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

SAMPLE

Document No. 550
Second Edition, 2010

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Washington, D.C.

Design-Build Institute of America - Contract Documents

LICENSE AGREEMENT

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

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

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INSTRUCTIONS

For DBIA Document No. 550 Standard Form of Agreement Between Design-Builder and General Contractor - Cost Plus Fee with an Option for a Guaranteed Maximum Price (2010 Edition)

Checklist

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

_____Page 1	Enter date of the Agreement
_____Page 1	Design-Builder's name, address and form of business
_____Page 1	General Contractor's name, address and form of business
_____Page 1	Project name and address
_____Page 1	Owner's name, address and form of business
_____Section 2.14.1	Attach permit list
_____Section 5.2.1	Complete blanks for calendar days
_____Section 5.2.2	Attach interim milestones (optional)
_____Section 5.4.1	Complete blanks for liquidated damages
_____Section 5.5.1	Complete blanks for early completion bonus
_____Section 6.2.1	Choose basis for Fee and complete blanks
_____Section 6.2.2	Insert financial arrangements for adjustments
_____Section 6.3.1.3	Complete blanks for markup; insert or attach personnel names, etc.
_____Section 6.6.1.1	Complete blanks for GMP, note the optional provision that is provided, and attach GMP Exhibit
_____Section 6.6.1.2	Complete blanks for General Contractor's Contingency
_____Section 6.7.1	Choose method for sharing savings; complete blanks
_____Section 7.2.1	Complete blanks for day of month
_____Section 7.3.1	Complete blanks for retainage percentage
_____Section 7.8.1	Complete blanks for interest rate
_____Section 8.2.1.2	Choose overhead/profit method for termination for convenience
_____Section 9.1.1	Insert Design-Builder's Senior Representative's name, etc.
_____Section 9.1.2	Insert Design-Builder's Representative's name, etc.
_____Section 9.2.1	Insert General Contractor's Senior Representative's name, etc.
_____Section 9.2.2	Insert General Contractor's Representative's name, etc.
_____Section 10.1.1	Attach Insurance Exhibit
_____Section 10.4.1	Insert amount and conditions of bonds or other security
_____Article 18	Insert any other provisions (optional)
_____Last Page	Design-Builder's and General Contractor's execution of the Agreement

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General Instructions

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

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Specific Instructions

Section	Title	Instruction
General	Purpose of This Agreement	DBIA Document No. 550, *Standard Form of Agreement Between Design-Builder and General Contractor - Cost Plus Fee with an Option for a Guaranteed Maximum Price* (2010 Edition), ("Agreement") sets forth the terms and conditions under which the construction of the Project will be performed, and should be used when the parties intend that Design-Builder pay General Contractor the Cost of the Work plus a Fee, with or without a Guaranteed Maximum Price (GMP). If there is uncertainty about Owner's Project Criteria, or it remains to be developed by Owner and Design-Builder jointly, a cost-plus/GMP contracting approach is desirable. Although it is possible that this Agreement could be used when Owner and Design-Builder have entered into a lump sum agreement, DBIA views this as unlikely. Therefore, this Agreement is designed to be used with DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee with an Option for a Guaranteed Maximum Price* (2010 Edition), and including DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2010 Edition). It is also envisioned that Design-Builder and General Contractor will have worked together in the procurement of the prime contract. If the parties execute this Agreement after the Construction Documents are final, the Agreement should be modified accordingly. If there is certainty as to Owner's Project Criteria, or if the Construction Documents are final, a lump sum fixed price for the completion of the Work may be suitable. In such case, the parties should use DBIA Document No. 555 *Standard Form of Agreement Between Design-Builder and General Contractor - Lump Sum* (2010 Edition).
General	Purpose of These Instructions	These Instructions are not part of this Agreement, but are provided to aid the parties in their understanding of the Agreement and in completing the Agreement.
General	Date	On Page 1, enter the date when both parties reach a final understanding. It is possible, due to logistical reasons, that the dates when the parties execute the Agreement may be different. Once both parties execute the Agreement, the effective date of the Agreement will be the date recorded on Page 1. This date does not, however, determine Contract Time, which is measured according to the terms of Article 5.
General	Parties: Design-Builder and General Contractor	On Page 1 enter the legal name and full address of Design-Builder, General Contractor and Owner, as well as the legal form of each entity, e.g., corporation, partnership, limited partnership, limited liability company, or other.
1.1	Pass Through	The section recognizes that General Contractor has the same rights, responsibilities and obligations as to Design-Builder as Design-Builder by the Design-Build Agreement has against and to Owner. However, because the Design-Build Agreement also affords the Design-Builder and Owner many opportunities to customize their contractual relationship by the selection of optional provisions, DBIA does not believe that these optional provisions should automatically pass through to the General Contractor. Accordingly, if the Design-Builder and General Contractor believe it is appropriate to afford General Contractor the same rights, responsibilities and obligations as it relates to these optional provisions, the parties should make that clear by adding the necessary and appropriate provisions at Article 18 of this Agreement.
1.2	Definitions	Terms, words and phrases used in the Agreement shall have the same meanings used in the Design-Build Agreement between Owner and Design-Builder except to the extent set forth in Section 1.2.
1.3	Contract Documents	The Contract Documents are listed in Section 1.3 in the order of their precedence.
1.3.1.2	GMP Exhibit, GMP Proposal	If a GMP is established upon execution of this Agreement, the GMP Exhibit must be attached pursuant to Section 6.6.1. If a GMP is established after execution of this Agreement, the GMP Proposal must be attached pursuant to Section 6.6.2.

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Section	Title	Instruction
1.5.2	Mutual Obligations and Acknowledgements	This Agreement contemplates that the Design-Builder and General Contractor have cooperated in the procurement of the Design-Build Agreement and that the General Contractor has familiarized itself with the Design-Build Agreement.
2.3.5	GMP Proposal to Owner	If requested by Design-Builder, General Contractor will assist Design-Builder in preparing Design-Builder's GMP Proposal to Owner pursuant to the Design-Build Agreement.
2.12	Patents and Copyrights	General Contractor shall pay all license fees and royalties for items or processes it selects which are subject to copyrights or patent rights.
2.14.1	Government Approvals and Permits	General Contractor is responsible for obtaining the specific permits, approvals, and licenses set forth in an exhibit to the Agreement.
3.3.1	Furnishing of Information	Design-Builder shall furnish General Contractor with the listed Owner-provided information. General Contractor is entitled to rely on the Owner-provided information to the same extent Design-Builder is entitled to pursuant to the Design-Build Agreement.
5.1.1	Date of Commencement	General Contractor's obligation to commence work is triggered by its receipt of a Notice to Proceed unless the parties mutually agree otherwise.
5.2.1	Substantial Completion of the entire Work	Enter the calendar days duration by which Substantial Completion has to be achieved. The parties should recognize that Owner and Design-Builder have the option of modifying the definition of Substantial Completion set forth in the General Conditions of Contract if they want to use a Temporary Certificate of Occupancy as the benchmark. If this option is selected, Design-Builder and General Contractor will need to do the same here.
5.2.2	Interim Milestones	It may be that some portions of the Work must be completed in phases or within a prescribed period of time to accommodate Design-Builder's or Owner's needs. The parties may, at their option, identify these portions of the Work to be completed prior to Substantial Completion of the entire Work. As presently drafted, no remedy is provided to the General Contractor if an interim milestone is not met. If the General Contractor has special requirements as it relates to interim milestones, Design-Builder may want to consider a remedy for the General Contractor's failure to meet an interim milestone, as well as providing a bonus to General Contractor for an early satisfaction of such interim milestone.
5.4.1	Liquidated Damages	Design-Builder should make a good faith evaluation of the amount that is reasonably necessary to compensate it for delay. Design-Builder should not establish liquidated damages to penalize General Contractor. Moreover, in the event a GMP is not established upon execution of the Agreement, it appears prudent for the parties to refrain from establishing liquidated damages until such time as the GMP is established. Section 5.4.1 establishes a grace period between the Scheduled Substantial Completion Date and the assessment of liquidated damages in order to prevent disputes as to which party bears responsibility for only a few days of delay. The parties should enter the calendar days that may pass following the Scheduled Substantial Completion Date before liquidated damages will be assessed. The parties should recognize that there are a number of options in the agreement between Owner and Design-Builder that may impact the provisions in this Agreement.
5.5.1	Early Completion Bonus	If the Project economics justify liquidated damages, then it is appropriate to couple these liquidated damages with an early completion bonus. The parties should enter the number of calendar days prior to the Scheduled Substantial Completion Date that will set the Bonus Date. Also, enter the amount of the bonus to be paid per day that will allow Design-Builder to share with General Contractor the economic benefits of early completion. Moreover, in the event a GMP is not established upon execution of the Agreement, it appears prudent for the parties to refrain from establishing an early completion bonus until such time as the GMP is established.
6.2.1	General Contractor's Fee	Enter the amount of General Contractor's Fee as a sum certain or as a percentage of the Cost of the Work.

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6.2.2	Adjustments to General Contractor's Fee	Insert the method for adjusting General Contractor's Fee for changes in the Work. For additive Change Orders, the parties have to negotiate the Fee General Contractor will receive. For deductive Change Orders, the parties have the option by checking the appropriate box to signify whether there will be no additional reduction or whether there will be an additional reduction based on a negotiated percentage.
6.3	Cost of the Work	The reimbursable items for the Cost of the Work set forth in Section 6.3 of the Agreement are consistent with those contained in DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee with an Option for a Guaranteed Maximum Price* (2010 Edition). To the extent Owner and Design-Builder modify the Cost of the Work provisions in DBIA Document No. 530, Section 6.3 of this Agreement should be modified accordingly.
6.3.1.3	Wages for General Contractor's Employees at Principal or Branch Offices	DBIA endorses reimbursing salaries and associated benefits of General Contractor's Project personnel, such as accountants, stationed at offices other than the field office, when to do so is more efficient and cost effective. Enter the percentage markup to be applied for Project-related overhead associated with such personnel. Attach as an exhibit a list of such personnel and their job functions.
6.3.1.4	Employee Benefits	It may be simpler for the parties to agree on a multiplier (rather than actual costs) to compensate General Contractor for employee benefits. Accordingly, the parties may want to insert the multiplier to be applied to the wages and salaries of such reimbursable employees.
6.3.1.7	Costs for Defective/Non-Conforming Work	The Cost of the Work shall include the costs to repair or correct defective or non-conforming Work (including warranty or corrective work performed after Substantial Completion) unless caused by General Contractor's negligence. DBIA believes that General Contractor should not be penalized for inadvertent mistakes which are inevitable when constructing a Project. To do so would encourage ultra-conservatism in every task, the ultimate cost of which would be greater than a proactive approach to performing the Work.
6.6	The Guaranteed Maximum Price	This Agreement provides the parties flexibility in establishing the Contract Price. Parties can establish a GMP before or after entering into this Agreement, or elect to proceed on the basis of costs plus a fee, without a GMP.
6.6.1.1	GMP at Agreement Execution	Enter the GMP, if appropriate. Attach as an exhibit to this Agreement the documents and assumptions used to establish the GMP. These documents comprise the GMP Exhibit which shall become a Contract Document pursuant to Section 1.3.1 of the Agreement. General Contractor does not guarantee any specific line item provided as part of the GMP.
6.6.1.2	GMP Contingency	Enter the amount of General Contractor's Contingency. Note that General Contractor is required to provide the Design-Builder with a status report accounting for the Contingency, including all reasonably foreseen uses and potential uses, of the Contingency for the upcoming three months.
6.6.2.1	GMP Proposal After Execution of this Agreement	At the request of Design-Builder, General Contractor shall submit its GMP Proposal, which shall include the items listed in Section 6.6.2.1.1. If the parties agree to additions or deletions from this list, modify this Section 6.6.2.1.1 appropriately. The Agreement provides the parties with flexibility as to when the GMP Proposal will be submitted after execution of the Agreement. Prior to execution of the Agreement the parties should discuss when Design-Builder desires General Contractor to submit its GMP Proposal.
6.6.2.3.1	Acceptance of GMP Proposal	If Design-Builder accepts the GMP Proposal, the parties should amend this Agreement to add the final GMP Proposal as a Contract Document pursuant to Section 1.3.1.

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Section	Title	Instruction
6.7	Savings	One of the benefits of a GMP approach is the possibility that with good management by General Contractor and timely support from Design-Builder the actual Cost of the Work and Fee may be less than the GMP. This creates a savings pool that should result in a benefit to both Design-Builder and General Contractor. Sharing these savings creates an incentive for General Contractor to save costs. Some factors to consider in determining how the Savings are shared include the timing for the establishment of the GMP and the amount of General Contractor's Fee established under Section 6.2.1.
6.7.1	Savings Calculations	This section provides that if the actual Cost of the Work and General Contractor's Fee is less than the GMP, as such GMP may have been adjusted, the savings, if any, shall be shared. The Agreement offers two choices for distributing Savings. Choose a method and enter the appropriate figures.
7.2.1	Progress Payments	Enter the day of the month when General Contractor shall submit its Application for Payment.
7.3.1	Retainage on Progress Payments	Enter the percent Design-Builder will retain from Progress Payments to General Contractor. Note that the contract between Owner and Design-Builder may contain a number of ways to release retainage. The parties in this Agreement should be mindful of these options when developing this provision.
7.8.1	Interest	The parties should enter the rate at which interest will accrue on General Contractor's payments if unpaid five (5) days after due. Late payment creates a hardship for General Contractor and its Subcontractors.
7.12.1	Record Keeping	The Design-Builder is provided access to, and the right to audit General Contractor's records. However, if the parties have agreed to multipliers or markups, the time to challenge and negotiate those percentages is at the time the parties execute the Agreement and not during the Project or after it has been completed. Accordingly, the Design-Builder can at any time audit these percentages only to confirm that such percentage has been properly charged and not to challenge the composition of such percentage.
8.2.1.3	Termination for Convenience: Overhead and Profit	The parties should choose prior to execution of the Agreement the method that will be used to determine overhead and profit paid to General Contractor in the event Design-Builder terminates General Contractor for its convenience. The parties may choose to set percentage rates for overhead and profit prior to execution of the Agreement, or may choose to determine reasonable sums to be paid for overhead and profit at the time of the termination. If the parties choose to set overhead and profit rates prior to execution of the Agreement, the percentages should be entered in Section 8.2.1.3.
8.2.2	Termination for Convenience	If Design-Builder terminates General Contractor for convenience because Owner has terminated Design-Builder for its convenience, General Contractor is only entitled to receive such amount as Design-Builder receives from Owner on behalf of General Contractor.
8.5	General Contractor's Right to Terminate for Cause	If General Contractor properly terminates the Agreement for cause, it shall recover from Design-Builder in the same way as if Design-Builder had terminated the Agreement for convenience under Section 8.2 of the Agreement.
Article 9	Representatives of the Parties	Enter the name, title, address and telephone number of Design-Builder's Senior Representative and Design-Builder's Representative at Sections 9.1.1 and 9.1.2, respectively. Enter the name, title, address and telephone number of General Contractor's Senior Representative and General Contractor's Representative at Sections 9.2.1 and 9.2.2, respectively. The parties can elect to establish these Representatives during the performance of the Project rather than at the time of execution of this Agreement. If Representatives are identified after execution of the Agreement, an appropriate amendment should be made to the Agreement at the time these individuals are designated.

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Section	Title	Instruction
10.1.1	General Contractor's Insurance Requirements	Attach an Insurance Exhibit setting forth in detail the insurance coverages General Contractor is required to provide for the Project. Parties are advised to familiarize themselves with the terms of Article 5 of the General Conditions of Contract, Insurance and Bonds, and to consult their insurance advisors.
10.1.2	Subcontractor's and Sub-Subcontractor's Insurance Requirements	General Contractor is obligated to require its Subcontractors and Sub-Subcontractors to provide the insurance coverage set forth in the Insurance Exhibit. Parties are advised to consult their insurance advisors.
10.1.3	Exclusions to Design-Build	Parties are advised that standard insurance policies may contain exclusions for the design-build delivery method. This Section 10.1.3 requires that any such exclusions be deleted from the policy.
10.4	Bonds and Other Performance Security	Enter the type and amount of bonds or other performance security required for the Project. Where bonding is not required by statute, Design-Builder may want to evaluate the project risk versus the bonding costs in deciding what type of performance security to require.
13.3	Disputes Involving Owner	Disputes for which Owner is responsible will be resolved in accordance with the dispute resolution clause in the Design-Build Agreement.
13.4	Disputes Not Involving Owner	DBIA endorses the use of partnering, negotiation, mediation and arbitration for the prevention and resolution of disputes. The Agreement provides for the parties' Representatives and Senior Representatives to attempt to negotiate the dispute. If this attempt fails, the dispute shall be submitted to mandatory, non-binding mediation. Any dispute that cannot be resolved by mediation shall then be submitted to binding arbitration pursuant to Section 13.5.
13.5	Arbitration	The prevailing party in any arbitration shall receive reasonable attorneys' fees from the other party. DBIA supports this "loser pays" provision to encourage parties to negotiate or mediate their differences and to minimize the number of frivolous disputes.
13.6	Duty to Continue Performance	Pending the resolution of any dispute, both Design-Builder and General Contractor shall continue to perform their respective duties under the Contract Documents, unless the parties provide otherwise in the Contract Documents.
13.7	Consequential Damages	DBIA believes that it is inappropriate for either Design-Builder or General Contractor to be responsible to the other for consequential damages arising from the Project. This limitation on consequential damages in no way restricts, however, the payment of liquidated damages, if any, under Article 5 of the Agreement.
Article 15	Electronic Data	Design-Builder will determine, after consultation with General Contractor, the software and format for the transmission of Electronic Data. The transmitting party disclaims all warranties with respect to the media transmitting the Electronic Data, but nothing in this Article is intended to negate duties with respect to the standard of care in creating the Electronic Data. In the event the Design-Build Agreement contains a conflicting provision governing Electronic Data, the provision in the Design-Build Agreement takes precedence.
Article 18	Other Provisions	Insert any other provisions. For example, the parties may elect to have disputes resolved through litigation rather than arbitration in which case the optional language in this Section should be included.

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

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

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

DESIGN-BUILDER:
(Name and address)

GENERAL CONTRACTOR:
(Name and address)

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

OWNER:
(Name and address)

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

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Article 1

General

1.1 Basic Purpose.

1.1.1 Design-Builder has contracted with Owner to provide the services necessary for the design and construction of the Project as set forth in the Design-Build Agreement. General Contractor, through itself and its Subcontractors, agrees to provide all Work to complete the construction of the Project consistent with the Contract Documents. Design-Builder and General Contractor agree that to the extent applicable to the performance of the Work hereunder, General Contractor shall have the same rights, responsibilities, and obligations as to Design-Builder as Design-Builder by the Design-Build Agreement has against and to Owner, except as may be modified herein. Notwithstanding the foregoing, if the Design-Builder and Owner have checked boxes indicating the selection of optional provisions from the Design-Build Agreement, those optional provisions are only passed through to General Contractor to the extent those provisions have been expressly set forth in Article 18.

1.2 Basic Definitions.

1.2.1 Terms used in this Agreement shall have the meanings set forth in the Design-Build Agreement between Owner and Design-Builder unless otherwise provided herein, with the following specific terms defined as follows:

1.2.1.1 *Agreement* refers to this executed contract between Design-Builder and General Contractor under DBIA Document 550, *Standard Form of Agreement Between Design-Builder and General Contractor - Cost Plus Fee with an Option for a Guaranteed Maximum Price* (2010 Edition).

1.2.1.2 *Construction Documents* are the documents consisting of Drawings and Specifications, to be prepared or assembled by Design-Builder in accordance with the Design-Build Agreement.

1.2.1.3 *Construction Schedule* refers to the schedule setting forth the dates by which General Contractor must perform the various stages of the Work, consistent with the Project Schedule.

1.2.1.4 *Contract Time(s)* refers to the dates set forth in Section 5.2 hereof.

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

1.2.1.6 *Design-Build Agreement* refers to the contract between Design-Builder and Owner for the design and construction of the Project under DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee with an Option for a Guaranteed Maximum Price* (2010 Edition), including the DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2010 Edition), and all exhibits, attachments, and other Contract Documents enumerated and incorporated therein.

1.2.1.7 *Design Consultant* is a qualified, licensed design professional who is not an employee of Design-Builder, but is retained by Design-Builder, or employed or retained by anyone under contract with Design-Builder, to furnish design services required under the Design-Build Agreement.

1.2.1.8 Final Completion is the date on which all Work is complete in accordance with the Contract Documents, including but not limited to any items identified in the punch list prepared under Section 7.5.1 and the submission of all documents set forth in Section 7.6.2.

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1.2.1.9 *Force Majeure Events* are those events that are beyond the control of General Contractor, Design-Builder and Owner, including the events of war, floods, labor disputes, earthquakes, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God.

1.2.1.10 *GMP Exhibit* means that exhibit referred to in Section 6.6.1.1.

1.2.1.11 *GMP Proposal* means that proposal developed by General Contractor in accordance with Section 6.6.2.1.

1.2.1.12 *Hazardous Conditions* are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.

1.2.1.13 *Legal Requirements* are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the parties, the Project or Site, the practices involved in the Project or Site, or any Work.

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

1.2.1.15 *Project Schedule* refers to the schedule setting forth the dates by which the various stages of both the design and construction of the Project must be performed so as to satisfy Design-Builder's obligations to Owner.

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

1.2.1.17 *Subcontractor* is any person or entity retained by General Contractor as an independent contractor to perform a portion of the General Contractor's Work hereunder and shall include materialmen and suppliers.

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

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

1.2.1.20 *Work* is comprised of all General Contractor's construction and other services required by the Contract Documents, including procuring and furnishing all supervision, labor, inspection, testing, start-up, materials, tools, equipment, machinery, transportation, temporary utilities, temporary facilities and all other items and services reasonably inferable from this Agreement and the other Contract Documents.

1.3 Contract Documents.

1.3.1 The Contract Documents are comprised of the following:

1.3.1.1 All written modifications, amendments, minor changes, and Change Orders to this Agreement;

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1.3.1.2 As applicable, the GMP Exhibit or the GMP Proposal accepted by Design-Builder in accordance with Section 6.6.2 herein;

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

1.3.1.4 The Construction Documents; and

1.3.1.5 The Design-Build Agreement, but only to the extent the Design-Build Agreement relates to the Work and the terms and conditions under which the Work shall be performed.

1.4 Interpretation and Intent.

1.4.1 Design-Builder and General Contractor, prior to execution of the Agreement, shall carefully review all the Contract Documents for any conflicts or ambiguities. Design-Builder and General Contractor will discuss and resolve any identified conflicts or ambiguities prior to execution of the Agreement.

1.4.2 The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted consistent with construction and design industry standards. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall take precedence in the order in which they are listed in Section 1.3 hereof.

1.5 Mutual Obligations and Acknowledgments.

1.5.1 Design-Builder and General Contractor commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents. Design-Builder and General Contractor shall perform their respective responsibilities, obligations and services in a timely manner to facilitate the other's timely and efficient performance and so as not to delay or interfere with the other's performance of its obligations under the Contract Documents.

1.5.2 Design-Builder and General Contractor acknowledge that they have cooperated with each other in the procurement of the Design-Build Agreement and that Design-Builder and General Contractor have met to review, discuss, and familiarize themselves with the Design-Build Agreement.

1.6 Entire Agreement.

1.6.1 Subject to the limitations in Section 1.3.1, the Contract Documents, all of which are incorporated by reference into this Agreement, form the entire agreement between Design-Builder and General Contractor and are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

Article 2

General Contractor's Services and Responsibilities

2.1 General.

2.1.1 Within seven (7) days after execution of this Agreement, Design-Builder and General Contractor will meet to discuss issues affecting the administration and schedule of the Work, and implement the necessary procedures, including but not limited to those relating to schedule updates, submittals, and payment, to facilitate the ability of the parties to perform their obligations under this

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Agreement.

2.1.2 General Contractor's Representative shall be reasonably available to Design-Builder and shall have the necessary expertise and experience required to supervise the Work. General Contractor's Representative shall communicate regularly with Design-Builder and shall be vested with the authority to act on behalf of General Contractor. General Contractor shall replace its Representative upon the reasonable request of Design-Builder.

2.1.3 General Contractor shall only communicate with Owner, Design-Builder's Design Consultants, or separate contractors of Design-Builder or Owner through Design-Builder.

2.2 Review of Site and Contract Documents.

2.2.1 General Contractor represents that it has examined the Site and the Contract Documents prior to executing this Agreement so as to reasonably ascertain the nature of the Work and the various conditions affecting the Work.

2.2.2 General Contractor shall promptly report to Design-Builder any errors, inconsistencies, omissions, or violations of Legal Requirements that General Contractor discovers. General Contractor shall be liable to Design-Builder for any damages resulting from any such errors, inconsistencies, omissions, or violations of Legal Requirements which General Contractor discovers and fails to report to Design-Builder. Nothing in this Agreement shall be deemed to transfer any design liability from Design-Builder to General Contractor.

2.3 Pre-Construction Services.

2.3.1 General Contractor shall assist Design-Builder regarding the selection of building systems, materials, and equipment, as well as Project cost, schedule, and construction feasibility studies. Such studies shall address, among other things, labor availability, construction costs, and procurement strategies related to the requirements set forth in the Contract Documents.

2.3.2 General Contractor shall, if requested, make recommendations to Design-Builder regarding the preparation and issuance of Construction Documents for a portion of the Project to permit construction to proceed on that portion of the Project prior to completion of the Construction Documents for the entire Project.

2.3.3 General Contractor shall advise Design-Builder regarding a schedule for the procurement of items included in the Work which have long-lead times.

2.3.4 Design-Builder and General Contractor agree that prior to the scheduled date for submitting all design submissions to Owner, Design-Builder and General Contractor will hold meetings for the purpose of monitoring the design for consistency with the requirements of the Contract Documents, including the GMP Exhibit (furnished pursuant to Section 6.6.1.1) or the GMP Proposal (furnished pursuant to Section 6.6.2.1), if any.

2.3.5 If requested by Design-Builder, General Contractor will assist Design-Builder in preparing a Guaranteed Maximum Price (GMP) Proposal to Owner in accordance with the Design-Build Agreement, and will attend meetings with Design-Builder and Owner to discuss the GMP Proposal.

2.4 Control Over Means and Methods.

2.4.1 General Contractor shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents and the Construction Schedule. General Contractor shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

2.5 Construction Schedule.

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2.5.1 Unless a schedule for the execution of the Work has been attached to the Agreement as an exhibit at the time the Agreement is executed, General Contractor shall prepare and submit for Design-Builder's review and response at least three (3) days prior to the meeting required by Section 2.1.1 hereof, a schedule for the execution of the Work in accordance with the Contract Documents, including any milestone dates which may be set forth in a separate exhibit to this Agreement. The schedule shall indicate the dates, consistent with those set forth in the Contract Documents for the start and completion of the various stages of the Work, including the dates when Design-Builder information and approvals are required to enable General Contractor to achieve the Contract Time(s). The accepted schedule (the "Construction Schedule") shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve General Contractor of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. Design-Builder's review and acceptance of the Construction Schedule shall not be construed as relieving General Contractor of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work. Design-Builder shall incorporate the Construction Schedule into the Project Schedule.

2.6 Status Report.

2.6.1 General Contractor shall provide Design-Builder on a regular basis a status report detailing the progress of the Work, including whether (i) the Work is proceeding according to the Construction Schedule; (ii) discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution; (iii) health and safety issues exist in connection with the Work; (iv) status of the contingency account; and (v) other items exist which require resolution so as not to jeopardize General Contractor's ability to complete the Work for the Contract Price and within the Contract Time(s). The frequency of the status report shall be established at the meeting required by Section 2.1.1 hereof.

2.7 Submittals and Substitutions.

2.7.1 In accordance with the Contract Documents and the Construction Schedule, General Contractor shall submit for Design-Builder's review and approval submittals, including shop drawings, product data and samples. Design-Builder shall advise General Contractor on or before the meeting required by Section 2.1.1 hereof of the submittal requirements for the Project. Any variances with the Construction Documents shall be specifically identified in General Contractor's submittals. Design-Builder's review and approval shall not relieve General Contractor of its responsibilities to perform the Work in accordance with the Construction Documents unless Design-Builder expressly approves in writing any such variance in its response to General Contractor's submittals. General Contractor shall make any necessary revisions to the submittals requested by Design-Builder.

2.7.2 General Contractor shall not make any substitutions in the Work or procedures or methods specified by Owner or Design-Builder for performing the Work unless it first receives written approval for such substitution from Design-Builder.

2.8 Subcontractors.

2.8.1 General Contractor shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. General Contractor shall not engage the services of any Subcontractor without first obtaining the approval of Design-Builder, which approval shall not be unreasonably withheld. General Contractor agrees that each Subcontractor shall be fully bound to General Contractor in the same manner as General Contractor is bound to Design-Builder for all the requirements of the Contract Documents to the extent applicable to the Subcontractor's scope of work. Design-Builder shall have the right, but not the obligation, to review and approve the form for each Subcontractor agreement.

2.8.2 General Contractor assumes responsibility to Design-Builder for the proper performance of the work of Subcontractors and any acts and omissions in connection with such performance. General Contractor shall coordinate the activities of all Subcontractors. Nothing in this Agreement is intended

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or deemed to relieve General Contractor from responsibility for the work performed by its Subcontractors, or create any legal or contractual relationship between Owner or Design-Builder and any Subcontractor, including but not limited to any third-party beneficiary rights.

2.9 Work of Others.

2.9.1 If Design-Builder or Owner performs other work on the Project or at the Site with separate contractors under Design-Builder's or Owner's control, General Contractor agrees to reasonably cooperate with, and coordinate its activities so as not to interfere with, those separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

2.9.2 If any part of the Work depends upon other work performed by Design-Builder, or Design-Builder's or Owner's separate contractors, General Contractor shall, prior to proceeding with that part of the Work, inspect such other work and promptly notify Design-Builder of any discovered discrepancies or defects that would render it unacceptable for the proper performance of the Work. General Contractor shall not proceed with such part of the Work without further direction from Design-Builder. Design-Builder shall promptly correct or cause to be corrected any such discrepancy or defect in the other work. Except to the extent such discrepancies or defects in such other work are latent, General Contractor shall be liable for appropriate losses or damages incurred due to any discrepancies or defects in such other work not reported to Design-Builder by General Contractor.

2.10 Site Cleanup.

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

2.11 Inspection.

2.11.1 At all reasonable times, General Contractor shall provide sufficient facilities for inspection of the Work by Design-Builder at the Site and at all locations where portions of the Work are in progress or various stages of completion. When appropriate portions of the Work are ready for inspection, General Contractor shall notify Design-Builder.

2.12 Patents and Copyrights.

2.12.1 General Contractor shall pay all license fees and royalties due for items or processes applicable to the Work which are subject to copyrights or patent rights and which are selected by General Contractor.

2.13 Legal Requirements.

2.13.1 General Contractor shall perform the Work in accordance with all applicable Legal Requirements.

2.13.2 The Contract Price and/or Contract Time(s) shall be adjusted to compensate General Contractor for the effects, if any, of any changes in the Legal Requirements enacted after the date of the Agreement affecting the performance of the Work, or if a GMP is established after the date of this Agreement, the date the parties agree upon the GMP.

2.14 Government Approvals and Permits.

2.14.1 General Contractor shall obtain and pay for the necessary permits, approvals, licenses, government charges and inspection fees required for the prosecution of the Work as set forth in

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Exhibit _____.

2.14.2 General Contractor shall provide reasonable assistance to Design-Builder in obtaining those permits, approvals and licenses, if any, that are the responsibility of Owner or Design-Builder.

2.15 Project Safety.

2.15.1 General Contractor recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, (iii) the work of others on the Project, and (iv) all other property at the Site or adjacent thereto. General Contractor assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work. General Contractor shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, General Contractor's Safety Representative shall be an individual stationed at the Site who may have other responsibilities on the Project in addition to safety. The Safety Representative shall make routine daily inspections of the Work and shall hold weekly safety meetings with General Contractor's personnel, Subcontractors and others as applicable.

2.15.2 General Contractor and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any Owner-specific and/or Design-Builder-specific safety requirements set forth in the Contract Documents or established for the Project, provided that such Owner-specific and/or Design-Builder-specific requirements do not violate any applicable Legal Requirement. General Contractor will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to Design-Builder's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

2.15.3 General Contractor's responsibility for safety under this Section 2.15 is not intended in any way to relieve Subcontractors or Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages or accidents resulting from their performance of the Work.

2.16 Warranty.

2.16.1 General Contractor warrants to Design-Builder that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. General Contractor's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work in a commercially reasonable manner. Nothing in this warranty is intended to limit any manufacturer's warranty which provides Owner and/or Design-Builder with greater warranty rights than set forth in this Section 2.16.1 or the Contract Documents. General Contractor will provide and, if requested, assign to Design-Builder all manufacturers' warranties upon Substantial Completion.

2.17 Correction of Defective Work.

2.17.1 General Contractor agrees to correct any Work that is found not to be in conformance with the Contract Documents, including that part of the Work subject to Section 2.16 hereof, within a period of one year from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by any specific warranty included in the Contract Documents.

2.17.2 General Contractor shall, within seven (7) days of receipt of written notice from Design-Builder that the Work is not in conformance with the Contract Documents, take meaningful steps to

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commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work or the Project affected by the nonconforming Work. If General Contractor fails to commence the necessary steps within such seven (7) day period, Design-Builder, in addition to any other remedies provided under the Contract Documents, may provide General Contractor with written notice that Design-Builder will commence correction of such nonconforming Work with its own forces. If Design-Builder does perform such corrective Work, General Contractor shall be responsible for all reasonable costs incurred by Design-Builder in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the seven (7) day period identified herein shall be deemed inapplicable.

2.17.3 The one year period referenced in Section 2.17.1 above applies only to General Contractor's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies Design-Builder may have regarding General Contractor's obligations under the Contract Documents.

Article 3

Design-Builder's Services and Responsibilities

3.1 Timely Reviews and Approvals.

3.1.1 Design-Builder shall provide timely reviews and approvals of submittals consistent with the turnaround times set forth in the Construction Schedule.

3.1.2 Design-Builder shall timely inspect the Work in accordance with the Contract Documents and so as not to jeopardize General Contractor's ability to complete its Work by the Contract Time(s).

3.2 Design-Builder's Representative.

3.2.1 Design-Builder's Representative shall be responsible for providing Design-Builder-supplied information and approvals in a timely manner to permit General Contractor to fulfill its obligations under the Contract Documents.

3.3 Furnishing of Services and Information.

3.3.1 Unless expressly stated to the contrary in the Contract Documents, and to the extent Design-Builder has received such items from Owner, Design-Builder shall provide for General Contractor's information the items listed below. Design-Builder does not warrant the accuracy or completeness of such items provided, however, that General Contractor is entitled to rely on these items to the same extent Design-Builder is entitled to rely upon such items in the Design-Build Agreement:

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

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

3.3.1.3 Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper construction of the Project and enable General Contractor to perform the Work;

3.3.1.4 A legal description of the Site;

3.3.1.5 Record drawings of any existing structures at the Site;

3.3.1.6 Environmental studies, reports and impact statements describing the environmental

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conditions, including Hazardous Conditions, in existence at the Site;

3.3.1.7 Owner's Project Criteria;

3.3.1.8 All permits, approvals, and licenses set forth in the Owner's Permit List attached as an exhibit to the Design-Build Agreement; and

3.3.1.9 Test and inspection reports.

3.3.2 Design-Builder shall provide General Contractor with a copy of the Design-Build Agreement, including all exhibits, attachments, and other Contract Documents enumerated and incorporated therein.

3.3.3 Upon General Contractor's reasonable request, Design-Builder shall provide General Contractor with information in Design-Builder's possession regarding Owner's financial ability to pay for the Work set forth in this Agreement.

3.3.4 Design-Builder shall provide General Contractor with the Project Schedule and appropriate updates thereto.

3.3.5 Design-Builder shall provide General Contractor with the Construction Documents for the Project.

3.3.6 Design-Builder shall obtain those permits, approvals and licenses that are not required to be provided by Owner pursuant to the Design-Build Agreement or by General Contractor pursuant to Section 2.14 hereof. Design-Builder shall provide reasonable assistance to General Contractor in obtaining those permits, approvals and licenses that are General Contractor's responsibility.

3.4 Notification of Errors.

3.4.1 Design-Builder shall notify General Contractor of any errors, inconsistencies, or omissions Design-Builder discovers in the Work. Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement shall relieve General Contractor of responsibility for errors, inconsistencies, or omissions in the Work.

3.5 Attendance at Design Meetings.

3.5.1 Design-Builder shall afford General Contractor and its Subcontractors the opportunity to attend all necessary design meetings with Owner, Designer and/or Design Consultants.

3.6 Review and Approval of Submittals.

3.6.1 Design-Builder shall review and approve submittals, including shop drawings, product data and samples, submitted by General Contractor. Design-Builder's review and approval of submittals shall be only for the purpose of confirming general conformance with the Construction Documents. Design-Builder's review and approval shall not relieve General Contractor of its responsibilities to perform the Work in accordance with the Construction Documents unless Design-Builder expressly approves in writing any such variance in its response to General Contractor's submittals. If revisions are necessary to a submittal prior to Design-Builder's approval, Design-Builder shall inform General Contractor of any such necessary revisions.

3.7 Design-Builder's Separate Contractors.

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

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Article 4

Hazardous Conditions and Differing Site Conditions

4.1 Hazardous Conditions.

4.1.1 Unless otherwise expressly provided in the Contract Documents to be part of the Work, General Contractor is not responsible for any Hazardous Conditions encountered at the Site. Upon encountering any Hazardous Conditions, General Contractor will stop work immediately in the affected area and duly notify Design-Builder and, if required by Legal Requirements, all government or quasi-government entities with jurisdiction over the Project.

4.1.2 General Contractor shall be obligated to resume work at the affected area of the Project only after Design-Builder provides General Contractor with a written certification from Design-Builder's or Owner's expert that (i) the Hazardous Conditions have been removed or rendered harmless and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or Site. To the extent the Hazardous Condition is the responsibility of Owner, Design-Builder agrees to include General Contractor in discussions with Owner to resolve the matter. If Design-Builder and General Contractor are unable to resolve the matter with Owner, the matter will be resolved in accordance with Section 13.3 hereof.

4.1.3 General Contractor will be entitled, in accordance with the Contract Documents, to an adjustment in its Contract Price and/or Contract Time(s) to the extent General Contractor's cost and/or time of performance have been adversely impacted by the presence of Hazardous Conditions.

4.1.4 As provided in the Design-Build Agreement, Design-Builder has caused Owner, to the fullest extent permitted by law, to indemnify, defend and hold harmless General Contractor, anyone employed directly or indirectly by General Contractor, and their officers, directors, employees and agents, from and against any and all claims, losses, damages, liabilities, and expenses, including attorneys' fees and expenses, arising out of or resulting from the presence, removal or remediation of Hazardous Conditions at the Site.

4.1.5 Notwithstanding the preceding provisions of this Section 4.1, General Contractor is responsible for Hazardous Conditions introduced to the Site by itself, Subcontractors, Sub-Subcontractors or anyone for whose acts they may be liable. To the fullest extent permitted by law, General Contractor shall indemnify, defend and hold harmless Owner, Design-Builder and their officers, directors, employees and agents from and against all claims, losses, damages, liabilities, and expenses, including attorneys' fees and expenses, arising out of or resulting from those Hazardous Conditions introduced to the Site by General Contractor, Subcontractors, Sub-Subcontractors or anyone for whose acts they may be liable.

4.2 Differing Site Conditions.

4.2.1 Concealed or latent physical conditions or subsurface conditions at the Site that (i) materially differ from the conditions indicated in the Contract Documents or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work are collectively referred to herein as "Differing Site Conditions." If General Contractor encounters a Differing Site Condition, General Contractor will be entitled to an adjustment in the Contract Price and/or Contract Time(s) to the extent General Contractor's cost and/or time of performance are adversely impacted by the Differing Site Condition. However, to the extent the Differing Site Condition is the contractual responsibility of Owner, Design-Builder agrees to include General Contractor in its discussions with Owner to resolve the matter. If Design-Builder and General Contractor are unable to resolve the matter with Owner, the matter will be resolved in accordance with Section 13.3 hereof.

4.2.2 Upon encountering a Differing Site Condition, General Contractor shall provide prompt written notice to Design-Builder of such condition, which notice shall be provided in accordance with Contract Documents and within sufficient time to permit Design-Builder to meet its notice requirements to Owner contained in the Design-Build Agreement. General Contractor shall, to the extent reasonably

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possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

Article 5

Contract Time

5.1 Date of Commencement.

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

5.2 Substantial Completion and Final Completion.

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

5.2.2 Interim milestones and/or Substantial Completion of identified portions of the Work shall be achieved as set forth in Exhibit _____, and shall be reflected in the Construction Schedule along with the dates for completing other activities.

5.2.3 Final Completion of the Work or identified portions of the Work shall be achieved as expeditiously as reasonably practicable.

5.2.4 All of the dates set forth in this Article 5 (the "Contract Time(s)") shall be subject to adjustment in accordance with this Agreement.

5.3 Time is of the Essence.

5.3.1 Design-Builder and General Contractor mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents and the Project Schedule.

5.4 Liquidated Damages.

5.4.1 General Contractor understands that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Design-Builder will suffer damages which are difficult to specify accurately and ascertain. General Contractor agrees that if Substantial Completion is not attained by _____(_____) days after the Scheduled Substantial Completion Date (the "LD Date"), General Contractor shall pay Design-Builder _____ _____dollars ($_____) as liquidated damages for each day that Substantial Completion extends beyond the LD Date. The liquidated damages provided herein shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature incurred by Design-Builder which are occasioned by any delay in achieving Substantial Completion.

(If a GMP is not established upon execution of this Agreement through the attachment of a GMP Exhibit, the parties should consider setting liquidated damages after GMP negotiations. If liquidated damages are applicable to any dates set forth in Section 5.2.2 hereof, this Section 5.4 will need to be modified accordingly Likewise, if the Design-Build Agreement has adopted any of the options contained in DBIA Document No. 530, then this provision should be modified accordingly.)

5.5 Early Completion Bonus.

5.5.1 If Substantial Completion is attained on or before _____ (_____) days before the Scheduled Substantial Completion Date (the "Bonus Date"), Design-Builder shall pay General Contractor at the time of final payment under Section 7.6 hereof an

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early completion bonus of _____ dollars ($_____) for each day that Substantial Completion is attained earlier than the Bonus Date.

(If a GMP is not established upon execution of this Agreement through the attachment of a GMP Exhibit, the parties should consider setting the early completion bonus after GMP negotiations. If an early completion bonus is applicable to any dates set forth in Section 5.2.2 hereof, this Section 5.5 will need to be modified accordingly. Likewise, if the Design-Build Agreement has adopted any of the options contained in DBIA Document No. 530, then this provision should be modified accordingly.)

5.6 Delays to the Work.

5.6.1 If General Contractor is delayed in the performance of its Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom General Contractor is responsible, the Contract Time(s) for performance shall be reasonably extended by Change Order. By way of example, events that may entitle General Contractor to an extension of the Contract Time(s) include acts or omissions of Design-Builder, Owner or anyone under Design-Builder's or Owner's control (including separate contractors), changes in the Work, Differing Site Conditions, Hazardous Conditions and Force Majeure Events.

5.6.2 In addition to General Contractor's right to a time extension for those events set forth in Section 5.6.1 above, General Contractor shall also be entitled to an appropriate adjustment of the Contract Price provided, however, that the Contract Price shall not be adjusted for Force Majeure Events unless otherwise provided in Article 18.

5.6.3 Notwithstanding any other provision to the contrary, any delay and resulting damages that arise out of, or relate to, problems caused by Owner or for which Owner is responsible shall be resolved pursuant to Section 13.3 hereof.

5.6.4 If the Project is delayed due to General Contractor or anyone for whom General Contractor is responsible, and not due to Design-Builder or Owner, in addition to its obligations to pay Design-Builder liquidated damages pursuant to Section 5.4 above, General Contractor shall, at the direction of Design-Builder and at General Contractor's own cost and expense, work such overtime and take such other measures as may be necessary to make up for all time lost in the completion of the Project due to such delay.

Article 6

Contract Price

6.1 Contract Price.

6.1.1 Design-Builder shall pay General Contractor in accordance with the Contract Documents a contract price ("Contract Price") equal to General Contractor's Fee (as defined in Section 6.2 hereof) plus the Cost of the Work (as defined in Section 6.3 hereof), subject to any GMP established in Section 6.6 hereof and any adjustments made in accordance with the Contract Documents. The parties acknowledge that if a GMP is established, the GMP is based upon the documents set forth in the GMP Exhibit (pursuant to Section 6.6.1.1), or the GMP Proposal (pursuant to Section 6.6.2.1). To the extent General Contractor is required to perform work which is not consistent with the GMP Exhibit or the GMP Proposal, General Contractor may be entitled to an adjustment in the Contract Price and/or Contract Time(s) pursuant to Article 12 of this Agreement.

6.2 General Contractor's Fee.

6.2.1 General Contractor's Fee shall be:

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[choose one of the following]

_____Dollars ($ _____) as adjusted in accordance with Section 6.2.2 below.

or

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

6.2.2 General Contractor's Fee will be adjusted as follows for changes in the Work:

6.2.2.1 For additive Change Orders, including additive Change Orders arising from both additive and deductive items, it is agreed that General Contractor shall receive a Fee of _ _____ percent (_____%) of the additional Costs of the Work incurred for that Change Order, plus any other markups set forth in Exhibit _____ hereto.

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

[Check one box only]

☐ No additional reduction to account for General Contractor's Fee or any other markup.

or

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

6.3 Cost of the Work.

6.3.1 The term Cost of the Work shall mean costs reasonably and incurred by General Contractor in the proper performance of the Work. The Cost of the Work shall include only the following:

6.3.1.1 Wages of direct employees of General Contractor performing the Work at the Site or, with Design-Builder's agreement, at locations off the Site.

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

6.3.1.3 Wages or salaries of General Contractor's personnel stationed at General Contractor's principal or branch offices, but only to the extent said personnel are identified in Exhibit _____and performing the functions set forth in said Exhibit. The reimbursable costs of personnel stationed at General Contractor's principal or branch offices shall include a _____percent (_____%) markup to compensate General Contractor for the Project-related overhead associated with such personnel.

6.3.1.4 Costs incurred by General Contractor for employee benefits, premiums, taxes, insurance, contributions and assessments required by law, collective bargaining agreements, or which are customarily paid by General Contractor to the extent such costs are based on wages and salaries paid to employees of General Contractor covered under Sections 6.3.1.1 through 6.3.1.3 hereof.

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[In lieu of the language in Section 6.3.1.4 above, General Contractor and Design-Builder may want to include the following language:]

☐ A multiplier of _____ percent (_____ %) shall be applied to the wages and salaries of the employees of General Contractor covered under Sections 6.3.1.1 through 6.3.1.3 hereof.

6.3.1.5 The reasonable portion of the cost of travel, accommodations and meals for General Contractor's personnel necessarily and directly incurred in connection with the performance of the Work.

6.3.1.6 Payments properly made by General Contractor to Subcontractors for performance of portions of the Work, including any insurance and bond premiums incurred by Subcontractors.

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

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

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

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

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

6.3.1.12 Rental charges and the costs of transportation, installation, minor repairs and replacements, dismantling and removal of temporary facilities, machinery, equipment and hand tools not customarily owned by the workers, which are provided by General Contractor at the Site, whether rented from General Contractor or others, and necessary for the performance of the Work.

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

6.3.1.14 All fuel and utility costs necessary for the performance of the Work.

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

6.3.1.16 Legal costs, court costs and costs of mediation and arbitration reasonably arising from General Contractor's performance of the Work, provided such costs do not arise from disputes between Design-Builder and General Contractor, or from Owner-related disputes.

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6.3.1.17 Costs for permits, royalties, licenses, tests and inspections incurred by General Contractor as a requirement of the Contract Documents.

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

6.3.1.19 Deposits which are lost, except to the extent caused by General Contractor's negligence.

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

6.3.1.21 Accounting and data processing costs related to the Work.

6.3.1.22 Other costs reasonably and properly incurred in the performance of the Work to the extent approved in writing by Design-Builder.

6.4 Allowance Items and Allowance Values.

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

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

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

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

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

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

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

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6.5 Non-Reimbursable Costs.

6.5.1 The following shall not be deemed as Costs of the Work:

6.5.1.1 Compensation for General Contractor's personnel stationed at General Contractor's principal or branch offices, except as provided for in Sections 6.3.1.1, 6.3.1.2 and 6.3.1.3 hereof.

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

6.5.1.3 The cost of General Contractor's capital used in the performance of its Work.

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

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

6.6 The Guaranteed Maximum Price.

6.6.1 GMP Established Upon Execution of this Agreement.

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

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

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

6.6.1.2 The GMP includes a Contingency in the amount of _____ Dollars ($_____) which is available for General Contractor's exclusive use for unanticipated costs it has incurred that are not the basis for a Change Order under the Contract Documents. By way of example, and not as a limitation, such costs may include: (a) trade buy-out differentials; (b) overtime or acceleration; (c) escalation of materials; (d) correction of defective, damaged or nonconforming work, however caused; (e) Subcontractor

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defaults; or (f) those events under Section 5.6.2 that result in an extension of the Contract Time but do not result in an increase in the Contract Price. The Contingency is not available to Design-Builder for any reason, including but not limited to changes in scope or any other item which would enable General Contractor to increase the GMP under the Contract Documents. General Contractor shall notify Design-Builder of all anticipated charges against the Contingency, and shall provide Design-Builder as part of the monthly status report required by Section 2.6.1 an accounting of the Contingency, including all reasonably foreseen uses or potential uses of the Contingency in the upcoming three (3) months. General Contractor agrees that with respect to any expenditure from the Contingency relating to a Subcontractor default or an event for which insurance or bond may provide reimbursement, General Contractor will in good faith exercise reasonable steps to obtain performance from the Subcontractor and/or recovery from any surety or insurance company. General Contractor agrees that if General Contractor is subsequently reimbursed for said costs, then said recovery will be credited back to the Contingency.

6.6.2 GMP Established after Execution of this Agreement.

6.6.2.1 GMP Proposal.

6.6.2.1.1 If requested by Design-Builder, General Contractor shall submit a GMP Proposal to Design-Builder which shall include the following, unless the parties mutually agree otherwise:

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

i. General Contractor's Fee as defined in Section 6.2 hereof;

and

ii. the estimated Cost of the Work as defined in Section 6.3 hereof, inclusive of any General Contractor's Contingency as defined in Section 6.5.1.2 hereof;

6.6.2.1.1.2 A list of the drawings and specifications, including all addenda, used as a basis for the GMP Proposal;

6.6.2.1.1.3 A list of the assumptions and clarifications made by General Contractor in the preparation of the GMP Proposal, which list is intended to supplement the information contained in the drawings and specifications;

6.6.2.1.1.4 The Scheduled Substantial Completion Date upon which the proposed GMP is based, to the extent said date has not already been established under Section 5.2.1 hereof, and a schedule upon which the Scheduled Substantial Completion Date is based;

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

6.6.2.1.1.6 If applicable, a schedule of alternate prices;

6.6.2.1.1.7 If applicable, a schedule of unit prices;

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

6.6.2.1.1.9 The time limit for acceptance of the GMP Proposal.

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6.6.2.2 Review and Adjustment to GMP Proposal.

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

6.6.2.3 Acceptance of GMP Proposal.

6.6.2.3.1 If Design-Builder accepts the GMP Proposal, as may be amended by General Contractor, the GMP and its basis shall be set forth in an amendment to this Agreement.

6.6.2.4 Failure to Accept the GMP Proposal.

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

6.6.2.4.1.1 Design-Builder may suggest modifications to the GMP Proposal, whereupon, if such modifications are accepted in writing by General Contractor, the GMP Proposal shall be deemed accepted and the parties shall proceed in accordance with Section 6.6.2.3 hereof;

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

6.6.2.4.1.3 Design-Builder may terminate this Agreement for convenience in accordance with Article 8 hereof.

If Design-Builder fails to exercise any of the above options, General Contractor shall have the right to (i) continue with the Work as if Design-Builder had elected to proceed in accordance with Item 6.6.2.4.1.2 above, and be paid by Design-Builder accordingly, unless and until Design-Builder notifies it in writing to stop the Work, or (ii) suspend performance of Work in accordance with Section 8.4.

6.7 Savings.

6.7.1 If the sum of the actual Cost of the Work and General Contractor's Fee is less than the GMP, as such GMP may have been adjusted over the course of the Project, the difference ("Savings") shall be shared as follows:

[choose one of the following]

_____ percent (_____%) to General Contractor and
_____percent (_____%) to Design-Builder.

or

The first $_____ dollars ($_____) of Savings shall be provided to *[choose either General Contractor or Design-Builder]* _____, with the balance of

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Savings, if any, shared _____percent (_____%) to General Contractor and_____ percent (_____%) to Design-Builder.

6.7.2 Savings shall be calculated and paid as part of final payment under Section 7.6 hereof, with the understanding that to the extent General Contractor incurs costs after Final Completion which would have been payable to General Contractor as a Cost of the Work, the parties shall recalculate the Savings in light of the costs so incurred, and General Contractor shall be paid by Design-Builder accordingly.

Article 7

Procedure for Payment

7.1 Schedule of Values.

7.1.1 Unless required by Design-Builder upon execution of this Agreement, within ten (10) days of execution of the Agreement, General Contractor shall submit for Design-Builder's review and approval a schedule of values for all of the Work. The Schedule of Values will (i) subdivide the Work into its respective parts; (ii) include values for all items comprising the Work and (iii) serve as the basis for monthly progress payments made to General Contractor throughout the work.

7.2 Progress Payments.

7.2.1 Beginning with the first month after the Date of Commencement, General Contractor shall submit on the _____ (_____) day of each month for Design-Builder's review and approval, General Contractor's Application for Payment requesting payment for all Work performed as of the date of the Application for Payment. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by Section 2.1.1 hereof. Design-Builder will submit General Contractor's proper Application for Payment to Owner with Design-Builder's application. General Contractor shall also provide Design-Builder with a quarterly reconciliation between billings and costs.

7.2.2 The Application for Payment may request payment for equipment and materials not yet incorporated into the Project, provided that (i) Design-Builder is satisfied that the equipment and materials are suitably stored at either the Site or another acceptable location, (ii) the equipment and materials are protected by suitable insurance, and (iii) upon payment, Design-Builder will receive the equipment and materials free and clear of all liens and encumbrances.

7.2.3 The Application for Payment shall constitute General Contractor's representation that the Work has been performed consistent with the Contract Documents, has progressed to the point indicated in the Application for Payment, and that title to all Work will pass to Owner free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project, or upon General Contractor's receipt of payment, whichever occurs earlier.

7.2.4 Design-Builder shall make payment on General Contractor's properly submitted and accurate Application for Payment within three (3) days after Design-Builder's receipt of payment from Owner on account of General Contractor's monthly Application for Payment, but in each case less the total of payments previously made, and less amounts properly withheld under this Agreement.

7.3 Retainage on Progress Payments.

7.3.1 Design-Builder will retain from each of General Contractor's Application for Payment ____ _____ percent (_____%). Unless mutually agreed otherwise between the parties, retainage will be included in Design-Builder's final payment to General Contractor, provided Design-Builder has received such retained amounts from Owner.

7.4 Withholding of Payments.

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7.4.1 If Design-Builder determines that General Contractor is not entitled to all or part of an Application for Payment, it will notify General Contractor in writing at least five (5) days prior to the date payment is due. The notice shall indicate the specific amounts Design-Builder intends to withhold, the reasons and contractual basis for the withholding, and the specific measures General Contractor must take to rectify Design-Builder's concerns. Design-Builder and General Contractor will attempt to resolve Design-Builder's concerns prior to the date payment is due. If the parties cannot resolve such concerns, Design-Builder shall pay General Contractor the uncontested amount of the Application for Payment, and General Contractor may pursue its rights under the Contract Documents, including those under Article 13 hereof.

7.5 Substantial Completion.

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

7.5.2 Within fifteen (15) days after Substantial Completion of the entire Work or, if applicable, any portion of the Work, and payment to Design-Builder from Owner, Design-Builder shall release to General Contractor all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to: (i) the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion; and (ii) all other amounts Design-Builder is entitled to withhold pursuant to Section 7.4.

7.5.3 Design-Builder, at its option, may use a portion of the Work which has been determined to be substantially complete provided that (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in Section 7.5.1 above, (ii) General Contractor and Design-Builder have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project, and (iii) Design-Builder and General Contractor agree that Design-Builder's and/or Owner's use or occupancy will not interfere with General Contractor's completion of the remaining Work.

7.6 Final Payment.

7.6.1 General Contractor shall submit its Final Application for Payment to Design-Builder in accordance with Section 7.6.2 below. Design-Builder shall make payment on General Contractor's properly submitted and accurate Final Application for Payment within ten (10) days after Design-Builder's receipt of final payment from Owner on account of General Contractor's Final Application for Payment, provided also that General Contractor has satisfied the requirements for final payment set forth in Section 7.6.2 below.

7.6.2 At the time of submission of its Final Application for Payment, General Contractor shall provide the following information:

7.6.2.1 an affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Design-Builder's or Owner's interests;

7.6.2.2 a general release executed by General Contractor waiving, upon receipt of final

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payment by General Contractor, all claims, except those claims previously made in writing to Design-Builder and remaining unsettled at the time of final payment;

7.6.2.3 consent of General Contractor's surety, if any, to final payment;

7.6.2.4 all operating manuals, warranties and other deliverables required by the Contract Documents; and

7.6.2.5 certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents.

7.6.3 Upon making final payment, Design-Builder waives all claims against General Contractor except claims relating to (i) General Contractor's failure to satisfy its payment obligations, if such failure affects Design-Builder's or Owner's interests; (ii) General Contractor's failure to complete the Work consistent with the Contract Documents, including defects appearing after Substantial Completion; and (iii) the terms of any special warranties required by the Contract Documents.

7.7 Pay When Paid.

7.7.1 General Contractor agrees that all payments to General Contractor hereunder, whether progress or final payment, or for changes or delays to the Work, shall not be due until after Design-Builder actually receives payment on account of same from Owner. Notwithstanding the preceding sentence, Design-Builder shall pay General Contractor within a reasonable time if it has not been paid by the Owner unless the Owner's failure to pay the Design-Builder is caused by the General Contractor's failure to perform in accordance with this Agreement.

7.8 Interest.

7.8.1 Payments due and unpaid under this Agreement shall bear interest commencing five (5) days after payment is due at the rate of _____percent (_____%) per month until paid.

7.9 Advance Payments.

7.9.1 Design-Builder has the right, at its sole option, to advance any payment due General Contractor under this Agreement.

7.10 Payment Not Acceptance.

7.10.1 No payment to General Contractor under this Agreement shall be evidence of, or construed to be, acceptance of defective, faulty, improper or non-conforming work.

7.11 General Contractor's Payment Obligations.

7.11.1 General Contractor will pay Subcontractors, in accordance with its contractual obligations to such parties, all the amounts General Contractor has received from Design-Builder on account of their work. General Contractor will impose similar requirements on Subcontractors to pay those parties with whom they have contracted. General Contractor will indemnify and defend Owner and Design-Builder against any claims for payment and mechanic's liens as set forth in Section 11.3 hereof, providing Design-Builder is not in breach of its contractual obligations to make payment to General Contractor for its Work.

7.12 Record Keeping and Finance Controls.

7.12.1 General Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of three (3) years after final payment of the Work,

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Design-Builder and Design-Builder's accountants shall be afforded access to and the right to audit from time-to-time, upon reasonable notice, to General Contractor's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the cost of performing the Work, including changes in the Work, all of which General Contractor shall preserve for a period of three (3) years after final payment. Such inspection shall take place at General Contractor's offices during normal business hours unless another location and time is agreed to by the parties. Any multipliers or markups agreed to by General Contractor and Design-Builder as part of this Agreement are only subject to audit to confirm that such multiplier or markup has been charged in accordance with this Agreement, with the composition of such multiplier or markup not being subject to audit.

Article 8

Stop Work and Termination

8.1 Design-Builder's Right to Stop Work.

8.1.1 Design-Builder may, without cause and for its convenience, order General Contractor in writing to stop and suspend the Work. Such suspension shall not exceed sixty (60) consecutive days or aggregate more than ninety (90) days during the duration of the Project.

8.1.2 General Contractor is entitled to seek an adjustment of the Contract Price and/or Contract Time(s) if its cost or time to perform the Work has been adversely impacted by any suspension or stoppage of work by Design-Builder. Notwithstanding anything to the contrary herein, if Design-Builder's suspension of the Work is the result of Owner's suspension of Design-Builder's work under the Design-Build Agreement, then Design-Builder shall pay General Contractor only those amounts Design-Builder actually receives from Owner on account of the Work.

8.2 Design-Builder's Right to Terminate for Convenience.

8.2.1 Upon ten (10) days' written notice to General Contractor, Design-Builder may, for its convenience and without cause, elect to terminate this Agreement. In such event, Design-Builder shall pay General Contractor for the following:

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

8.2.1.2 The reasonable costs and expenses attributable to such termination, including amounts due in settlement of terminated contracts with Subcontractors; and

8.2.1.3 ***[choose one of the following]***

☐ The fair and reasonable sums for overhead and profit on the sum of items 8.2.1.1 and 8.2.1.2 above.

or

☐ Overhead and profit in the amount of _____ percent (_____%) on the sum of items 8.2.1.1 and 8.2.1.2 above.

8.2.2 If Design-Builder's termination of General Contractor for convenience is the result of Owner's termination of Design-Builder for convenience under the Design-Build Agreement, then Design-Builder shall pay General Contractor only those amounts Design-Builder actually receives from Owner on behalf of General Contractor.

8.3 Design-Builder's Right to Terminate for Cause.

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8.3.1 If General Contractor persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, its Subcontractors, (v) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time(s), as such times may be adjusted, or (vi) perform material obligations under the Contract Documents, then Design-Builder shall have the rights, in addition to any other rights and remedies provided in the Contract Documents or by law, set forth in Sections 8.3.2 and 8.3.3 below.

8.3.2 Upon the occurrence of an event set forth in Section 8.3.1 above, Design-Builder may provide written notice to General Contractor that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of General Contractor's receipt of such notice. If General Contractor fails to cure, or reasonably commence to cure, such problem, then Design-Builder may give a second written notice to General Contractor of its intent to terminate within an additional seven (7) day period. If General Contractor, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Design-Builder may declare the Agreement terminated for default by providing written notice to General Contractor of such declaration.

8.3.3 Upon declaring the Agreement terminated pursuant to Section 8.3.2 above, Design-Builder may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which General Contractor hereby transfers, assigns and sets over to Design-Builder for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items. In the event of such termination, General Contractor shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, if the unpaid balance of the Contract Price exceeds the cost and expense incurred by Design-Builder in completing the Work, such excess shall be paid by Design-Builder to General Contractor. Notwithstanding the preceding sentence, if the Agreement establishes a GMP, General Contractor will only be entitled to be paid for Work performed prior to its default. If Design-Builder's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then General Contractor shall be obligated to pay the difference to Design-Builder. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expenses, including attorneys' fees and expenses, incurred by Design-Builder in connection with the reprocurement and defense of claims arising from General Contractor's default, subject to the waiver of consequential damages set forth in Section 13.7 hereof.

8.3.4 If Design-Builder improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Section 8.2 of the Agreement.

8.4 General Contractor's Right to Stop Work.

8.4.1 If (i) Owner fails to pay amounts due Design-Builder under the Design-Build Agreement for work performed by General Contractor, such failure is not due to the fault of General Contractor, and General Contractor has not been paid such amounts due, or (ii) Design-Builder fails to pay any amounts due General Contractor under this Agreement, General Contractor may, in addition to any other rights afforded under the Contract Documents or at law, stop work in accordance with Section 8.4.2.

8.4.2 General Contractor shall provide Design-Builder with written notice that General Contractor will stop work unless said failure to pay the amount is not cured within seven (7) days from Design-Builder's receipt of General Contractor's notice. If Design-Builder does not cure the problem within such seven (7) day period, General Contractor may stop work. In such case, General Contractor shall be entitled to make a claim for adjustment to the Contract Price and Contract Time(s) to the extent it has been adversely impacted by such stoppage. To the extent Design-Builder's failure to pay is related to a dispute between the parties, the dispute will be resolved in accordance with Article 13 and the parties will continue performance in accordance with Section 13.6.

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8.5 General Contractor's Right to Terminate For Cause.

8.5.1 General Contractor, in addition to any other rights and remedies afforded under the Contract Documents or at law, may terminate the Agreement for cause for the following reasons:

8.5.1.1 The Work has been stopped for sixty-five (65) consecutive days, or more than ninety-five (95) days during the duration of the Project, because of court order, any government authority having jurisdiction over the Work, or orders by Design-Builder under Section 8.1 hereof, provided that such stoppages are not due to the acts or omissions of General Contractor or anyone for whose acts General Contractor may be responsible.

8.5.1.2 Design-Builder's failure to provide General Contractor with any information, permits or approvals that are Design-Builder's responsibility under the Contract Documents which result in the Work being stopped for sixty-five (65) consecutive days, or more than ninety-five (95) days during the duration of the Project, even though Design-Builder has not ordered General Contractor in writing to stop and suspend the Work pursuant to Section 8.1 hereof.

8.5.1.3 Design-Builder's failure to cure the problems set forth in Section 8.4.1 above within thirty (30) days after General Contractor has stopped the Work.

8.5.2 Upon the occurrence of an event set forth in Section 8.5.1 above, General Contractor may provide written notice to Design-Builder that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Design-Builder's receipt of such notice. If Design-Builder fails to cure, or reasonably commence to cure, such problem, then General Contractor may give a second written notice to Design-Builder of its intent to terminate within an additional seven (7) day period. If Design-Builder, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then General Contractor may declare the Agreement terminated for default by providing written notice to Design-Builder of such declaration. In such case, General Contractor shall be entitled to recover in the same manner as if Design-Builder had terminated this Agreement for its convenience under Section 8.2 of the Agreement.

8.6 Bankruptcy of Design-Builder or General Contractor.

8.6.1 If either Design-Builder or General Contractor institutes or has instituted against it a case under the United States Bankruptcy Code (such party being referred to as the "Bankrupt Party"), such event may impair or frustrate the Bankrupt Party's ability to perform its obligations under the Contract Documents. Accordingly, should such event occur.

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

8.6.1.2 The Bankrupt Party shall file an appropriate action within the bankruptcy court to seek assumption or rejection of the Agreement within sixty (60) days of the institution of the bankruptcy filing and shall diligently prosecute such action.

If the Bankrupt Party fails to comply with its foregoing obligations, the non-Bankrupt Party shall be entitled to request the bankruptcy court to reject the Agreement, declare the Agreement terminated and pursue any other recourse available to the non-Bankrupt Party under this Article 8.

8.6.2 The rights and remedies under Section 8.6.1 above shall not be deemed to limit the ability of the non-Bankrupt Party to seek any other rights and remedies provided by the Contract Documents or by law, including its ability to seek relief from any automatic stays under the United States Bankruptcy Code.

Article 9

Representatives of the Parties

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9.1 Design-Builder's Representatives.

9.1.1 Design-Builder designates the individual listed below as its Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 13.4 of the Agreement: *(Identify individual's name, title, address and telephone numbers)*

9.1.2 Design-Builder designates the individual listed below as its Design-Builder's Representative, which individual has the authority and responsibility set forth in Section 3.2 of the Agreement: *(Identify individual's name, title, address and telephone numbers)*

9.2 General Contractor's Representatives.

9.2.1 General Contractor designates the individual listed below as its Senior Representative ("General Contractor's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 13.4 of the Agreement: *(Identify individual's name, title, address and telephone numbers)*

9.2.2 General Contractor designates the individual listed below as its General Contractor's Representative, which individual has the authority and responsibility set forth in Section 2.1.2 of the Agreement: *(Identify individual's name, title, address and telephone numbers)*

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Article 10

Insurance and Bonds

10.1 General Contractor's Insurance Requirements.

10.1.1 General Contractor is responsible for procuring and maintaining, from insurance companies authorized to do business in the state in which the Project is located, the insurance coverages set forth in the Insurance Exhibit to this Agreement, with the minimum ratings set forth in said Exhibit for certain claims which may arise from or out of the performance of this Agreement and obligations under the Contract Documents.

10.1.2 General Contractor shall require its Subcontractors and Sub-Subcontractors to procure and maintain, from insurance companies authorized to do business in the state in which the Project is located, the insurance coverages set forth in the Insurance Exhibit.

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10.1.3 General Contractor's and its Subcontractors' and Sub-Subcontractors' insurance coverage set forth in the Insurance Exhibit shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project.

10.1.4 Prior to commencing any services hereunder, General Contractor shall provide Design-Builder with certificates evidencing that (i) all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect for the duration required by the Contract Documents and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to Design-Builder.

10.1.5 Except as otherwise stated in the Insurance Exhibit, the insurance policies required herein shall list Design-Builder, and any other entities required by the Contract Documents, if any, as an additional insured.

10.1.6 If any of the foregoing coverages are required to remain in force after final payment, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment.

10.2 Property Insurance.

10.2.1 In accordance with the Contract Documents, Owner or Design-Builder shall procure and maintain property insurance upon the entire Project.

10.3 Waiver of Subrogation.

10.3.1 Design-Builder and General Contractor waive against each other and Owner, Subcontractors, Design Consultants, Owner's or Design-Builder's separate contractors, agents and employees of each and all of them, all damages covered by property insurance provided herein, except such rights as they may have to the proceeds of such insurance. Design-Builder and General Contractor shall, where appropriate, require similar waivers of subrogation from Design Consultants and Subcontractors and shall require each of them to include similar waivers in their contracts. These waivers of subrogation shall not contain any restriction or limitation that will impair the full and complete extent of its applicability to any person or entity unless agreed to in writing prior to the execution of this Agreement.

10.4 Bonds and Other Performance Security.

10.4.1 General Contractor shall provide the following performance bond and labor and material payment bond or other performance security: *(Indicate the amount of bonds and any other conditions of the bonds or other security.)*

Article 11

Indemnification

11.1 Patent and Copyright Infringement.

11.1.1 General Contractor shall defend any action or proceeding brought against Owner or Design-Builder based on any claim that the Work, or any part thereof, or the operation or use of the Work or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. Design-Builder shall give prompt written notice to General Contractor of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. General Contractor shall indemnify and hold harmless Owner and Design-Builder from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Owner or Design-Builder in any such action or proceeding. General Contractor agrees to keep Design-Builder informed of all developments in the defense of such actions.

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

11.1.3 Sections 11.1.1 and 11.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating to a particular process or product of a particular manufacturer specified by Owner or Design-Builder or (ii) arising from modifications to the Work by Owner or Design-Builder after acceptance of the Work. If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Design-Builder shall defend, indemnify and hold harmless General Contractor to the same extent General Contractor is obligated to defend, indemnify and hold harmless Design-Builder in Section 11.1.1 above.

11.1.4 The obligations set forth in this Section 11.1 shall constitute the sole agreement between the parties relating to liability for infringement or violation of any patent or copyright.

11.2 Tax Claim Indemnification.

11.2.1 If, in accordance with Design-Builder's direction, an exemption for all or part of the Work is claimed for taxes, Design-Builder shall indemnify, defend and hold harmless General Contractor from and against any liability, penalty, interest, fine, tax assessment, attorneys' fees or other expenses or costs incurred by General Contractor as a result of any action taken by General Contractor in accordance with Design-Builder's directive.

11.3 Payment Claim Indemnification.

11.3.1 Providing that Design-Builder is not in breach of its contractual obligation to make payments to General Contractor for the Work, General Contractor shall indemnify, defend and hold harmless Owner and Design-Builder from any claims or mechanic's liens brought against Owner, Design-Builder, or against the Project as a result of the failure of General Contractor, or those for whose acts it is responsible, to pay for any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred for, or in connection with the Work. Within three (3) days of receiving written notice from Design-Builder that such a claim or mechanic's lien has been filed, General Contractor shall commence to take the steps necessary to discharge said claim or lien, including, if necessary, the furnishing of a mechanic's lien bond. If General Contractor fails to do so, Design-Builder will have the right to discharge the claim or lien and hold General Contractor liable for costs and expenses incurred, including attorneys' fees.

11.4 General Contractor's General Indemnification.

11.4.1 General Contractor, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Owner, Design-Builder, their officers, directors, employees and agents from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) to the extent resulting from the negligent acts or omissions of General Contractor, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable.

11.4.2 If an employee of General Contractor, anyone employed directly or indirectly by General Contractor, or anyone for whose acts any of them may be liable has a claim against any party indemnified pursuant to Section 11.4.1 above, General Contractor's indemnity obligation set forth in Section 11.4.1 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for General Contractor, Subcontractors, or other entity under any employee benefit acts, including workers' compensation or disability acts.

11.5 Design-Builder's General Indemnification.

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11.5.1 Design-Builder, to the fullest extent permitted by law, shall indemnify, hold harmless and defend General Contractor and its officers, directors, employees and agents from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) to the extent resulting from the negligent acts or omissions of Design-Builder, Design Consultant, Design-Builder's other contractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable.

11.5.2 If an employee of Design-Builder, anyone employed directly or indirectly by Design-Builder, or anyone for whose acts any of them may be liable has a claim against any party indemnified pursuant to Section 11.5.1 above, Design-Builder's indemnity obligation set forth in Section 11.5.1 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Design-Builder, Design Consultant, Design-Builder's other contractors, or other entity under any employee benefit acts, including workers' compensation or disability acts.

Article 12

Changes to the Contract Price and Time

12.1 Owner-Generated Changes.

12.1.1 If Owner issues changes affecting the Work, General Contractor agrees, if directed by Design-Builder, to meet with Design-Builder and Owner to review and discuss the changes. General Contractor shall only be entitled to adjustments in its Contract Price and Contract Time(s) attributable to such Owner-generated changes to the extent Design-Builder actually receives such adjustments from Owner. If General Contractor disputes the adjustment, such dispute shall be resolved pursuant to Section 13.3 of this Agreement.

12.2 Design-Builder-Generated Changes.

12.2.1 Changes to the Work issued by Design-Builder shall be governed by the provisions set forth in the following sections of this Article 12.

12.3 Change Orders.

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

12.3.1.1 The scope of the change in the Work;

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

12.3.1.3 The extent of the adjustment to the Contract Time(s).

12.3.2 All changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents. Design-Builder and General Contractor shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes.

12.3.3 If Design-Builder requests a proposal for a change in the Work from General Contractor and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse General Contractor for reasonable costs incurred for preparing the proposal.

12.4 Work Change Directives.

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

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

12.5 Minor Changes in the Work.

12.5.1 Minor changes in the Work do not involve an adjustment in the Contract Price and/or Contract Time(s) and do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Design-Builder may make minor changes in the Work consistent with the intent of the Contract Documents, provided, however, that Design-Builder shall promptly inform General Contractor, in writing, of any such changes.

12.6 Contract Price Adjustment.

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

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

12.6.1.2 A mutually accepted, lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by Design-Builder;

12.6.1.3 Costs, fees and any other markups set forth in the Agreement; and

12.6.1.4 If an increase or decrease cannot be agreed to as set forth in items 12.6.1.1 through 12.6.1.3 above and Design-Builder issues a Work Change Directive, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit, as may be set forth in this Agreement. If the net result of both additions and deletions to the Work is an increase in the Contract Price, reasonable overhead and profit shall be calculated on the basis of the net increase to the Contract Price. General Contractor shall maintain a documented, itemized accounting evidencing the expenses and savings associated with such changes.

12.6.2 If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to Design-Builder or General Contractor because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.

12.6.3 If Design-Builder and General Contractor disagree upon whether General Contractor is entitled to be paid for any services required by Design-Builder, or if there are any other disagreements over the scope of Work or proposed changes to the Work, Design-Builder and General Contractor shall resolve the disagreement pursuant to Article 13 hereof. As part of the negotiation process, General Contractor shall furnish Design-Builder with a good faith estimate of the costs to perform the disputed services in accordance with Design-Builder's interpretations. If the parties are unable to agree and Design-Builder expects General Contractor to perform the services in accordance with Design-Builder's interpretations, General Contractor shall proceed to perform the disputed services, conditioned upon Design-Builder issuing a written order to General Contractor (i) directing General Contractor to proceed and (ii) specifying Design-Builder's interpretation of the services that are to be performed.

12.7 Emergencies.

12.7.1 In any emergency affecting the safety of persons and/or property, General Contractor shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price

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and/or Contract Time(s) on account of emergency work shall be determined as provided in this Article 12.

Article 13

Contract Adjustments and Disputes

13.1 Requests for Contract Adjustments and Relief.

13.1.1 If either General Contractor or Design-Builder believes that it is entitled to relief against the other for any event arising out of or related to the Work or the Project, such party shall provide written notice to the other party of the basis for its claim for relief. Such notice shall be in accordance with specific notice requirements contained in applicable sections of the Contract Documents and, if possible, be made prior to incurring any cost or expense. General Contractor shall provide Design-Builder written notice of claims for which Owner may be responsible in sufficient time for Design-Builder to meet its notice requirements to Owner set forth in the Contract Documents. In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed ten (10) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later. Such notice shall be in accordance with the Contract Documents and shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request. General Contractor shall comply with all documentation requirements set forth in the Design-Build Agreement when submitting its claim to Design-Builder.

13.2 Dispute Avoidance and Resolution.

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

13.3 Disputes Involving Owner.

13.3.1 To the extent a claim, dispute or controversy arises out of, or relates to, problems caused by Owner or for which Owner is responsible ("Owner Disputes"), such Owner Disputes shall be resolved pursuant to the dispute resolution clause set forth in the Design-Build Agreement. Both Design-Builder and General Contractor agree to cooperate in the presentation and prosecution or defense of Owner Disputes. If, after a request for an extension of time or additional compensation from General Contractor, Design-Builder believes that the event causing the delay or additional compensation is the responsibility of Owner, then Design-Builder will cooperate with and assist General Contractor in presenting a request for an extension of time or additional compensation to Owner. Notwithstanding the above, Design-Builder reserves the right not to submit a claim to Owner. In such cases, the claim shall be resolved pursuant to Section 13.4.

13.3.2 Notwithstanding any other provisions herein to the contrary, Design-Builder and General Contractor each agree to accept the relief as to a time extension or additional compensation obtained from Owner, if any, as well as all other aspects of the final decision following appeal or the expiration of the time for appeal, as full and final resolution of any Owner Dispute.

13.3.3 If Design-Builder asserts a claim against Owner involving General Contractor, each party shall bear its own costs for outside counsel and third-party consultants retained to prosecute claims against Owner and for any other litigation costs. Each party shall present its portion of the claim to Owner.

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13.3.4 If Owner contends that the Contract Documents have been breached, or otherwise asserts a claim or set-off against Design-Builder, the party determined to be responsible for the breach either by settlement or by the trier of fact shall be responsible for all costs occasioned by the breach, including counsel and litigation costs. If the trier of fact fails to determine the relative degrees of fault of Design-Builder and General Contractor in connection with any claim by Owner, then Design-Builder and General Contractor agree that the allocation of fault shall be determined pursuant to Section 13.4.

13.4 Disputes Not Involving Owner.

13.4.1 For any claim, dispute or controversy not arising out of, or relating to, problems caused by Owner or for which Owner is responsible, General Contractor and Design-Builder will first attempt to resolve such claim, dispute or controversy at the field level through discussions between Design-Builder's Representative and General Contractor's Representative.

13.4.2 If a claim, dispute or controversy cannot be resolved through Section 13.4.1, Design-Builder's Senior Representative and General Contractor's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such claim, dispute or controversy. Five (5) days prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving the claim, dispute or controversy.

13.4.3 If after meeting the Senior Representatives determine that the claim, dispute or controversy cannot be resolved on terms satisfactory to both parties, the parties shall submit within thirty (30) days of the conclusion of the meeting by the Senior Representatives the claim, dispute or controversy to non-binding mediation. The mediation shall be conducted by a mutually agreeable impartial mediator, or if the parties cannot so agree, a mediator designated by the American Arbitration Association ("AAA") pursuant to its Construction Industry Mediation Rules. The mediation will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by procedures established by the mediator. Unless otherwise mutually agreed by Design-Builder and General Contractor and consistent with the mediator’s schedule, the mediation shall commence within ninety (90) days of the submission of the dispute for mediation. Persons with authority to resolve the dispute shall be present at the mediation.

13.5 Arbitration.

13.5.1 Any claims, disputes or controversies between the parties arising out of or relating to the Agreement, or the breach thereof, which have not been resolved in accordance with the procedures set forth in Section 13.4 above, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the AAA then in effect, unless the parties mutually agree otherwise.

13.5.2 The award of the arbitrator(s) shall be final and binding upon the parties without the right of appeal to the courts. Judgment may be entered upon it in accordance with applicable law by any court having jurisdiction thereof.

13.5.3 General Contractor and Design-Builder expressly agree that any arbitration pursuant to this Section 13.5 may be joined or consolidated with any arbitration involving any other person or entity (i) necessary to resolve the claim, dispute or controversy, or (ii) substantially involved in or affected by such claim, dispute or controversy. Both Design-Builder and General Contractor will include appropriate provisions in all contracts they execute with other parties in connection with the Project to require such joinder or consolidation.

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

13.6 Duty to Continue Performance.

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

13.7 CONSEQUENTIAL DAMAGES.

13.7.1 NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY (EXCEPT AS SET FORTH IN SECTION 13.7.2 BELOW), NEITHER DESIGN-BUILDER NOR GENERAL CONTRACTOR SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSSES OF USE, PROFITS, BUSINESS, REPUTATION OR FINANCING.

13.7.2 The consequential damages limitation set forth in Section 13.7.1 is not intended to affect (i) the payment of liquidated damages, if any, set forth in Article 5 of this Agreement, which both parties recognize have been established, in part, to reimburse Design-Builder for some damages that might otherwise be deemed to be consequential or (ii) any liability of General Contractor for consequential damages that may be imposed upon Design-Builder by the Design-Build Agreement.

Article 14

Miscellaneous

14.1 Assignment.

14.1.1 Neither General Contractor nor Design-Builder shall, without the written consent of the other, assign, transfer or sublet any portion or part of the Work or the obligations required by the Contract Documents.

14.2 Successorship.

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

14.3 Governing Law.

14.3.1 The Agreement and all Contract Documents shall be governed by the laws of the place of the Project, without giving effect to its conflict of law principles.

14.4 Severability.

14.4.1 If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements or court order, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

14.5 No Waiver.

14.5.1 The failure of either Design-Builder or General Contractor to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

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14.6 Headings.

14.6.1 The headings used in this Agreement, or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

14.7 Notice.

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

14.8 Amendments.

14.8.1 The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

14.9 Survival.

14.9.1 General Contractor's obligations under this Agreement shall not be released and shall specifically survive the completion of all services hereunder by General Contractor, final payment to General Contractor, and the termination of this Agreement for any reason.

Article 15

Electronic Data

15.1 Electronic Data.

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

15.2 Transmission of Electronic Data.

15.2.1 Design-Builder shall determine, after consultation with General Contractor, the software and the format for the transmission of Electronic Data. Each party shall be responsible for securing the legal rights to access the agreed-upon format, including, if necessary, obtaining appropriately licensed copies of the applicable software or electronic program to display, interpret and/or generate the Electronic Data.

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

15.2.3 By transmitting Work Product in electronic form, the transmitting party does not transfer or assign its rights in the Work Product. The rights in the Electronic Data shall be as set forth in Article 18 of the Agreement. Under no circumstances shall the transfer of ownership of Electronic Data be deemed to be a sale by the transmitting party of tangible goods.

15.3 Electronic Data Protocol.

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15.3.1 The parties acknowledge that Electronic Data may be altered or corrupted, intentionally or otherwise, due to occurrences beyond their reasonable control or knowledge, including but not limited to compatibility issues with user software, manipulation by the recipient, errors in transcription or transmission, machine error, environmental factors, and operator error. Consequently, the parties understand that there is some level of increased risk in the use of Electronic Data for the communication of design and construction information and, in consideration of this, agree, and shall require their independent contractors, Subcontractors and Design Consultants to agree, to the following protocols, terms and conditions set forth in this Section 15.3.

15.3.2 Electronic Data will be transmitted in the format determined in Section 15.2.1 above, including file conventions and document properties, unless prior arrangements are made in advance in writing.

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

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

15.4 In the event Design-Build Agreement contains a provision governing Electronic Data, and there is a conflict between the provision in the Design-Build Agreement and this Article 15, the provision in the Design-Build Agreement takes precedence, notwithstanding the order of precedence set forth in Section 1.4.2.

Article 16

Confidential Information

16.1 Confidential and/or Proprietary Information.

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

16.1.2 General Contractor may receive information from Design-Builder that is either confidential or proprietary to either Design-Builder or to Owner. Such information shall be labeled as confidential and/or proprietary. General Contractor agrees to maintain the confidential nature of such information and to execute any such additional agreements as may be required by Owner or Design-Builder with respect to such information.

16.1.3 In the event the Design-Build Agreement contains a provision governing Confidential Information, and there is a conflict between the provision in the Design-Build Agreement and this Article 16, the provision in the Design-Build Agreement takes precedence, notwithstanding the order of precedence set forth in Section 1.4.2.

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Article 17

Work Product

17.1 Work Product.

17.1.1 The General Contractor shall have no ownership and property rights in any drawings, specifications, and other documents and electronic data ("Work Product") furnished by Design-Builder to General Contractor under this Agreement. Design-Builder shall be granted ownership of all Work Product, if any, furnished by General Contractor to Design- Builder under this Agreement.

17.2 Indemnification for Use of Work Product.

17.2.1 If consent to re-use is given by written agreement and either Design-Builder or General Contractor uses the Work Product furnished to them by the other on any other project, it agrees that it shall do so at its sole risk and without liability or legal exposure to the other party, Owner, or anyone working through them. Such party further agrees that it shall defend, indemnify and hold harmless the other party from and against any and all claims, damages, liabilities, losses and expenses, including attorneys' fees, arising out of or resulting from such use of the Work Product on another project.

Article 18

Other Provisions

18.1 Other provisions, if any, are as follows:
(Insert any additional provisions, including those that relate to options that might have been selected by Design-Builder and Owner in the Design-Build Agreement related to Warranty Reserves, alternatives to Liquidated Damages, etc., as the parties may deem commercially appropriate.)

[In lieu of Sections 13.5.1 through 13.5.3 of the Agreement, the parties may want to delete such sections and include the following alternative dispute resolution clause.]

☐ Any claims, disputes, or controversies between the parties arising out of or related to the Agreement, or the breach thereof which have not been resolved in accordance with the procedures set forth in Section 13.4 herein shall be resolved in a court of competent jurisdiction in the state in which the Project is located.

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

DESIGN-BUILDER:	**GENERAL CONTRACTOR:**
_____	_____
(Name of Design-Builder)	*(Name of General Contractor)*
_____	_____
(Signature)	*(Signature)*
Printed Name: _____	Printed Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

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