed for the Work that is the subject of the GMP Proposal;

**5.7.6.7** the current Construction Progress Schedule, which shall be fully developed for the Work that is the subject of the GMP Proposal;

**5.7.6.8** an updated Staffing Plan including an outline of the qualifications and experience of the DB's proposed project manager and proposed superintendent, including references, unless the DB previously submitted that information and the DB's project manager and superintendent were approved;

**5.7.6.9** a detailed scope-of-Work description for each anticipated Subcontract for the Work that is the subject of the GMP Proposal;

**5.7.6.10** a detailed scope-of-Work description for all Work that is the subject of the GMP Proposal and that the DB proposes to perform itself or through a DB Affiliated Entity if the requirements of **Section 4.7** are met (otherwise this scope of Work will be performed by a Subcontractor);

**5.7.6.11** a complete list of all Alternates (if any) including a detailed description with related measurement and payment terms.

**5.7.7** By submitting a GMP Proposal or a revised GMP Proposal (as applicable), the DB represents and affirms as to the scope of Work which is the subject of the GMP Proposal that:

**5.7.7.1** the GMP Documents are sufficient to provide for completion of the Work, and include all Work, whether or not shown or described, which may be reasonably inferred to be required or useful for the completion of the Work in accordance with Applicable Law and customary standards of the construction industry; and

**5.7.7.2** the DB is familiar with Applicable Law and reasonably observable local and Site conditions that may in any manner affect cost, progress, or performance of the Work.

**5.7.8** After the Contracting Authority, Owner, and Criteria A/E have had a reasonable period to review the GMP Proposal, the Contracting Authority, Owner, Criteria A/E, and DB shall meet to discuss the GMP Proposal and agree on necessary clarifications or adjustments of the GMP Proposal. Unless the Contracting Authority agrees otherwise in writing, within 5 business days after the review meeting, the DB shall revise the GMP Proposal to reflect the clarifications and adjustments, and resubmit it to the Contracting Authority, Owner, and Criteria A/E. After the Contracting Authority, Owner, and Criteria A/E have had a reasonable period to review the revised GMP Proposal, the Contracting Authority, Owner, Criteria A/E, and DB shall meet to discuss the revised GMP Proposal and agree on necessary clarifications or adjustments of the GMP Proposal.

**5.7.9** If the DB's proposed Contract Sum exceeds the DB's most-recent, pre-GMP Proposal estimate of the Construction Cost of the scope of Work which is the subject of the GMP Proposal (as that estimate was adjusted on account of DB proposals intended to reconcile that estimate with the Construction Budget that the Contracting Authority has accepted), the Contracting Authority may in its complete discretion **(1)** require the DB to re-perform previously completed Preconstruction Services as necessary to reconcile the Contract Sum with that estimate; or **(2)** terminate the Agreement.

**5.7.9.1** If the Contracting Authority chooses to proceed under **Section 5.7.9** clause **(1)**, the Contracting Authority may require the DB to re-perform previously completed Preconstruction Services as necessary to reconcile the proposed Contract Sum with the DB's most-recent, pre-GMP Proposal estimate of the Construction Cost of the scope of Work which is the subject of the GMP Proposal (as that estimate was adjusted on account of DB proposals intended to reconcile that estimate with the Construction Budget that the Contracting Authority has accepted).

**5.7.10** The period for the Contracting Authority's acceptance of the proposed GMP Amendment will be no less than the later of the date 30 days after the date of the initial review meeting under **Section 5.7.8** or the date 10 days after the date of any subsequent review meeting under **Section 5.7.8**. After expiration of the acceptance period, the GMP Proposal will not be effective without written acceptance by the DB.

**5.7.11** Subject to **Section 5.7.11.1**, the GMP Amendment shall become binding and effective upon execution by the Contracting Authority and DB. Thereafter, the GMP Amendment, and the Work will be subject to Modifications as provided in the Contract Documents.

**5.7.12** If the GMP Amendment is entered into before the completion of the Construction Documents Stage for the associated Work, as the Drawings and Specifications are developed, the AOR shall inform the DB, Owner, and Contracting Authority of the need for any changes in Project requirements or in construction materials, systems, or equipment and of the need for any adjustments in the detailed estimate of Construction Cost and the Project Schedule.

**5.7.12.1** Upon prior written approval of the Owner and Contracting Authority of any such changes or adjustments in Project requirements or in construction materials, systems, or equipment, the DB shall revise the detailed estimate of Construction Cost and Project Schedule, as applicable, incorporating such changes or adjustments.

**5.7.13** The DB shall revise the GMP Documents to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the GMP Amendment. The DB will deliver the revised GMP Documents to the Contracting Authority and Owner for review. When the Contracting Authority, Owner, and DB approve of the revised GMP Documents, the revised GMP Documents will become part of the GMP Amendment.

**5.7.14** Before the Contracting Authority accepts the GMP Proposal and issues a Notice to Proceed, the DB shall not incur any cost under the Contract Sum without the Contracting Authority's prior written authorization.

## **5.8 Building and Trade Permits and Licenses**

### **5.8.1 Plan Approval.**

**5.8.1.1** The DB shall secure and pay for the required structural, plumbing, HVAC, and electrical plan approvals.

**5.8.1.2** The DB shall schedule and attend all intermediate and final inspections required for any permit applicable to the Work. The DB shall schedule the State Fire Marshal or local fire authority for the life safety inspection for occupancy permits. The DB shall give the Contracting Authority and Owner reasonable notice of the dates and times arranged for inspections.

**.1** The DB shall pay for any reinspections required as a result of the DB's failure to receive approval of its Work.

### **5.8.2 Trade Permits and Licenses.**

**5.8.2.1** The DB shall obtain, maintain, and pay for any permit, inspection, or license applicable to the DB's particular trade.

### **5.8.3 Local Permits.**

**5.8.3.1** The DB shall secure and pay the fees for any permits, inspections, licenses, capacity charges, or tap fees required by local authorities having jurisdiction over the Project. The DB shall give the Contracting Authority and Owner reasonable notice of the date arranged for inspections.

### **5.8.4 National Pollutant Discharge Elimination System ("NPDES") Storm Water General Permit.**

**5.8.4.1** The DB shall secure the NPDES general permit by submitting a Notice of Intent ("NOI") application form to the Ohio Environmental Protection Agency at least 45 days prior to the start of construction.

**5.8.4.2** The DB shall prepare and certify a storm water pollution prevention plan to provide sedimentation and erosion controls at the Project.

**5.8.4.3** The DB shall prepare and process the required Notice of Termination ("NOT") prior to Contract Completion.

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**ARTICLE 6 - CONSTRUCTION AND CLOSEOUT****6.1 Commencement of Work on the Site**

**6.1.1** Unless the Contracting Authority agrees otherwise in writing, the Construction Stage will commence with the Contracting Authority's issuance of the Notice to Proceed and will terminate upon Contract Completion.

**6.1.2** Until the Contract Sum and Contract Times are established through a GMP Amendment for a particular scope of Work, the Contracting Authority shall not issue a Notice to Proceed for that scope of Work and the DB shall not commence that scope of Work. This **Section 6.1.2** is not intended to preclude the use of multiple GMP Amendments on the Project or to restrict the appropriate use of Change Directives.

**6.2 DB's General Responsibilities**

**6.2.1** Consistent with the DB Staffing Plan approved by the Contracting Authority, the DB shall maintain a competent, full-time staff at the Site at all times that Work is in preparation or progress on the Project and shall establish and implement on-Site organization and authority so that the Work is accomplished in conformance with the Project Schedule.

**6.2.2** The DB shall perform the Work so as not to interfere with, disturb, hinder, or delay the services of Separate Consultants or the work of Separate Contractors. The DB shall cooperate and coordinate fully with all Separate Consultants and Separate Contractors and shall freely share all of the DB's Project-related information with them to facilitate the timely and proper performance of the Work and of the services and work of the Separate Consultants and Separate Contractors.

**6.2.3** The DB shall afford every Separate Consultant and Separate Contractor proper and safe access to the Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of their services and work.

**6.2.4** If the DB damages the property or work of any Separate Consultant or Separate Contractor, or by failure to perform the Work with due diligence, delays, interferes with, hinders, or disrupts the services of any Separate Consultant or the work of any Separate Contractor who suffers additional expense and damage as a result, the DB is responsible for that damage, injury, or expense.

**6.2.5** The intent of **Sections 6.2.2** through **6.2.4** is to benefit the Separate Consultants and Separate Contractors, and to demonstrate that the Separate Consultants and Separate Contractors are intended third-party beneficiaries of the DB's obligations under the Contract.

**6.2.6** If the proper execution or results of any part of the Work depends upon work performed or services provided by the Owner, a Separate Consultant, or Separate Contractor, the DB shall inspect that other work and appropriate instruments of service, and promptly report to the Contracting Authority in writing any defects or deficiencies in that other work or services that render it unavailable or unsuitable for the proper execution and results of the Work. The DB's failure so to report will constitute an acceptance of the other work and services as fit and proper for integration with the DB's Work except for defects and deficiencies in the other work or services that were not reasonably discoverable at the time of the DB's inspection.

**6.2.7** The DB shall not delay the Work on account of any claim, dispute, or action between the DB and a Separate Consultant or Separate Contractor.

**6.2.8** The DB shall develop and keep current the Construction Progress Schedule in accordance with **Section 6.5**, and prepare and keep current a schedule of submittals that is coordinated with the Construction Progress Schedule, for the Contracting Authority's acceptance.

**6.2.9** The DB shall monitor the progress of the Work for conformance with the Construction Progress Schedule and shall initiate revisions as required by **Section 6.5.14**.

**6.2.10** The DB shall establish the Project's regular working hours, subject to the Owner's approval.

**6.2.11** The DB shall coordinate the Work with the activities and responsibilities of the Owner and Contracting Authority to complete the Project in accordance with the Contract Documents.

**6.2.12** In the event of default of the DB, the DB shall cooperate with the Owner, Contracting Authority, and DB's Surety to achieve the Substantial Completion date and Contract Completion.

**6.2.13** The DB shall remove all snow and ice as may be required for reasonably safe access to the Site including, but not limited to, building entries, driveways, parking lots, and sidewalks.

**6.2.14** The DB shall keep a daily log containing a record of weather, number of workers on Site for the DB, identification of equipment, Work accomplished, problems encountered, and other similar relevant data.

### 6.3 Construction Procedures

**6.3.1** The DB is solely responsible for and has control over all construction means, methods, manners, techniques, sequences, and procedures, for safety precautions and programs in connection with the Work, and for coordinating all portions of the Work.

**6.3.2** The DB shall lay out and coordinate all lines, levels, elevations, and measurements for all of the Work, coordinate and verify existing conditions, and notify the Contracting Authority of discrepancies and conflicts before proceeding with installation or excavation.

**6.3.3** The DB shall perform all cutting, fitting, or patching required for the Work and shall not endanger the Project by cutting, excavating, or otherwise altering the Project, or any part of it.

**6.3.3.1** If the DB requires sleeves for the Work, the DB shall furnish and install the sleeves. The DB is responsible for the exact location and size of all holes and openings required to be formed or built for the Work.

**6.3.3.2** The DB's patching shall match and blend with the existing or adjacent surface(s).

**6.3.4** The DB shall comply with ORC Sections 3781.25 through 3781.32. In addition, before starting excavation or trenching, the DB shall determine the location of any underground utilities and notify any public authority or utility having jurisdiction over the Project and secure any required approval.

**6.3.4.1** The DB shall give notice at least 2 business days in advance of excavation to the owners of underground utilities registered with the Ohio Underground Utility Protection Services ("OUPS" at <http://oups.org>, phone 811 or 800-362-2764), and the owners of underground utilities shown on the Drawings and Specifications who are not registered members of OUPS. The owner of an underground utility is required within 48-hours' notice to stake, mark, or otherwise designate the location of its utilities in the construction area together with its approximate depth. In the event that any underground utility owner fails to timely perform, the DB shall notify the Contracting Authority and contact the owner of the underground utility.

**6.3.5** The DB shall install all Work in accordance with the Contract Documents and any installation recommendations of the manufacturer, including required temperature and humidity limits for installation of the various materials.

**6.3.6** The DB shall comply with all requirements and conditions of the NPDES general permit, including, but not limited to, implementing and maintaining the sedimentation and erosion control measures specified in the storm water pollution prevention plan prepared by the DB pursuant to **Section 5.8.4**, which are related to the Work, maintaining records of its construction activities, removing materials no longer required, and taking proper action if there is a reportable quantity spill.

### 6.4 Construction Supervision

**6.4.1** Unless waived by the Contracting Authority in writing, the DB shall provide continuous supervision at the Site by a competent superintendent when any Work is being performed and the DB's superintendent shall not be involved with any work other than the Project.

**6.4.2** The DB's project manager and superintendent shall each have the responsibility and authority to act on behalf of the DB. All communications to the DB's project manager or superintendent shall be binding as if given directly to the DB.

**6.4.3** For all Subcontracts in excess of \$200,000, the DB shall submit an outline of the qualifications and experience of the Subcontractor's proposed project manager and proposed superintendent, including references, to the Contracting Authority no less than 10 days before the Subcontractor is scheduled to begin Work on the Site. For all other Subcontracts, upon receiving a request from the Contracting Authority, the DB shall submit an outline of the qualifications and experience of the Subcontractor's proposed project manager and proposed superintendent, including references, to the Contracting Authority.

**6.4.3.1** The Contracting Authority may reject the Subcontractor's proposed project manager or proposed superintendent. If the Contracting Authority does not notify the DB of the rejection within 30 days after receiving the required information, it shall indicate that the Contracting Authority has no objection, but does not affect the Contracting Authority's rights under **Section 6.11.2** or any other provision relative to that project manager or superintendent.

**6.4.3.2** If the Contracting Authority rejects the Subcontractor's proposed project manager or proposed superintendent, the DB shall cause the Subcontractor to replace the project manager or superintendent (as appropriate) with someone acceptable to the Contracting Authority at no additional cost.

**6.4.4** The DB and its Subcontractors subject to **Section 6.4.3** shall not replace their respective project managers or superintendents without prior written approval of the Contracting Authority.

**6.4.4.1** If the DB or a Subcontractor subject to **Section 6.4.3** proposes to change its project manager or superintendent, the DB shall submit written justification for the change to the Contracting Authority, along with the name and qualifications of the proposed replacement.

**6.4.4.2** The procedure provided in **Section 6.4.3** shall be conducted to evaluate the DB or Subcontractor's (as applicable) proposed replacement project manager or superintendent.

## 6.5 Construction Progress Schedule

**6.5.1** The DB shall prepare and maintain a resource-loaded Construction Progress Schedule using the critical-path method of scheduling that provides the following information:

**6.5.1.1** a graphic presentation of the sequence of the Work for the Project in the media and format required for the Project;

**6.5.1.2** identification of each stage of the Work and any Milestone dates;

**6.5.1.3** identification of activities and durations for review and approval of Shop Drawings and other action submittals, fabrication and review of mock-up Work, product review and procurement, fabrication, shop inspection, and delivery, including, but not limited to, lead time, coordination drawing delivery, Substantial Completion, Punch List, Punch List Correction, Project close-out requirements, occupancy requirements, and Contract Completion;

**6.5.1.4** identification of disruptions and shutdowns due to other operations;

**6.5.1.5** identification of the critical path of the Work;

**6.5.1.6** identification of the crew size and total resource hours for each activity in the schedule; and

**6.5.1.7** the DB's signature and date indicating approval.

**6.5.2** The DB shall develop the Construction Progress Schedule using commercially available, personal computer software that is acceptable to the Contracting Authority and shall submit all baseline and updated schedules to the Contracting Authority in the schedules' native electronic format.

**6.5.3** The Construction Progress Schedule shall not exceed the time limits current under the Contract Documents, shall provide for reasonable, efficient, and economical execution of the Project, and shall relate to the entire Project to the extent required by the Contract Documents.

**6.5.4** The DB shall use the Construction Progress Schedule to plan, organize, and execute the Project, record and report actual performance and progress, and show how it plans to coordinate and complete all remaining Work within applicable Milestones. The Project participants shall use the Construction Progress Schedule as a tool for scheduling and reporting sequenced progress of the Work. The DB shall provide a clear graphics legend and other data including, but not limited to, Milestone dates, constraints, and other items required by the Project, Contracting Authority and Owner. Each submission shall show the Contracting Authority's Project number and Project name, and provide a signature approval and date line for the DB.

**6.5.5** The DB shall provide in each schedule: **(1)** activity identification and description for each activity broken down to a maximum duration that is appropriate for the activity, **(2)** responsibility of the DB, DB's resources, and crew size for each activity, and **(3)** early start, early finish, late start, late finish for each activity. Each schedule shall show predecessor activities and successor activities for each activity, entry free float, total float, and percentage of completion, and identify the appropriate predecessors and successors for all related activities.

**6.5.6** The Construction Progress Schedule shall show all submittal dates, review and approval durations for Shop Drawings, other action submittals, and mock-up Work.

**6.5.7** The DB shall submit the initial and all updates of the Construction Progress Schedule in graphic and tabular form to the Contracting Authority. With each monthly schedule update, the DB shall include a list of all changes to the previously approved baseline schedule or monthly updated schedule.

**6.5.7.1** After receiving the Construction Progress Schedule, the Contracting Authority shall review and may accept it or reject and return it to the DB with recommendations for revisions.



- 6.5.8** The Construction Progress Schedule shall be managed using early start dates and early finish dates. The DB shall exhaust existing float before claiming additional time for a Change Order, or show that it is not possible to use float to cover the time requirements of the Change Order.
- 6.5.9** The DB's failure to timely submit and properly maintain an approved Construction Progress Schedule may result in liquidated damages in accordance with the Contract Documents.
- 6.5.10** For each progress meeting, the DB shall provide a 2- to 6-week look-ahead schedule, as appropriate for the Project.
- 6.5.11** On a weekly basis, the DB shall prepare and submit to the Contracting Authority a written report describing:
- 6.5.11.1** activities begun or finished during the preceding week;
  - 6.5.11.2** activities in progress and expected completion;
  - 6.5.11.3** activities to be started or finished in the upcoming 2 weeks, including but not limited to, the DB's workforce size and total resource hours associated with those activities; and
  - 6.5.11.4** other information requested by the Contracting Authority.
- 6.5.12** The DB shall attach the above information to the minutes of the weekly progress meetings.
- 6.5.13** The DB shall provide monthly Progress Status Reports to the Contracting Authority and Owner, which shall include recommendations for adjusting the Construction Progress Schedule to meet Milestone dates and the Substantial Completion date.
- 6.5.13.1** If it is apparent to the Contracting Authority that the DB may be unable to meet critical path activities, Milestone completion dates, or the Substantial Completion date, the Contracting Authority shall direct the DB to submit within 3 days a recovery plan to avoid or minimize the delay to the Project.
- 6.5.13.2** A recovery plan shall include, but is not limited to, adjustments to one or more of the following:
- .1** workforce;
  - .2** hours per shift;
  - .3** shifts per workday;
  - .4** workdays per week;
  - .5** equipment; and
  - .6** activity logic.
- 6.5.13.3** If the Contracting Authority approves the recovery plan, the DB shall prepare a revised Construction Progress Schedule that shall be signed and approved in accordance with **Section 6.5.7**. If the Contracting Authority does not approve the recovery plan, the DB shall submit within 3 days an alternate recovery plan to the Contracting Authority in writing for review and approval in accordance with **Section 6.5.7**.
- 6.5.14** The DB shall update the Construction Progress Schedule on a monthly basis, or other interval approved by the Contracting Authority, in accordance with **Section 6.5.7**.
- 6.5.14.1** The updated Construction Progress Schedule signed by the DB shall serve as an affirmation that the DB can meet the requirements of the updated Construction Progress Schedule.
- 6.5.14.2** The DB shall submit a tabular copy showing all changes to the previously approved schedule including, but not limited to, logic, float, and actual start date of activities. The original or initially approved Construction Progress Schedule and all subsequent Construction Progress Schedules submitted by the DB, and accepted by the Contracting Authority, shall serve as an affirmation that the DB agrees to and can meet the applicable requirements of the updated Construction Progress Schedule.
- 6.5.15** The DB's failure to timely submit an approved, updated Construction Progress Schedule may result in liquidated damages in accordance with the Contract Documents.

## 6.6 Progress Meetings

- 6.6.1** The DB shall schedule a weekly progress meeting for the Contracting Authority and other Persons involved in the Project. The purpose of the progress meeting is to review progress on the Project during the previous week, discuss anticipated progress during the following weeks, review critical operations, and discuss critical problems.

**6.6.2** The DB shall be represented at every progress meeting by a Person authorized with signature authority to make decisions regarding possible modification of the Contract Documents or Construction Progress Schedule.

**6.6.2.1** The DB shall notify the Contracting Authority and other Persons involved in the Project of the time and place of the progress meeting that shall thereafter be the same day and hour of the week for the duration of the Project, unless the Contracting Authority notifies the DB and other Persons involved in the Project of a different day and hour at least 2 days in advance.

**6.6.2.2** The DB shall have any of its Subcontractors attend the progress meeting as determined advisable by the DB, or as requested by the Contracting Authority.

**6.6.3** The DB shall prepare a written report of each progress meeting and distribute the report to the Contracting Authority and Owner.

**6.6.3.1** If any Person in attendance objects to anything in a report of a progress meeting, the Person shall notify the DB, Contracting Authority, and any other affected Person in writing explaining the objection within 5 days.

**6.6.3.2** The report of each progress meeting shall reflect any objection made to the report of the previous progress meeting and any response.

## **6.7 Additional Tests and Inspections**

**6.7.1** If the Contracting Authority determines that any portion of the Work requires special inspection, testing, or approval not otherwise required under the Contract Documents, the Contracting Authority may order such inspection, testing, or approval.

**6.7.1.1** If the special inspection, testing, or approval reveals Defective Work, the DB shall pay all associated costs and will not be entitled to any related adjustment of the Contract Times. Those costs may include, but are not limited to:

- .1** the cost of the special inspection, testing, or approval;
- .2** the cost of additional special inspections, testing, or approvals to evaluate remedial Work;
- .3** the cost of correcting the Defective Work; and
- .4** all related Owner-incurred fees and charges of contractors, engineers, architects, attorneys, and other professionals.

**6.7.1.2** If the special inspection, testing, or approval reveals that the Work complies with the Contract Documents and the DB believes that it is entitled to an adjustment of the Contract Sum or Contract Times, or both, on account of the special inspection, testing, or approval, the DB may request a Change Order by giving written notice under **Section 7.3.2** within 7 days after the special inspection, testing, or approval.

**6.7.2** If the DB is aware of a need for inspection, testing, or approval, or of a need to have any inspection, testing, or approval completed by a particular time to avoid delay, then the DB shall timely communicate such information to the Contracting Authority.

**6.7.3** The DB shall coordinate with and give the Contracting Authority and Owner reasonable notice of the anticipated dates of all inspections, testing, or approvals.

**6.7.4** Within 5 days after completion of an inspection, testing, or approval, the DB shall provide an original report/certificate of the inspection, testing, or approval to the Contracting Authority with a recommendation for or against acceptance of the results therein.

## **6.8 Review of Contract Documents and Field Conditions**

**6.8.1** Before starting each portion of the Work, the DB shall carefully study and compare the various Contract Documents relative to that portion of the Work, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the Site affecting it.

**6.8.2** If the DB finds any perceived ambiguity, conflict, error, omission, or discrepancy on or between any of the documents provided by the Contracting Authority or Owner, or between any of the those documents and any Applicable Law, the DB, before proceeding with the Work, shall promptly submit a Request for Interpretation (“RFI”) to the Contracting Authority for an interpretation or clarification.

**6.8.2.1** Before submitting any RFI to the Contracting Authority, the DB shall carefully review the relevant documents to ensure that those documents do not answer the RFI.

**6.8.2.2** The Contracting Authority shall promptly respond to an RFI.

**6.8.2.3** Any interpretation or clarification made by any Person other than the Contracting Authority, or in any

manner other than writing, shall not be binding and the DB shall not rely upon it.

**6.8.3** If the DB believes that it is entitled to an adjustment of the Contract Sum or Contract Times, or both, on account of clarifications or instructions issued by the Contracting Authority in response to a RFI, the DB may request a Change Order by giving written notice under **Section 7.3.2** within 7 days of receiving the Contracting Authority's RFI response.

**6.8.4** If the DB does not notify the Contracting Authority per **Section 6.8.3**, the DB will have accepted the RFI response without an adjustment to the Contract Sum or Contract Times.

## 6.9 Protection of the Project

**6.9.1** The DB shall protect the Work from weather and maintain the Work and all materials, apparatus, and fixtures free from injury or damage until Substantial Completion of the Work.

**6.9.1.1** The DB shall at all times cover or protect the Work.

**6.9.1.2** The DB, at its expense, shall remove, and replace with new, any Work damaged as a result of DB's failure to provide coverage or protection.

**6.9.1.3** The DB, at its expense, shall repair or replace any adjacent property, including, but not limited to, roads, walks, shrubbery, plants, trees, or turf, damaged during performance of the Work.

**6.9.2** The DB shall protect the Project and existing or adjacent property from damage at all times and shall erect and maintain necessary barriers, furnish and keep lighted necessary danger signals at night, and take reasonable precautions to prevent injury or damage to individuals or property.

**6.9.3** The DB shall not load, or permit any part of the Project to be loaded, in any manner that endangers the Project, or any portion thereof. The DB shall not subject any part of the Project or existing or adjacent property to stress or pressure that endangers the Project or property.

**6.9.4** The DB shall provide all temporary bracing, shoring, and other structural support required for safety of the Project and proper execution of the Work.

### **6.9.5** Vibration, Noise, and Dust Control.

**6.9.5.1** The DB shall provide controls/barriers for vibrations, noise, and dust control in occupied buildings as required by the construction operations.

**6.9.5.2** The DB will not be permitted to exhaust or release unfiltered air, dust, construction debris, or other undesirable products into the exterior atmosphere or into occupied areas of the building outside the Site. The Project Manager may limit or stop the Work if the DB does not maintain proper air-quality standards.

**6.9.5.3** In certain occupied buildings, tasks might be of such a nature that noise and vibration cannot be tolerated. In such spaces, Work shall be scheduled for other than normal working hours. The DB is cautioned that weekend or overtime work, if required, shall be performed at no additional cost. Permission to work other than standard hours shall be received from the Contracting Authority prior to the occurrence. Weekend and overtime Work shall be reflected in the Construction Progress Schedule.

**6.9.5.4** The DB is responsible for vibration control and control of transmission of noise arising from the Work. Principal considerations which shall be given to noise and vibration control are:

- .1 Noise control in compliance with Occupational Safety and Health Administration ("OSHA") requirements for the health and safety of building occupants; control shall be for all areas of the facility, including equipment rooms, boiler rooms, and fan rooms.
- .2 Vibration control to limit sound produced by construction equipment, and for protection of the equipment existing in a building and the building structure.
- .3 Vibration control to provide for maximum usefulness of the facility by keeping levels of vibration within ranges conducive to study and work or other uses for which the facility is designed.

## 6.10 Materials and Equipment

**6.10.1** The DB shall bring to or store at the Site only the materials and equipment required in the Work. If possible, materials and equipment should be installed in their final positions when brought to the Site.

**6.10.1.1** The DB shall properly store and protect all materials and equipment it provides to the Project.

**6.10.1.2** The DB shall timely remove from the Site any materials or equipment no longer required for the Work.

**6.10.2** The DB shall not allow materials or equipment to damage the Project or adjacent property, nor to endanger any individual at or near the Site.

**6.10.3** If the DB provides an Acceptable Component, the DB shall be solely responsible for the costs of coordination and

modification required.

**6.10.4** If the DB provides approved Substitutions that require changes to the Contract Documents, the DB shall be solely responsible for the additional costs incurred as a result, including, but not limited to, changes to the design.

**6.10.5** The Contracting Authority shall consider Requests for Substitutions after the Contract Sum is initially established only when the DB can conclusively demonstrate to the Contracting Authority the following conditions:

**6.10.5.1** the specified Basis of Design Components, Acceptable Components, or previously-approved Substitutions, through no fault of the DB or a Subcontractor, are not available; or

**6.10.5.2** the specified Basis of Design Components, Acceptable Components, or previously-approved Substitutions will not perform as designed or intended.

**6.10.6** The DB's incorporation of unapproved Substitutions in the Work shall constitute Defective Work.

## 6.11 Labor

**6.11.1** The DB shall maintain a sufficient workforce and enforce good discipline and order among its employees and the employees of its Subcontractors. The DB shall not permit employment of individuals not skilled in tasks assigned to them.

**6.11.2** The DB shall dismiss from the Project any individual employed by the DB or a Subcontractor who the Contracting Authority finds, in its sole discretion, to be incompetent, guilty of misconduct, or detrimental to the Project.

**6.11.3** The DB shall employ all legal efforts to minimize the likelihood or effect of any strike, Work stoppage, or other labor disturbance. Informational pickets shall not justify any Work stoppage.

## 6.12 Safety Precautions

**6.12.1** The DB shall take reasonable precautions to ensure the safety of individuals on the Project.

**6.12.1.1** The DB is responsible for designing and implementing its own safety program, including compliance with OSHA regulations. The DB's safety plans, such as fall protection, hazards, communications, competent person, etc., shall meet or exceed the Owner's safety plan (if any).

**6.12.2** The DB shall pay any fine or cost incurred because of the DB's violation, or alleged violation, of Applicable Law.

**6.12.3** Before starting any Work, the DB shall submit to the Contracting Authority a copy of the DB's site-specific safety plan and safety manuals.

**6.12.4** The DB shall not introduce Hazardous Materials to the Project or burn any fires on the Site.

**6.12.4.1** The DB shall notify the Project Manager 24 hours before the start of non-routine or non-recurring hot-work. Use of sources of fire, flame or sparks and flammable materials shall be kept to an absolute minimum. At the beginning of the Project, the DB shall inform the Project Manager of the DB's intent to use blowtorches, welding apparatus or similar exposed flame and sparking devices. Similar notice shall be given in regard to the use of flammable liquids, adhesives, and cleaners.

**6.12.4.2** The DB shall furnish an appropriate number of fire extinguishers (minimum of 1), which shall be within the immediate areas where work is being done at all times. The extinguisher shall be adequate and suitable for the class of fire likely to be caused by the DB's operations.

**6.12.5** Work Stoppage Due to Hazardous Materials.

**6.12.5.1** If the DB encounters material the DB reasonably believes to be, or contain, a Hazardous Material, which has not been rendered harmless, the DB shall immediately stop Work in the affected area and verbally report the condition to the Contracting Authority, and within 1 business day deliver written notice of the condition to the Contracting Authority.

**6.12.5.2** The Contracting Authority will promptly determine the necessity of the Owner retaining a qualified environmental consultant to evaluate the suspected Hazardous Material and to issue a related written report. Where appropriate, the Owner will engage a licensed abatement contractor to remove the material or render it harmless as directed.

**6.12.5.3** The DB shall resume Work in the affected area upon written notice from the Contracting Authority that **(1)** the suspect material was evaluated and found not to be or contain a Hazardous Material, or **(2)** the suspect material has been removed or rendered harmless.

**6.12.5.4** If the DB knowingly or negligently proceeds with the Work in an area where a Hazardous Material exists and has not been rendered harmless, the DB shall be solely responsible for all related claims, damages, losses, and

expenses, including, but not limited to, attorneys' fees, arising out of or resulting from performing the Work in the affected area.

**6.12.5.5** The term "rendered harmless" means that the level of exposure is less than any applicable exposure standards set forth in Applicable Law.

**6.12.6** Safety Data Sheets.

**6.12.6.1** The DB shall identify any material it uses at the Site with a Safety Data Sheet ("SDS") meeting the requirements of OSHA's Hazard Communication Standard (formerly known as a Material Safety Data Sheet).

**6.12.6.2** The DB shall maintain a notebook containing all of its applicable SDSs. This notebook shall be kept at the Site for the duration of the Project.

**6.13 Construction Facilities, Utilities, and Equipment**

**6.13.1** Facilities.

**6.13.1.1** The DB shall provide and maintain in a clean condition suitable temporary facilities, equipment, services, and enclosed storage for its use at the Site.

**6.13.1.2** The DB shall provide and maintain in a clean condition:

- .1 Suitable facilities, equipment, and services for use by the Contracting Authority;
- .2 Adequate space, equipment, and furnishings to conduct progress meetings, and store approved documents and permits; and
- .3 Adequate sanitary facilities for use by all Persons at the Site.

**6.13.2** Environmental Controls.

**6.13.2.1** The DB shall protect its Work and materials from weather and damage from heat, cold, and humidity.

**6.13.2.2** Until the permanent HVAC system is complete and available for use:

- .1 The DB shall make arrangements and pay for installation and maintenance of temporary heating and ventilating systems; and
- .2 The DB shall pay the costs incurred in operating the temporary heating and ventilating systems.

**6.13.2.3** When the permanent HVAC system is complete and available for use:

- .1 The DB shall start up and maintain operation of the permanent HVAC system, including filters, and promptly remove temporary heating and ventilating systems.
- .2 If the Project consists entirely of new construction, the DB shall pay the costs of energy consumed in operating the permanent HVAC system until Substantial Completion.
- .3 If the Project is a renovation of an existing building or structure, addition(s) to an existing building or structure, or any combination of new construction and renovation work that does not allow separate

metering of utilities, the Owner shall pay the costs of energy consumed in operating the permanent HVAC system.

**6.13.2.4** From the date of Substantial Completion, the Owner shall pay the cost of operating the permanent HVAC system for the occupied portion of the Project.

**6.13.2.5** If the permanent HVAC system is used during construction, the DB shall furnish an extended warranty and service contract in effect until the expiration of the Correction Period.

**6.13.3** Water and Drainage.

**6.13.3.1** The DB shall provide water necessary for the Work until the permanent plumbing system is available for use.

**6.13.3.2** The DB shall provide temporary drainage and dewatering necessary for the Work and shall employ pumps, trenches, drains, sumps, and other necessary elements required to provide satisfactory working conditions for the protection, execution, and completion of the Project.

**6.13.3.3** The DB shall make arrangements and pay for installation and maintenance of temporary plumbing systems until the permanent plumbing system is available for use.

**6.13.3.4** When the permanent plumbing system is complete and available for use:

- .1 The DB shall start up and maintain operation of the permanent plumbing systems, and make arrangements and pay for removal of temporary plumbing systems.
- .2 If the Project consists entirely of new construction, the DB shall pay the costs of water consumed and sewerage charges until Substantial Completion.
- .3 If the Project is a renovation of an existing building or structure, addition(s) to an existing building or structure, or any combination of new construction and renovation work that does not allow separate metering of utilities, the Owner shall pay the costs of water consumed and sewerage charges.

**6.13.3.5** If the permanent plumbing system is used during construction, the DB shall furnish an extended warranty and service contract in effect until the expiration of the Correction Period.

**6.13.4** Electric Service.

**6.13.4.1** The DB shall provide temporary light and power; pay the charges for temporary electric service installation, and removal if required.

**6.13.4.2** If the Project consists entirely of new construction, the DB shall pay the cost of energy consumed until Substantial Completion.

**6.13.4.3** If the Project is a renovation of an existing building or structure, addition(s) to an existing building or structure, or any combination of new construction and renovation work that does not allow separate metering of utilities, the Owner shall pay the cost of energy consumed.

**6.13.4.4** If the permanent electrical system is used during construction, the DB shall furnish an extended warranty and service contract in effect until the expiration of the Correction Period.

**6.13.5** Hoisting Facilities.

**6.13.5.1** The DB shall erect and maintain any hoisting equipment required for its Work.

**6.13.5.2** If the electric service requirements of hoisting facilities differ from that available at the Site, the DB shall provide and pay for all necessary connections.

**6.13.5.3** If a permanent elevator is identified in the Contract Documents to be used for hoisting materials or personnel during construction, the DB shall furnish an extended warranty and service contract in effect until the expiration of the Correction Period.

**6.14 Progress Cleaning**

**6.14.1** The DB shall remove all waste materials, rubbish, and mud attributable to the Work to an appropriate disposal location at or near the Site.

**6.14.2** The DB shall perform weekly broom cleaning of hard flooring surfaces in the area of the Work.

**6.14.3** The DB shall remove, once each working day or as appropriate for the Project, all waste materials and rubbish from the disposal location at or near the Site.

**6.14.4** The DB shall remove, as appropriate for the Project or as the Contracting Authority or Owner directs, any waste materials or rubbish from areas adjacent to the Project.

**6.14.4.1** The DB shall dispose of waste materials, rubbish, and construction debris in a lawful manner in approved recycling facilities or landfills.

**6.14.5** If the DB fails to clean up during the progress of the Work, the Contracting Authority may clean up on behalf of the DB and at the DB's expense. If the DB fails to maintain the areas adjacent to the Project clean and free of waste materials and rubbish, the Contracting Authority may also direct the local jurisdiction responsible for the area to have the area cleaned to its satisfaction at the DB's expense.

**6.14.6** The DB shall remove excavated material and spoil to a suitable off-site location approved by the Contracting Authority.

**6.14.6.1** If the Owner designates a location on its property for disposal or storage of clean topsoil and/or subsoil in the Contract Documents, the DB shall remove such materials to the designated location.

## **6.15 Use of Premises**

**6.15.1** The DB shall use corridors, stairs, and elevators as designated by the Contracting Authority. The DB shall exercise extreme care to not exceed the carrying capacity of elevators or damage the cab interior in any way.

**6.15.2** Loitering or wandering through interior of buildings or exterior grounds outside the limits of the Work will not be permitted.

**6.15.3** The DB shall confine its apparatus, materials, and the operations of its workers to the limits indicated by law, ordinances, permits, and the directions of the Contracting Authority.

**6.15.4** No signs or advertising of any kind will be permitted on or about the Site, except those appearing on trucks and trailers.

## **6.16 Interruption of Existing Services**

**6.16.1** Whenever it becomes necessary to interrupt existing services in use by the Owner or its tenants, including but not limited to sewer, water, gas, and steam lines, electric, telephone, and cable service, the DB shall continue the associated Work on a non-stop 24-hour per day basis until that Work is completed and the service restored, or at an alternate time required by the Contracting Authority.

**6.16.2** Before beginning that Work, the DB shall apply in writing to, and receive approval in writing from, the Owner, through the Contracting Authority, to establish a time when interruption of the service will cause a minimum of interference with the activities of the Owner and its tenants.

## **6.17 Explosives and Blasting**

**6.17.1** The DB shall not conduct blasting on, or bring explosives to, the Site without the prior written approval of the Contracting Authority, Owner, and other authorities with jurisdiction.

**6.17.2** The DB shall perform all blasting, storing, and handling of explosives as required under Applicable Law.

**6.17.2.1** The DB shall carry appropriate liability insurance coverage, as required by the Contract Documents, for its blasting and explosives storage and handling operations. Immediately upon request, the DB shall deliver evidence of that insurance to the Contracting Authority.

## 6.18 [NOT USED]

### 6.19 Action Submittals

**6.19.1 Contracting Authority's Submittal Review.** The Contracting Authority shall review submittals for conformity with design intent within 14 days of receiving them or in accordance with the approved submittal schedule, or other period as mutually agreed by the Contracting Authority and DB. It is not the purpose of the Contracting Authority's review of submittals to determine the accuracy and completeness of other details, such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the DB's responsibility.

**6.19.2 Risk of Nonpayment.** The DB shall not commence any portion of the Work requiring Shop Drawings, Product Data, Samples, or other submittals until the submittal has been approved by the Contracting Authority. If the DB starts Work before the Contracting Authority's final approval of the submittal, the DB does so at its own risk.

**6.19.3 Equipment Statement.** Shop Drawings on equipment shall include the following written statement from the manufacturer of the equipment:

**6.19.3.1** "This equipment submitted for approval shall perform as specified when installed in the arrangement shown on this drawing and in the Contract Documents and in conjunction with all other accessories such as flues, breechings, piping, controls, and equipment not furnished by this manufacturer, but required as an accessory or supplement to this equipment, providing that the accessory or supplementary items perform as specified and are installed as shown in the Contract Documents."

.1 The DB will be deemed to have included the above statement as required even if the associated Shop Drawing does not actually contain the statement.

**6.19.3.2** This equipment statement shall not be required for Samples, Product Data, and other standard submittals that are not created specifically for this Project.

### 6.20 Warranty

**6.20.1** The DB warrants to the Contracting Authority and the Owner that all materials and equipment furnished under the Contract shall be new and of good quality unless otherwise required or permitted by the Contract Documents, that the Work shall be free from defects not inherent in the quality required or permitted, and that the Work shall conform to the requirements of the Contract Documents. Work not conforming to those requirements, including Substitutions not properly approved and authorized, may be considered Defective Work. If required by the Contracting Authority, the DB shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

**6.20.1.1** If the DB or a Subcontractor recommends a particular product, material, system, or item of equipment for incorporation into the Project and the Owner accepts that recommendation, the above warranty includes a warranty from the DB to the Owner that the recommended product, material, system, or item of equipment is fit and appropriate for the associated purpose.

### 6.21 Uncovering the Work

**6.21.1** If the DB covers Work contrary to the requirements of the Contract Documents or contrary to the written request of the Contracting Authority, the DB shall, if the Contracting Authority requests in writing, uncover that Work for observation, correct it if not in conformity with the Contract Documents, and recover it at the DB's expense without adjustment of the Contract Times.

**6.21.2** If the DB covers Work in accordance with the Contract Documents and not contrary to a request from the Contracting Authority for an opportunity to observe the Work prior to covering, the DB shall, if the Contracting Authority requests in writing, uncover that Work.

**6.21.2.1** If the uncovered Work is Defective Work, the DB shall pay the costs of uncovering, correcting, and recovering the Work and shall not be entitled to an adjustment of the Contract Times.

**6.21.2.2** If the uncovered Work is not Defective Work and the DB believes that it is entitled to an adjustment of the Contract Sum or Contract Times, or both, on account of the uncovering and recovering of the Work, the DB may request a Change Order by giving written notice under **Section 7.3.2** within 7 days after the Contracting Authority observes the uncovered Work.

### 6.22 Correction of the Work

**6.22.1 Before Substantial Completion.**

**6.22.1.1** If the DB provides Defective Work or fails or neglects to perform the Work in accordance with the



Construction Progress Schedule, the Contracting Authority may issue a written notice to the DB and DB's Surety directing the DB to correct the Defective Work or recover schedule deficiencies. Unless otherwise specified in that written notice, the DB shall begin to correct the Defective Work and recover the schedule deficiencies within no more than 3 days after the Contracting Authority issues the written notice ("72-Hour Notice").

**6.22.1.2** If the DB fails to promptly commence and diligently pursue correction of Defective Work or recovery of schedule deficiencies required under **Section 6.22.1.1**, the Owner may correct the Defective Work or take action to recover schedule deficiencies without giving further notice to the DB or DB's Surety.

**6.22.2** After Substantial Completion.

**6.22.2.1** In addition to the DB's other obligations under the Contract Documents, if any of the Work is found to be Defective Work after Substantial Completion, the DB shall correct it promptly after receipt of written notice from the Contracting Authority or Owner to do so, unless the Contracting Authority and Owner have previously acknowledged and accepted the Defective Work in writing. The Contracting Authority or Owner may send a copy of the written notice to the DB's Surety, but are not obligated to do so.

**6.22.2.2** During the Correction Period. If the Contracting Authority or Owner issues a notice under **Section 6.22.2.1** during the Correction Period, the Owner may correct the Defective Work itself without giving further notice to the DB or DB's Surety if the DB fails to **(1)** notify the Owner in writing of the DB's intent to correct the Defective Work within 7 days after the Contracting Authority or Owner issues the notice and **(2)** thereafter promptly commence and diligently pursue correction of Defective Work.

**6.22.2.3** The Correction Period:

- .1 commences on the date of Substantial Completion of the Work or a designated portion of the Work which the Contracting Authority and Owner have agreed to take Partial Occupancy;
- .2 relates only to the DB's specific obligation and opportunity to correct the Work during the Correction Period;
- .3 does not establish a period of limitation with respect to any of the DB's other obligations under the Contract Documents;
- .4 has no relationship to the time within which the Contracting Authority or Owner may seek to enforce the Contract;
- .5 does not establish a period of limitation within respect to the commencement of litigation to establish the DB's liability under the Contract or otherwise; and
- .6 shall not be extended by corrective Work performed by the DB under this **Section 6.22.2**.

**6.22.2.4** After the Correction Period. If the Owner issues notice under **Section 6.22.2.1** after expiration of the Correction Period, the Owner may correct the Defective Work itself without giving further notice to the DB or DB's Surety if the DB fails to **(1)** notify the Owner in writing of the DB's intent to correct the Defective Work within 14 days after the Owner issues the notice and **(2)** thereafter promptly commence and diligently pursue correction of Defective Work.

**6.22.3** Emergency Correction of Defective Work.

**6.22.3.1** Notwithstanding any other provision of the Contract to the contrary, if in the Contracting Authority or Owner's opinion the Defective Work presents a threat of imminent harm or danger to people, property, or the environment, the Contracting Authority or Owner may order the DB to immediately correct Defective Work or the Owner may correct the Defective Work itself without prior notice to the DB or DB's Surety.

**6.22.4** Responsibility for Costs of Correction.

**6.22.4.1** The DB shall pay, immediately upon demand, all of the costs and damages associated with the correction of Defective Work and the recovery of schedule deficiencies under this **Section 6.22**. Those costs and damages may include, but are not limited to, the related fees and charges of contractors, engineers, architects, attorneys, and other professionals; and the cost of correcting or replacing adjacent work. The Contracting Authority may deduct those costs and damages from payments then or thereafter due the DB.

**6.23** Acceptance of Defective Work

**6.23.1** The Owner may accept any Defective Work instead of requiring its removal or correction, in which case the Contract Sum shall be equitably reduced as described under **Article 7**.

**6.23.1.1** The Owner may only accept Defective Work though a deduct Change Order that makes explicit reference to this **Section 6.23**.

**6.23.2** None of the following will constitute **(1)** acceptance of Defective Work, **(2)** a release of the DB's obligation to perform the Work in accordance with the Contract, or **(3)** a waiver of any rights set forth in the Contract or otherwise

provided by Applicable Law:

- 6.23.2.1 observations or inspections by the Owner or Contracting Authority;
- 6.23.2.2 the making of any payment;
- 6.23.2.3 Substantial Completion or the issuance of a Certificate of Substantial Completion;
- 6.23.2.4 Partial Occupancy and the Owner's use or occupancy of the Work or any part of it;
- 6.23.2.5 Contract Completion or the issuance of a partial or final Certificate of Contract Completion;
- 6.23.2.6 any review or approval of a submittal;
- 6.23.2.7 any inspection, test, or approval by other Persons; or
- 6.23.2.8 any correction of Defective Work by the Owner.

## 6.24 Project Document Maintenance and Submittal

### 6.24.1 During Construction.

6.24.1.1 The DB shall maintain in good order at a secure location on the Site:

- .1 a complete copy of all Contract Documents; Shop Drawings, Product Data, Samples and similar required submittals; manufacturer operating and maintenance instructions; certificates; warranties; RFIs and responses thereto; and other Project-related documents, all marked currently and accurately to record field changes and selections made during construction and to show actual installation where installation varies from Work as originally shown, including the exact location and depth of underground utility lines; and
- .2 a set of Drawings and Specifications, approved in accordance with **Section 5.8.1.1**, and the records required by **Section 6.2.14**.

6.24.1.2 Before submitting each DB Payment Request, the DB shall record all changes on the Contract Documents, neatly in a contrasting color, noting new information not shown on the original Contract Documents. Failure to record all changes may cause payment to be withheld or delayed by the Contracting Authority.

6.24.1.3 The DB shall keep a record of changes made to the Specifications, noting particularly any approved variation from manufacturer's installation instructions and recommendations.

6.24.1.4 If the DB uses Shop Drawings to indicate as-built conditions, the DB shall cross-reference the Shop Drawing sheet numbers to the corresponding sheet numbers on the Contract Documents. The DB shall note related numbers where applicable.

6.24.1.5 The DB shall at all times permit access to the documents described in this **Section 6.24.1** to authorized representatives of the Contracting Authority, Owner, and Criteria A/E.

### 6.24.2 Before Contract Completion.

6.24.2.1 The DB shall submit the As-Built Documents to the AOR. That submission shall include, but is not limited to:

- .1 Certificate of Occupancy;
- .2 inspection certificates for pressure piping, elevator, boiler, electrical, plumbing or piping purification, etc.;
- .3 Letter of Approval from the local fire authority or State Fire Marshal for the fire suppression system;
- .4 Operation and Maintenance Manuals, organized into suitable sets of manageable size. Indexed data bound in individual binders, with pocket folders for folded sheet information and appropriate identification marked on the front and the spine of each binder;
- .5 neatly and accurately marked sets of As-Built Documents, and other Contract Documents reflecting the actual construction of the Project;
- .6 detailed Drawings reflecting the exact location of any concealed utilities, mechanical or electrical systems, and components;
- .7 assignment to the Owner of all warranties and guarantees, including the most-recent address and telephone number of any Subcontractors or manufacturers;
- .8 an affidavit to certify that all Subcontractors have been paid in full for all Work performed or materials furnished for the Project;
- .9 final certified payroll reports; and
- .10 an affidavit to certify that the DB and each of its Subcontractors, regardless of tier, have complied with all requirements of ORC Chapter 4115.

6.24.2.2 By submitting the As-Built Documents to the AOR, the DB certifies that its As-Built Documents are complete, correct, and accurate.

**6.24.2.3** The AOR shall revise the original Contract Documents and related Electronic Files with the information contained on the As-Built Documents. The AOR shall label the revised original Contract Documents and related Electronic Files as “Record Documents” and reflect the date of the AOR’s incorporation of the As-Built Documents.

**6.24.2.4** The DB, as a condition precedent to execution of the Certificate of Contract Completion and shall submit the Record Documents to the Contracting Authority.

**6.24.2.5** By submitting the Record Documents to the Contracting Authority, the DB certifies that its Record Documents are complete, correct, and accurate.

**6.24.2.6** The Owner may thereafter use the Record Documents for any purpose relating to the Project including, but not limited to, additions to or completion of the Project.

## 6.25 Final Cleaning

**6.25.1** Before requesting the Substantial Completion inspection of the Work, the DB shall clean the Site, remove waste materials and rubbish attributable to the Project, and restore the property to its original condition so that upon Substantial Completion, the premises are ready for occupancy by the Owner.

**6.25.2** If the DB performs any Work after final cleaning, the DB shall clean the affected area as provided above so that upon Substantial Completion, the premises are ready for occupancy by the Owner.

**6.25.3** Final cleaning shall be done to the reasonable satisfaction of the Contracting Authority.

## 6.26 Substantial Completion

### 6.26.1 DB’s Punch List.

**6.26.1.1** When the DB considers the Work, or a designated portion thereof, Substantially Complete the AOR shall inspect the Work and prepare a list of Defective Work and incomplete or unacceptable Work (“DB’s Punch List”). The AOR shall list all items of Work not in compliance with the Contract Documents, including items the DB is requesting to be deferred.

- .1 The DB shall proceed to correct all items listed on the DB’s Punch List and certify that the incomplete items listed on the DB’s Punch List are to its knowledge an accurate and complete list by signing the DB’s Punch List.
- .2 The DB’s or AOR’s failure to include an item on the DB’s Punch List shall not alter the DB’s responsibility to complete the Work in accordance with the Contract Documents.
- .3 The DB shall submit the signed DB’s Punch List to the Contracting Authority, together with a request for the Substantial Completion inspection of the Work.

### 6.26.2 Substantial Completion Inspection.

**6.26.2.1** Within 3 business days after receipt of the request for the Substantial Completion inspection of the Work, the Contracting Authority shall notify the DB of acceptance or rejection of the request, stating reasons for any rejection.

- .1 Within 7 days after its acceptance of the DB’s request, the Contracting Authority shall conduct the Substantial Completion inspection to determine whether the Work, or the designated portion, is in conformity with the Contract Documents and Substantially Complete. The Contracting Authority shall notify the DB and Owner of the scheduled time of the Contracting Authority’s inspection.
- .2 If the Contracting Authority determines that the Work is Substantially Complete, within 3 business days after the Substantial Completion inspection, the Contracting Authority shall prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion and include a list of Defective, incomplete, or unacceptable Work (“Contracting Authority’s Punch List”). The Contracting Authority’s Punch List shall include **(1)** the items on the DB’s Punch List that are not yet completed or corrected as of the date of the Substantial Completion inspection, and **(2)** comments from the Owner.
- .3 The Contracting Authority shall submit the Certificate of Substantial Completion to the Owner and DB for their written acceptance. Upon their acceptance and consent of the DB’s Surety, and subject to the Owner’s right to withhold payment, the Owner shall release retainage as described under **Section 9.2.13.3**.
- .4 The Contracting Authority’s failure to include an item on the Contracting Authority’s Punch List shall not alter the DB’s responsibility to complete the Work in accordance with the Contract Documents.
- .5 If the Contracting Authority accepts the request for the Substantial Completion inspection and subsequently determines that the Work is not Substantially Complete, the Contracting Authority may require compensation for expenses related to excessive Punch List activities.

**6.26.3** Completion of Punch List Items.

**6.26.3.1** Within 30 days after the date of Substantial Completion and before the date of Contract Completion, the DB shall complete all items on the Contracting Authority's Punch List. After completing all items on the Contracting Authority's Punch List, the DB shall provide a written request for Final Inspection of the Work to the Contracting Authority.

- .1 If Work on the Contracting Authority's Punch List cannot be timely completed, the DB shall justify in writing to the reasonable satisfaction of the Contracting Authority the reasons the items cannot be completed, and the DB may propose, for the Contracting Authority's approval, a time when the DB shall complete those items.
- .2 Within 3 business days after receipt of the DB's request for Final Inspection, the Contracting Authority shall complete a Final Inspection of the Work for compliance with the Contract Documents.
- .3 If multiple inspections of items on the Contracting Authority's Punch List are required due to the DB's failure to properly and timely complete them, the DB shall pay any additional costs incurred by the Contracting Authority and Owner resulting from any attendant delay and re-inspections. The Contracting Authority may deduct those additional costs from payments then or thereafter due the DB. If payments then or thereafter due the DB are not sufficient to cover those amounts, the DB shall immediately pay the amount of the insufficiency to the Owner.

**6.27 Partial Occupancy**

**6.27.1** The Owner may occupy or use a portion of the Project prior to Contract Completion if:

**6.27.1.1** the building authority with jurisdiction over the Project issues a partial certificate of occupancy for the portion of the Project the Owner intends to occupy;

**6.27.1.2** the DB with the Owner's assistance has provided written notice of the Partial Occupancy to the insurers providing property insurance for the Project; and

**6.27.1.3** the Contracting Authority has received notice of the Partial Occupancy from the DB and has consented to it.

**6.27.2** Before the Owner commences Partial Occupancy, the Owner, Contracting Authority, DB, and AOR shall proceed as described under **Section 6.26** for the area designated for Partial Occupancy.

**6.27.3** The DB shall, subject to the operation agreement between DB and the Owner, continue to maintain the area accepted for Partial Occupancy of the Work, and shall remain obligated to complete and correct the Work and to carry the insurance required by the Contract Documents during performance of any such Work.

**6.28 [NOT USED]****6.29 Contract Completion****6.29.1** Partial Contract Completion.

**6.29.1.1** When items of Work cannot be completed until a subsequent date, the Contracting Authority shall prepare a partial Certificate of Contract Completion that shall include a detailed list of the deferred Work and the date(s) by which the DB will complete that Work.

**6.29.2** Final Contract Completion.

**6.29.2.1** When all items on the Contracting Authority's Punch List have been completed to the satisfaction of the Contracting Authority, all requirements of the Contract Documents have been completed, and the provisions of **Sections 6.24** through **6.28** have been fulfilled, the Contracting Authority shall prepare and issue a final Certificate of Contract Completion.

**6.29.2.2** The date that the Contracting Authority executes the final Certificate of Contract Completion is the date of Contract Completion.

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**ARTICLE 7 - MODIFICATIONS****7.1 General****7.1.1 Preconstruction Services Amendments.**

**7.1.1.1** Preconstruction Stage obligations under this Contract may be modified only through a Preconstruction Services Amendment prepared by the Contracting Authority and signed by both the DB and Contracting Authority.

**7.1.1.2** The DB may initiate a Preconstruction Services Amendment by submitting written notice to the Owner and accompanied by a Proposal meeting the requirements of **Section 9.1.6** or **Section 9.1.7** as applicable.

**7.1.2 Changes in the Work.**

**7.1.2.1** The Contracting Authority may order changes in the Work without invalidating the Contract. Subject to the limitations stated in this **Article 7** and elsewhere in the Contract Documents, a change in the Work may be accomplished by a Change Order, Change Directive, or order for a minor change in the Work.

- .1** The DB shall proportionately increase the amount of the Bonds whenever the Contract Sum (not including the Construction Stage Design Services Fee) is increased.
- .2** If notice of any change affecting the Contract is required by the provision of any Bond, notice is the DB's responsibility, and the amount of each applicable Bond shall be adjusted accordingly.

**7.1.2.2** The DB shall not proceed with any change in the Work without the Contracting Authority's prior written authorization except as provided under **Section 1.10**.

**7.1.2.3** Except as provided in **Section 1.10**, the DB's failure to obtain prior written authorization for a change in the Work constitutes a waiver by the DB of an adjustment to the Contract Sum or Contract Times, or both, for the related Work.

**7.1.2.4** The DB shall perform all changes in the Work under the applicable provisions of the Contract Documents, and the DB shall proceed promptly with the change unless otherwise provided in the Change Order, Change Directive, or order for a minor change in the Work.

**7.1.3 Paperwork Consolidation.**

**7.1.3.1** Related Modifications, with the same or similar justification (e.g., Owner Request or field resolution), may be consolidated into the same Change Order.

**7.1.3.2** Add and deduct Modifications, with the same or similar justification, may be included on the same Change Order.

**7.1.4 Modification Numbering.**

**7.1.4.1** The DB shall assign a number to each Modification, which shall uniquely identify it.

**7.1.4.2** The DB shall not duplicate or reuse any number throughout the Project or reuse assigned numbers for Proposal Requests that are initiated but cancelled in process.

**7.1.4.3** The number for each Change Order shall be coordinated with any associated Proposal Request or Change Directive.

**7.1.5 Modification Log.**

**7.1.5.1** The DB shall create and maintain a Modification Log for the Project, which shall contain the following minimum information:

- .1** number of the Modification;
- .2** a brief description of the Modification;
- .3** cost of the Modification;
- .4** schedule impact of the Modification; and
- .5** dates sent to, and received from, the parties.

**7.1.6 Reconciliation of Unit Price Items.**

**7.1.6.1** The Contracting Authority may increase, decrease, or delete entirely the scheduled quantities of Work to be performed and materials to be furnished by Change Order.

**7.1.6.2** The parties shall enter into a Change Order to reconcile the difference between the scheduled and actual quantities of Work performed and materials furnished.

**7.1.6.3** If the actual quantity of a Unit Price item exceeds the scheduled quantity by 20 percent or more, the DB shall immediately notify the Contracting Authority. If the actual quantity of a Unit Price item differs from the scheduled quantity by 20 percent or more, so that application of the Unit Price to the quantities of Work proposed would create

an undue hardship on either the Owner or DB, the Contracting Authority shall issue a Proposal Request or the DB shall issue a request for a Change Order (as appropriate). The parties shall thereafter negotiate an appropriate adjustment of the Unit Price and scheduled quantity and enter into an associated Change Order.

- .1 If a Unit Price is adjusted as described under **Section 7.1.6.3**, the new Unit Price will only apply to the units of Work performed that are (1) less than the 20 percent threshold if the Unit Price is changed on account of an over-estimation of the scheduled quantity of a Unit Price item involved in the Work or (2) in excess of the 20 percent threshold if the Unit Price is changed on account of an under-estimation of the scheduled quantity of a Unit Price item involved in the Work.

## 7.2 Change Order Procedure

**7.2.1** A Change Order is a written instrument prepared by the Contracting Authority and executed by the Contracting Authority and DB stating their agreement upon all of the following:

- 7.2.1.1** a change in the Work;
- 7.2.1.2** the amount of the adjustment of the Contract Sum, if any; and
- 7.2.1.3** the extent of the adjustment of the Contract Times, if any.

**7.2.2** Except with the Contracting Authority's written consent as explicitly provided under **Section 7.4.8**, the DB is not entitled to reserve any rights or take other similar action with respect to a Change Order if the effect or intent of the reservation or action would be to accommodate a further adjustment of the Contract Sum or Contract Times, or both, after the DB signs the Change Order. By signing a Change Order, the DB irrevocably certifies that the elements of a Change Order described in **Section 7.2.1** are completely satisfied, and waives all rights, if any, to seek further adjustment of the Contract Sum or Contract Times, or both, at a later date with respect to the associated change in the Work including without limitation on account of the "cumulative impact" of the associated change in the Work in combination with one or more other changes in the Work.

**7.2.3** The Contracting Authority shall prepare each Change Order form, attach the supporting documentation, and issue the Change Order to the DB for signature.

**7.2.4** Within 3 days after receiving a Change Order: (1) if the DB agrees with the Change Order under **Section 7.2.1**, the DB shall sign the Change Order and transmit the signed Change Order and the updated Change Order Log to the Owner; or (2) if the DB does not agree with the Change Order under **Section 7.2.1**, the DB shall provide written notice of the disagreement to the Contracting Authority and Owner.

**7.2.5** When the Contracting Authority receives the Change Order, the Contracting Authority may sign the form approving the Change Order, and transmit the fully executed Change Order to all signers; or, if the Contracting Authority does not accept the Change Order, the Contracting Authority will reject and notify the DB of the rejection.

**7.2.6** When the Change Order is signed by the DB and Contracting Authority, the fully executed Change Order modifies the Contract Documents and authorizes and directs the DB to proceed, and the DB shall promptly proceed with the associated change in the Work.

## 7.3 Initiation of Change Orders

### 7.3.1 Proposal Request.

**7.3.1.1** The Contracting Authority shall prepare and issue a Proposal Request to the DB to obtain the DB's Proposal for the adjustment of the Contract Sum or Contract Times, or both, associated with a contemplated Modification.

- .1 In any Proposal for an adjustment of the Contract Sum, the DB shall specifically identify the items set forth in **Section 7.7**.
- .2 In any Proposal for an adjustment of the Contract Times, the DB shall specifically identify the items set forth in **Section 7.8**.
- .3 The DB's cost of preparing and providing Proposals is included in the Contract Sum.

**7.3.1.2** The DB shall respond with a Proposal to the Contracting Authority within 14 days after receiving the Proposal Request. The allowable time for the DB's response may be extended by written agreement of the DB and Contracting Authority.

**7.3.1.3** The DB shall hold the Proposal valid and open for acceptance for at least 45 days. The acceptance period may be adjusted by mutual consent of the DB and Contracting Authority. The time limits described under this **Section 7.3.1.3** apply only to Proposals submitted in response to a Proposal Request.

**7.3.1.4** A Proposal may be accepted by the Contracting Authority only through a Change Order. A Proposal Request does not authorize the DB to proceed with a change in the Work.

**7.3.1.5** If the DB does not timely submit a Proposal within the time required in **Section 7.3.1.2**, the DB waives its right to an adjustment to the Contract Sum or Contract Times, or both, associated with the contemplated change in the Work.

### **7.3.2** Request for Change Order.

**7.3.2.1** The DB may initiate a change in the Work by submitting written notice to the Contracting Authority accompanied by a Proposal as described under **Section 7.3.1**.

## **7.4** Change Directives

**7.4.1** A Change Directive is a written order prepared and executed by the Contracting Authority directing a change in the Work and may, if necessary:

**7.4.1.1** State a proposed basis for adjustment, if any, in the Contract Sum or Contract Times, or both; or

**7.4.1.2** Limit the scope of the change in the Work on a time and materials basis, not to exceed a fixed adjustment of the Contract Sum.

**7.4.2** If a change in the Work must start immediately to avoid an imminent impact to the schedule of the Project, the Contracting Authority may prepare a Change Directive, for the Contracting Authority's signature pursuant to **Section 7.4.1**, authorizing the DB to proceed.

**7.4.3** A Change Directive shall be used to direct a change in the Work in the absence of total agreement on the terms of a Change Order.

**7.4.3.1** For the purposes of clarity, the Contract refers to a Change Directive as if it is only to be used in the absence of total agreement on the terms of a Change Order concerning the associated change of the Work. A Change Directive may also be used in the absence of agreement as to whether the subject of the Change Directive actually constitutes a change in the Work; such as the situation described under **Section 7.5.3**.

**7.4.4** Upon receipt of a Change Directive, the DB shall promptly proceed with the change in the Work involved.

**7.4.5** The DB may sign the Change Directive to accept the proposed basis for adjustment, if any, of the Contract Sum or Contract Times, or both. Thereafter, the Contracting Authority shall prepare and the Contracting Authority and DB shall promptly execute an associated Change Order as described under **Section 7.2**.

**7.4.6** Within 14 days after receiving the Change Directive, the DB shall respond with a Proposal as described under **Section 7.3.1** to the Contracting Authority for adjustment of the Contract Sum or Contract Times, or both, on account of the change, unless the Change Directive is performed on a time and materials basis under **Section 7.4.1.2**. If the Change Directive is performed on a time and materials basis, the DB shall submit its Proposal within 7 days after completing the Work.

**7.4.6.1** The Proposal for the adjustment of the Contract Sum, if any, shall include: **(1)** written documentation as described under **Section 7.7**; and **(2)** a written statement from the DB that the proposed adjustment is the entire adjustment in the Contract Sum associated with the change.

**7.4.6.2** The Proposal for the change in the Contract Times, if any, shall include: **(1)** written documentation as described under **Section 7.8**; and **(2)** a written statement from the DB that the proposed adjustment is the entire adjustment of the Contract Times associated with the change.

**7.4.7** If the DB does not respond to a Change Directive as required under **Section 7.4.5** or **Section 7.4.6**, the Contracting Authority shall determine the adjustments, if any, of the Contract Sum and Contract Times. If the DB does not agree with the Contracting Authority's determination, the DB shall initiate a Claim under **Article 8** within 10 days of the date that the Contracting Authority issues its determination, and the DB's failure to do so shall constitute an irrevocable waiver of the Claim.

**7.4.8** Pending final determination of the total adjustment of the Contract Times on account of a Change Directive, the period of time not in dispute for that change in the Work may be included in the Construction Progress Schedule accompanied by a Change Order indicating the parties' agreement with part or all of the time adjustment.

**7.4.9** If the Contracting Authority and DB agree on the adjustments of the Contract Sum and Contract Times associated with a Change Directive, the Contracting Authority shall prepare an appropriate Change Order promptly after receiving the DB's Proposal. The Contracting Authority and DB shall promptly sign the Change Order as described under **Section 7.2**.

**7.4.10** If the Contracting Authority and DB do not agree on the adjustments of the Contract Sum and Contract Times associated with a Change Directive within 60 days after the Change Directive is issued, the Contracting Authority shall determine the adjustments, if any, of the Contract Sum and Contract Times. If the DB does not agree with the

Contracting Authority's determination, the DB shall initiate a Claim under **Article 8** within 10 days of the date that the Contracting Authority issues its determination, and the DB's failure to do so shall constitute an irrevocable waiver of the Claim.

## 7.5 Minor Changes in the Work

**7.5.1** The Contracting Authority may order minor changes in the Work not involving adjustment of the Contract Sum or extension of the Contract Times and not inconsistent with the intent of the Contract Documents. Those changes shall be effected by written order issued to the DB.

**7.5.2** The DB shall promptly carry out each order for a minor change in the Work if the DB agrees that the order does not involve adjustment of the Contract Sum or Contract Times, or both.

**7.5.3** If the DB reasonably believes that it would be entitled to an adjustment of the Contract Sum or Contract Times, or both, on account of an order for a minor change in the Work, the DB, within 3 business days after receiving the order, shall give the Contracting Authority written notice of the DB's position, and not proceed with the subject Work without first receiving a Change Directive or Change Order related to it.

**7.5.4** The DB waives its right to an adjustment of the Contract Sum or Contract Times on account of an order for a minor change in the Work by:

**7.5.4.1** starting the Work that is the subject of the order for a minor change in the Work; or

**7.5.4.2** failing to give the notice described under **Section 7.5.3** within 3 business days after receiving the order for a minor change in the Work.

## 7.6 Differing Site Conditions

**7.6.1** If the DB encounters a Differing Site Condition, the DB shall stop Work on that Differing Site Condition and give immediate written notice of the condition to the Contracting Authority.

**7.6.1.1** The DB's failure to give notice of the Differing Site Condition as required under this **Section 7.6.1** shall constitute an irrevocable waiver of any associated Claim.

**7.6.1.2** The written notice of a Differing Site Condition under this **Section 7.6.1** shall be required before the notice of Claim under **Article 8**.

**7.6.2** Promptly after receiving notice from the DB under **Section 7.6.1**, the Contracting Authority shall investigate to determine whether the DB has encountered a Differing Site Condition. The Contracting Authority shall give written notice of its determination to the DB within 10 days after completing the investigation.

**7.6.2.1** If the Contracting Authority determines that the DB has encountered a Differing Site Condition, the Contracting Authority shall prepare (as appropriate) a resulting Change Order or a Change Directive.

**7.6.2.2** If the Contracting Authority determines that the DB has not encountered a Differing Site Condition and the DB does not agree with that determination, the DB shall initiate a Claim under **Article 8** within 10 days of the date that the Contracting Authority issues its determination.

## 7.7 Change Order Cost or Credit Determination

### 7.7.1 General.

**7.7.1.1** The maximum cost or credit resulting from a change in the Work shall be determined as described below.

- .1** A Unit Price Proposal shall only be valid when incorporated into the Contract by Change Order except for Unit Price Work included in the GMP Amendment.
- .2** The maximum cost or credit includes all compensation for impact costs. Additional costs for impacts shall not be allowed.

**7.7.1.2** The DB shall not assign any portion of the Work to another Person whereby the DB would benefit directly or indirectly from the double application of charges for overhead or profit.

**7.7.1.3** The Contracting Authority may require notarized invoices for material costs and may audit the records of the DB and Subcontractors.

**7.7.1.4** **Section 7.7.2** establishes the exclusive and maximum amount that the Owner shall pay for any Change Order, including, but not limited to, all amounts for interference with, delay, hindrance, disruption, or impact of the Work ("Pricing Criteria"). These Pricing Criteria also govern the value of deduct Change Orders and the DB's entitlement to additional compensation or damages through the Claims and dispute resolution processes on account of changes in the Work. In order to expedite the review and approval process, Proposals shall be prepared in the



categories and order listed in **Section 7.7.2**.

### **7.7.2 Pricing Criteria.**

**7.7.2.1 Construction Stage Design Services Fee:** The AOR's Services directly involved in the Work on an hourly basis according to the rates set forth in the AOR's Fee Schedule attached to the Agreement.

**7.7.2.2 DB Construction Stage Personnel Costs:** The DB's on-Site management, supervision, and administrative personnel not subject to prevailing wage under to ORC Chapter 4115. These costs will be calculated on an hourly basis according to the rates set forth in the Personnel Costs Rate Schedule attached to the Agreement.

- .1 In no event will the DB be entitled to an increase in the Contract Sum on account of Construction Stage Personnel Costs unless the DB actually incurs additional Construction Stage Personnel Costs solely on account of the associated change in the Work.
- .2 Under no conditions will the increase under this **Section 7.7.2.2** exceed those additional Construction Stage Personnel Costs the DB actually incurs.

**7.7.2.3 Labor:** Field labor directly involved in the Work based upon the actual rate of pay to the worker. If the Project is subject to payment of prevailing wage rates, field labor shall be paid according to the relevant classification of labor as established in the applicable prevailing wage determination for the Project locality, as determined by the Ohio Department of Commerce, Wage and Hour Bureau.

- .1 In no event will the DB be entitled to an increase in the Contract Sum on account of labor costs unless the DB actually incurs additional labor costs on account of the associated change in the Work.
- .2 Under no conditions will the increase under this **Section 7.7.2.3** exceed those additional labor costs the DB actually incurs.
- .3 The cost for supervision above the level of working forepersons (such as general forepersons, superintendent, project manager, etc.) is included in the adjustment under **Section 7.7.2.2** for the DB and under **Section 7.7.2.11** for Subcontractors.

**7.7.2.4 Fringes:** Fringe benefit credit for labor provided under **Section 7.7.2.3** is only allowable for prevailing wage fringe benefits pursuant to ORC Chapter 4115, including, but not limited to, Health and Welfare, vacation, apprenticeship training, and certain types of pension plans. The parties shall defer to the Ohio Department of Commerce's policy on which benefits are granted fringe benefit credit. Each fringe benefit for which credit is requested shall be calculated on an hourly basis and listed as a separate line item. The DB shall submit documentation supporting the calculation of the amounts for each fringe benefit for each worker classification, including labor provided by Subcontractors.

**7.7.2.5 Allowable Payroll Expenses:** Allowable payroll expenses for labor provided under **Section 7.7.2.3** including payroll taxes as well as other benefits that are required by Applicable Law, such as federal and state Unemployment and Workers' Compensation shall each be a separate line item and shall not be credited for compliance with ORC Chapter 4115.

**7.7.2.6 Equipment Rentals:** All charges for certain non-owned heavy or specialized equipment at up to 100 percent of the documented rental cost. No rental charges shall be allowed for hand tools, minor equipment, simple scaffolds, etc. Downtime due to repairs, maintenance and weather delays shall not be allowed. DB shall submit copies of actual paid invoices to substantiate rental costs.

**7.7.2.7 Owned Equipment:** All charges for certain heavy or specialized equipment owned by the DB or Subcontractor performing the Work at up to 100 percent of the cost listed by the current edition of the Associated Equipment Distributors' *AED Green Book* heavy equipment rental rates. No recovery shall be allowed for hand tools, minor equipment, simple scaffolds, etc. The longest period of time that the equipment is to be required for the Work shall be the basis for the pricing. Downtime due to repairs, maintenance, and weather delays shall not be allowed.

**7.7.2.8 Trucking:** A reasonable delivery charge or per-mile trucking charge for delivery of required materials or equipment. Charges for use of a pick-up truck shall not be allowed.

**7.7.2.9 Materials:** The actual cost (including all discounts, rebates or related credits) of all materials incorporated into the changed Work. Documentation shall show costs, quantities, or Unit Prices of all items, as appropriate.

- .1 The cost or credit for reusable materials (e.g., concrete form lumber, shoring, or temporary enclosures) shall be limited to 33 percent of the material cost for each use.

## **7.8 Time Extension**

**7.8.1** Every adjustment of the Contract Times associated with any change in the Work shall be determined as provided in this **Section 7.8**, which establishes the DB's maximum entitlement for any change in the Work, including without limitation all adjustments for interference, delay, hindrance, or disruption of the Work. This **Section 7.8** also governs

time adjustments for deduct Change Orders and the DB's entitlement to additional time through the Claims and dispute resolution processes on account of changes in the Work.

**7.8.2** The DB shall substantiate all changes in the Contract Times with:

**7.8.2.1** A written description of the nature of the interference, disruption, hindrance or delay;

**7.8.2.2** Identification of Persons and events responsible for the interference, disruption, hindrance or delay;

**7.8.2.3** Date, or anticipated date, of commencement of the interference, disruption, hindrance or delay;

**7.8.2.4** Identification of activities by schedule activity number and name on the Construction Progress Schedule, which may be affected by the interference, disruption, hindrance or delay, or new activities created by the interference, disruption, hindrance or delay and the relationship with existing activities;

**7.8.2.5** Anticipated duration of the interference, disruption, hindrance or delay and of any remobilization period;

**7.8.2.6** Specific number of days of extension requested and specific number of days for remobilization requested;

**7.8.2.7** Recommended action to avoid or minimize any future interference, disruption, hindrance or delay;

**7.8.2.8** A detailed written Proposal as described under **Section 7.7** for an increase in the Contract Sum which would fully compensate the DB for all costs of acceleration of the Work needed to completely overcome the associated delay, if any.

**7.8.3** Critical Path. Time extensions shall depend upon the extent to which the Work on the critical path of the Construction Progress Schedule is affected, if applicable.

**7.8.3.1** A Change Order granting a time extension may provide that the Contract Times shall be extended for only those specific elements so interfered with, disrupted, hindered, or delayed and related remobilization and that remaining Milestone dates shall not be altered and may further provide for adjustment of Liquidated Damages.

## **7.9 Examination and Audit of DB's Records**

**7.9.1** The Contracting Authority may examine all books, records, documents and other data of the DB and its Subcontractors related to the bidding, pricing, or performance of the Work for the purpose of evaluating any DB Payment Request, Proposal, Modification, or Claim.

**7.9.2** The above-referenced materials shall be made available at the office of the DB or Subcontractor, as applicable, at all reasonable times for inspection, audit, and reproduction until the expiration of 6 years after the date of Substantial Completion of all Work.

**7.9.2.1** The DB shall maintain, and require its Subcontractors to maintain, complete and accurate business records at its principal place of business. If the principal place of business is greater than 50 miles from the Site, the DB shall timely make records available, and shall require its Subcontractors to timely make records available, at the office of the Contracting Authority or Owner upon request for the records.

**7.9.3** To the extent that the DB or a Subcontractor, as applicable, informs the Contracting Authority or Owner in writing that any documents provided to the Contracting Authority or Owner are trade secrets, the Contracting Authority or Owner shall treat these documents, to the extent permitted by law, as trade secrets of the DB or Subcontractor, as applicable.

**7.9.3.1** If a dispute arises with any other Person about whether that Person should be given access to the documents, the DB or Subcontractor as applicable, shall indemnify the Contracting Authority and Owner against all costs, expenses, and damages, including but not limited to attorneys' fees, incurred or paid by reason of that dispute.

**7.9.4** The right of inspection, audit, and reproduction extends to all documents necessary to permit adequate evaluation of the cost of pricing data submitted along with the computations and projections used therein.

**7.9.5** If the Contract has been terminated, in whole or in part, the records relating to the Work terminated shall be made available to the Contracting Authority or Owner for a period of 6 years from the date of any applicable final settlement or payment, as applicable.

**7.9.6** Records that relate to disputes, litigation, or settlement of Claims arising out of the performance of the Work shall be made available until the dispute, litigation or Claims have been finally decided or settled.

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**ARTICLE 8 - DISPUTE RESOLUTION**

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**8.1 Initiation of a Claim**

**8.1.1** Every Claim shall accrue upon the date of occurrence of the event giving rise to the Claim.

**8.1.2** Except as provided under **Section 1.10**, the DB shall initiate every Claim by giving written notice of the Claim to the Contracting Authority within 10 days after occurrence of the event giving rise to the Claim.

**8.1.2.1** The 10-day time limit on initiating a Claim arising from a determination of the Contracting Authority concerning a Change Directive begins to run on the date that the Contracting Authority issues its determination under **Section 7.4.7** or **Section 7.4.10**, as applicable.

**8.1.2.2** The 10-day time limit on initiating a Claim arising from the response of the Contracting Authority to a RFI begins to run on the date that the Contracting Authority issues the Contracting Authority's response to the RFI.

**8.1.2.3** The 10-day time limit on initiating a Claim arising from the Contracting Authority's determination concerning a Differing Site Condition begins to run on the date that the Contracting Authority issues the Contracting Authority's determination under **Section 7.6**.

**8.1.3** The DB's written notice of a Claim shall provide the following information to permit timely and appropriate evaluation of the Claim, determination of responsibility, and opportunity for mitigation:

**8.1.3.1** nature and anticipated amount of the impact, including all costs for any interference, disruption, hindrance, or delay, which shall be calculated in accordance with **Section 7.7** and be a fair and reasonably accurate assessment of the damages suffered or anticipated by the DB;

**8.1.3.2** identification of the circumstances responsible for causing the impact, including, but not limited to, the date or anticipated date, of the commencement of any interference, disruption, hindrance, or delay;

**8.1.3.3** identification of activities on the Construction Progress Schedule that will be affected by the impact or new activities that may be created and the relationship with existing activities;

**8.1.3.4** anticipated impacts and anticipated duration of any interference, disruption, hindrance, delay, or impact, and any remobilization period; and

**8.1.3.5** recommended action to avoid or minimize any interference, disruption, hindrance, delay, or impact.

**8.1.4** The DB's failure to initiate a Claim as and when required under this **Section 8.1** shall constitute the DB's irrevocable waiver of the Claim.

**8.1.5** The Contracting Authority shall respond to the written notice of the Claim within a reasonable time of receipt.

**8.2 Substantiation of Claims**

**8.2.1** Within 30 days after the initiation of a Claim, the DB shall submit 3 copies of all information and statements required to substantiate a Claim as provided in this **Article 8** and all other information that the DB believes substantiates the Claim. The DB shall file the 3 copies by delivery to the Contracting Authority.

**8.2.2** The DB shall substantiate all of its Claims by providing the following minimum information:

**8.2.2.1** a narrative of the circumstances, which gave rise to the Claim, including without limitation the start date of the event or events and the actual or anticipated finish date;

**8.2.2.2** detailed identification of the Work (e.g., activity codes from the Construction Progress Schedule) affected by the event giving rise to the Claim;

**8.2.2.3** copies of the DB's daily log (**Section 6.2.14**) for each day of impact;

**8.2.2.4** copies of relevant correspondence and other information regarding or supporting DB entitlement;

**8.2.2.5** copies of the DB's most recent income statement and complete and detailed job-cost report, including segregated general and administrative expenses for the most recent reporting period, and for the period of the Contract, if available, and similar information for any Subcontractor claim included; and

**8.2.2.6** the notarized certification described under **Section 8.5.1.1**.

**8.2.3** The DB's failure to comply with the requirements of this **Section 8.2** shall constitute an irrevocable waiver of any related Claim.

**8.3 Substantiation of Claims for Increase of the Contract Sum**

**8.3.1** The DB shall substantiate each Claim for an increase of the Contract Sum with:

**8.3.1.1** written documentation as described under **Section 7.7** of the actual additional direct and indirect costs to the DB due to the event giving rise to the Claim;

**8.3.1.2** a written statement from the DB that the increase requested is the entire increase in the Contract Sum associated with the Claim; and

**8.3.1.3** the general substantiation documentation described under **Section 8.2**.

**8.3.2** The DB's failure to comply with the requirements of this **Section 8.3** shall constitute an irrevocable waiver of any related Claim.

#### **8.4 Substantiation of Claims for Extension of the Contract Times**

**8.4.1** The DB shall substantiate each Claim for an extension of the Contract Times with:

**8.4.1.1** written documentation as described under **Section 7.8** of the actual delay to the critical path of the Construction Progress Schedule due to the event giving rise to the Claim;

**8.4.1.2** a detailed written Proposal as described under **Section 7.7** for an increase in the Contract Sum that would fully compensate the DB for all costs of acceleration of the Work needed to completely overcome the associated delay together with a statement consistent with **Section 8.3.1.2**;

**8.4.1.3** a written statement from the DB that the extension requested is the entire extension of the Contract Times associated with the Claim; and

**8.4.1.4** the general substantiating documentation described under **Section 8.2**.

**8.4.2** In addition to the requirements of **Section 8.4.1**, if adverse weather conditions are the basis for a Claim for additional time, the DB shall document the Claim with data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on a critical element of the scheduled construction. The support for and evaluation of all adverse weather Claims shall be based upon average weather conditions during the 5 years immediately preceding the dates at issue in the Claim as those weather conditions were recorded at the government-controlled weather-recording facility nearest to the Site.

**8.4.3** The DB's failure to comply with the requirements of this **Section 8.4** shall constitute an irrevocable waiver of any related Claim.

#### **8.5 Certification of the Claim**

**8.5.1** The DB shall certify each Claim within 30 days after initiating the Claim under **Section 8.1** or before Contract Completion, whichever is earlier, by providing the notarized certification specified in **Section 8.5.1.1**, signed and dated by the DB:

**8.5.1.1** "The undersigned Design-Builder certifies that the Claim is made in good faith; that the supporting data is accurate and complete to the best of the Design-Builder's knowledge and belief; that the amount requested is a fair, reasonable, and necessary adjustment for which the Design-Builder believes the State is liable; and that the undersigned is duly authorized to certify the Claim on behalf of the Design-Builder."

**8.5.2** The DB's failure to comply with the requirements of this **Section 8.5** shall constitute an irrevocable waiver of any related Claim.

#### **8.6 Delay and Delay Damage Limitations; Derivative Claims**

**8.6.1** Subject to other provisions of the Contract, the DB will be entitled to an extension of the Contract Times on account of delay in the commencement or progress of Work on the critical path of the Construction Progress Schedule caused by acts of Nature or the public enemy, acts of the government not arising from the DB's failure to comply with Applicable Law, fires, floods, epidemics, weather, and labor disputes beyond the DB's control.

**8.6.2** Notwithstanding any other provision of the Contract Documents to the contrary, the DB shall not be entitled to an increase in the Contract Sum, or an extension of the Contract Times, or both:

**8.6.2.1** on account of the impact of any normal adverse weather on any of the Work or on account of the impact of any abnormal adverse weather on Work not on the critical path;

**8.6.2.2** to the extent that a delay occurs concurrently with a delay attributable to the DB; or

**8.6.2.3** on account of the delay of any Work not on the critical path.

**8.6.3** Notwithstanding any other provision of the Contract Documents to the contrary, the DB shall not be entitled to an increase in the Contract Sum or any type of damages on account of a delay in the commencement or progress of Work on the critical path unless **(1)** the delay is caused by the Owner and **(2)** the delay was not authorized or permitted under the

Contract.

**8.6.4** Notwithstanding any other provision of the Contract Documents to the contrary, the DB shall not be entitled to an increase in the Contract Sum or any type of damages arising from a delay in the commencement or progress of any of the Work caused by the occurrence or non-occurrence of an event beyond the Owner’s control such as acts of Nature or the public enemy, acts of the government, fires, floods, epidemics, labor disputes, unusual delivery delays, weather, or damages caused by the DB.

**8.6.5 Derivative Claims.** Notwithstanding any other provision of the Contract to the contrary, if the Owner prosecutes a claim, suit, or appeal against a Separate Consultant or Separate Contractor to recover damages the DB suffers on account of the acts or neglects of a Separate Consultant or Separate Contractor or a person or entity for whom either is legally responsible, the Owner’s liability to the DB shall not exceed the amount the Owner actually recovers from the Separate Consultant or Separate Contractor on account of those damages less the costs the Owner incurs recovering them. The Owner is not obligated to prosecute any such claim, suit, or appeal.

**8.7 Liquidated Damages**

**8.7.1** If the DB fails to achieve a Milestone within the associated Contract Time, it would be difficult, if not impossible, to determine the Owner’s resulting damages. Therefore, if the DB fails to achieve a Milestone within the associated Contract Time, the DB shall (at the Owner’s option) pay to or credit the Owner the Liquidated Damages per day sum determined according to the following schedule for each day that the DB fails to achieve a Milestone within the associated Contract Time.

Contract Sum	Liquidated Damages per day
Less than \$1,000,000	\$500
From \$1,000,000.01 to \$2,000,000	\$1,000
From \$2,000,000.01 to \$5,000,000	\$2,000
From \$5,000,000.01 to \$10,000,000	\$5,000
From \$10,000,000.01 to \$20,000,000	\$7,500
From \$20,000,000.01 to \$50,000,000	\$10,000
More than \$50,000,000	\$15,000

**8.7.2** If the DB simultaneously fails to achieve two or more Milestones, the Owner shall be entitled to recover the sum of the associated Liquidated Damages per day rates.

**8.7.3** The Liquidated Damages described in this **Section 8.7** are only intended to compensate the Owner for the damages the Owner itself incurs as a direct result of the DB’s failure to achieve the Milestones within their associated Contract Times.

**8.7.4** The Liquidated Damages described in this **Section 8.7** are not intended to compensate the Owner for any damages the Owner incurs on account of (1) any claims attributable to the DB that are brought by others including Separate Consultants and Separate Contractors as a result of the DB’s failure to achieve the Milestones within their associated Contract Times or (2) any failure of the DB to timely, properly, and completely perform the Contract other than the failure to achieve the Milestones within their associated Contract Times.

**8.7.5** The parties acknowledge that the above-listed Liquidated Damages per day sums are not penalties but are a reasonable estimate of the damages the Owner itself would incur as a direct result of the DB’s failure to achieve the Milestones within their associated Contract Times. The parties each irrevocably waive the right (if any) to challenge the validity and enforceability of those Liquidated Damages per day sums. Notwithstanding any other provision of the Contract Documents to the contrary, if a court determines that the Liquidated Damages per day sums or their application are void and unenforceable, the Owner shall be entitled to recover the actual damages that it incurs on account of the DB’s failure to achieve one or more of the Milestones within the Contract Times.

**8.7.6** In addition to other rights that the Owner may have relative to Liquidated Damages, the Contracting Authority may deduct Liquidated Damages from the Contract Sum as the damages accrue. If payments then or thereafter due the DB are not sufficient to cover such amounts, the DB shall immediately pay the amount of the insufficiency to the Owner.

**8.8 Mutual Waiver of Consequential Damages**

**8.8.1** Except as provided under **Section 8.8.2**, the Owner and DB each waive against the other all Claims for consequential damages that may arise out of or relate to this Contract.

**8.8.1.1** The Owner’s waiver includes Claims for loss of use, income, profit, revenue, financing, cost of capital, business and reputation, management and employee productivity, and consequential damages arising from

termination of the Contract or related to insolvency.

**8.8.1.2** The DB's waiver includes Claims for unabsorbed home-office overhead; any other form of overhead in excess of that specifically provided for under **Section 7.7**; delay damages except as otherwise specifically provided for in **Section 8.6**; increased cost of funds for the Project; lost opportunity to work on other projects; losses of financing, business, and reputation; loss of profit except anticipated profit arising directly from properly performed Work; loss of bonding capacity; and consequential damages arising from termination of the Contract or related to insolvency.

**8.8.2** Notwithstanding **Section 8.8.1**, this **Section 8.8**:

**8.8.2.1** does not apply to any damages that would be covered by insurance provided in connection with the Project if the Contract did not include **Section 8.8.1**;

**8.8.2.2** does not apply to the DB's indemnity obligations for third-party claims against the Indemnified Parties even if those claims are for damages that **Section 8.8.1** would otherwise preclude;

**8.8.2.3** does not preclude the Owner's recovery of Liquidated Damages under **Section 8.7**; and

**8.8.2.4** does not apply to Claims for damages arising from the Owner's or the DB's gross negligence or willful misconduct.

**8.8.3** This **Section 8.8** shall survive termination of the Contract.

## 8.9 Claim Decision

**8.9.1** The Project Manager shall review the DB's Claim and approve or deny all or any part of it, and forward a written decision to the DB and Contracting Authority within 30 days after receiving the DB's Claim.

**8.9.1.1** The Project Manager may employ independent resources to assist in its review, or refer evaluation of the Claim to a consultant.

**8.9.2** If the DB and Contracting Authority agree with the Project Manager's decision, the decision shall be incorporated into a Change Order.

**8.9.3** Any Claim remaining unresolved after completion of the process described under this **Section 8.9** shall be subject to Claim decision review as described under **Section 8.10**.

## 8.10 Claim Decision Review

**8.10.1** The DB may request review of the Project Manager's decision by written notice to the Contracting Authority delivered by certified mail within 14 days of the Project Manager's decision.

**8.10.2** Any Claim remaining unresolved after completion of the process described under this **Section 8.10** shall be subject to litigation.

## 8.11 Audit of the Claim

**8.11.1** All Claims shall be subject to audit at any time following filing of the Claim, whether or not the Claim is part of a lawsuit.

**8.11.2** The audit may be performed by employees of the Contracting Authority or by a consultant engaged by the Contracting Authority.

**8.11.3** The audit may begin upon 10-days' notice to the DB or affected Subcontractor.

**8.11.4** The DB shall cooperate with the request.

**8.11.5** Failure of the DB or a Subcontractor to produce sufficient records to allow the Contracting Authority to audit and verify a Claim shall constitute an irrevocable waiver of the Claim or portion of the Claim that could not be completely audited.

**8.11.6** The DB shall make available to the Contracting Authority all DB and Subcontractor documents related to the Claim including, without limitation, the following documents:

**8.11.6.1** daily time sheets and superintendent's daily reports;

**8.11.6.2** union agreements, if any, and employer agreements;

**8.11.6.3** insurance, welfare, fringes, and benefits records;

**8.11.6.4** payroll register;

**8.11.6.5** earnings records;

- 8.11.6.6 payroll tax returns;
- 8.11.6.7 material invoices, purchase orders, Subcontracts, and all material and supply acquisition contracts;
- 8.11.6.8 material cost distribution worksheets;
- 8.11.6.9 equipment records (list of DB equipment, rates, etc.);
- 8.11.6.10 vendor rental agreements and Subcontractor invoices;
- 8.11.6.11 Subcontractor payment certificates;
- 8.11.6.12 canceled checks (payroll and vendors);
- 8.11.6.13 complete and detailed job-cost report;
- 8.11.6.14 job payroll ledger;
- 8.11.6.15 general ledger, general journal, (if used) and all subsidiary ledgers and journals together with all supporting documentation pertinent to entries made in these ledgers and journals;
- 8.11.6.16 cash disbursements journal;
- 8.11.6.17 financial statements for all years reflecting operations on the Project;
- 8.11.6.18 income tax returns for all years reflecting operations on the Project;
- 8.11.6.19 depreciation records on all equipment utilized whether the records are maintained by the DB, its accountant, or others;
- 8.11.6.20 if a source other than depreciation records is used to develop costs for the DB's internal purposes in establishing the actual cost of owning and operating equipment, all other source documents;
- 8.11.6.21 all documents that reflect the DB's actual profit and Overhead during the years the Project was being performed;
- 8.11.6.22 all documents related to the preparation of the DB's GMP Proposal, including the final calculations on which the Contract Sum was based;
- 8.11.6.23 all documents that relate to the Claim together with all documents that support the amount of damages as to the Claim;
- 8.11.6.24 worksheets used to prepare the Claim establishing the cost components for items of the Claim including, but not limited to, labor, fringes, benefits and insurance, materials, equipment, Subcontractors, and all documents that establish the periods of time, individuals involved, the hours and rate of pay for the individuals; and
- 8.11.6.25 all other documents required by the Contracting Authority to reasonably review the Claim.

## 8.12 False Certification of the Claim

8.12.1 If the DB falsely certifies all or any part of a Claim, the portion of the Claim falsely certified shall be denied, and may be sufficient cause for the Contracting Authority to debar the DB from future contracting opportunities as permitted by law.

## 8.13 Performance and Payment

8.13.1 The DB shall proceed with the Work during any dispute resolution process, unless otherwise agreed by the DB and Contracting Authority in writing.

8.13.2 The Contracting Authority shall continue to make payment of any undisputed amounts in accordance with the Contract Documents pending final resolution of a Claim, unless otherwise agreed by the DB and Contracting Authority in writing.

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**ARTICLE 9 - COMPENSATION AND PAYMENT****9.1 Preconstruction Stage**

9.1.1 The DB shall bear all cost and expense incurred during the preconstruction stage.

**9.2 Construction Stage****9.2.1 Establishing the Contract Sum—General Provisions.**

9.2.1.1 In exchange for the DB's proper, timely, and complete performance of the Work in the Construction Stage, the Owner shall agree to the Contract Sum, being the residual value of the completed project in accordance with the RFP.

**9.2.2 Establishing the Contract Sum—Elements.**

9.2.2.1 For the purposes of the establishing the Contract Sum through the GMP Amendment, the Contract Sum is the sum of the DB's Fee, plus the estimated Cost of the Work (including Allowances and Unit Price Work), minus the scheduled reimbursement for the DB's operation of the facility upon final completion.

9.2.2.2 The DB shall not be entitled to any compensation except the residual value, if any, as set forth in the RFP.

9.2.2.3 The DB shall be responsible for all cost and expense during the Construction Stage.



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**ARTICLE 10 - BONDS, INSURANCE, AND INDEMNIFICATION**

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**10.1 Performance and Payment Bonds**

**10.1.1** Before signing the Agreement, the DB shall provide the Performance Bond and Payment Bond required under OAC Section 153:1-4-02 and below:

**10.1.1.1** The Performance Bond shall be in the form of **Document 00 61 13.13 - Performance Bond Form**.

**10.1.1.2** The Payment Bond shall be in the form of **Document 00 61 13.16 - Payment Bond Form**.

**10.1.1.3** Each Surety under the Bonds shall be licensed to do business in Ohio and satisfactory to the Contracting Authority.

**10.1.1.4** If there is more than one Surety under a Bond, each of them shall be jointly and severally liable as surety under that Bond.

**10.1.1.5** The penal sum of each of the Bonds, when initially submitted, shall be equal to 100 percent of the DB's estimate of the Cost of the Work.

**10.1.1.6** Bond forms with terms and conditions not compliant with OAC Section 153:1-4-02 and/or riders will not be accepted by the Contracting Authority.

**10.1.2** The DB shall submit with each executed Bond **(1)** a certified copy of the authority to act (power of attorney) of the agent signing the Bond on behalf of the Surety and **(2)** a current and signed Certificate of Compliance under ORC Section 9.311 issued by the Ohio Department of Insurance showing the Surety is licensed to do business in Ohio.

**10.1.3** If the estimate of the Cost of the Work increases at any time after the DB provides the Bonds under **Section 10.1.1**, the DB shall cause the penal sums of the Bonds to be increased such that the penal sums equal 100 percent of the revised estimate.

**10.1.4** As a condition precedent to the effectiveness of the GMP Amendment, the DB shall cause the penal sums of the Bonds to be increased such that the penal sums equal 100 percent of the the Contract Sum established in the GMP Amendment. If the Contract Sum increases at any time after the GMP Amendment, the DB shall cause the penal sums of the Bonds to be increased such that the penal sums equal 100 percent of the increased Contract Sum.

**10.1.5** Any time the DB increases the penal sums of the Bonds under **Section 10.1.3** or **Section 10.1.4**, the DB shall deliver to the Contracting Authority new Bonds showing the increased penal sums and written consent of the affected Surety or Sureties confirming the increased penal sums. The Contracting Authority's receipt of replacement Bonds and that written consent is a condition precedent to the Owner's obligation to pay the DB for any portion of the Work associated with the increase.

**10.1.6** If at any time prior to final payment, any surety providing Bonds for the Project **(1)** is adjudged bankrupt or has made a general assignment for the benefit of its creditors; **(2)** has liquidated all assets or has made a general assignment for the benefit of its creditors; **(3)** is placed in receivership; **(4)** otherwise petitions a state or federal court for protection from its creditors; or **(5)** allows its license to do business in Ohio to lapse or to be revoked, then the DB shall, within 21 days of any such action listed above, provide the Contracting Authority with new Bonds in the form and amount described in this **Section 10.1**. The Contracting Authority's receipt of replacement Bonds is a condition precedent to the Owner's obligation to pay the DB.

**10.1.7** If notice of any change affecting the Contract is required by any Surety or by the provision of any Bond, the DB shall provide that notice.

**10.1.8** For the purposes of determining the penal sum of the Bonds under this **Section 10.1** only, the Preconstruction Stage Compensation and the Contract Sum do not include the Design Services Fee.

**10.2 DB's General Insurance Requirements**

**10.2.1** Throughout the performance of the Work or longer as may be described below, the DB shall obtain, pay for, and keep in force, the minimum insurance coverage described in this **Article 10**.

**10.2.1.1** Each requirement of this **Article 10** applies to Subcontractors just as it applies to the DB.

**10.2.1.2** If a Subcontractor's usual insurance coverage does not meet the minimum coverage requirements, before entering into an agreement with that Subcontractor, the DB shall submit to the Contracting Authority **(1)** a certificate of insurance evidencing the insurance the Subcontractor will carry without additional compensation and **(2)** if the Contracting Authority requests, a written proposal from the Subcontractor to provide coverage that meets the minimum coverage requirements. The Contracting Authority will decide whether to accept the non-conforming insurance coverage or the proposal to provide conforming coverage.

**10.2.1.3** On a case-by-case basis, the Contracting Authority and DB may agree to adjust the below requirements for

any particular Subcontractor.

**10.2.2** Before starting the Work on the Site, upon renewal of any policy, and upon a change of any insurance carrier, the DB shall deliver to the Contracting Authority certificates evidencing that the required insurance is in force.

**10.2.3** With the exception of government-controlled workers compensation coverage:

**10.2.3.1** the DB shall place the insurance with companies that **(1)** are satisfactory to the Contracting Authority, **(2)** hold an A.M. Best Rating of A-, X, or higher, and **(3)** are authorized to conduct business in Ohio;

**10.2.3.2** the policies shall be endorsed to require the DB's insurance carrier to **(1)** provide at least 30-days' written notice to the Contracting Authority (as certificate holder) of the cancellation or non-renewal of the insurance and **(2)** provide at least 10-days' written notice to the Contracting Authority (as certificate holder) of the cancellation of the insurance for non-payment of premium; and

**10.2.3.3** within 30 days of the Contracting Authority's request, the DB shall submit insurance-company certified copies of the policies, the policy endorsements, loss-run reports, or all three.

**10.2.4** The DB shall pay all deductibles, or self-insured retentions, or both contained in the DB's policies of insurance required or provided in connection with the Project. The Contracting Authority reserves the right to approve or reject all levels of self-insured retention, captive insurance programs, or other alternative risk financing the DB may use to comply with any insurance requirement.

**10.2.5** The DB shall pay a proportionate share of the deductibles, or self-insured retentions, or both contained in any insurance policy the Contracting Authority purchases for the Project. The DB's proportionate share will derive from the percentage of the associated claim or loss attributable to the alleged or actual negligence of the DB, a Subcontractor, or a Consultant.

**10.2.6** The Contracting Authority and Owner do not represent that required coverage or limits are adequate to protect the DB.

**10.2.7** Failure of the Contracting Authority to demand a certificate or other evidence of full compliance with the insurance requirements or failure of Contracting Authority to identify a deficiency from evidence that is provided shall not be construed as a waiver of the DB's obligation to maintain the required insurance.

**10.2.8** The Contracting Authority may terminate the Contract for cause on account of the DB's failure to maintain required insurance.

### 10.3 DB's Minimum Coverage Requirements

**10.3.1** Workers Compensation. The DB shall maintain workers compensation coverage meeting the requirements of Applicable Law.

**10.3.2** Employers Liability Coverage. The DB shall maintain employers liability coverage with **(1)** an each-accident limit of not less than \$1,000,000, **(2)** a disease each-employee limit of not less than \$1,000,000, and **(3)** a disease policy limit of not less than \$1,000,000.

**10.3.3** Commercial General Liability. The DB shall maintain commercial general liability ("CGL") coverage that provides **(1)** an each-occurrence limit of not less than \$1,000,000, **(2)** a general-aggregate limit of not less than \$2,000,000, and **(3)** a products and completed-operations aggregate limit of not less than \$2,000,000.

**10.3.3.1** The CGL insurance shall be written on ISO occurrence form CG 00 01 10 01 or a substitute form, providing at least equivalent coverage for liability arising from premises, operations, independent contractors, products/completed-operations, personal and advertising injury, and liability assumed under an insured contract.

**10.3.3.2** The DB shall include the State, Contracting Authority, Owner, and Criteria A/E as additional insureds under the CGL policy using ISO endorsement CG 20 10 07 04 and ISO endorsement CG 20 37 07 04 or a substitute form(s) providing equivalent coverage.

**10.3.3.3** The CGL policy shall be endorsed using ISO endorsement CG 25 03 or a substitute form providing equivalent coverage to provide that the general aggregate limit applies separately to each of the insured's projects.

**10.3.3.4** The CGL insurance shall apply as primary and non-contributory insurance with respect to any other insurance or self-insurance programs that cover the additional insured(s).

**10.3.3.5** The CGL policy shall not exclude coverage to the additional insured(s) for bodily injury or property damage arising out of the products/completed-operations hazard.

**10.3.3.6** The DB shall maintain the CGL insurance in effect for no less than 5 years after the earlier of the termination the Contract or Substantial Completion of all Work.

**10.3.4 Business Automobile Liability.** The DB shall maintain business automobile (“BA”) coverage written on ISO form CA 00 01 10 01 or a substitute form, providing at least equivalent coverage with a limit of not less than \$1,000,000 each accident.

**10.3.4.1** The coverage shall extend to any auto.

**10.3.4.2** The DB shall include the State, Contracting Authority, Owner, and Criteria A/E as additional insureds under the BA policy.

**10.3.5 Umbrella/Excess Liability.** The DB may employ an umbrella/excess liability policy to achieve the above-required minimum coverage.

**10.3.5.1** The DB shall maintain umbrella/excess liability coverage with a limit of not less than \$2,000,000 (in addition to the above-required limits) if the Work (or the Work to be performed by the Subcontractor) includes any of the following:

- .1 brick/block masonry;
- .2 exterior caulking/sealant;
- .3 cast-in-place or precast concrete;
- .4 curtain wall;
- .5 dampproofing/waterproofing;
- .6 electrical;
- .7 elevator;
- .8 exterior glass and/or glazing;
- .9 exterior marble, granite, and/or other stonework;
- .10 miscellaneous metals;
- .11 plaster/stucco;
- .12 plumbing;
- .13 HVAC;
- .14 roofing and/or sheet metal;
- .15 scaffolding;
- .16 spray-on fireproofing;
- .17 sprinkler and/or fire protection; or
- .18 structural steel and/or metal deck.

**10.3.5.2** The DB shall maintain umbrella/excess liability coverage with a limit of not less than \$5,000,000 (in addition to the above-required limits) if the Work (or the Work to be performed by the Subcontractor) includes any of the following:

- .1 caissons and/or piles;
- .2 demolition;
- .3 excavation and/or utility work;
- .4 sheeting, shoring, and/or underpinning;
- .5 window washing equipment; or
- .6 wrecking.

**10.3.6 Contractor’s Pollution Liability.** If the Work includes environmentally sensitive, hazardous types of activities (such as demolition, exterior insulation finish systems, Asbestos abatement, storage-tank removal, or similar activities), or involves Hazardous Materials, the DB shall maintain a contractor’s pollution liability (“CPL”) policy with **(1)** a per-claim limit of not less than \$1,000,000 and **(2)** an annual-aggregate limit of not less than \$1,000,000, covering the acts, errors and/or omissions of the DB for damages (including from mold) sustained by the Owner by reason of the DB’s performance of the Work.

**10.3.6.1** The CPL policy shall have an effective date, which is on or before the date that the DB first started to perform any Project-related services.

**10.3.6.2** Upon submission of the associated certificate of insurance and at each policy renewal, the DB shall advise the Contracting Authority in writing of any actual or alleged claims that may erode the CPL policy’s limits.

**10.3.6.3** The DB shall maintain the CPL insurance in effect for no less than 5 years after the earlier of the termination of the Contract or Substantial Completion of all Work.

**10.3.7 Professional Liability—DB and AOR.** The DB and AOR shall each separately maintain professional liability insurance without design-build exclusions with limits not less than as identified in the following table:

Contract Sum	Each Claim	Annual Aggregate
Up to \$25,000,000	\$1,000,000	\$2,000,000
From \$25,000,000.01 to \$50,000,000	\$2,000,000	\$4,000,000
From \$50,000,000.01 to \$100,000,000	\$5,000,000	\$5,000,000
More than \$100,000,000	\$10,000,000	\$10,000,000

**10.3.7.1** The professional liability policy shall have an effective date on or before the date that the DB or AOR (as applicable) first started to provide any Project-related services.

**10.3.7.2** Upon submission of the associated certificate of insurance and at each policy renewal, the DB shall advise the Contracting Authority in writing of any actual or alleged claims that may erode the professional liability policy’s limits.

**10.3.7.3** The DB and AOR shall each maintain the professional liability insurance in effect for no less than 5 years after the earlier of the termination of the Contract or Substantial Completion of all Work.

**10.3.7.4** If the DB is not authorized under Applicable Law to directly provide professional design services, the DB may satisfy the requirements of this **Section 10.3.7** by providing a contractor’s professional liability insurance policy.

**10.3.7.5** If the DB or AOR is a joint venture:

- .1 the DB or AOR (as applicable) may meet the requirements of this **Section 10.3.7** by providing a PL policy under which each joint venturer is the insured; or
- .2 each joint venturer shall individually meet the requirements of this **Section 10.3.7** by providing a PL policy (1) under which the individual joint venturer is the insured and (2) that covers that joint venturer’s interests in the joint venture by endorsement or otherwise. The certificate of insurance shall reflect that the PL policy covers the joint venturer’s interest in the joint venture.

*Example:* Assume that the CM (1) is the “XY joint venture” of company “X” and company “Y”; and (2) is required under **Section 10.3.7** to maintain PL insurance limits of \$1M/\$2M. In order to comply with **Section 10.3.7.5.2**, “X” must maintain PL insurance limits of \$1M/\$2M and “Y” must maintain PL insurance limits of \$1M/\$2M.

**10.3.7.6** If the DB or AOR is a limited-liability company, which members consist of two or more separate firms:

- .1 the DB or AOR (as applicable) may meet the requirements of this **Section 10.3.7** by providing a PL policy under which the limited-liability company is the insured; or
- .2 each member of the limited-liability company shall individually meet the requirements of this **Section 10.3.7** by providing a PL policy (1) under which the individual member is the insured and (2) that covers that member’s interests in the limited-liability company by endorsement or otherwise. The certificate of insurance shall reflect that the PL policy covers the member’s interest in the limited-liability company.

*Example:* Assume that the CM (1) is the “XY limited-liability company,” the members of which are “X” and “Y”; and (2) is required under **Section 10.3.7** to maintain PL insurance limits of \$1M/\$2M. In order to comply with **Section 10.3.7.6.2**, “X” must maintain PL insurance limits of \$1M/\$2M and “Y” must maintain PL insurance limits of \$1M/\$2M.

**10.3.8 Professional Liability—Consultants.** Each Consultant that provides professional design services shall maintain professional liability insurance without design-build exclusions with limits not less than as identified in the following table:

Contract Sum Applicable to Consultant’s Scope of Services	Each Claim	Annual Aggregate
Up to \$25,000,000	\$1,000,000	\$2,000,000
From \$25,000,000.01 to \$50,000,000	\$2,000,000	\$4,000,000
From \$50,000,000.01 to \$100,000,000	\$5,000,000	\$5,000,000
More than \$100,000,000	\$10,000,000	\$10,000,000

**10.3.8.1** The professional liability policy shall have an effective date on or before the date that the Consultant first started to provide any Project-related services.

**10.3.8.2** Upon submission of the associated certificate of insurance and at each policy renewal, the DB shall advise the Contracting Authority in writing of any actual or alleged claims that may erode the professional liability policy’s limits.

**10.3.8.3** The Consultant shall maintain the professional liability insurance in effect for no less than 5 years after the earlier of the termination of the Contract or Substantial Completion of all Work.

**10.3.8.4** If the Consultant is not authorized under Applicable Law to directly provide professional design services, the Consultant may satisfy the requirements of this **Section 10.3.7.5** by providing a contractor’s professional liability insurance policy.

**10.3.9 Professional Liability—Subcontractors.** If the Work to be performed by a Subcontractor includes any professional design services (including without limitation sprinkler and/or fire protection and other design-build work) the Subcontractor shall maintain professional liability insurance without design-build exclusions with limits not less than as identified in the following table:

Subcontract Sum	Each Claim	Annual Aggregate
Up to \$50,000,000	\$1,000,000	\$2,000,000
More than \$50,000,000	\$2,000,000	\$4,000,000

**10.3.9.1** The professional liability policy shall have an effective date on or before the date that the Subcontractor first started to provide any Project-related services.

**10.3.9.2** Upon submission of the associated certificate of insurance and at each policy renewal, the DB shall advise the Contracting Authority in writing of any actual or alleged claims that may erode the Subcontractor’s professional liability policy’s limits.

**10.3.9.3** The Subcontractor shall maintain the professional liability insurance in effect for no less than 5 years after the earlier of the termination of the Contract or Substantial Completion of all Work.

**10.3.9.4** If the Subcontractor is not authorized under Applicable Law to directly provide professional design services, the Subcontractor may satisfy the requirements of this **Section 10.3.9** by providing a contractor’s professional liability insurance policy.

**10.3.10 Aviation Liability.** If the DB or a Subcontractor uses aircraft, including helicopters, in performance of the Work, the DB shall maintain aircraft or aviation liability coverage in an amount of no less than \$10,000,000. The Contracting Authority and Owner will not be liable for any damage to any aircraft owned, leased, rented, or borrowed by the DB or Subcontractor.

**10.3.11 Watercraft Liability.** If the DB or a Subcontractor uses watercraft in performance of the Work, the DB shall maintain watercraft liability coverage including protection and indemnity insurance in an amount of no less than \$5,000,000. The Contracting Authority and Owner will not be liable for any damage to any watercraft owned, leased, rented, or borrowed by the DB or Subcontractor.

**10.3.12 Equipment Coverage.** The Contracting Authority and Owner will not insure or be liable for damage to any DB or Subcontractor owned, leased, rented, or borrowed tools, equipment, or vehicles. The DB and Subcontractors are solely responsible for maintaining all insurance necessary to cover their tools, equipment, and vehicles.

**10.3.13 Ocean Marine Insurance.** If the shipment of equipment or materials for the Work will not be covered by the builder’s risk insurance required under **Section 10.4**, the DB shall maintain ocean marine insurance to the Site including cost, insurance, and freight with limits of not less than an amount equal to the full replacement cost of equipment/materials shipped to final destination point. The insurance shall include the following minimum requirements:

- 10.3.13.1** all-risk basis including war risk and all forms of terrorism;
- 10.3.13.2** coverage for general average and salvage charges;
- 10.3.13.3** “on deck” coverage;
- 10.3.13.4** warehouse-to-warehouse coverage;
- 10.3.13.5** coverage to include losses from strikes, riots, and civil commotions (“SR&CC coverage”);
- 10.3.13.6** coverage to include losses from free of capture and seizure warranty (“FC&S Warranty coverage”);
- 10.3.13.7** “Inchmaree” clause;
- 10.3.13.8** sue and labor;
- 10.3.13.9** “both-to-blame” coverage;

**10.3.13.10** free of particular average;

**10.3.13.11** inland coverage including on-land shipment, port storage, and barge transit upon inland waterways; and

**10.3.13.12** damage by saltwater and rainwater perils and cargo sweat.

**10.3.14 Additional Property Insurance.** For any demolition, blasting, excavating, tunneling, shoring, or similar operations, the DB shall provide and maintain Property Damage Liability insurance with a limit of liability equal to the limit as specified in the applicable sections of **Article 10**.

## **10.4 Builder's Risk Insurance**

**10.4.1** The DB shall provide and maintain, during the progress of the Work and until Contract Completion, a builder's risk insurance policy to cover all Work in the course of construction including false-work, temporary buildings and structures, and materials used in the construction process, stored on or off-site, or while in transit. This insurance shall be on a special cause of loss form that provides coverage on an open perils basis insuring against the direct physical loss of, or damage to, covered property including, but not limited to, theft, vandalism, malicious mischief, earthquake, tornado, lightning, explosion, breakage of glass, flood, collapse, water damage, and hot and cold testing. This insurance shall be written on a replacement cost basis and shall also include debris removal, and/or demolition occasioned by enforcement of Applicable Law.

**10.4.1.1** The amount of coverage shall be not less than the total completed value of the Project, including the value of permanent fixtures and decorations, with a deductible of not more than \$25,000 per occurrence. Any deductible over the amount specified shall be authorized in writing by the Owner and Contracting Authority.

**10.4.1.2** Coverage shall include a provision to pay the reasonable extra costs of acceleration and expediting temporary and permanent repairs to, or permanent replacement of, damaged property. This shall include overtime wages and the extra cost of "express" or other means for rapidly transporting materials and supplies necessary to the repair or replacement.

**10.4.1.3** Coverage shall include "soft cost endorsement" including, but not limited to, the reasonable extra costs of the Criteria A/E and reasonable DB extension or acceleration costs.

**10.4.1.4** Coverage shall include material in transit or stored off-site and identified for the Project.

**10.4.1.5** Coverage shall waive all rights between the Owner, Contracting Authority, DB, and Subcontractors at any tier, for damages caused by fire or any other perils to the extent of actual recovery of any insurance proceeds under the policy.

**10.4.1.6** Coverage shall include appropriate sub-limits for installation coverage.

**10.4.1.7** Coverage shall include provisions for mechanical or electrical breakdown, or boiler system testing.

**10.4.1.8** Coverage shall include temporary structures and scaffolding, along with collapse coverage.

**10.4.1.9** Coverage shall be primary to all other applicable insurance.

**10.4.1.10** The builder's risk policy shall specifically permit and allow for Partial Occupancy by the Owner prior to Contract Completion and coverage shall remain in effect until all punch list items are completed.

**10.4.1.11** The DB's tools and equipment shall not be covered under the builder's risk policy. It is the DB's sole responsibility to maintain such coverage, which shall be included in its Overhead and not included as a separate item in the DB's Schedule of Values.

**10.4.2** If the DB is involved solely in the installation of material and equipment and not in new building construction, the DB shall purchase and maintain a builder's risk, builder's risk-renovations, or installation floater insurance policy. The policy shall comply with the provisions of **Section 10.4.1**.

## **10.5 Waivers of Subrogation**

**10.5.1** To the fullest extent permitted by Applicable Law, the DB waives all rights against the Owner, Contracting Authority, and their agents and employees for damages to the extent covered by any insurance, except rights to the proceeds of that insurance. All policies shall accomplish the waiver of subrogation by endorsement or otherwise.

**10.5.2** The Owner, Contracting Authority, and DB waive all rights against each other for damages caused by fire or other perils to the extent of actual recovery of any insurance proceeds under any property insurance, inland marine insurance, or builder's risk insurance applicable to the Work.

## 10.6 Indemnification for Injury or Damage

**10.6.1 Liability Other than Professional Liability.** To the fullest extent permitted by Applicable Law and with respect to liability other than professional liability claims, the DB shall indemnify, defend, and hold harmless the Indemnified Parties from and against all claims, costs, damages, losses, fines, penalties, and expenses (including but not limited to all fees and charges of attorneys and other professionals and all court, arbitration, or other dispute-resolution costs) arising out of or in connection with the Project, provided that any such claim, cost, damage, loss, fine, penalty, or expense is attributable to:

**10.6.1.1** bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property but only to the extent caused by the negligent acts, errors, or omissions of the DB or a person or entity for whom the DB may be liable;

**10.6.1.2** infringement of patent rights or copyrights by the DB or a person or entity for whom the DB may be liable; or

**10.6.1.3** a violation of Applicable Law but only to the extent attributable to the DB or a person or entity for whom the DB may be liable.

**10.6.2 Professional Liability.** To the fullest extent permitted by Applicable Law and with respect to professional liability claims, the DB shall indemnify and hold harmless the State, Contracting Authority, Owner, and their respective officers, officials, and employees from and against all claims, costs, damages, losses, fines, penalties, and expenses (including but not limited to all fees and charges of attorneys and other professionals and all court, arbitration, or other dispute-resolution costs) arising out of or in connection with **(1)** the failure of the DB or Person for whom the DB is legally liable to comply with the standard of care described under **Section 1.12**; and **(2)** infringement of patent rights or copyrights by the DB or a Person for whom the DB may be liable.

**10.6.3** The DB's indemnification obligation under **Section 10.6** exists regardless of whether or not and the extent to which the claim, damage, loss, fine, penalty, or expense is caused in part by a Person indemnified under **Section 10.6**. But nothing in **Section 10.6** obligates the DB to indemnify any individual or entity from and against the consequences of that Person's own negligence.

**10.6.3.1** The DB's obligations under **Section 10.6** shall not extend to the liability of the Criteria A/E, Criteria A/E's consultants, agents, representatives, or employees for negligent preparation or approval of Drawings, Specifications, Change Orders, opinions, and any other responsibility of the Criteria A/E, except to the extent covered by the DB's insurance.

**10.6.4** In claims against a Person indemnified under **Section 10.6** by any direct or indirect employee (or the survivor or personal representative of that employee) of the DB or a Person for whom the DB may be liable, the indemnification obligation under **Section 10.6** will not be limited by a limitation on the amount or type of damages, compensation, or benefits payable under workers' compensation acts, disability benefit acts, or other employee benefit acts.

**10.6.5** The DB's indemnification obligation under **Section 10.6** will not be limited by any insurance policy provided or required in connection with the Project.

**10.6.6** The DB's obligations under **Section 10.6** shall not negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a Person indemnified under **Section 10.6**.

**10.6.7** The DB's indemnification obligation under **Section 10.6** will survive termination of the Contract and Contract Completion.

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**ARTICLE 11 - SUSPENSION AND TERMINATION**
**11.1 Suspension of the Work**

**11.1.1** The Contracting Authority, without cause and without prejudice to any other right or remedy it may have, may order the DB in writing to suspend, delay, or interrupt performance of the Work in whole or in part for such period as the Contracting Authority may determine.

**11.1.1.1** If the Contracting Authority suspends the Work under this **Section 11.1.1** and the DB complies with **Article 8**, the Contract Sum, and Contract Times shall be adjusted for increases in the cost and time caused by the suspension, delay, or interruption.

**11.1.1.2** Notwithstanding the foregoing, no adjustment shall be made to the Contract Sum or Contract Times to the extent that:

- .1 performance was, or could have been, suspended, delayed, or interrupted by a cause for which the DB is responsible; or
- .2 an equitable adjustment is made or denied under another provision of the Contract.

**11.1.2** The Contracting Authority, without prejudice to any other right or remedy it may have, may order the DB in writing to suspend, delay, or interrupt the performance of the Work in whole or in part for such period as the Contracting Authority may determine for any of the following reasons: **(1)** Defective Work; **(2)** the DB is causing undue risk of damage to any part of the Project or adjacent area; **(3)** the DB fails to furnish or perform the Work in such a way that the complete Work will conform to the requirements of the Contract Documents; or **(4)** any other cause the Contracting Authority reasonably believes justifies suspension.

**11.1.2.1** The Contracting Authority's exercise of its right to suspend the Work under this **Section 11.1.2** shall not entitle the DB to any adjustment of the Contract Sum, or Contract Times.

**11.1.2.2** If the Contracting Authority is adjudged to have improperly suspended the Work under this **Section 11.1.2**, the suspension shall be deemed to have been a suspension under **Section 11.1.1**.

**11.1.3** Upon receipt of notice of suspension under this **Section 11.1**, the DB shall cease Work on the suspended activities and take all necessary or appropriate steps to limit disbursements and minimize respective costs. The DB shall furnish a report to the Contracting Authority, within 5 days of receiving the notice of suspension, describing the status of the Work, including, but not limited to, results accomplished, resulting conclusions, and other information as the Contracting Authority may require.

**11.1.4** The Contracting Authority's right to stop the Work shall not give rise to any duty to exercise the right for the benefit of the DB or any other party, and the Contracting Authority's exercise or failure to exercise the right shall not prejudice any of the Contracting Authority's other rights.

**11.2 [NOT USED]****11.3 Termination for Cause**

**11.3.1** The Contracting Authority may terminate all or a portion of the Contract if the DB commits a material breach of the Contract including but not limited to:

- 11.3.1.1** failure to prosecute the Work with the necessary force or in a timely manner;
- 11.3.1.2** refusal to remedy Defective Work;
- 11.3.1.3** failure to supply enough properly skilled workers or proper materials;
- 11.3.1.4** failure to properly make payment to Subcontractors or Consultants;
- 11.3.1.5** performance of any services outside of the United States;
- 11.3.1.6** permitting its Subcontractors or Consultants to perform any services outside of the United States; or
- 11.3.1.7** disregarding laws, ordinances, or rules, regulations, or orders of a public authority with jurisdiction over the Project.

**11.3.2** If the Contracting Authority intends to exercise its termination rights under this **Section 11.3**, the Contracting Authority shall issue not less than 5-days' written notice to the DB and the DB's Surety ("5-Day Notice").

**11.3.2.1** Notwithstanding any provision of the Contract to the contrary **(1)** the issuance of a 72-Hour Notice under **Section 6.22.1** is not a condition precedent to the Contracting Authority's exercise of its rights under **Section 11.3** and **(2)** the Contracting Authority's decision to not issue a 72-Hour Notice under **Section 6.22.1** will not prejudice the Contracting Authority's rights under **Section 11.3**.



**11.3.3** If the DB fails to satisfy the requirements set forth in the 5-Day Notice within 15 days of receipt of the 5-Day Notice, the Contracting Authority may declare the DB in default, terminate the Contract, and employ upon the Work the additional force or supply materials or either as appropriate, and remove Defective Work.

**11.3.4** If the Contract is terminated, the DB's Surety may perform the Contract. If the DB's Surety does not commence performance of the Contract within 10 days of the date of Contract termination, the Contracting Authority may complete the Work by means the Contracting Authority determines appropriate. The Contracting Authority may take possession of and use all materials, facilities, and equipment at the Site or stored off-site, for which the Owner has paid.

**11.3.5** If the Contract is terminated, the DB shall not be entitled to further payment.

**11.3.5.1** If the Contract is terminated before the Contract Sum is established and the Preconstruction Stage is not completed, the DB or Surety shall immediately pay the amount of the insufficiency to the Owner. This obligation for payment shall survive termination of the Contract.

**11.3.6** If the DB's Surety performs the Work, the provisions of the Contract Documents govern the Surety's performance, with the Surety in place of the DB in all provisions.

## **11.4 DB Insolvency**

### **11.4.1 Bankruptcy of DB.**

**11.4.1.1** If the DB files a voluntary petition in bankruptcy or has an involuntary petition in bankruptcy filed against it, the DB, the DB as the debtor-in-possession, or the trustee of the DB's bankruptcy estate shall file a motion to assume or reject the Contract under Bankruptcy Code §365, 11 U.S.C. §365, within 20 days after the filing of the voluntary petition or involuntary petition and shall diligently prosecute that motion to conclusion so as to obtain an order granting or denying that motion within 45 days after the filing of the voluntary or involuntary petition. The failure to file and prosecute that motion within the time limits provided by this **Section 11.4** shall constitute a material breach of the Contract as time is of the essence with respect to DB's performance of all terms of this Contract. The DB agrees to the granting of relief from the automatic stay of the Bankruptcy Code, 11 U.S.C. §362(a), to permit the Contracting Authority to terminate the Contract for cause in such instance and issue and serve all notices necessary to terminate the Contract or arising out of the termination of the Contract and to take any and all other action necessary to terminate the Contract.

### **11.4.2 Receivership or Assignment for the Benefit of Creditors.**

**11.4.2.1** If the DB makes a general assignment for the benefit of creditors or if a receiver is appointed for all or a substantial part of the DB's business or property, the Contracting Authority shall serve written notice on the DB and DB's Surety stating that any failure of the DB to provide adequate assurance of continued performance shall be considered a rejection of the Contract, which shall result in termination of the Contract for cause. Such termination of the Contract need not be evidenced by an order of any court.

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**ARTICLE 12 - GENERAL PROVISIONS**

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**12.1 DB's Documents and Contract Documents****12.1.1 Ownership.**

**12.1.1.1** The Owner alone owns the DB's Documents and the Contract Documents and every right, title, and interest therein.

- .1** The DB shall execute and deliver and cause its employees and agents and all Subcontractors and Consultants to execute and deliver, to the Owner any transfers, assignments, documents, or other instruments (if any) necessary to vest in the Owner complete right, title, interest in and ownership of the DB's Documents and the Contract Documents.

**12.1.1.2** The DB may retain copies, including reproducible copies, of the DB's Documents and the Contract Documents for information, reference, and performance of the Work.

**12.1.1.3** The submission or distribution of the DB's Documents and the Contract Documents to meet official regulatory requirements or for similar purposes in connection with the Project is not a waiver of the Owner's reserved rights in the DB's Documents and the Contract Documents. Any unauthorized use of the DB's Documents and the Contract Documents shall be at the sole risk of the entity making the unauthorized use.

**12.1.1.4** The DB shall provide Electronic Files (in native format) to Separate Consultants and Separate Contractors for their use in connection with the Project. The DB shall provide the Electronic Files **(1)** at no additional cost to the Separate Consultants, Separate Contractors, and Owner and **(2)** without requiring the Separate Consultants, Separate Contractors, or Owner to agree to any terms or conditions concerning the provision, receipt, or use of the Electronic Files that differ in any material respect from the Contract.

**12.1.2 Intent.**

**12.1.2.1** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the DB.

**12.1.2.2** The Contract Documents are complementary, and what is required by one is binding as if required by all.

**12.1.2.3** The DB shall provide all services, labor, and materials necessary for the entire completion of the Work described in the Contract Documents and reasonably inferable to produce the intended results.

**12.1.2.4** The Drawings govern dimensions, details, and locations of the Work. The Specifications govern quality of materials and workmanship.

**12.1.2.5** The organization of the Specifications in divisions, sections, and articles, and the arrangement of Drawings shall not restrict the DB in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

**12.1.2.6** In the event of inconsistency or conflict within the Contract Documents, the DB shall provide the better quality or greater quantity of Work, and comply with the stricter requirement.

**12.1.2.7** Unless otherwise defined in the Contract Documents, words that have well-known technical or construction industry meanings are used in accordance with those recognized meanings.

**12.1.2.8** The Sections of Division 01 - "General Requirements" govern the performance of the Work of all Sections of the Specifications.

**12.1.3 Use of Electronic Files.**

**12.1.3.1** The Owner, Contracting Authority, Criteria A/E, and DB reasonably expect that they will provide Electronic Files to each other to facilitate the design and construction of the Project consistent with current practices and customs in the construction industry.

**12.1.3.2** The Owner, Contracting Authority, Criteria A/E, and DB acknowledge that the use of Electronic Files involves risks not generally associated with the use of paper documents. Those risks include, for example and without limitation, alteration (inadvertent or intentional) and deterioration, both of which may not be readily apparent through casual observation.

**12.1.3.3** The Owner, Contracting Authority, Criteria A/E, and DB do not warrant to each other that any Electronic File they provide **(1)** was not altered through transmission; **(2)** is compatible with the recipient's computer system or software; **(3)** will not be altered through degradation of the recipient's storage media; or **(4)** is suitable for conversion/translation to and subsequent use in a system or format other than the Electronic File's original system or format.

**12.1.3.4** Before relying on any Electronic File it receives, the recipient is responsible for verifying that the Electronic File was not altered through transmission, degradation of the recipient's own storage media, or other

causes.

**12.1.3.5** If the recipient of an Electronic File converts/translates the Electronic File from its original system or format to an alternate system or format, the recipient assumes the risk that the conversion/translation created errors in the converted/translated file.

**12.1.3.6** The Owner, Contracting Authority, Criteria A/E, and DB shall each maintain and operate its own computer systems and storage media in a commercially reasonable way and take reasonable steps to prevent errors in and deterioration of the Electronic Files it creates, provides, and receives.

**12.1.3.7** In the event of a discrepancy between information contained in a paper version of a document and the Electronic File of that document, the paper version will govern.

**12.1.3.8** This **Section 12.1.3** does not relieve the DB of its responsibility for the preparation, completeness, or accuracy of the DB's Documents.

## 12.2 Public Relations

**12.2.1** Publicity prior to completion of the Project. Prior to completion of the Project, public relations or publicity about the Project shall be solely within the control, and with the consent of, the Owner.

**12.2.2** Publicity after completion of the Project. After completion of the Project, the DB may exercise reasonable public relations and marketing efforts related to the Project, provided the DB properly identifies the Owner and Contracting Authority, and their participation in the Project.

## 12.3 Application and Governing Law

**12.3.1** The Contract and the rights of the parties thereunder shall be governed by the laws of the state of Ohio and only the courts of Delaware County, Ohio shall have jurisdiction over any action or proceeding concerning the Contract and/or performance thereunder. The DB irrevocably consents to such jurisdiction.

**12.3.2** The parties to the Contract shall comply with Applicable Law.

**12.3.3** Other rights and responsibilities of the DB, Criteria A/E, Contracting Authority, and Owner are set forth throughout the Contract Documents and included under different titles, articles, and paragraphs for convenience.

## 12.4 Conditions of the Contract

**12.4.1** These General Conditions govern, take precedence over, and shall not be superseded or amended by Drawings and Specifications, unless so provided in Supplementary Conditions prepared by the Contracting Authority.

## 12.5 Notice of Commencement

**12.5.1** The Contracting Authority shall prepare a Notice of Commencement and make it available as required under ORC Section 1311.252.

**12.5.2** Upon request, the Contracting Authority or DB shall furnish the Notice of Commencement to Subcontractors or any other member of the public.

## 12.6 Written Notice

**12.6.1** Notice under the Contract Documents shall be validly given if:

**12.6.1.1** delivered personally to a member of the organization for whom the notice is intended;

**12.6.1.2** delivered, or sent by registered or certified mail, to the last known business address of the organization; or

**12.6.1.3** sent by facsimile, email, or web-based project management software, provided the original, signed document is delivered within 3 business days after the date of the electronic transmission.

**12.6.2** When the Owner, Contracting Authority, or DB gives notice to one of the other 2, it shall also simultaneously send a copy of that notice to the others.

**12.6.3** A copy of all notices, certificates, requests, or other communications to the Contracting Authority shall be sent to the Project Manager.

**12.6.4** In the event of an emergency involving the Project, including, but not limited to, a fatality, serious injury, fire, collapse, flood, utility, or power loss to occupied facilities, explosion, or environmental damage, the DB shall immediately notify the Contracting Authority and Owner by telephone.

**12.6.5** The Contracting Authority, Owner, or DB may, by written notice given hereunder, designate addresses, telephone numbers, email addresses, or facsimile numbers to which notices, certificates, requests, or communications shall be sent.

## 12.7 Taxes

**12.7.1** Only those materials that ultimately become a part of the completed structure or improvement that constitutes the Project shall be exempt from state sales tax and state use tax.

**12.7.2** The purchase, lease, or rental of material, equipment, parts, or expendable items such as concrete form lumber, tools, oils, greases, and fuels, which are used in connection with the Work, are subject to the application of state sales tax and state use tax.

## 12.8 Computing Time

**12.8.1** When the Contract Documents refer to a period of time by a number of days, the period shall be computed to exclude the first and include the last day of the period. If the last day of the period falls on a Saturday, Sunday, or a legal holiday, that day shall be omitted from the computation and the period shall end on the next succeeding day that is not a Saturday, Sunday, or legal holiday.

**12.8.2** Except as excluded under **Section 12.8.1**, the Contract Times and all other periods referred to in the Contract Documents includes Saturdays, Sundays, and all days defined as legal holidays by **Section 12.8.4**.

**12.8.3** The standard workdays are Monday through Friday, excluding legal holidays.

**12.8.4** Legal holidays are as follows:

**12.8.4.1** New Year's Day – First Day in January;

**12.8.4.2** Martin Luther King Jr. Day – Third Monday in January;

**12.8.4.3** Washington-Lincoln (President's) Day – Third Monday in February;

**12.8.4.4** Memorial Day – Last Monday in May;

**12.8.4.5** Independence Day – Fourth day of July;

**12.8.4.6** Labor Day – First Monday in September;

**12.8.4.7** Columbus Day – Second Monday in October (observed for purposes of this Contract the day after Thanksgiving Day);

**12.8.4.8** Veterans' Day – Eleventh Day of November;

**12.8.4.9** Thanksgiving Day – Fourth Thursday of November; and

**12.8.4.10** Christmas Day – Twenty-fifth day of December.

**12.8.5** If a legal holiday falls on a Saturday, it is observed on the preceding Friday. If a legal holiday falls on a Sunday, it is observed on the following Monday.

## 12.9 Time of the Essence

**12.9.1** Time limits stated in the Contract Documents are of the essence of the Contract and all obligations under the Contract. By signing the GMP Amendment, the DB acknowledges that the Contract Times are reasonable, taking into consideration the usual weather and other conditions prevailing in the locality of the Project. By signing the Construction Progress Schedule, the DB acknowledges that the specified Milestone dates are reasonable, taking into consideration the usual weather and other conditions prevailing in the locality of the Project.

**12.9.1.1** The DB acknowledges that the Owner has entered into, or may enter into, agreements for use of all or part of the premises where the Work is to be completed based upon the DB achieving Contract Completion within the associated Contract Time.

**12.9.1.2** The DB shall perform the Work in a reasonable, efficient, and economical sequence, and in the order and time as provided in the Construction Progress Schedule.

**12.9.1.3** The DB acknowledges that it may be subject to interference, disruption, hindrance, or delay in the progress of the Work from any cause. The sole remedy for such interference, disruption, hindrance, or delay shall be an extension of the Contract Times under **Article 8**, unless otherwise required by ORC Section 4113.62.

## 12.10 Successors and Assigns

**12.10.1** The Contracting Authority and DB each bind themselves, their successors, assigns, and legal representatives, to the other party to this Contract and to the successors, assigns, and legal representatives of the other party with respect to all terms of this Contract.

**12.10.2** The DB shall not assign, or transfer any right, title, or interest in this Contract without the Contracting Authority's prior written consent.

## 12.11 Extent of Contract

**12.11.1 Entire Agreement.** This Agreement, including the attached documents, and the Contract Documents represent the entire and integrated agreement between the Contracting Authority and DB and supersede all prior negotiations, representations, or agreements, either written or oral.

**12.11.2 Multiple Counterparts.** This Contract may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

**12.11.3 Captions.** The captions and headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions or sections hereof.

**12.11.4 Precedence.** If there are any inconsistencies between the provisions of the Contract Documents and the provisions of the Request for Qualifications or Request for Proposals or this Contract, the provisions of this Contract shall prevail.

**12.11.5 Definitions.** Capitalized terms used in this Contract have the same meanings stated in the Contracting Definitions of the Ohio Facilities Construction Commission, unless a different meaning is clearly expressed herein.

## 12.12 Severability

**12.12.1** If any term or provision of this Contract or the application thereof to any Person or circumstance, is finally determined to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Contract or the application of such term or provision to other Persons or circumstances, shall not be affected thereby, and each term and provision of this Contract shall be valid and enforced to the fullest extent permitted by Applicable Law.

## 12.13 Electronic and Facsimile Signatures

**12.13.1** Any party hereto may deliver a copy of its counterpart signature page to this Contract via electronic signature software, fax, e-mail, or web-based project management software. Each party hereto shall be entitled to rely upon an electronic, scanned or facsimile signature of any other party delivered in such a manner as if such signature were an original.

## 12.14 No Third-Party Interest

**12.14.1** Except as expressly provided herein, **(1)** no person or entity, other than the Contracting Authority and DB, will have any right or interest under the Contract, and **(2)** the Contract does not create a contractual relationship of any kind between any people or entities other than the Contracting Authority and DB.

## 12.15 Ohio Retirement System

**12.15.1** All individuals employed by the DB that provide personal services to the Contracting Authority or Owner are not public employees for the purposes of ORC Chapter 145, as amended.

**12.15.2** If the DB is a PERS retirant, as defined by ORC Section 145.38, the DB shall notify the Contracting Authority of such status in writing prior to commencement of Work. The Contracting Authority, Owner, or State is not responsible for changes to the DB's retirement benefits resulting from entering into this Contract.

## 12.16 No Waiver

**12.16.1** The failure of the Contracting Authority or DB to insist in any one or more instances upon the strict performance of any one or more of the provisions of the Contract or to exercise any rights under the Contract or provided by law will not be construed as a waiver or relinquishment of that provision or right or of the right to subsequently demand strict performance or exercise the right and the rights will continue unchanged and remain in full force and effect.

## 12.17 Rights and Remedies

**12.17.1** The duties, obligations, rights, and remedies under the Contract are in addition to and not a limitation of the

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duties, obligations, rights, and remedies otherwise imposed by or available under Applicable Law.

**12.18 Survival of Obligations**

**12.18.1** All representations, indemnity obligations, warranties, guarantees, and necessarily continuing obligations under the Contract, will survive final payment, completion and acceptance of the Work, and termination or completion of the Contract.

**END OF DOCUMENT**

**ATTACHMENT H**  
**Design Build Contract**

# Document 00 52 53 - Agreement Form (Design-Build Project)

## State of Ohio Standard Requirements for Public Facility Construction

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This Agreement is made as of the date set forth below between the Board of Commissioners of Delaware County, Ohio (the "County"), and the Design-Builder in connection with the Project.

**Project Number:** <<insert project number>>  
**Project Name:** <<insert project name>>  
Site Address: <<insert street address>>  
<<insert city, county>>

**Owner (County):** <<insert name>>  
Owner's Representative: <<insert name>>  
Address: <<insert street address>>  
<<insert city, state zip code>>

**Contracting Authority:** Board of Commissioners of Delaware County, Ohio  
Project Manager: <<insert name>>

**Design-Builder ("DB"):** <<insert name>>  
DB's Principal Contact: <<insert name>>  
Address: <<insert street address>>  
<<insert city, state zip code>>

### ARTICLE 1 - SCOPE OF WORK; BUDGET; SCHEDULE

1.1 The DB shall perform and provide all of the Work described in the Contract.

1.1.1 The portion of the Work to be performed by the DB's Architect/Engineer of Record ("AOR") is described in the **AOR Scope of Services Description** attached as **Exhibit A**.

1.2 The Construction Budget is \$<<insert Construction Budget amount>>.

1.3 The **Preliminary Project Schedule** is attached as **Exhibit B**.

### ARTICLE 2 - PRECONSTRUCTION STAGE

2.1 The DB shall be solely responsible for the DB's proper, timely, and complete performance of the Preconstruction Services, including, without limitation, program verification, schematic design, design development, and document preparation, along with all personnel costs and expenses attendant thereto.

### ARTICLE 3 - CONSTRUCTION STAGE

3.1 As described in the General Conditions, the parties will establish the Contract Sum, Contract Times, Milestones, and other commercial terms relevant to the Construction Stage through at least one **GMP Amendment**, the form of which is attached as **Exhibit C**. The DB shall be responsible for all Costs of the Work, and the GMP shall reflect the Costs of the Work and the residual value of the Project, if any, in accordance with the RFP.

### ARTICLE 4 - KEY PERSONNEL

4.1 The DB's key personnel for the Project are:

- 4.1.1 <<insert name>>, Project Manager;
- 4.1.2 <<insert name>>, Lead Scheduling Engineer;
- 4.1.3 <<insert name>>, Lead Estimator;
- 4.1.4 <<insert name>>, General Superintendent.

*Edit the above list as appropriate for the Project.*



4.2 The DB’s key personnel are authorized to act on the DB’s behalf with respect to the Project and all matters concerning the Project.

**ARTICLE 5 - CONSULTANTS**

5.1 The DB’s Consultants for the Project are:

5.1.1 Architect/Engineer of Record:

«insert firm name»  
«insert firm address»  
«insert firm address»

«insert consultant contact name, title»

5.1.2 «insert discipline»:

«insert firm name»  
«insert firm address»  
«insert firm address»

«insert consultant contact name, title»

*Edit the above list as appropriate for the Project.*

5.2 The DB may provide a portion of the Work through one or more Consultants, provided, however, the DB will remain responsible for all duties and obligations of the DB under the Contract.

5.2.1 If the DB engages a Design-Assist Firm, that entity (1) will be considered a Consultant under the Contract during the Preconstruction Stage and (2) before that entity performs any Work during the Construction Stage, it shall be subject to all Applicable Law and Contract provisions concerning prequalification, selection, and engagement, and shall enter into a Subcontract with the DB.

5.3 By appropriate written agreement, the DB shall require each Consultant, to the extent of the Consultant’s portion of the Work, to be bound to the DB by the terms of the Contract, and to assume toward the DB all of the obligations and responsibilities which the DB assumes toward the County.

5.3.1 The DB shall not retain any Consultant on terms inconsistent with the Contract.

5.3.2 All agreements between the DB and a Consultant shall identify the County as the agreement’s intended third-party beneficiary.

5.3.3 The Contracting Authority’s receipt and approval of a copy of the agreement between the DB and a Consultant is a condition precedent to the County’s obligation to pay the DB on account of the Consultant’s services.

5.4 The County has no obligation to pay or see to the payment of money to any Consultant except as otherwise required under Applicable Law.

5.5 The DB shall obtain the County’s written approval before engaging any Consultant not named above. The DB shall not employ any Consultant against whom the County has a reasonable objection. The County’s approval or disapproval of any Consultant, however, will not relieve the DB of the DB’s full responsibility for the performance of the Work.

5.6 The DB shall not remove any Consultant from the Project or reduce the extent of any Consultant’s participation in the Work without the County’s prior written consent. The DB shall not permit any Consultant to replace any previously identified team member except with the County’s prior written consent unless the Consultant ceases to employ that person. On notice from the County, the DB shall immediately and permanently remove from the Project any Consultant or person under a Consultant’s control whose performance is not satisfactory to the County.

5.7 The County may communicate with any Consultant either through the DB or directly with the Consultant, but the County may not modify the contract between the DB and any Consultant.

5.8 The DB hereby assigns to the County each Consultant’s agreement provided that the assignment is effective only after the County terminates the Contract and only for those agreements which the County accepts by notifying the Consultant and DB in writing. The County may re-assign accepted agreements.

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## ARTICLE 6 - GENERAL PROVISIONS

### 6.1 Effectiveness.

**6.1.1** The Contract shall become binding and effective upon execution by the County and the DB.

**6.1.1.1** If the DB is a joint venture, **(1)** each individual joint venturer shall **(a)** sign the Agreement in its own name and **(b)** be a party to the Contract, and **(2)** the Contract, Performance Bond, and Payment Bond shall be binding on and apply to all joint venturers jointly and severally.

**6.1.1.2** If the DB is a limited liability company, which the Contracting Authority reasonably believes to be a special purpose or similar entity, the Contracting Authority may in its discretion require the limited liability company and each member of the limited liability company to **(1)** sign the Agreement in its own name and **(2)** be a party to the Contract. In that case, the Contract, the Performance Bond, and the Payment Bond shall be binding on and apply to the limited liability company and to all of its members jointly and severally.

**6.1.2** This Agreement may be executed in several counterparts, each of which shall constitute a complete original Agreement, which may be introduced in evidence or used for any other purpose without production of any other counterparts.

### 6.2 Representations.

**6.2.1** The DB represents and warrants that it is not subject to an unresolved finding for recovery under ORC Section 9.24. If this representation and warranty is found to be false, the Contract is void, and the DB shall immediately repay to the County any funds paid under this Contract.

**6.2.2** The DB, by signature on this Agreement, certifies that it is currently in compliance with, and will continue to adhere to, the requirements of Ohio ethics laws and conflict of interest laws and will take no action inconsistent with those laws.

## ARTICLE 7 - ENUMERATION OF DOCUMENTS

**7.1** The Contract Documents constitute the substance of the Contract, and include, but are not limited to, this Agreement (including all of its exhibits), the GMP Documents, final approved Drawings, final approved Specifications, Addenda if any, **Contracting Definitions, General Conditions, Project Manual, and Modifications** if any.

**7.2** This Agreement includes the following documents:

**7.2.1 Supplementary Scope Statement (AOR)** attached as **Exhibit A**;

**7.2.2 Preliminary Project Schedule** attached as **Exhibit B**;

**7.2.3 GMP Amendment** form attached as **Exhibit C**;

**SIGNATURES**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth below:

«INSERT DB'S NAME»

**OWNER**

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Printed Name*

\_\_\_\_\_  
*Printed Name*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Date*

*If the DB is a corporation, partnership, sole proprietorship, or limited liability company, use the table above. If the DB is a joint venture or special purpose entity, use the table below. Then delete the unused table and this note.*

«INSERT DB'S NAME»

**OWNER**

by «insert Joint Venturer/Member's name»

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Printed Name*

\_\_\_\_\_  
*Printed Name*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Title*

by «insert Joint Venturer/Member's name»

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Printed Name*

\_\_\_\_\_  
*Title*

**END OF DOCUMENT**

**ATTACHMENT I**  
**Operator Contract**

**DELAWARE COUNTY SOLID WASTE TRANSFER STATION  
OPERATION, HAULING AND DISPOSAL SERVICES CONTRACT**

**Section 1 - Parties to the Agreement**

This Agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019 by and between the Delaware County Board of Commissioners, Delaware County, Ohio, 101 North Sandusky Street, Delaware, Ohio 43015 ("County"), and \_\_\_\_\_ ("Contractor") (hereinafter collectively referred to as the "Parties").

**Section 2 - Contract Administrator**

The Delaware County Board of Commissioners hereby designates the Delaware County Sanitary Engineer as Administrator and agent of the Board for Work performed in accordance with this Agreement. The Administrator shall have general supervision of the Work and authority to order commencement or suspension thereof.

**Section 3 - Scope of Services (Work)**

Contractor agrees to furnish, unto the County, operation, hauling and disposal services for the Delaware County Solid Waste Transfer Station in accordance with the Scope of Services attached hereto and, by this reference, hereby made part of this Agreement ("Work"). Contractor shall perform the Work in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

**Section 4 - Term**

This Agreement shall be in effect from \_\_\_\_\_ to \_\_\_\_\_, subject to termination or suspension as provided in Section 9 hereof.

**Section 5 - Tipping Fees**

The tipping fees for Municipal Waste and Construction & Demolition Debris shall be as follows during the term of this Agreement:

Commercial and Non-Commercial Users:

Municipal Waste = \$ \_\_\_\_\_ per ton

Construction Debris = \$ \_\_\_\_\_ per ton

Minimum Charge - Non-Commercial:

Municipal Waste = \$ \_\_\_\_ per CY or \$ \_\_\_\_ per ton

Construction and Demolition Debris = \$ \_\_\_\_\_ per CY or \$ \_\_\_\_ per ton

Miscellaneous Charges:

**Section 6 - Payment of County Surcharge**

A seven percent (7%) surcharge (County Surcharge) will be placed on the aggregate of the operational, hauling, disposal and pass-through fees. The Contractor will pay the County Surcharge for all fees collected during one month to the County by the tenth (10th) day of the following month. A late fee of ten percent (10%) of the previous month's collected fee will be assessed to the Contractor if not paid by the payment deadline.

**Section 7 - Insurance**

7.1 **General Liability Coverage:** Contractor shall maintain commercial general liability insurance of \$1,000,000 each occurrence with an annual aggregate of \$2,000,000. Identical coverage shall be

required to be provided by all subcontractors, if any.

- 7.2 Automobile Liability Coverage: Contractor shall maintain automobile liability insurance of \$1,000,000 each accident. Such coverage shall include coverage for owned, hired and non-owned automobiles. Identical coverage shall be required to be provided by all subcontractors, if any.
- 7.3 Workers' Compensation Coverage: Contractor shall maintain workers' compensation coverage as required by the laws of the State of Ohio. Identical coverage shall be required to be provided by all subcontractors, if any.
- 7.4 Umbrella Liability Coverage: Contractor shall maintain an umbrella liability insurance of \$10,000,000.
- 7.5 Additional Insureds: The County, its elected officials and employees, shall be named as additional insureds with respect to all activities under this Agreement in the policies required by Subsections 7.1 and 7.2. Contractor shall require all of its subcontractors to provide like endorsements.
- 7.6 Proof of Insurance: Prior to the commencement of any work under this Agreement, Contractor, and all of its subcontractors, shall furnish the County with properly executed certificates of insurance for all insurance required by this Agreement and properly executed endorsements listing the additional insured as required in Subsection 7.4. Certificates of insurance shall provide that such insurance shall not be cancelled without thirty (30) days prior written notice to the County. Contractor will replace certificates for any insurance expiring prior to completion of work under this Agreement.

#### **Section 8 - Liability and Warranties**

Except as set forth herein, and to the fullest extent permitted by law, neither party shall be liable to the other for any incidental, indirect or consequential damages arising out of or connected in any way to the Work or this Agreement. This mutual waiver shall include, but not be limited to, loss of profit, loss of business or income, or any other consequential damages that either party may have incurred from any cause of action whatsoever.

Notwithstanding any other provision to the contrary, and to the fullest extent permitted by law, the Contractor shall indemnify and hold free and harmless the County and its employees from any and all damages, injury, costs, expenses, judgments or decrees, or any other liabilities caused by the negligence of the Contractor's employees that they may incur as a result of bodily injury, sickness, disease or death or injury to or destruction of tangible property including the loss of use resulting therefrom, contamination of or adverse effects on the environment, or any violation of governmental laws, regulations, or orders, to the proportionate extent caused by any negligent acts, errors or omissions of the Contractor, its employees, agents, subcontractors, and their employees and agents' subcontractors and their employees or any other person for whose acts any of them may be liable, except for conditions existing on the property at the time of the signing of this contract.

#### **Section 9 - Suspension or Termination of Agreement**

The County may suspend or terminate this Agreement for cause with 30 days written notice to Contractor setting out the reason for the termination or suspension. Contractor will have 60 days to cure any claimed default set out in the notice or, if such default cannot be cured within the 60 day time period, such reasonable time period as is necessary.

#### **Section 10 - Change in Scope of Work**

In the event that significant changes to the Scope of Services as defined in Section 3 are required during performance of the Work, the first party shall notify the second party in writing with a detailed explanation

of the circumstances believed to have changed beyond those originally contemplated by this Agreement. Any subsequent modifications to this Agreement shall be approved by both parties in writing.

**Section 11 - Miscellaneous Terms & Conditions**

- 11.1 **Prohibited Interests:** Contractor agrees that no agent, officer, or employee of the County during his/her tenure or for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. Contractor further agrees that it will not employ in any manner a current County employee for a minimum period of one (1) year from the completion date of this Agreement, without the prior express written consent of County.
- 11.2 **Entire Agreement:** This Agreement, and those documents incorporated by reference herein, shall constitute the entire understanding and agreement between the County and the Contractor, shall supersede all prior understandings and agreements relating to the subject matter hereof, and may only be amended in writing with the mutual consent and agreement of the parties.
- 11.3 **Governing Law:** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio. Any and all legal disputes arising from this Agreement shall be filed in and heard before the courts of Delaware County, Ohio.
- 11.4 **Headings:** The subject headings of the Sections and Subsections in this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This Agreement shall be deemed to have been drafted by both parties and no purposes of interpretation shall be made to the contrary.
- 11.5 **Waivers:** No waiver of breach of any provision of this Agreement shall in any way constitute a waiver of any prior, concurrent, subsequent, or future breach of this Agreement or any other provision hereof. No term or provision of this Agreement shall be deemed waived, and no breach excused, unless such a waiver or consent is expressly made in writing and signed by the party claimed to have waived or consented. Such waiver shall not constitute and shall not in any way be interpreted as a waiver of any other term or provision or future breach unless said waiver expressly states an intention to waive another specific term or provision or future breach.
- 11.6 **Severability:** If any item, condition, portion, or section of this Agreement or the application thereof to any person, premises, or circumstance shall to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition, provision, or section to persons, premises, or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Agreement and all the terms, conditions, provisions, or sections hereof shall, in all other respects, continue to be effective and to be complied with.
- 11.7 **Non-Discrimination/Equal Opportunity:** Contractor hereby certifies that, in the hiring of employees for the performance of work under this Agreement or any subcontract, that neither it nor any subcontractor, by reason of race, color, religion, sex, age, disability as defined in section 4112.01 of the Revised Code, national origin, or ancestry, shall discriminate against any citizen of this state in the employment of a person qualified and available to perform the work to which the Agreement relates.

Contractor further certifies that neither it nor any subcontractor, or person acting on behalf of it or any subcontractor, in any manner, shall discriminate against, intimidate, or retaliate against any employee hired for the performance of work under this Agreement on account of race, color, religion, sex, age, disability as defined in section 4112.01 of the Revised Code, national origin, or ancestry.

Contractor certifies that it has a written affirmative action program for employment and effectively

utilizes economically disadvantaged persons, as referred to in division (E)(l) of section 122.71 of the Revised Code.

Contractor certifies that it complies with all applicable laws regarding Non-Discrimination / Equal Opportunity and will not discriminate.

- 11.8 **Independent Contractor:** The Parties acknowledge and agree that Contractor is acting as an independent contractor and that no agency, partnership, joint venture, or employment relationship has been or will be created between the Parties. Contractor also agrees that, as an independent contractor, Contractor assumes all responsibility for any federal, state, municipal, or other tax liabilities along with workers compensation, unemployment compensation, and insurance premiums that may accrue as a result of compensation received for services or deliverables rendered hereunder. **Contractor hereby certifies that it has five or more employees and that none of the employees are public employees for purposes of Chapter 145 of the Ohio Revised Code.**

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement.

CONTRACTOR

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

By: \_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Print Name & Title)

DELAWARE COUNTY BOARD OF COMMISSIONERS

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

By: \_\_\_\_\_  
Barb Lewis, President of the Board  
Pursuant to Resolution No. 11-137 and  
Resolution No. 19-

Approved as to form:

\_\_\_\_\_  
Staff Attorney



## ATTACHMENT J

### Operator Bid Sheet Narrative

A. The bid sheets include two options

All gate rates are net of pass thru fees but include the County Surcharge.

1) Gate rate per ton for MSW, tires, CFC appliances and optional C&D rate. The gate rate for curbside recycling would be fixed at \$0 per ton while the other gate rates for recyclables could vary.

2) Gate rate per ton for MSW, tires, CFC appliances and optional C&D rate. The gate rate for curbside recycling and other gate rates for recyclables could vary.

As an Alternate Bid, the proposer can propose a fuel index to adjust up or down the gate rates annually. The fuel index must incorporate commonly used national fuel indexes and must include the distance for each material for disposal or recycling.

As an Alternate Bid, the proposer can propose a recycling index or method to adjust the recycling gate rates up or down annually. The index or method must use elements of independent indexes used in commodity pricing on the open market.

B. The TRC Investment and TRC expected tons must be provided to establish the TRC residual for all four terms of the contract.

C. Transload pricing is requested to support large residential contracts and maximize the utilization of the TRC.

D. A detailed list of recyclables accepted at the TRC for recycling.

E. Additional information on any recycling market index adjustment or other programs

**A. Operator Bid Sheet**

**Public Gate Rate Option #1**

Operation and Maintenance of the Delaware County Transfer and Recycling Center

**Disposal (option #1 Single Stream Recyclable Floor of Zero)**

<b>Term</b>	<b>Public Gate Rate</b>	<b>Optional Public C&amp;D Rate</b>
<b>Years 1-5</b>	MSW \$ _____/Ton Tires \$ _____/Ton CFC Appliances \$ _____/Ton Other \$ _____/Ton	\$ _____/Ton
<b>Years 6-10</b>	MSW \$ _____/Ton Tires \$ _____/Ton CFC Appliances \$ _____/Ton Other \$ _____/Ton	\$ _____/Ton
<b>Years 11-15</b>	MSW \$ _____/Ton Tires \$ _____/Ton CFC Appliances \$ _____/Ton Other \$ _____/Ton	\$ _____/Ton
<b>Years 16-20</b>	MSW \$ _____/Ton Tires \$ _____/Ton CFC Appliances \$ _____/Ton Other \$ _____/Ton	\$ _____/Ton

**Gate Rates are net of all pass thru fees but include County Surcharge.**

**Operator Bid Sheet**

**Public Gate Rate Recycling Option #1**

**(option #1 Single Stream Recyclable Floor of Zero)**

Term	Public Gate Rate Recycling	Type of Recyclable Material
Years 1-5	\$ <u>  0  </u> /Ton \$ _____ /Ton \$ _____ /Ton	curbside single stream (List other materials)
Years 6-10	\$ <u>  0  </u> /Ton \$ _____ /Ton \$ _____ /Ton	curbside single stream (List other materials)
Years 11-15	\$ <u>  0  </u> /Ton \$ _____ /Ton \$ _____ /Ton	curbside single stream (List other materials)
Years 16-20	\$ <u>  0  </u> /Ton \$ _____ /Ton \$ _____ /Ton	curbside single stream (List other materials)

Bid price includes the retention, by the operator, of revenue generated by the sale of recyclables. The zero tipping fee is for all curbside single stream residential programs at a minimum.

**Operator Bid Sheet**

**Public Gate Rate Option #2**

**Operation and Maintenance of the Delaware County Transfer and Recycling Center**

**Disposal (option #2 No Floor Pricing for Recyclables)**

<b>Term</b>	<b>Public Gate Rate</b>	<b>Optional Public C&amp; D Rate</b>
<b>Years 1-5</b>	MSW \$_____/Ton Tires \$_____/Ton CFC Appliances \$_____/Ton Other \$_____/Ton	\$_____/Ton
<b>Years 6-10</b>	MSW \$_____/Ton Tires \$_____/Ton CFC Appliances \$_____/Ton Other \$_____/Ton	\$_____/Ton
<b>Years 11-15</b>	MSW \$_____/Ton Tires \$_____/Ton CFC Appliances \$_____/Ton Other \$_____/Ton	\$_____/Ton
<b>Years 11-15</b>	MSW \$_____/Ton Tires \$_____/Ton CFC Appliances \$_____/Ton Other \$_____/Ton	\$_____/Ton

**Gate Rates are net of all pass thru fees but include County Surcharge.**

**Public Gate Rate Recycling Option #2**

**(option #2 No Floor Pricing for Recyclables)**

<b>Term</b>	<b>Public Gate Rate Recycling</b>	<b>Type of Recyclable Material</b>
-------------	-----------------------------------	------------------------------------

<p style="text-align: center;"><b>Years 1-5</b></p>	<p>\$ _____/Ton  \$ _____/Ton  \$ _____/Ton  \$ _____/Ton</p>	<p style="text-align: center;"><b>curbside single stream  (Provide description and  cost per type)</b></p>
<p style="text-align: center;"><b>Years 6-10</b></p>	<p>\$ _____/Ton  \$ _____/Ton  \$ _____/Ton  \$ _____/Ton</p>	<p style="text-align: center;"><b>curbside single stream  (Provide description and  cost per type)</b></p>
<p style="text-align: center;"><b>Years 11-15</b></p>	<p>\$ _____/Ton  \$ _____/Ton  \$ _____/Ton  \$ _____/Ton</p>	<p style="text-align: center;"><b>curbside single stream  (Provide description and  cost per type)</b></p>
<p style="text-align: center;"><b>Years 11-15</b></p>	<p>\$ _____/Ton  \$ _____/Ton  \$ _____/Ton  \$ _____/Ton</p>	<p style="text-align: center;"><b>curbside single stream  (Provide description and  cost per type)</b></p>

Bid price includes the retention, by the operator, of revenue generated by the sale of recyclables. Please provide cost per ton for each recycled item proposed. **As an Alternate Bid, the proposer can propose a recycling index or method to adjust the recycling gate rates up or down annually based on market conditions. The index or method must use elements of independent indexes used in commodity pricing on the open market.**

**B. Residual Value (Start of Year 1)**

TRC Investment	TRC Tons Expected	Contract per ton Residual
\$ _____	_____	\$ _____/Ton

Note: Contract per ton Residual is calculated by dividing the total cost or TRC Investment by TRC tons (all materials received recyclables, MSW etc), expected for the four full contract terms or 20 years. **The total residual amount at the end of each term is the total TRC tons expected reduced by the total actual tons received times Contract per ton Residual.** Once total tons required have been received residual is \$1. Once the TRC investment and TRC Tons Expected are proposed and agreed by contract, the Contract per ton Residual is fixed for the contract term unless additional investments and tons expected are mutually agreed upon. TRC Investment and TRC tons expected is proposed by the Operator and represents their operational and financial expectations relative to the proposed gate rate pricing and the operator's internal operational benefits for operation of the TRC.

### C. Transload Tipping Fee

<b>Transload</b>		
<b>Description</b>	<b>Tipping fee</b>	
<b>Years 1-5</b>	<b>\$_____ /Ton</b>	
<b>Years 6-10</b>	<b>\$_____ /Ton</b>	
<b>Years 11-15</b>	<b>\$_____ /Ton</b>	
<b>Years 16-20</b>	<b>\$_____ /Ton</b>	

Cost, net of transportation and disposal, to load trailers of Governmental Entity Vehicles or their contracted haulers as authorized by the County. Governmental entity includes residential consortiums. Tonnage can be MSW and/or recyclables. Minimum tonnage MSW & recycling required is 10,000 tons annually.









**ATTACHMENT K**

**Delaware County Transfer Station Site Map**

