

**CITY OF MENTOR, OHIO
FLOATING DOCK BIDS
ADDENDUM #1
FEBRUARY 10, 2023**

I. INSTRUCTIONS

- A. This Addendum to the Contract Documents is issued prior to the receipt of bids. All work covered by this Addendum shall be included in the original quotation and this Addendum shall be considered as one of the Contract Documents.
- B. All work performed under this Addendum shall be subject to all other Contract Document requirements.
- C. This Addendum shall be bound in the front of the Project Manual immediately following the Title Sheet.
- D. BIDS WILL BE RECEIVED UNTIL 12:00 PM FEBRUARY 22, 2023.**
- E. BIDS WILL BE OPENED ON FEBRUARY 22, 2023 AFTER THE DEADLINE.**

II. SPECIFICATIONS

A. Bulkhead specifications (Bid Alternate Item)

- Grade 50 steel sheet piling (STD-NZ 14 or equivalent).
- Grade 50 steel sheet piling for Deadman sheets (SKZ-22)
- Thickness: .310 to .320.
- Length: 20 feet.
- Nominal width: 28.5 inches per sheet.
- Section modulus (in³/wall ft.): 20.0 to 30.0.
- Dywidag #8 Grade 75 (1 inches) 25' long tie rods, nuts and washers, spaced every 14'-3". Tierod to waler at bulkhead shall be placed just above water level to facilitate construction.
- Steel waler beam(s) – bolted and welded, w 10 x 33.
- Location of splices are at contractor's discretion. The plan intent is to follow the existing marina bulkhead alignment. Means and methods shall be left up to the Contractor.
- Clean granular backfill placed and tamped and sheet piling capped in preparation for 8' wide (eight feet wide, six inches thick) concrete sidewalk to be poured over the top of the sheet piling. Include winter protection.
- Dead man anchors 20 square feet sheet pile & waler

- Design Load for tieback = 54 kips
- Design load per linear foot of wall = 4.5 kips/ft.
- Transfer Load = 3 kips.
- The 1 inch diameter Tie rods shall capable of resisting the design load provided above.
- Tie rods and their anchor hardware shall be coated with the manufacturers' recommended corrosion inhibitor prior to installing.

B. Minimum Dock size requirements will include:

- All slips shall be 30 feet long by 30 feet wide
- Header shall be a minimum of 8 feet wide
- Fingers shall be a minimum of 4 feet wide
- Connecting walkway shall be a minimum of 8 feet wide
- Floatation shall be a minimum of 25 psf flotation deck live load.

III. Bid Form

- New updated bid form attached as BF-10 shall be used in the submission of the bid.

III. General Conditions

CONDITIONS (Design-Build Project)

City of Mentor Standard Requirements for Public Facility Construction

ARTICLE 1 - DB'S RESPONSIBILITIES

1.1 Nondiscrimination.

1.1.1 The DB shall comply with Applicable Law regarding equal employment opportunity, including R.C. § 153.59 and all Executive Orders issued by the Governor of the state of Ohio.

1. As required by R.C. § 153.59, the DB agrees to both of the following:
 "That, in the hiring of employees for the performance of work under the contract or any subcontract, no contractor, subcontractor, or any person acting on a contractor's or subcontractor's behalf, by reason of race, creed, sex, disability or military status as defined in section 4112.01 of the Revised Code, or color, shall discriminate against any citizen of the state in the employment of labor or workers who is qualified and available to perform the work to which the employment relates;" and
 "That no contractor, subcontractor, or any person on a contractor's or subcontractor's behalf, in any manner, shall discriminate against or intimidate any employee hired for the performance of work under the contract on account of race, creed, sex, disability or military status as defined in

section 4112.01 of the Revised Code, or color.”

2. The DB shall cooperate fully with any official or agency of the state or federal government that seeks to eliminate unlawful employment discrimination, and with all other state and federal efforts to assure equal employment practices under the Contract.
3. In the event the DB fails to comply with these nondiscrimination clauses, the Owner shall deduct from the amount payable to the DB a forfeiture of the statutory penalty pursuant to R.C. § 153.60 for each person who is discriminated against or intimidated in violation of this Section 1.1.1.
4. Pursuant to R.C. § 153.60, the Contract may be terminated or suspended in whole or in part by the Owner and all money to become due hereunder may be forfeited in the event of a subsequent violation of this Section 1.1.1.

1.2 Prevailing Wages.

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

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

1. pay to laborers and mechanics performing Work on the Project the prevailing wage rates of the Project locality, as determined by the Ohio Department of Commerce, Wage and Hour Bureau;
2. post in a prominent place readily accessible by all workers on the Site, a legible listing of the current classifications of laborers, workers, and mechanics employed under this Contract;
3. ensure that the rates posted are current and remain posted in legible condition during the period of the Contract; and
4. not be entitled to an increase in the Contract Sum on account of an increase in prevailing wage rates, except as otherwise provided by Applicable Law.

1.3 Royalties and Patents.

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

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

1.4 Assignment of Antitrust Claims.

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

1.5 Use of Domestic Steel.

1.5.1 The DB is required to supply, if commercially available within the Project schedule, domestically produced steel products used for load bearing structural purposes.

1.5.2 The DB and Subcontractors shall comply with R.C. § 153.011 regarding the specification and use of domestically produced steel products, and furnish the certifications required by Section 5.19.4, except, if domestic steel is not commercially available within the

Project schedule, DB shall certify the facts and circumstances supporting that conclusion.

1.6 Drug Free Safety Program Participation.

1.6.1 Throughout the performance of the Work, the DB shall be enrolled in and remain in good standing in the Ohio Bureau of Workers' Compensation ("OBWC") Drug-Free Safety Program ("DFSP") or a comparable program approved by the OBWC that meets the requirements specified in R.C. § 153.03 ("OBWC-approved DFSP").

1.6.2 As required under R.C. § 153.03(E):

1. "Each contractor shall require all subcontractors with whom the contractor is in contract for the public improvement to be enrolled in and be in good standing in the Bureau of Workers' Compensation's Drug-Free Workplace Program or a comparable program approved by the Bureau that meets the requirements specified in section 153.03 of the Revised Code prior to a subcontractor providing labor at the project site of the public improvement."
2. "Each subcontractor shall require all lower-tier subcontractors with whom the subcontractor is in contract for the public improvement to be enrolled in and be in good standing in the Bureau of Workers' Compensation's Drug Free Workplace Program or a comparable program approved by the Bureau that meets the requirements specified in section 153.03 of the Revised Code prior to a lower-tier subcontractor providing labor at the project site of the public improvement."
3. "Failure of a contractor to require a subcontractor to be enrolled in and be in good standing in the Bureau of Workers' Compensation's Drug-Free Workplace Program or a comparable program approved by the Bureau that meets the requirements specified in section 153.03 of the Revised Code prior to the time that the subcontractor provides labor at the project site will result in the contractor being found in breach of the contract and that breach shall be used in the responsibility analysis of that contractor or the subcontractor who was not enrolled in a program for future contracts with the State for 5 years after the date of the breach."
4. "Failure of a subcontractor to require a lower-tier subcontractor to be enrolled in and be in good standing in the Bureau of Workers' Compensation's Drug-Free Workplace Program or a comparable program approved by the Bureau that meets the requirements specified in section 153.03 of the Revised Code prior to the time that the lower tier subcontractor provides labor at the project site will result in the subcontractor being found in breach of the contract and that breach shall be used in the responsibility analysis of that subcontractor or the lower-tier subcontractor who was not enrolled in a program for future contracts with the State for 5 years after the date of the breach."

1.6.3 Prior to authorizing a Subcontractor to commence Work on the Site, the DB shall obtain the Owner's approval, and shall also submit written confirmation of the Subcontractor's enrollment to the Owner.

1.6.4 In addition to OBWC-approved DFSP Basic requirements, the DB, each Subcontractor, and each Separate Contractor that provides labor on the Site shall participate in a

pool that performs random drug testing of at least 5 percent of its employees who perform labor on the Site. The random drug testing percentage shall also include the onsite supervisors of the DB, Subcontractors, and Separate Contractors. Basic random drug testing shall otherwise comply with the same testing guidelines and criteria as required for OBWC-approved advanced testing. The DB and each Subcontractor shall provide evidence of required testing to the Owner upon request.

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

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

1.9 Testing and Inspection Services. Unless otherwise specified in the Contract Documents, the DB shall apply for, secure, and pay for the costs of structural testing and special inspections under all pertinent provisions of the Ohio Building Code; testing including geotechnical analysis, environmental testing and analysis; concrete, masonry, structural steel, reinforcing steel, welding, bolts, steel connections, plumbing and piping, air and water balancing and testing, or other testing; or approval required by Applicable Law.

1.10 DB's Standard of Care.

1.10.1 The DB shall perform the professional design/engineering services portion of the Work consistent with the professional skill and care ordinarily provided by registered architects, landscape architects, professional engineers, and professional surveyors regularly providing comparable services in the same or similar locality under the same or similar circumstances. The DB shall also perform the professional design/engineering services portion of the Work in accordance with the applicable rules established by the applicable state boards of registration, including, but not limited to, OAC § 4703-3-07 for registered architects, OAC § 4703-3-07 for landscape architects, and OAC § 4733-35 for professional engineers and professional surveyors.

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

1.10.3 The DB shall perform the Work as expeditiously as is consistent with the skill and care required under Sections 1.10.1 and 1.10.2 and the orderly progress of the Project.

ARTICLE 2 - OWNER'S RIGHTS AND RESPONSIBILITIES

2.1 Owner.

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

2.1.2 The Owner shall furnish information and services required of it in a timely manner.

2.2.3 Upon issuance of the Notice to Proceed, the Owner shall provide the Site to the DB in a condition to permit the DB to perform the Work.

2.2.4 The Owner may request a change in the Work only in accordance with the Contract Documents.

2.1.5 The Owner shall have access to the Work at all times whenever the Project is in

preparation or progress.

2.1.6 When the Owner requires use of its forms as indicated in the Contract Documents, the DB shall not modify any form so provided by the Owner.

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

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

ARTICLE 3 - SUBCONTRACTORS

3.1 DB's Responsibility.

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

1. The DB is fully responsible for any delay, interference, disruption, or hindrance attributable to its Subcontractors.
2. The DB shall require that each of its Subcontractors have a competent supervisor at the Site whenever the Subcontractor is performing Work.
3. The DB shall bind its Subcontractors to the terms of the Contract Documents, so far as applicable to the Work of the Subcontractor, and shall not agree to any provision, which seeks to bind the Owner to terms inconsistent with or at variance from the Contract Documents.

3.2 Prompt Payment.

3.2.1 The DB shall make payments to Subcontractors in accordance with Applicable Law, including R.C. § 4113.61 that include, without limitation, the requirements described under this Article.

3.3 Design/Engineering-Assist Firms.

3.3.1 Authorization. After receipt of a written request from the DB, the Owner may authorize the DB to engage a Design-Assist Firm to perform a scope of design-assist services and associated Work agreed upon by the Owner and DB. The DB may request authorization to engage a Design-Assist Firm at any point in the Project that is appropriate or necessary to facilitate the Project's design and construction.

3.3.2 The DB shall include in its request (1) information required by the Request for Bid Proposals, (2) a detailed description of the scope of the design-assist services and associated Work which the DB proposes to be performed by a Design-Assist Firm, and (3) an estimated price for the scope of Work to be performed by the selected Design-Assist Firm.

3.3.3 The Owner may authorize the DB to engage a Design-Assist Firm provided that the Design-Assist Firm meets in the sole judgment of the Owner its Qualification Criteria and other pertinent requirements set forth in the Request for Bid Proposals. Owner's consent to DB's engagement of a Design-Assist Firm shall not be cause for DB to request an increased adjustment of the Contract Sum, however, in the event DB's engagement of a Design-Assist Firm reduces DB's Design/Engineering services fee, the Owner may condition consent on an equitable fee

reduction per Section 6.7.

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

3.3.5 The Design-Assist Firm shall not be permitted to assume any of DB's professional design liability by virtue of performing the design-assist services.

ARTICLE 4 - PRECONSTRUCTION DESIGN/ENGINEERING SERVICES

4.1 General Requirements.

4.1.1 Commencement. The DB's Design/Engineering Services will begin on the date set forth in a notice that the Owner will issue to the DB ("Notice to Commence Services").

4.1.2 Scope of Preconstruction Services. The DB shall perform the Preconstruction Services, which consist of the activities and stages set forth in this Article.

4.1.3 Consultation.

1. The DB shall schedule and attend meetings with the Owner. The DB shall consult with the Owner regarding Site use and improvements and the selection of materials, systems, and equipment. The DB shall provide recommendations to the Owner on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost, including estimates of alternative designs or materials, budgets and possible economies.
2. At all appropriate times throughout the performance of the Work, the DB shall contact, meet, consult, and otherwise coordinate with the Owner, governmental authorities with jurisdiction over the Project, and others for the purpose of facilitating the Project's design and construction.

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

4.1.5 Long-Lead-Time Items.

1. The DB shall recommend to the Owner a schedule for procurement of long-lead time items that will constitute part of the Work as required to meet the Project Schedule.
2. The Owner may procure long-lead-time items itself after the Contract Award and deduct those items from the Contract Sum, provided the DB has not previously procured any of those items. In that case, the Owner will assign the contracts for the long-lead-time items to the DB, who shall accept responsibility for those items as if procured by the DB. The DB shall expedite the delivery of long-lead time items.

4.2 Organizational Meeting.

4.2.1 The Owner and the DB will conduct an organizational meeting.

4.2.2 During the organizational meeting, the attendees will:

1. review the responsibilities of the Owner's personnel involved in the Project;
2. review the scope of the DB's services and the responsibilities of each of the DB's key personnel involved in the Project;
3. review and establish lines of communication between the Owner and DB;
4. review then-available programming and other documents which reflect the current status of the Project's design;
5. review the various periods of time established in Articles 4 and 5 to determine whether any adjustments are needed in view of the Project's scope, schedule, and budget requirements while providing reasonable periods for the Owner to review the DB's deliverables and for the DB to revise and resubmit those deliverables;
6. if the parties agree to adjust the periods as described under Section 4.2.2, they will promptly enter into an associated Change Directive; and
7. review and reach agreement on timing and sequencing requirements for the DB's deliverables and related review and revision periods.

4.2.3 If the DB has not submitted a proposed Project Schedule to the Owner before the organizational meeting or if the organizational meeting resulted in changes to a previously submitted Project Schedule, within five (5) days after the organizational meeting is adjourned the DB shall submit a proposed or revised Project Schedule to the Owner. The Owner and DB will promptly thereafter consult with one another as necessary to reach agreement on the initial Project Schedule, which shall be used as the basis for moving forward with the Project subject to revision as described elsewhere in the Contract.

4.3 Schematic Design.

4.3.1 Schematic Design will begin upon the Owner's Notice to Commence Services.

4.3.2 During Schematic Design, the DB shall:

1. advise the Owner in writing if at any time it appears that the Project Schedule may be exceeded and make recommendations for corrective action;
2. meet with the Owner at intervals acceptable to the Owner to review drawings and other documents that depict the current status of the Schematic Design;
3. identify and analyze requirements of Applicable Law;
4. investigate existing conditions and verify the accuracy of Owner-provided information about existing conditions, as appropriate;
5. coordinate the location of new grading, drainage, and Site utilities;
6. make recommendations to the Owner for actions designed to minimize adverse effects on the Marina operations;
7. review and provide recommendations concerning Site use and improvements, and alternative approaches to selection of materials, building systems, and equipment; and
8. provide recommendations on value engineering, constructability, logistics, site use and improvements, availability and suitability of materials, equipment, and labor and systems, long-lead items, safety and security

plans, quality control, time requirements for construction, and factors related to Project cost, including costs of alternative designs or materials, preliminary budgets, and possible economies of scale.

4.3.3 Life Cycle Cost Analysis. The DB shall prepare and submit practical alternative design concepts, considering passive and/or active building components, for the purpose of minimizing future costs and expenses to the Owner. The DB shall re-evaluate life cycle cost as additional alternatives to be considered during the continuing design development to assure their cost-effective implementation.

4.3.4 DB's Schematic Design Submission.

1. The DB shall submit the Schematic Design documents to the Owner on or before the date identified in the Project Schedule for that submission.
2. The Schematic Design documents shall include:
 - a. a conceptual site plan and preliminary dockage plan and the relationship of Project components to one another;
 - b. a conceptual site plan and preliminary dockage plan for future expansion of floating docks beyond the Project;
 - c. cost evaluations of alternative materials and systems that may enhance the Owner's long-term goals and objectives both for the Project and future projects; and
 - d. identification of any unresolved issues related to compliance with Applicable Law.

4.3.5 Owner's Approval of Schematic Design.

1. After the Owner has had a reasonable period to review the Schematic Design documents, the Owner shall meet with DB to discuss the Schematic Design and to discuss and implement any Owner adjustments or clarifications of the Schematic Design. DB shall adjust the Schematic Design based upon the Owner's review.
2. When the Owner approves the revised Schematic Design it shall in writing acknowledge that acceptance and the DB thereafter may continue to finalize the Design in reliance on that written acceptance.

4.4 Final Design Development. Final Design Development will begin upon completion of the activities described in Section 4.3.

4.4.1 During the Final Design Development stage, the DB shall:

1. advise the Owner in writing if at any time it appears that the Project Schedule may be exceeded and make recommendations for corrective action;
2. meet with the Owner at intervals acceptable to the Owner to review drawings and other documents that depict the current status of the Final Design Development for the Project;
3. resolve all issues related to compliance with Applicable Law;
4. provide final recommendations on value engineering, constructability, logistics, site use and improvements, availability and suitability of materials, equipment, labor and systems, long-lead items, safety and

security plans, quality control, time requirements for construction, and factors related to the cost of the Project including costs of alternative designs or materials, preliminary budgets, and possible economies of scale.

4.4.2 DB's Final Design Development Submission.

1. The DB shall submit the Final Design documents to the Owner on or before the date identified in the Project Schedule for that submission.
2. The Final Design documents shall include:
 - a. plans, sections, typical construction details, and equipment and service layouts that illustrate and describe the Project's proposed final Design;
 - b. the final conceptual site/dockage plan for future expansion of floating docks beyond the Project;
 - c. specifications sufficient to identify the quality and other characteristics of the proposed or selected materials, equipment, finishes, fixtures, and systems;
 - d. an identification of any unresolved issue related to compliance with Applicable Law; and
 - e. the Site Logistics Plan indicating how the DB intends to use the Site, minimize impacts to the daily operations of the Marina, and illustrating things such as areas to be used for lay down of material and equipment; office and storage trailer locations; vehicular access gates with ingress and egress routes; locations of wheel wash and concrete truck wash-out activities; offloading and hoisting locations; and proposed mooring/dockage locations for all waterborne equipment and vehicles.

4.4.3 Owner's Approval of Final Design.

1. After the Owner has had a reasonable period to review the Final Design documents, the Owner shall meet with DB to discuss the Final Design and to discuss and implement any Owner adjustments or clarifications of the Final Design. DB shall adjust the Final Design based upon the Owner's review.
2. When the Owner approves the revised Final Design it shall in writing acknowledge that acceptance and the DB thereafter may finalize Construction Documents based upon reliance on that written acceptance.

4.5 Construction Documents. Construction Documents shall be developed upon completion of the activities described in Section 4.4, unless the DB elected to undertake their development at an earlier date. The DB shall:

4.5.1 Advise the Owner in writing if at any time it appears that the Project Schedule may be exceeded and make recommendations for corrective action.

4.5.2 File documents required for the approvals of governmental authorities with jurisdiction over the Project; and

4.5.3 Verify that the Construction Documents include requirements and assignment of responsibilities for safety precautions and programs and for temporary facilities for common use of the DB and Subcontractors.

4.5.4 Construction Documents shall include:

1. Drawings setting forth in detail the requirements for the construction of the Project; and
2. Specifications that establish in detail the quality levels of all materials and work required for the Project.

4.5.5 Construction Documents Review and Approval.

1. The DB shall submit the Construction Documents to the Owner on or before the date identified in the Project Schedule for that submission.
2. After the Owner has had a reasonable period to review the Construction Documents, the Owner shall meet with DB to discuss the Construction Documents and to discuss and implement any Owner adjustments or clarifications of the Construction Documents. DB shall adjust the Construction Documents based upon the Owner's review.
3. When the Owner approves the revised Construction Documents it shall in writing acknowledge that acceptance and the DB thereafter may proceed upon the issuance of all required permits to commence Construction.

4.6 Building and Trade Permits and Licenses.

4.6.1 The DB shall secure all required structural, plumbing, and electrical plan approvals. The DB shall schedule and attend all intermediate and final inspections required for any permit applicable to the Work. The DB shall pay for any re-inspections required as a result of the DB's failure to receive approval of its Work.

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

4.6.3 The DB shall secure and pay the fees for any permits, inspections, and licenses required by local authorities having jurisdiction over the Project. The DB shall give the Owner reasonable notice of the date arranged for inspections. The DB is not required to pay any capacity charges or tap fees.

ARTICLE 5 - CONSTRUCTION AND CLOSEOUT

5.1 Commencement of Work on the Site. Unless the Owner agrees otherwise in writing, the Construction Stage will commence with the Owner's issuance of the Notice to Proceed and will terminate upon Contract Completion.

5.2 DB's General Responsibilities. The DB shall:

5.2.1 Maintain a competent, full-time staff at the Site at all times that Work is in preparation or progress on the Project and shall establish and implement on-Site organization and authority so that the Work is accomplished in conformance with the Project Schedule.

5.2.2 Not delay the Work on account of any claim, dispute, or action between the DB and any Subcontractor.

5.2.3 Develop and keep current a Construction Progress Schedule.

5.2.4 Establish the Project's regular working hours, subject to the Owner's approval.

5.2.5 Remove all snow and ice from the Project area as may be required for reasonably safe access to the Site including, but not limited to, entries, driveways, parking lots, and sidewalks.

5.2.6 Keep a daily log containing a record of weather, number of workers on Site for the DB, identification of equipment, Work accomplished, problems encountered, and other similar relevant data.

5.3 Construction Procedures.

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

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

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

5.3.4 DB shall comply with R.C. §§ 3781.25 through 3781.32. In addition, before starting excavation or trenching, the DB shall determine the location of any underground utilities and notify any public authority or utility having jurisdiction over the Project and secure any required approval.

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

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

5.4 Construction Supervision.

5.4.1 DB shall provide continuous supervision at the Site by a competent superintendent when any Work is being performed.

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

5.5 Progress Meetings. The DB shall hold progress meetings with Owner whenever required to review progress on the Project, anticipated progress, and to review and discuss critical problems.

5.6 Additional Tests and Inspections.

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

1. If the special inspection, testing, or approval reveals Defective Work, the DB shall pay all associated costs and will not be entitled to any related adjustment of the Contract Times. Those costs may include, but are not limited to: (a) the cost of the special inspection, testing, or approval; (b) the cost of additional special inspections, testing, or approvals to evaluate remedial Work; (c) the cost of correcting the Defective Work; and (d) all related Owner-incurred fees and charges of contractors, engineers,

architects, attorneys, and other professionals.

2. The Owner may deduct the costs described above from payments then or thereafter due the DB. If payments then or thereafter due the DB are not sufficient to cover those amounts, the DB shall immediately pay the amount of the insufficiency to the Owner.

5.6.2 If the special inspection, testing, or approval reveals that the Work complies with the Contract Documents, then no costs shall be assessed against the DB related thereto by the Owner.

5.7 Review of Contract Documents and Field Conditions.

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

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

1. Before submitting any RFI to the Owner, the DB shall carefully review the relevant documents to ensure that those documents do not answer the RFI.
2. The Owner shall promptly respond to an RFI.
3. Any interpretation or clarification made by any Person other than the Owner, or in any manner other than writing, shall not be binding and the DB shall not rely upon it.

5.8 Protection of the Project.

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

5.8.2 DB shall at all times cover or protect the Work.

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

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

5.8.5 After the date of Substantial Completion, the Owner is responsible for protecting and maintaining all materials, apparatus, and fixtures for the occupied portion of the Project free from injury or damage.

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

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

5.8.8 The DB shall provide all temporary bracing, shoring, and other structural support

required for safety of the Project and proper execution of the Work.

5.8.9 Vibration, Noise, and Dust Control. The DB shall provide controls/barriers for vibrations, noise, and debris control as required by the construction operations.

5.9 Materials and Equipment.

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

1. The DB shall properly store and protect all materials and equipment it provides to the Project.
2. The DB shall timely remove from the Site any materials or equipment no longer required for the Work.

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

5.10 Labor.

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

5.10.2 The DB shall dismiss from the Project any individual employed by the DB or a Subcontractor who engages in misconduct or any action detrimental to the Project and/or Marina.

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

5.11 Safety Precautions.

5.11.1 The DB shall take reasonable precautions to ensure the safety of individuals on the Project Site.

1. The DB is responsible for designing and implementing its own safety program, including compliance with OSHA regulations. The DB's safety plans, such as fall protection, hazards, communications, competent person, etc., shall meet or exceed the Owner's safety plan (if any).
2. The DB shall pay any fine or cost incurred because of the DB's violation, or alleged violation, of Applicable Law.
 1. The DB shall not introduce Hazardous Materials to the Project or burn any fires on theThe DB shall notify the Project Manager 24 hours before the start of non-routine or non-recurring hot-work. Use of sources of fire, flame or sparks and flammable materials shall be kept to an absolute minimum. At the beginning of the Project, the DB shall inform the Project Manager of the DB's intent to use blowtorches, welding apparatus or similar exposed flame and sparking devices. Similar notice shall be given in regard to the use of flammable liquids, adhesives, and cleaners.
 2. The DB shall furnish an appropriate number of fire extinguishers (minimum of 1), which shall be within the immediate areas where work is being done at all times. The extinguisher shall be adequate and suitable for the class of fire likely to be caused by the DB's operations.

5.11.2 Work Stoppage Due to Hazardous Materials.

1. If the DB encounters material the DB reasonably believes to be, or contain, a Hazardous Material, which has not been rendered harmless, the DB shall immediately stop Work in the affected area and verbally report the condition to the Owner, and within one (1) business day deliver written notice of the condition to the Owner.
2. The Owner shall ascertain the necessity of retaining a qualified environmental consultant to evaluate the suspected Hazardous Material and to issue a related written report. Where appropriate, the Owner will engage a licensed abatement contractor to remove the material or render it harmless as directed.
3. The DB shall resume Work in the affected area upon written notice from the Owner that (1) the suspect material was evaluated and found not to be or contain a Hazardous Material, or (2) the suspect material has been removed or rendered harmless.
4. If the DB knowingly or negligently proceeds with the Work in an area where a Hazardous Material exists and has not been rendered harmless, the DB shall be solely responsible for all related claims, damages, losses, and expenses, including, but not limited to, attorneys' fees, arising out of or resulting from performing the Work in the affected area.
5. The term "rendered harmless" means that the level of exposure is less than any applicable exposure standards set forth in Applicable Law.

5.11.3 Safety Data Sheets.

1. The DB shall identify any material it uses at the Site with a Safety Data Sheet ("SDS") meeting the requirements of OSHA's Hazard Communication Standard (formerly known as a Material Safety Data Sheet).
2. The DB shall maintain a notebook containing all of its applicable SDSs. This notebook shall be kept at the Site for the duration of the Project.

5.12 Construction Facilities, Utilities, and Equipment.

5.12.1 Facilities.

1. The DB shall provide and maintain in a clean condition suitable temporary facilities, equipment, services, and enclosed storage, if necessary, for its use at the Site.
2. The DB shall provide adequate sanitary facilities for use by all Persons at the Site.

5.13 Electric Service.

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

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

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

5.13.4 From the date of Substantial Completion, the Owner shall pay the cost of energy consumed for the occupied portions of the Project.

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

5.14 Hoisting Facilities.

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

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

5.15 Progress Cleaning.

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

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

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

5.15.4 If the DB fails to clean up during the progress of the Work, the Owner may clean up on behalf of the DB and at the DB's expense. If the DB fails to maintain the areas adjacent to the Project clean and free of waste materials and rubbish, the Owner may also have the area cleaned to its satisfaction at the DB's expense. The Owner may deduct the cleaning costs from payments then or thereafter due the DB. If payments then or thereafter due the DB are not sufficient to cover those amounts, the DB shall immediately pay the amount of the insufficiency to the Owner.

5.14.5 The DB shall remove excavated material and spoil to a suitable off-site location approved by the Owner. If the Owner designates a location on its property for disposal or storage of clean topsoil and/or subsoil in the Contract Documents, the DB shall remove such materials to the designated location.

5.16 Use of Premises.

5.16.1 The DB shall use access drives and parking areas as designated by the Owner. The DB shall exercise care to not exceed the load capacity of those improved surfaces.

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

5.16.3 The DB shall confine its apparatus, materials, and the operations of its workers to the limits indicated by law, ordinances, permits, and the directions of the Owner.

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

5.17 Interruption of Existing Services.

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

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

5.18 Explosives and Blasting.

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

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

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

5.19 Action Submittals.

5.19.1 Owner's Submittal Review. The Owner shall review submittals for conformity with design intent within seven (7) days of receiving them or in accordance with the approved submittal schedule, or other period as mutually agreed by the Owner and DB. It is not the purpose of the Owner's review of submittals to determine the accuracy and completeness of other details, such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the DB's responsibility.

5.19.2 Risk of Nonpayment. The DB shall not commence any portion of the Work requiring Shop Drawings, Product Data, Samples, or other submittals until the submittal has been approved by the Owner. If the DB starts Work before the Owner's final approval of the submittal, the DB does so at its own risk that payment may not be made by the Owner for the related Work.

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

1. "This equipment submitted for approval shall perform as specified when installed in the arrangement shown on this drawing and in the Contract Documents and in conjunction with all other accessories such as flues, breechings, piping, controls, and equipment not furnished by this manufacturer, but required as an accessory or supplement to this equipment, providing that the accessory or supplementary items perform as specified and are installed as shown in the Contract Documents."
2. The DB will be deemed to have included the above statement as required even if the associated Shop Drawing does not actually contain the statement.
3. This equipment statement shall not be required for Samples, Product Data, and other standard submittals that are not created specifically for this Project.

5.19.4 Domestic Steel Certifications. The DB shall include the following written certifications on the front cover or initial sheet of each structural steel fabrication Shop Drawing, signed and dated prior to fabrication:

1. "Steel Fabricator Certification: The steel fabricator identified below certifies that for this project all loadbearing structural steel has been fabricated or produced, to the best of its knowledge, only from steel made in the United States in accordance with Ohio Revised Code Section 153.011. Further, the steel fabricator hereby certifies that it has read and understands that a monetary penalty for violations may be imposed under the authority of Ohio Revised Code Section 153.99." This certification shall be followed by the name of the fabrication company, name of the company official signing the certification, the signature of that company official, and the date of that signature.

2. The DB will be deemed to have included the above certification as required even if the associated Shop Drawing does not actually contain the certification.
3. “Contractor Certification: The contractor identified below certifies that it has required as a condition of purchase, that for this project all load-bearing structural steel shall be fabricated and produced using, to the best of its knowledge, only steel made in the United States in accordance with Ohio Revised Code Section

153.011. Further, the contractor hereby certifies that it has read and understands that a monetary penalty for violations may be imposed under the authority of Ohio Revised Code Section 153.99.” This certification shall be followed by the name of the DB company, name of the company official signing the certification, the signature of that company official, and the date of that signature.

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

5.20 Warranty.

5.20.1 The DB warrants to the Owner that all materials and equipment furnished under the Contract shall be new and of good quality unless otherwise required or permitted by the Contract Documents, that the Work shall be free from defects not inherent in the quality required or permitted, and that the Work shall conform to the requirements of the Contract Documents. Work not conforming to those requirements, including Substitutions not properly approved and authorized, may be considered Defective Work. If required by the Owner, the DB shall furnish satisfactory evidence as to the kind and quality of materials and equipment. If the DB or a Subcontractor recommends a particular product, material, system, or item of equipment for incorporation into the Project and the Owner accepts that recommendation, the above warranty includes a warranty from the DB to the Owner that the recommended product, material, system, or item of equipment is fit and appropriate for the associated purpose.

5.21 Uncovering the Work.

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

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

1. If the uncovered Work is Defective Work, the DB shall pay the costs of uncovering, correcting, and recovering the Work and shall not be entitled to an adjustment of the Contract Times.
2. If the uncovered Work is not Defective Work and the DB believes that it is entitled to an adjustment of the Contract Sum or Contract Times, or both, on account of the uncovering and recovering of the Work, the DB may request a Change Order by giving written notice under Section 6.7 within seven (7) days after the Owner observes the uncovered Work.

5.22 Correction of the Work.

5.22.1 Before Substantial Completion.

1. If the DB provides Defective Work, the Owner may issue a written notice to the DB and DB's Surety directing the DB to correct the Defective Work or recover schedule deficiencies. Unless otherwise specified in that written notice, the DB shall begin to correct the Defective Work and recover the schedule deficiencies within no more than three (3) days after the Owner issues the written notice ("72- Hour Notice").
2. If the DB fails to promptly commence and diligently pursue correction of Defective Work or recovery of schedule deficiencies required under this Section, the Owner may correct the Defective Work or take action to recover schedule deficiencies without giving further notice to the DB or DB's Surety.

5.22.2 After Substantial Completion.

1. In addition to the DB's other obligations under the Contract Documents, if any of the Work is found to be Defective Work after Substantial Completion, the DB shall correct it promptly after receipt of written notice from the Owner to do so, unless the Owner have previously acknowledged and accepted the Defective Work in writing. The Owner may send a copy of the written notice to the DB's Surety, but is not obligated to do so.
2. During the Correction Period. If the Owner issues a notice under this Section during the Correction Period, the Owner may correct the Defective Work itself without giving further notice to the DB or DB's Surety if the DB fails to (1) notify the Owner in writing of the DB's intent to correct the Defective Work within seven

(7) days after the Owner issues the notice and (2) thereafter promptly commence and diligently pursue correction of Defective Work.

5.22.3 The Correction Period:

1. commences on the date of Substantial Completion of the Work or a designated portion of the Work which the Owner has agreed to take Partial Occupancy;
2. relates only to the DB's specific obligation and opportunity to correct the Work during the Correction Period;
3. does not establish a period of limitation with respect to any of the DB's other obligations under the Contract Documents;
4. has no relationship to the time within which the Owner may seek to enforce the Contract;
5. does not establish a period of limitation with respect to the commencement of litigation to establish the DB's liability under the Contract or otherwise; and
6. shall not be extended by corrective Work performed by the DB under this Section 5.22.

5.22.4 After the Correction Period. If the Owner issues notice under Section 5.22, after expiration of the Correction Period, the Owner may correct the Defective Work itself without giving further notice to the DB or DB's Surety if the DB fails to (1) notify the Owner in writing of the DB's intent to correct the Defective Work within fourteen (14) days after the Owner issues the

notice and (2) thereafter promptly commence and diligently pursue correction of Defective Work.

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

5.22.6 Responsibility for Costs of Correction. The DB shall pay all of the costs and damages associated with the correction of Defective Work and the recovery of schedule deficiencies under this Section 5.22. Those costs and damages may include, but are not limited to, the related fees and charges of contractors, engineers, architects, attorneys, and other professionals; and the cost of correcting or replacing adjacent work. The Owner may deduct those costs and damages from payments then or thereafter due the DB. If payments then or thereafter due the DB are not sufficient to cover those amounts, the DB shall immediately pay the amount of the insufficiency to the Owner.

5.23 Acceptance of Defective Work.

5.23.1 The Owner may accept any Defective Work instead of requiring its removal or correction, in which case the Contract Sum shall be equitably reduced as described under Article 6. The Owner may only accept Defective Work through a deduct Change Order that makes explicit reference to this Section 5.23.

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

1. observations or inspections by the Owner;
2. the making of any payment;
3. Substantial Completion or the issuance of a Certificate of Substantial Completion;
4. Partial Occupancy and the Owner's use or occupancy of the Work or any part of it;
5. Contract Completion or the issuance of a partial or final Certificate of Contract Completion;
6. any review or approval of a submittal;
7. any inspection, test, or approval by other Persons; or
8. any correction of Defective Work by the Owner.

5.24 Project Document Maintenance and Submittal.

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

1. Certificate of Occupancy, if applicable;
2. inspection certificates for pressure piping, electrical, plumbing or piping purification, etc.;
3. Letter of Approval from the local fire authority or State Fire Marshall for the fire suppression system, if applicable;
4. Operation and Maintenance Manuals.
5. accurately marked sets of As-Built Documents and other Contract

- Documents reflecting the actual construction of the Project;
6. detailed Drawings reflecting the exact location of any concealed utilities, mechanical or electrical systems, and components;
 7. assignment to the Owner of all warranties and guarantees, including the most- recent address and telephone number of any Subcontractors or manufacturers;
 8. an affidavit to certify that all Subcontractors have been paid in full for all Work performed or materials furnished for the Project;
 9. final certified payroll reports, if applicable; and
 10. an affidavit to certify that the DB and each of its Subcontractors, regardless of tier, have complied with all requirements of R.C. Chapter 4115.

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

5.25 Final Cleaning.

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

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

5.25.3 Final cleaning shall be done to the reasonable satisfaction of the Owner.

5.26 Substantial Completion.

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

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

5.26.2 Substantial Completion Inspection. Within three (3) business days after receipt of the request for the Substantial Completion inspection of the Work, the Owner shall notify the DB of acceptance or rejection of the request, stating reasons for any rejection.

1. Within seven (7) days after its acceptance of the DB's request, the Owner shall conduct the Substantial Completion inspection to determine whether the Work, of the designated portion, is in conformity with the Contract Documents and Substantially Complete. The Owner shall notify the DB of the scheduled time of the Owner's inspection.

2. If the Owner determines that the Work is Substantially Complete, within three (3) business days after the Substantial Completion inspection, the Owner shall prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion and include a list of Defective, incomplete, or unacceptable Work ("Owner's Punch List"). The Owner's Punch List shall include

(1) the items on the DB's Punch List that are not yet completed or corrected as of the date of the Substantial Completion inspection, and (2) any additional Owner comments.

3. The Owner shall submit the Certificate of Substantial Completion to the DB and DB's Surety.
4. The Owner's failure to include an item on the Owner's Punch List shall not alter the DB's responsibility to complete the Work in accordance with the Contract Documents.

5.26.3 Completion of Punch List Items.

1. Within seven (7) days after the date of Substantial Completion and before the date of Contract Completion, the DB shall complete all items on the Owner's Punch List. After completing all items on the Owner's Punch List, the DB shall provide a written request for Final Inspection of the Work to the Owner.
2. If Work on the Owner's Punch List cannot be timely completed, the DB shall justify in writing to the reasonable satisfaction of the Owner the reasons the items cannot be completed, and the DB may propose, for the Owner's approval, a time when the DB shall complete those items.
3. Within three (3) business days after receipt of the DB's request for Final Inspection, the Owner shall complete a Final Inspection of the Work for compliance with the Contract Documents.

5.27 Contract Completion.

5.27.1 Partial Contract Completion.

1. When items of Work cannot be completed until a subsequent date, the Owner shall prepare a partial Certificate of Contract Completion that shall include a detailed list of the deferred Work and the date(s) by which the DB will complete that Work.
2. The Owner shall submit the partial Certificate of Contract Completion to the DB for its written acceptance. Upon their acceptance of the partial Certificate of Contract Completion and consent of the DB's Surety, the Owner may release payment to the DB, as determined in the sole discretion of the Owner.

5.27.2 Final Contract Completion.

1. When all items on the Owner's Punch List have been completed to the satisfaction of the Owner, all requirements of the Contract Documents have been completed, and the provisions of this Article have been fulfilled, the Contracting Authority shall prepare and issue a final Certificate of Contract Completion.
2. The date that the Owner executes the final Certificate of Contract Completion is the date of Contract Completion.

ARTICLE 6 - MODIFICATIONS

6.1 General.

The Contract may be modified only through a duly authorized and executed Amendment prepared by the Owner and signed by both the Owner and DB. A Change Order is a type of Amendment to the Contract. A minor change (termed a Change Directive), as detailed in Section 6.5, is not an Amendment.

6.2 DB Proceeds at Own Risk.

6.2.1 The DB shall not proceed with any change in the Work without the Owner's prior written authorization.

6.2.2 DB's failure to obtain prior written authorization for a change in the Work constitutes a waiver by the DB of an adjustment to the Contract Sum or Contract Times, or both, for the related Work.

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

6.3 Amendment Procedure.

6.3.1 A Change Order is a written instrument prepared by the Owner and executed by the Owner and DB stating their agreement upon all of the following:

1. a change in the Work;
2. the amount of the adjustment of the Contract Sum, if any; and
3. the extent of the adjustment of the Contract Times, if any.

6.3.2 Except with the Owner's written consent as explicitly provided under this Article, the DB is not entitled to reserve any rights or take other similar action with respect to a Change Order if the effect or intent of the reservation or action would be to accommodate a further adjustment of the Contract Sum or Contract Times, or both, after the DB signs the Change Order. By signing a Change Order, the DB irrevocably certifies that the elements of a Change Order are completely satisfied, and waives all rights, if any, to seek further adjustment of the Contract Sum or Contract Times, or both, at a later date with respect to the associated change in the Work including without limitation on account of the "cumulative impact" of the associated change in the Work in combination with one or more other changes in the Work.

6.3.3 Within three (3) days after receiving a Change Order: (1) if the DB agrees with the Change Order, the DB shall sign the Change Order and transmit the signed Change Order to the Owner; or (2) if the DB does not agree with the Change Order, the DB shall provide written notice of the disagreement to the Owner.

6.3.4 If a Change Order requires Owner funding not previously approved for the Contract, the Change Order shall be of no effect unless an until Owner attaches a certification of funding and transmits the Change Order with such certificate to the DB.

6.3.5 When the Change Order is signed by the Owner and DB, the fully executed Change Order modifies the Contract Documents and authorizes and directs the DB to proceed, and the DB shall promptly proceed with the associated change in the Work.

6.4 Initiation of Change Orders.

6.4.1 Proposal Request - Work. If the Owner desires a Modification in the Work, it shall prepare and issue a Proposal Request to the DB to obtain the DB's Proposal for the adjustment of

the Contract Sum or Contract Times, or both, associated with a contemplated Modification in the Work.

1. In any Proposal for an adjustment of the Contract Sum, the DB shall specifically itemize all services, labor and materials cost to arrive at a lump sum charge for the Proposal.
2. The DB's cost of preparing and providing Proposals is included in the Contract Sum.

6.4.2 Proposal Request - Differing Site Condition. If the DB desires a Modification in the Work due to Differing Site Condition, it shall prepare and issue a Proposal Request to the Owner to obtain the Owner's consent for the adjustment of the Contract Sum or Contract Times, or both, associated with a contemplated Modification in the Work due to Differing Site Condition.

1. In any Proposal under this Section 6.4.1 for an adjustment of the Contract Sum or Contract Times, the DB shall specifically itemize all services, labor and materials cost to arrive at a lump sum charge for the Proposal.
2. The DB's cost of preparing and providing Proposals is included in the Contract Sum.

6.4.3 Proposal Request - Contract Times. If the DB desires a Modification in Contract Times, it shall prepare and issue a Proposal Request to the Owner to obtain the Owner's consent.

1. In any Proposal for an adjustment of the Contract Times, the DB shall specifically provide all information and analysis detailed in Section 6.8 to arrive at the Proposal.
2. The DB's cost of preparing and providing Proposals is included in the Contract Sum.

6.4.4 The DB or Owner, as applicable, shall respond with a Proposal to the other within seven

(7) days (unless a longer period of time is permitted pursuant to specific Section) after receiving the Proposal Request. The allowable time for the DB's or Owner's response may be extended by written agreement of the DB and Owner.

6.5 Minor Changes in the Work.

6.5.1 The Project Manager may order/authorize minor changes in the Work not involving adjustment of the Contract Sum or extension of the Contract Times and not inconsistent with the intent of the Contract Documents. Those changes shall be effected by written Change Directive issued to the DB.

6.5.2 The DB shall promptly carry out each Change Directive in the Work if the DB agrees that the order does not involve adjustment of the Contract Sum or Contract Times, or both.

6.5.3 If the DB reasonably believes that it would be entitled to an adjustment of the Contract Sum or Contract Times, or both, on account of a Change Directive in the Work, the DB, within three (3) business days after receiving the Change Directive, shall give the Owner written notice of the DB's position, and not proceed with the subject Work without first receiving a Change Order related to it. The DB waives its right to an adjustment of the Contract Sum or Contract Times on account of a Change Directive in the Work by: (a) starting the Work that is the subject of the Change Directive; or (b) failing to give the notice described under this Section within three (3) business days after receiving the Change Directive.

6.6 Differing Site Conditions.

6.6.1 If the DB encounters a Differing Site Condition, the DB shall stop Work on that Differing Site Condition and give immediate written notice of the condition to the Owner.

6.6.2 The DB's failure to give notice of the Differing Site Condition as required under this Section shall constitute an irrevocable waiver of any associated Claim.

6.6.3 The written notice of a Differing Site Condition under this shall be required before the notice of Claim under Article 7.

6.6.4 Promptly after receiving notice from the DB under this Section, the Owner shall investigate to determine whether the DB has encountered a Differing Site Condition. The Owner shall give written notice of its determination to the DB within ten (10) days after completing the investigation.

1. If the Owner determines that the DB has encountered a Differing Site Condition, the Owner shall prepare (as appropriate) a resulting Change Order or a Change Directive.
2. If the Owner determines that the DB has not encountered a Differing Site Condition and the DB does not agree with that determination, the DB shall initiate a Claim under Article 7 within ten (10) days of the date that the Owner issues its determination.

6.7 Change Order Cost or Credit Determination.

6.7.1 The maximum cost or credit resulting from a change in the Work or arising under Section

3.3 shall be determined as described below. Proposals shall include the information required by the Section applicable to the Proposal.

6.7.2 The maximum cost or credit includes all compensation for impact costs. Additional costs for impacts shall not be allowed.

6.7.3 The DB shall not assign any portion of the Work to another Person whereby the DB would benefit directly or indirectly from the double application of charges for overhead or profit.

6.7.4 The Owner may require notarized invoices for material costs and may audit the records of the DB and Subcontractors.

6.8 Time Extension.

6.8.1 Every adjustment of the Contract Times associated with any change in the Work or as otherwise may be expressly permitted by Contract shall be determined as provided in this Section, which establishes the DB's maximum entitlement for any change in the Contract Times, including without limitation all adjustments for interference, delay, hindrance, or disruption of the Work. This Section also governs time adjustments for deduct Change Orders and the DB's entitlement to additional time through the Claims and dispute resolution processes on account of changes in the Work.

6.8.2 The DB shall substantiate all changes in the Contract Times with:

1. A written description of the nature of the interference, disruption, hindrance or delay;
2. Identification of Persons and events responsible for the interference, disruption, hindrance or delay;
3. Date, or anticipated date, of commencement of the interference, disruption, hindrance or delay;
4. Identification of activities by schedule activity number and name on the

Construction Progress Schedule, which may be affected by the interference, disruption, hindrance or delay, or new activities created by the interference, disruption, hindrance or delay and the relationship with existing activities;

5. Anticipated duration of the interference, disruption, hindrance or delay and of any remobilization period;
6. Specific number of days of extension requested and specific number of days for remobilization requested; and
7. Recommended action to avoid or minimize any future interference, disruption, hindrance or delay.

6.8.3 A Change Order granting a time extension may provide that the Contract Times shall be extended for only those specific elements so interfered with, disrupted, hindered, or delayed and related remobilization and that remaining Milestone dates shall not be altered and may further provide for adjustment of Liquidated Damages.

ARTICLE 7 - DISPUTE RESOLUTION

7.1 Initiation of a Claim.

7.1.1 Every Claim shall accrue upon the date of occurrence of the event giving rise to the Claim.

7.1.2 The DB shall initiate every Claim by giving written notice of the Claim to the Owner within ten (10) days after occurrence of the event giving rise to the Claim, unless an earlier date is required by a specific Section the Contract, in which event the earlier notice deadline shall apply.

7.1.3 The DB's written notice of a Claim shall provide the following information to permit timely and appropriate evaluation of the Claim, determination of responsibility, and opportunity for mitigation:

1. identification of the circumstances responsible for causing the impact, including, but not limited to, the date or anticipated date, of the commencement of any interference, disruption, hindrance, or delay;
2. identification of activities on the Construction Progress Schedule that will be affected by the impact or new activities that may be created and the relationship with existing activities;
3. anticipated impacts and anticipated duration of any interference, disruption, hindrance, delay, or impact, and any remobilization period; and
4. recommended action to avoid or minimize any interference, disruption, hindrance, delay, or impact.

7.1.4 The DB's failure to initiate a Claim as and when required under this Section 7.1 shall constitute the DB's irrevocable waiver of the Claim.

7.1.5 The Contracting Authority shall respond to the written notice of the Claim within a reasonable time of receipt.

7.2 Substantiation of Claims for Extension of the Contract Times.

- 7.2.1 The DB shall substantiate each Claim for an extension of the Contract Times with:
1. written documentation as described in Section 6.8 of the actual delay to the critical path of the Construction Progress Schedule due to the event giving

rise to the Claim;

2. a written statement from the DB that the extension requested is the entire extension of the Contract Times associated with the Claim; and
3. the general substantiating documentation described under Section 7.2.2.

7.2.2 In addition to the requirements of Section 7.2.1, if adverse weather conditions are the basis for a Claim for additional time, the DB shall document the Claim with data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on a critical element of the scheduled construction. The support for and evaluation of all adverse weather Claims shall be based upon average weather conditions during the 5 years immediately preceding the dates at issue in the Claim as those weather conditions were recorded at the government-controlled weather-recording facility nearest to the Site.

7.2.3 The DB's failure to comply with the requirements of this Section 7.2 shall constitute an irrevocable waiver of any related Claim.

7.3 Delay and Delay Damage Limitations; Derivative Claims.

7.3.1 Subject to other provisions of the Contract, the DB will be entitled to an extension of the Contract Times on account of delay in the commencement or progress of Work on the critical path of the Construction Progress Schedule caused by acts of Nature or the public enemy, acts of the government not arising from the DB's failure to comply with Applicable Law, fires, floods, epidemics, weather, and labor disputes beyond the DB's control.

7.3.2 Notwithstanding any other provision of the Contract Documents to the contrary, the DB shall not be entitled to an increase in the Contract Sum, only to an extension of the Contract Times, unless (1) the delay is caused by the Owner and (2) the delay was not authorized or permitted under the Contract.

7.3.3 Notwithstanding any other provision of the Contract Documents to the contrary, the DB shall not be entitled to an increase in the Contract Sum or any type of damages arising from a delay in the commencement or progress of any of the Work caused by the occurrence or non-occurrence of an event beyond the Owner's control such as acts of Nature or the public enemy, acts of the government, fires, floods, epidemics, labor disputes, unusual delivery delays, weather, or damages caused by the DB.

7.4 Derivative Claims. Notwithstanding any other provision of the Contract to the contrary, if the Owner prosecutes a claim, suit, or appeal against a Separate Consultant or Separate Contractor to recover damages the DB suffers on account of the acts or neglects of a Separate Consultant or Separate Contractor or a person or entity for whom either is legally responsible, the Owner's liability to the DB shall not exceed the amount the Owner actually recovers from the Separate Consultant or Separate Contractor on account of those damages less the costs the Owner incurs recovering them. The Owner is not obligated to prosecute any such claim, suit, or appeal.

7.5 Liquidated Damages.

7.5.1 If the DB fails to achieve a Milestone within the associated Contract Time, it would be difficult, if not impossible, to determine the Owner's resulting damages. Therefore, if the DB fails to achieve a Milestone within the associated Contract Time, the DB shall (at the Owner's option) pay to or credit the Owner the Liquidated Damages per day sum determined according to the following schedule for each day that the DB fails to achieve a Milestone within the associated Contract Time.

Contract Sum	Liquidated Damages per day
Less than \$1,000,000	\$500
From \$1,000,000.01 to \$2,000,000	\$1,000
From \$2,000,000.01 to \$5,000,000	\$2,000
From \$5,000,000.01 to \$10,000,000	\$5,000
From \$10,000,000.01 to \$20,000,000	\$7,500
From \$20,000,000.01 to \$50,000,000	\$10,000
More than \$50,000,000	\$15,000

7.5.2 If the DB simultaneously fails to achieve two or more Milestones, the Owner shall be entitled to recover the sum of the associated Liquidated Damages per day rates.

7.5.3 The Liquidated Damages described in this Section 7.5 are only intended to compensate the Owner for the damages the Owner itself incurs as a direct result of the DB's failure to achieve the Milestones within their associated Contract Times.

7.5.4 The Liquidated Damages described in this Section 7.5 are not intended to compensate the Owner for any damages the Owner incurs on account of (1) any claims attributable to the DB that are brought by others including Separate Consultants and Separate Contractors as a result of the DB's failure to achieve the Milestones within their associated Contract Times or (2) any failure of the DB to timely, properly, and completely perform the Contract other than the failure to achieve the Milestones within their associated Contract Times.

7.5.5 The parties acknowledge that the above-listed Liquidated Damages per day sums are not penalties but are a reasonable estimate of the damages the Owner itself would incur as a direct result of the DB's failure to achieve the Milestones within their associated Contract Times. The parties each irrevocably waive the right (if any) to challenge the validity and enforceability of those Liquidated Damages per day sums. Notwithstanding any other provision of the Contract Documents to the contrary, if a court determines that the Liquidated Damages per day sums or their application are void and unenforceable, the Owner shall be entitled to recover the actual damages that it incurs on account of the DB's failure to achieve one or more of the Milestones within the Contract Times.

7.5.6 In addition to other rights that the Owner may have relative to Liquidated Damages, the Owner may deduct Liquidated Damages from the Contract Sum as the damages accrue. If payments then or thereafter due the DB are not sufficient to cover such amounts, the DB shall immediately pay the amount of the insufficiency to the Owner.

7.6 Mutual Waiver of Consequential Damages.

7.6.1 Except as provided under Section 7.6.2, the Owner and DB each waive against the other all Claims for consequential damages that may arise out of or relate to this Contract.

1. The Owner's waiver includes Claims for loss of use, income, profit, revenue, financing, cost of capital, business and reputation, management and employee productivity, and consequential damages arising from termination of the Contract or related to insolvency.
2. The DB's waiver includes Claims for unabsorbed home-office overhead; any other form of overhead; delay damages; increased cost of funds for the

Project; lost opportunity to work on other projects; losses of financing, business, and reputation; loss of profit except anticipated profit arising directly from properly performed Work; loss of bonding capacity; and consequential damages arising from termination of the Contract or related to insolvency.

7.6.2 Notwithstanding Section 7.6.1, this Section 7.6:

1. does not apply to any damages that would be covered by insurance provided in connection with the Project if the Contract did not include Section 7.6.1;
2. does not apply to the DB's indemnity obligations for third-party claims against the Indemnified Parties even if those claims are for damages that Section 7.6.1 would otherwise preclude;
3. does not preclude the Owner's recovery of Liquidated Damages under Section
4. does not apply to Claims for damages arising from the Owner's or the DB's gross negligence or willful misconduct.

7.5; and

7.6.3 This Section 7.6 shall survive termination of the Contract.

7.7 Claim Decision.

7.7.1 The Project Manager shall review the DB's Claim and approve or deny all or any part of it, and forward a written decision to the DB within fourteen (14) days after receiving the DB's Claim.

1. The Project Manager may employ independent resources to assist in its review, or refer evaluation of the Claim to a consultant.
2. If the DB agrees with the Project Manager's decision, the decision shall be incorporated into a Change Order.
3. Any Claim remaining unresolved after completion of the process described under this Section 7.7 shall be subject to Claim decision review as described under Section 7.8.

7.8 Claim Decision Review.

7.8.1 The DB may request review of the Project Manager's decision by written notice delivered by certified mail within seven (7) days of the Project Manager's decision. The written notice shall be delivered to the Mentor City Manager (the Manager).

7.8.2 The Manager shall schedule and conduct a meeting within fourteen (14) days after receiving the DB's request for review. The Manager may employ independent resources to assist in the meeting and review.

7.8.3 The Manager shall determine the final disposition of the DB's request for review and provide a written decision to the DB within fourteen (14) days after the meeting.

7.8.4 The Manager's decision is the final administrative decision of the Owner.

7.8.5 If the DB agrees with the Manager's decision, the decision shall be incorporated into a Change Order.

7.8.6 Any Claim remaining unresolved after completion of the process described under this Section 7.8 shall be subject to litigation, which may be preceded by Alternative Dispute Resolution (“ADR”) as described under Section 7.9.

7.9 Alternative Dispute Resolution.

7.9.1 The intent of the ADR process is to resolve disputes quickly and equitably in a manner agreed upon by all parties to the dispute.

7.9.2 The ADR procedure shall be accepted by all of the Project’s key stakeholders.

7.9.3 The accepted ADR methods shall not include binding arbitration; alter any of the requirements for Claim initiation, certification, and substantiation; or alter the administrative process described under this Article 7.

7.9.4 The following forms of non-binding ADR may be considered:

1. Mediation: If mediation is the accepted ADR procedure, the parties to the dispute shall accept a neutral third party to mediate the dispute. The costs of mediation

shall be shared equally among the parties to the dispute. If the parties are unable to agree on a mediator, then they shall open a case with the American Arbitration Association and comply with its Rules as related the appointment and compensation of a mediator. Each party shall be solely responsible for their attorney fees and expenses, inclusive of any expert fees and/or reports.

2. Another ADR procedure accepted by all of the Project’s key stakeholders.

7.10 Performance and Payment.

7.10.1 The DB shall proceed with the Work during any dispute resolution process, unless otherwise agreed by the DB and Owner in writing.

7.10.2 The Owner shall continue to make payment of any undisputed amounts in accordance with the Contract Documents pending final resolution of a Claim, unless otherwise agreed by the DB and Owner in writing.

ARTICLE 8 - COMPENSATION AND PAYMENT

8.1 Design Services Fee.

8.1.1 The Owner will pay the Design Services Fee on a lump sum basis (1) according to the Fee Schedule for Design Services attached to the Contract for each Stage Phase/Task, not in excess of the portion of the Design Services Fee allocated to that Phase/Task in the Contract and (2) not in excess of the total Design Services Fee stated in the Contract.

8.1.2 DB’s invoices for Design Services shall:

1. Describe all Design Services rendered in sufficient detail to enable the Owner to identify the Design Services;
2. Cover only one calendar month ending on the last day of the month.

8.1.3 Payments for Design Services shall not be subject to retainage.

8.1.4 Design Services Payment Timing. The Owner shall pay the DB on a monthly basis within 30 days after the Owner’s receipt of the DB’s invoice unless the Owner disputes the invoice amount or exercises its rights under Section 8.1.5.

1. If the Owner disputes the invoice amount or chooses to exercise its rights under Section 8.1.5, (1) the Owner shall give the DB written notice within fourteen (14) days after the Owner's receipt of the DB's invoice, and (2) the Owner shall timely pay all undisputed amounts or amounts not subject to Section 8.1.5 (as appropriate);
2. If the DB takes exception to the withholding of payment under this Section, the DB shall initiate and prosecute a Claim under Article 7 and continue to perform the Contract.

8.1.5 Right to Withhold Payment. The Owner may decline to approve any DB invoice or part thereof, or nullify any previous DB invoice, in whole or in part, to the extent necessary in the Owner's opinion to protect the Owner from loss because of:

1. Damage caused by the DB;
2. Failure to comply with Applicable Law;
3. Failure to make any timely submittal in the Design Stage;
4. Failure to carry out the Work in accordance with the Contract Documents; or
5. That which is permitted under other provisions of the Contract Documents.

If the DB remedies the basis for withholding payment under Section 8.1.5 to the Owner's reasonable satisfaction, the Owner shall pay the amounts withheld.

8.2 Construction Stage Compensation.

8.2.1 The Owner will pay the Construction Stage Fee on a lump sum basis (1) according to a Payment Request, not in excess of the portion of the Construction Services allocated to that Payment Request and (2) not in excess of the total Construction Services Fee stated in the Contract.

8.2.2 The DB may submit a Payment Request to the Owner each month or upon another interval approved by the Owner. The DB shall base each Payment Request on the Schedule of Values current as of the date that the DB submits the DB Payment Request.

1. DB shall support each DB Payment Request with documentation substantiating the DB's right to payment. The DB shall supply additional documentation as the Owner may request in connection with each payment to the DB.
2. If the Payment Request includes use of any Contingency, DB shall support each such use of the Contingency in sufficient detail to enable the Owner to identify the associated scope of Work and expenditures
3. The Owner may require proof of the renewal of required insurance as a condition precedent to payment.
4. DB shall attach certified payroll reports for the relevant period to each Payment Request. See, Prevailing Wage Requirements.
5. DB may list on the Payment Request any Change Orders approved and performed prior to submission of the Payment Request.
6. The DB shall submit its Payment Request using forms approved by the Owner.

8.2.3 Subject to Sections herein below, the Owner shall pay an approved Payment Request within thirty (30) days. Payments due and not paid to the DB, through no fault of the DB, within the thirty

(30) day period shall, from the date payment is due, bear simple interest at the applicable statutory rate.

8.2.4 Labor Payments.

1. Payments to the DB for labor performed shall be made at the rate of ninety-two (92%) percent of the amount invoiced through the Payment Request that shows the Work is fifty (50%) percent complete.
2. After the Work is fifty (50%) percent complete, as evidenced by payments of at least fifty (50%) percent of the Contract Sum including approved Change Orders to date, no additional funds shall be retained from payments for labor.

8.2.5 Material Payments.

1. The Owner shall pay the DB at the rate of one hundred (100%) percent of the scheduled value for materials incorporated into the Project.
2. The Owner shall pay the DB at the rate of ninety-two (92%) percent of the invoice cost, not to exceed the scheduled value, for materials delivered to the Site, or other off-site storage location approved by the Owner, provided the DB provides the following information with the DB Payment Request:
 - a. a list of the fabricated materials consigned to the Project, giving the place of storage, together with copies of invoices, in order to verify quantity and cost; and
 - b. a certification of materials stored off-site, prepared by the DB and signed by the Owner to evidence that the materials are in conformity with the Specifications and have been tagged with the Project name and number for delivery to the Project. The DB shall directly reimburse the Owner for all costs incurred to visit a storage site, other than the areas adjacent to the Project.
 - c. The Owner shall pay the balance of the scheduled value when the materials are incorporated into and become a part of the Project.
3. When payment is allowed for materials delivered to the Site or other approved off-site storage location but not yet incorporated into the Project, the materials are the property of the Owner. The Owner may, at its sole discretion, retain any material not ultimately incorporated into the Project or return it to the DB for credit of an amount proportionate to the value of the extra materials.

8.2.6 Retainage.

1. When the Contract is fifty (50%) percent complete, all funds retained for faithful performance of the Work shall be deposited in an escrow account with a bank in the state in accordance with the terms and conditions provided in an escrow agreement executed by the DB, Owner, and applicable bank.
2. When the DB has achieved Substantial Completion of all Work, and there is no other reason to retain funds; upon request of the DB, the funds retained in connection with that Work shall be released from escrow and paid to the DB, withholding only that amount necessary to assure faithful completion

in the sole discretion of the Owner.

3. Upon consent by the DB's Surety, the Owner may reduce the amount of funds retained for the faithful performance of Work by fifty (50%) percent of the amount of funds required to be retained, provided the DB's Surety remains responsible for all damages that may be caused due to default by the DB, including, but not limited to, the following:
 - a. completion of the Work;
 - b. all interference, disruption, hindrance and delay claims;
 - c. all Liquidated Damages; and
 - d. all additional expenses incurred by the Owner.

8.2.7 Payments Withheld. The Owner may decline to approve any Payment Request or part thereof, or nullify any previous DB Payment Request, in whole or in part, to the extent necessary in the Owner's opinion to protect the Owner from loss because of:

1. Defective Work nor remedied;
2. damage caused by the DB;
3. reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
4. reasonable evidence that the Work will not be completed within the Contract Times, and that the unpaid balance would not be adequate to cover damages under the Contract Documents for the anticipated delay;
5. failure to comply with Applicable Law including, but not limited to, the requirements of R.C. Chapter 4115;
6. failure to carry out the Work in accordance with the Contract Documents; or
7. that which is permitted under other provisions of the Contract Documents.

If the DB remedies the basis for withholding payment under Section 8.2.7 to the Owner's reasonable satisfaction, the Owner shall pay the amounts withheld.

8.2.8 Final Payment Request. The DB, as a condition precedent to Contract Completion and final payment, shall complete all requirements of the Contract Documents.

1. DB and each of its Subcontractors, regardless of tier, shall execute a Payment Release Affidavit to certify that the DB and each of its Subcontractors, regardless of tier, have complied with all requirements of R.C. Chapter 4115, and to certify that all of its Subcontractors have been paid in full for all Work performed or materials furnished for the Project
2. The Owner shall pay the final Payment Request within thirty (30) days. Payments due and not paid to the DB within the thirty (30) day period shall bear interest from the date payment is due under the Contract Documents at the applicable statutory rate.

8.2.9 Acceptance of final payment by the DB or a Subcontractor constitutes the payee's waiver of all Claims against the Owner except those previously made in writing under Article 7 and identified by that payee as unsettled at the time of the final Payment Request.

ARTICLE 9 - BONDS, INSURANCE, AND INDEMNIFICATION

9.1 Performance and Payment Bonds.

9.1.1 Before signing the Agreement, the DB shall provide a Performance Bond and Payment Bond (or combined bond) on forms generally recognized as commercially acceptable in Ohio (examples of which appear at <https://ofcc.ohio.gov/Documents/Agreements-and-Standard-Requirements>) and:

1. Each Surety under the Bond(s) shall be licensed to do business in Ohio and satisfactory to the Contracting Authority.
2. If there is more than one Surety under a Bond, each of them shall be jointly and severally liable as surety under that Bond.
3. The penal sum of each of the Bonds, when initially submitted, shall be equal to 100 percent of the Contract Sum.
4. Bond forms with terms and conditions not compliant with the Contract Documents will not be accepted by the Owner.

9.1.2 The DB shall submit with each executed Bond (1) a certified copy of the authority to act (power of attorney) of the agent signing the Bond on behalf of the Surety and (2) a current and signed Certificate of Compliance under R.C. § 9.311 issued by the Ohio Department of Insurance showing the Surety is licensed to do business in Ohio.

9.1.3 If the Contract Sum increases at any time after the DB provides the Bonds under Section 9.1.1, the DB shall cause the penal sums of the Bonds to be increased such that the penal sums equal 100 percent of the increased Contract Sum.

9.1.4 Any time the DB increases the penal sums of the Bonds under Section 9.1.3, the DB shall deliver to the Owner new Bonds showing the increased penal sums and written consent of the affected Surety or Sureties confirming the increased penal sums. The Owner's receipt of replacement Bonds and that written consent is a condition precedent to the Owner's obligation to pay the DB for any portion of the Work associated with the increase.

9.1.5 If at any time prior to final payment, any surety providing Bonds for the Project (1) is adjudged bankrupt or has made a general assignment for the benefit of its creditors; (2) has liquidated all assets or has made a general assignment for the benefit of its creditors; (3) is placed in receivership; (4) otherwise petitions a state or federal court for protection from its creditors; or (5) allows its license to do business in Ohio to lapse or to be revoked, then the DB shall, within 21 days of any such action listed above, provide the Owner with new Bonds in the form and amount described in this Section 10.1. The Owner's receipt of replacement Bonds is a condition precedent to the Owner's obligation to pay the DB.

9.1.6 If notice of any change affecting the Contract is required by any Surety or by the provision of any Bond, the DB shall provide that notice.

9.1.7 For the purposes of determining the penal sum of the Bonds under this Section 9.1 only, the Contract Sum does not include the Design/Engineering Services Fee.

9.2 DB's General Insurance Requirements.

9.2.1 Throughout the performance of the Work or longer as may be described below, the DB shall obtain, pay for, and keep in force, the minimum insurance coverage described in this Article 9.

1. Each requirement of this Article 9 applies to Subcontractors just as it applies to the DB.
2. If a Subcontractor's usual insurance coverage does not meet the minimum coverage requirements, before entering into an agreement with that Subcontractor, the DB shall submit to the Owner (1) a certificate of insurance evidencing the insurance the Subcontractor will carry without additional compensation and (2) if the Owner requests, a written proposal from the Subcontractor to provide coverage that meets the minimum coverage requirements. The Owner Authority will decide whether to accept the non-conforming insurance coverage or the proposal to provide conforming coverage.
3. On a case-by-case basis, the Owner and DB may agree to adjust the below requirements for any particular Subcontractor.

9.2.2 Before starting the Work on the Site, upon renewal of any policy, and upon a change of any insurance carrier, the DB shall deliver to the Owner certificates evidencing that the required insurance is in force.

9.2.3 With the exception of government-controlled workers compensation coverage:

1. the DB shall place the insurance with companies that (1) are satisfactory to the Owner, (2) hold an A.M. Best Rating of A-, X, or higher, and (3) are authorized to conduct business in Ohio;
2. the policies shall be endorsed to require the DB's insurance carrier to (1) provide at least 30-days' written notice to the Owner (as certificate holder) of the cancellation or non-renewal of the insurance and (2) provide at least 10-days' written notice to the Owner (as certificate holder) of the cancellation of the insurance for non-payment of premium; and
3. within 30 days of the Owner's request, the DB shall submit insurance-company certified copies of the policies, the policy endorsements, loss-run reports, or all three.

9.2.4 The DB shall pay all deductibles, or self-insured retentions, or both contained in the DB's policies of insurance required or provided in connection with the Project. The Contracting Authority reserves the right to approve or reject all levels of self-insured retention, captive insurance programs, or other alternative risk financing the DB may use to comply with any insurance requirement.

9.2.5 The DB shall pay a proportionate share of the deductibles, or self-insured retentions, or both contained in any insurance policy the Owner purchases for the Project. The DB's proportionate share will derive from the percentage of the associated claim or loss attributable to the alleged or actual negligence of the DB, a Subcontractor, or a Consultant.

9.2.6 The Owner does not represent that required coverage or limits are adequate to protect the DB.

9.2.7 Failure of the Owner to demand a certificate or other evidence of full compliance with the insurance requirements or failure of Owner to identify a deficiency from evidence that is

provided shall not be construed as a waiver of the DB's obligation to maintain the required insurance.

9.2.8 The Owner may terminate the Contract for cause on account of the DB's failure to maintain required insurance.

9.3 DB's Minimum Coverage Requirements.

9.3.1 Workers Compensation. The DB shall maintain workers compensation coverage meeting the requirements of Applicable Law.

9.3.2 Employers Liability Coverage. The DB shall maintain employers liability coverage with (1) an each-accident limit of not less than \$1,000,000, (2) a disease each-employee limit of not less than \$1,000,000, and (3) a disease policy limit of not less than \$1,000,000.

9.3.3 Commercial General Liability. The DB shall maintain commercial general liability ("CGL") coverage that provides (1) an each-occurrence limit of not less than \$1,000,000, (2) a general-aggregate limit of not less than \$2,000,000, and (3) a products and completed-operations aggregate limit of not less than \$2,000,000.

1. The CGL insurance shall be written on ISO occurrence form CG 00 01 10 01 or a substitute form, providing at least equivalent coverage for liability arising from premises, operations, independent contractors, products/completed-operations, personal and advertising injury, and liability assumed under an insured contract.
2. The DB shall include the Owner as additional insured under the CGL policy using ISO endorsement CG 20 10 07 04 and ISO endorsement CG 20 37 07 04 or a substitute form(s) providing equivalent coverage.
3. The CGL policy shall be endorsed using ISO endorsement CG 25 03 or a substitute form providing equivalent coverage to provide that the general aggregate limit applies separately to each of the insured's projects.
4. The CGL insurance shall apply as primary and non-contributory insurance with respect to any other insurance or self-insurance programs that cover the additional insured(s).
5. The CGL policy shall not exclude coverage to the additional insured(s) for bodily injury or property damage arising out of the products/completed-operations hazard.
6. The DB shall maintain the CGL insurance in effect for no less than 5 years after the earlier of the termination the Contract or Substantial Completion of all Work.

9.3.4 Business Automobile Liability. The DB shall maintain business automobile ("BA") coverage written on ISO form CA 00 01 10 01 or a substitute form, providing at least equivalent coverage with a limit of not less than \$1,000,000 each accident.

1. The coverage shall extend to any auto.
2. The DB shall include the Owner as additional insured under the BA policy.

9.3.5 Umbrella/Excess Liability. The DB may employ an umbrella/excess liability policy

to achieve the above-required minimum coverage.

1. The DB shall maintain umbrella/excess liability coverage with a limit of not less than \$2,000,000 (in addition to the above-required limits) if the Work (or the Work to be performed by the Subcontractor) includes any of the following:
 1. brick/block masonry;
 2. exterior caulk/sealant;
 3. cast-in-place or precast concrete;
 4. curtain wall;
 5. dampproofing/waterproofing;
 6. electrical;
 7. elevator;
 8. exterior glass and/or glazing;
 9. exterior marble, granite, and/or other stonework;
 10. miscellaneous metals;
 11. plaster/stucco;
 12. plumbing;
 13. HVAC;
 14. roofing and/or sheet metal;
 15. scaffolding;
 16. spray-on fireproofing;
 17. sprinkler and/or fire protection; or
 18. structural steel and/or metal deck.
2. The DB shall maintain umbrella/excess liability coverage with a limit of not less than \$5,000,000 (in addition to the above-required limits) if the Work (or the Work to be performed by the Subcontractor) includes any of the following:
 1. caissons and/or piles;
 2. demolition;
 3. excavation and/or utility work;
 4. sheeting, shoring, and/or underpinning;
 5. window washing equipment; or
 6. wrecking.

9.3.6 Contractor's Pollution Liability. If the Work includes environmentally sensitive, hazardous types of activities (such as demolition, exterior insulation finish systems, Asbestos abatement, storage- tank removal, or similar activities), or involves Hazardous Materials, the DB

shall maintain a contractor’s pollution liability (“CPL”) policy with (1) a per claim limit of not less than \$1,000,000 and (2) an annual- aggregate limit of not less than \$1,000,000, covering the acts, errors and/or omissions of the DB for damages (including from mold) sustained by the Owner by reason of the DB’s performance of the Work.

1. The CPL policy shall have an effective date, which is on or before the date that the DB first started to perform any Project-related services.
2. Upon submission of the associated certificate of insurance and at each policy renewal, the DB shall advise the Owner in writing of any actual or alleged claims that may erode the CPL policy’s limits.
3. The DB shall maintain the CPL insurance in effect for no less than 5 years after the earlier of the termination of the Contract or Substantial Completion of all Work.

9.3.7 Professional Liability - DB. The DB shall maintain professional liability insurance without design-build exclusions with limits not less than as identified in the following table:

Contract Sum	Each Claim	Annual Aggregate
Up to \$25,000,000	\$1,000,000	\$2,000,000
From \$25,000,000.01 to \$50,000,000	\$2,000,000	\$4,000,000
More than \$50,000,000.01	\$5,000,000	\$5,000,000

1. The professional liability policy shall have an effective date on or before the date that the DB first started to provide any Project-related services.
2. Upon submission of the associated certificate of insurance and at each policy renewal, the DB shall advise the Owner in writing of any actual or alleged claims that may erode the professional liability policy’s limits.
3. The DB shall maintain the professional liability insurance in effect for no less than
5 years after the earlier of the termination of the Contract or Substantial Completion of all Work.
4. If the DB is not authorized under Applicable Law to directly provide professional design services, the DB may satisfy the requirements of this Section 9.3.7 by providing a contractor’s professional liability insurance policy.
5. If the DB is a joint venture:
 1. the DB may meet the requirements of this Section 9.3.7 by providing a PL policy under which each joint venturer is the insured; or
 2. each joint venturer shall individually meet the requirements of this Section 9.3.7 by providing a PL policy (1) under which the individual joint venturer is the insured and (2) that covers that joint venture’s interest in the joint venture by endorsement or otherwise. The certificate of insurance shall reflect that the PL policy covers the joint venturer’s interest in the joint venture.

6. If the DB is a limited-liability company, which members consist of two or more separate firms:
 1. the DB may meet the requirements of this Section 9.3.7 by providing a PL policy under which the limited-liability company is the insured; or
 2. each member of the limited-liability company shall individually meet the requirements of this Section 9.3.7 by providing a PL policy (1) under which the individual member is the insured and (2) that covers that member's interests in the limited-liability company by endorsement or otherwise. The certificate of insurance shall reflect that the PL policy covers the member's interest in the limited-liability company.

9.3.8 Professional Liability - Consultants. Each Consultant that provides professional design/engineering services shall maintain professional liability insurance without design-build exclusions with limits not less than as identified in the following table:

Contract Sum Applicable to Consultant's Scope of Services	Each Claim	Annual Aggregate
Up to \$25,000,000	\$1,000,000	\$2,000,000
From \$25,000,000.01 to \$50,000,000	\$2,000,000	\$4,000,000
More than \$50,000,000.01	\$5,000,000	\$5,000,000

1. The professional liability policy shall have an effective date on or before the date that the Consultant first started to provide any Project-related services.
2. Upon submission of the associated certificate of insurance and at each policy renewal, the DB shall advise the Owner in writing of any actual or alleged claims that may erode the professional liability policy's limits.
3. The Consultant shall maintain the professional liability insurance in effect for no less than 5 years after the earlier of the termination of the Contract or Substantial Completion of all Work.
4. If the Consultant is not authorized under Applicable Law to directly provide professional design services, the Consultant may satisfy the requirements of this Section 9.3.7.5 by providing a contractor's professional liability insurance policy.

9.3.9 Professional Liability - Subcontractors. If the Work to be performed by a Subcontractor includes any professional design services (including without limitation sprinkler and/or fire protection and other design-build/engineering work) the Subcontractor shall maintain professional liability insurance without design-build exclusions with limits not less than as identified in the following table:

Subcontract Sum	Each Claim	Annual Aggregate
Up to \$50,000,000	\$1,000,000	\$2,000,000
More than \$50,000,000	\$2,000,000	\$4,000,000

1. The professional liability policy shall have an effective date on or before the date that the Subcontractor first started to provide any Project-related services.
2. Upon submission of the associated certificate of insurance and at each policy renewal, the DB shall advise the Owner in writing of any actual or alleged claims that may erode the Subcontractor's professional liability policy's limits.
3. The Subcontractor shall maintain the professional liability insurance in effect for no less than 5 years after the earlier of the termination of the Contract or Substantial Completion of all Work.
4. If the Subcontractor is not authorized under Applicable Law to directly provide professional design services, the Subcontractor may satisfy the requirements of this Section 9.3.9 by providing a contractor's professional liability insurance policy.

9.3.10 Aviation Liability. If the DB or a Subcontractor uses aircraft, including helicopters, in performance of the Work, the DB shall maintain aircraft or aviation liability coverage in an amount of no less than \$10,000,000. The Owner will not be liable for any damage to any aircraft owned, leased, rented, or borrowed by the DB or Subcontractor.

9.3.11 Watercraft Liability. If the DB or a Subcontractor uses watercraft in performance of the Work, the DB shall maintain watercraft liability coverage including protection and indemnity insurance in an amount of no less than \$5,000,000. The Owner will not be liable for any damage to any watercraft owned, leased, rented, or borrowed by the DB or Subcontractor.

9.3.12 Equipment Coverage. The Owner will not insure or be liable for damage to any DB or Subcontractor owned, leased, rented, or borrowed tools, equipment, or vehicles. The DB and Subcontractors are solely responsible for maintaining all insurance necessary to cover their tools, equipment, and vehicles.

9.3.13 Additional Property Insurance. For any demolition, blasting, excavating, tunneling, shoring, or similar operations, the DB shall provide and maintain Property Damage Liability insurance with a limit of liability equal to the limit as specified in the applicable sections of Article 9.

9.4 Builder's Risk Insurance.

9.4.1 The DB shall provide and maintain, during the progress of the Work and until Contract Completion, a builder's risk insurance policy to cover all Work in the course of construction including false-work, temporary buildings and structures, and materials used in the construction process, stored on or off-site, or while in transit. This insurance shall be on a special cause of loss form that provides coverage on an open perils basis insuring against the direct physical loss of, or damage to, covered property including, but not limited to, theft, vandalism, malicious mischief, earthquake, tornado, lightning, explosion, breakage of glass, flood, collapse, water damage, and hot and cold testing. This insurance shall be written on a replacement cost basis and shall also include debris removal, and/or demolition occasioned by enforcement of Applicable Law.

1. The amount of coverage shall be not less than the total completed value of the Project, including the value of permanent fixtures and decorations, with a deductible of not more than \$25,000 per occurrence. Any deductible over the amount specified shall be authorized in writing by the Owner.

2. Coverage shall include a provision to pay the reasonable extra costs of acceleration and expediting temporary and permanent repairs to, or permanent replacement of, damaged property. This shall include overtime wages and the extra cost of “express” or other means for rapidly transporting materials and supplies necessary to the repair or replacement.
3. Coverage shall include “soft cost endorsement” including, but not limited to, reasonable DB extension or acceleration costs.
4. Coverage shall include material in transit or stored off-site and identified for the Project.
5. Coverage shall waive all rights between the Owner, DB, and Subcontractors at any tier, for damages caused by fire or any other perils to the extent of actual recovery of any insurance proceeds under the policy.
6. Coverage shall include appropriate sub-limits for installation coverage.
7. Coverage shall include provisions for mechanical or electrical breakdown, or boiler system testing.
8. Coverage shall include temporary structures and scaffolding, along with collapse coverage.
9. Coverage shall be primary to all other applicable insurance.
10. The builder’s risk policy shall specifically permit and allow for Partial Occupancy by the Owner prior to Contract Completion and coverage shall remain in effect until all punch list items are completed.
11. The DB’s tools and equipment shall not be covered under the builder’s risk policy. It is the DB’s sole responsibility to maintain such coverage.

9.4.2 If the DB is involved solely in the installation of material and equipment and not in new building construction, the DB shall purchase and maintain a builder’s risk, builder’s risk-renovations, or installation floater insurance policy. The policy shall comply with the provisions of Section 9.4.1.

9.5 Waivers of Subrogation.

9.5.1 To the fullest extent permitted by Applicable Law, the DB waives all rights against the Owner and its agents and employees for damages to the extent covered by any insurance, except rights to the proceeds of that insurance. All policies shall accomplish the waiver of subrogation by endorsement or otherwise.

9.5.2 The Owner and DB waive all rights against each other for damages caused by fire or other perils to the extent of actual recovery of any insurance proceeds under any property insurance, inland marine insurance, or builder’s risk insurance applicable to the Work.

9.6 Indemnification for Injury or Damage.

9.6.1 Liability Other than Professional Liability. To the fullest extent permitted by Applicable Law and with respect to liability other than professional liability claims, the DB shall indemnify, defend, and hold harmless the Indemnified Parties from and against all claims, costs, damages, losses, fines, penalties, and expenses (including but not limited to all fees and charges of attorneys and other professionals and all court, arbitration, or other dispute-resolution costs) arising out of or in connection with the Project, provided that any such claim, cost, damage, loss, fine, penalty, or expense is attributable to:

1. bodily injury, sickness, disease, or death, or to injury to or destruction of

- tangible property but only to the extent caused by the negligent acts, errors, or omissions of the DB or a person or entity for whom the DB may be liable;
2. infringement of patent rights or copyrights by the DB or a person or entity for whom the DB may be liable; or
 3. a violation of Applicable Law but only to the extent attributable to the DB or a person or entity for whom the DB may be liable.

9.6.2 **Professional Liability.** To the fullest extent permitted by Applicable Law and with respect to professional liability claims, the DB shall indemnify and hold harmless the Owner and its officers, officials, and employees from and against all claims, costs, damages, losses, fines, penalties, and expenses (including but not limited to all fees and charges of attorneys and other professionals and all court, arbitration, or other dispute resolution costs) arising out of or in connection with (1) the failure of the DB or Person for whom the DB is legally liable to comply with the standard of care described under Section 1.10; and (2) infringement of patent rights or copyrights by the DB or a Person for whom the DB may be liable.

9.6.3 The DB's indemnification obligation under Section 9.6 exists regardless of whether or not and the extent to which the claim, damage, loss, fine, penalty, or expense is caused in part by a Person indemnified under Section 10.6. But nothing in Section 9.6 obligates the DB to indemnify any individual or entity from and against the consequences of that Person's own negligence.

9.6.4 In claims against a Person indemnified under Section 9.6 by any direct or indirect employee (or the survivor or personal representative of that employee) of the DB or a Person for whom the DB may be liable, the indemnification obligation under Section 9.6 will not be limited by a limitation on the amount or type of damages, compensation, or benefits payable under workers' compensation acts, disability benefit acts, or other employee benefit acts.

9.6.5 The DB's indemnification obligation under Section 9.6 will not be limited by any insurance policy provided or required in connection with the Project.

9.6.6 The DB's obligations under Section 9.6 shall not negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a Person indemnified under Section 9.6.

9.6.7 The DB's indemnification obligation under Section 9.6 will survive termination of the Contract and Contract Completion.

9.6.8 The Owner may deduct from the Contract Sum the claims, damages, losses, fines, penalties, and expenses for which the DB is liable under Section 9.6. If those claims, damages, losses, fines, penalties, and expenses exceed the unpaid balance of the Contract Sum, the DB shall immediately pay the difference to the Owner.

ARTICLE 10 - SUSPENSION AND TERMINATION

10.1 Suspension of the Work.

10.1.1 The Owner, without prejudice to any other right or remedy it may have, may order the DB in writing to suspend, delay, or interrupt the performance of the Work in whole or in part for such period as the Owner may determine for any of the following reasons: (1) Defective Work; (2) the DB is causing undue risk of damage to any part of the Project or adjacent area; (3) the DB fails to furnish or perform the Work in such a way that the complete Work will conform to the requirements of the Contract Documents; or (4) any other cause the Owner reasonably believes justifies suspension.

1. The Owner's exercise of its right to suspend the Work under this Section 10.1 shall not entitle the DB to any adjustment of the Contract Sum or Contract Times.
2. If the Owner is adjudged to have improperly suspended the Work under this Section 10.1.1, the DB shall have only such rights and remedies as arise under Article 7.

10.1.2 Upon receipt of notice of suspension under this Section 10.1, the DB shall cease Work on the suspended activities and take all necessary or appropriate steps to limit disbursements and minimize respective costs. The DB shall furnish a report to the Owner, within five (5) days of receiving the notice of suspension, describing the status of the Work, including, but not limited to, results accomplished, resulting conclusions, and other information as the Owner may require.

10.1.3 The Owner's right to stop the Work shall not give rise to any duty to exercise the right for the benefit of the DB or any other party, and the Owner's exercise or failure to exercise the right shall not prejudice any of the Owner's other rights.

10.2 Termination for Convenience.

10.2.1 The Owner may terminate the Contract in whole or in part for the Owner's convenience and without cause, at any time upon written notice to the DB.

10.2.2 Upon receipt of the notice of termination for convenience, the DB shall immediately proceed with performance of the following duties in accordance with instructions from the Owner:

1. cease operation as specified in the notice;
2. place no further orders and enter into no further subcontracts for materials, labor, services, or facilities, except as necessary to complete continued portions of the Project;
3. terminate all subcontracts and orders to the extent they relate to the Work terminated;
4. proceed with Work not terminated; and
5. take actions that may be necessary, or that the Owner may direct, for the protection and preservation of the terminated Work.

10.2.3 The Owner shall pay the DB in accordance with its Pricing for the percentage of the Work completed and the value of materials ordered and delivered, less any salvage credit the DB may receive for them.

10.2.4 All materials, equipment, facilities, and supplies at the Site or stored off-site, for which the DB has received payment, shall become the property of the Owner.

10.2.5 The DB is entitled to a fair and reasonable profit for Work performed and reasonable expenses directly attributable to termination of the Contract. In no event shall the DB be entitled to (1) DB's Fee on Work not performed or (2) compensation in excess of the total Contract Sum.

10.2.6 Notwithstanding any other provision of the Contract to the contrary, if the Contract is terminated before Contract Completion, the DB shall not be entitled to any portion of the DB's Contingency.

10.2.7 If the Owner terminates the Work under this Section 10.2, the termination shall not affect the rights or remedies of the Owner against the DB then existing or which may thereafter accrue.

10.2.8 Notwithstanding the foregoing Sections, if the Owner terminates the Work under this Section 10.2, but there exists an event of the DB's default, the DB shall be entitled to receive only such sums as it would be entitled to receive following the occurrence of an event of default as provided in Section 10.3.

10.3 Termination for Cause.

10.3.1 The Owner may terminate all or a portion of the Contract if the DB commits a material breach of the Contract including but not limited to:

1. failure to prosecute the Work with the necessary force or in a timely manner;
2. refusal to remedy Defective Work;
3. failure to supply enough properly skilled workers or proper materials;
4. failure to properly make payment to Subcontractors or Consultants;
5. performance of any services outside of the United States;
6. permitting its Subcontractors or Consultants to perform any services outside of the United States; or
7. disregarding laws, ordinances, or rules, regulations, or orders of a public authority with jurisdiction over the Project.

10.3.2 If the Owner intends to exercise its termination rights under this Section 10.3, the Owner shall issue not less than 5-days' written notice to the DB and the DB's Surety.

10.3.3 Notwithstanding any provision of the Contract to the contrary (1) the issuance of a 72- Hour Notice under Section 5.22.1 is not a condition precedent to the Owner's exercise of its rights under Section 10.3 and (2) the Owner's decision to not issue a 72-Hour Notice under Section 5.22.1 will not prejudice the Owner's rights under Section 10.3.

10.3.4 If the DB fails to satisfy the requirements set forth in the 5-Day Notice within fifteen (15) days of receipt of the 5-Day Notice, the Owner may declare the DB in default, terminate the Contract, and employ upon the Work the additional force or supply materials or either as appropriate, and remove Defective Work.

10.3.5 If the Contract is terminated, the DB's Surety may perform the Contract. If the DB's Surety does not commence performance of the Contract within ten (10) days of the date of Contract termination, the Owner may complete the Work by means the Owner determines appropriate. The Owner may take possession of and use all materials, facilities, and equipment at the Site or stored off-site, for which the Owner has paid.

10.3.6 If the Contract is terminated, the DB shall not be entitled to further payment. If the Contract Sum is exceeded by the costs of finishing the Work, including without limitation the fees and charges of contractors, engineers, architects, attorneys, and other professionals and court costs, and other damages incurred by the Owner and not expressly waived, the DB or Surety shall immediately pay the amount of the insufficiency to the Owner. This obligation for payment shall survive termination of the Contract. Notwithstanding any other provision of the Contract to the contrary, if the Contract is terminated before Contract Completion, the DB shall not be entitled to any portion of the DB's Contingency.

10.3.7 If the DB's Surety performs the Work, the provisions of the Contract Documents govern the Surety's performance, with the Surety in place of the DB in all provisions including, but not limited to, provisions for payment for the Work, and provisions of the right of the Owner to complete the Work.

10.3.8 If the Owner terminates the Contract under this Section 10.3, the termination shall

not affect any rights or remedies of the Owner against the DB then existing or which may thereafter accrue. The Owner's retention or payment of funds due the DB shall not release the DB or the DB's Surety from liability for performance of the Work in accordance with the requirements of the Contract Documents.

10.3.9 If the Owner is adjudged to have improperly terminated the Contract under this Section 10.3, the termination will be deemed to have been a termination under Section 10.2.

10.4 DB Insolvency.

10.4.1 Bankruptcy of DB. If the DB files a voluntary petition in bankruptcy or has an involuntary petition in bankruptcy filed against it, the DB, the DB as the debtor-in-possession, or the trustee of the DB's bankruptcy estate shall file a motion to assume or reject the Contract under Bankruptcy Code (11 U.S.C. § 365) within twenty (20) days after the filing of the voluntary petition or involuntary petition and shall diligently prosecute that motion to conclusion so as to obtain an order granting or denying that motion within forty-five (45) days after the filing of the voluntary or involuntary petition. The failure to file and prosecute that motion within the time limits provided by this Section 10.4 shall constitute a material breach of the Contract as time is of the essence with respect to DB's performance of all terms of this Contract. The DB agrees to the granting of relief from the automatic stay of the Bankruptcy Code (11 U.S.C. § 362(a)) to permit the Owner to terminate the Contract for cause in such instance and issue and serve all notices necessary to terminate the Contract or arising out of the termination of the Contract and to take any and all other action necessary to terminate the Contract.

10.4.2 Receivership or Assignment for the Benefit of Creditors. If the DB makes a general assignment for the benefit of creditors or if a receiver is appointed for all or a substantial part of the DB's business or property, the Owner shall serve written notice on the DB and DB's Surety stating that any failure of the DB to provide adequate assurance of continued performance shall be considered a rejection of the Contract, which shall result in termination of the Contract for cause. Such termination of the Contract need not be evidenced by an order of any court.

ARTICLE 11 - GENERAL PROVISIONS

11.1 DB's Documents and Contract Documents.

11.1.1 Ownership.

1. The Owner alone owns the DB's Documents and the Contract Documents and every right, title, and interest therein. The DB shall execute and deliver and cause its employees and agents and all Subcontractors and Consultants to execute and deliver to the Owner any transfers, assignments, documents, or other instruments (if any) necessary to vest in the Owner complete right, title, interest in and ownership of the DB's Documents and the Contract Documents.
2. The DB may retain copies, including reproducible copies, of the DB's Documents and the Contract Documents for information, reference, and performance of the Work.
3. The submission or distribution of the DB's Documents and the Contract Documents to meet official regulatory requirements or for similar purposes in connection with the Project is not a waiver of the Owner's reserved rights in the DB's Documents and the Contract Documents. Any unauthorized use of the DB's Documents and the Contract Documents shall be at the sole risk

of the entity making the unauthorized use.

11.1.2 Intent.

1. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the DB.
2. The Contract Documents are complementary, and what is required by one is binding as if required by all.
3. The DB shall provide all services, labor, and materials necessary for the entire completion of the Work described in the Contract Documents and reasonably inferable to produce the intended results.
4. The Drawings govern dimensions, details, and locations of the Work. The Specifications govern quality of materials and workmanship.
5. The organization of the Specifications in divisions, sections, and articles, and the arrangement of Drawings shall not restrict the DB in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.
6. In the event of inconsistency or conflict within the Contract Documents, the DB shall provide the better quality or greater quantity of Work, and comply with the stricter requirement.
7. Unless otherwise defined in the Contract Documents, words that have well-known technical or construction industry meanings are used in accordance with those recognized meanings.

11.1.3 Use of Electronic Files.

1. The Owner and DB reasonably expect that they will provide Electronic Files to each other to facilitate the design and construction of the Project consistent with current practices and customs in the construction industry.
2. The Owner and DB acknowledge that the use of Electronic Files involves risks not generally associated with the use of paper documents. Those risks include, for example and without limitation, alteration (inadvertent or intentional) and deterioration, both of which may not be readily apparent through casual observation.
3. The Owner and DB do not warrant to each other that any Electronic File they provide (1) was not altered through transmission; (2) is compatible with the recipient's computer system or software; (3) will not be altered through degradation of the recipient's storage media; or (4) is suitable for conversion/translation to and subsequent use in a system or format other than the Electronic File's original system or format.
4. Before relying on any Electronic File it receives, the recipient is responsible for verifying that the Electronic File was not altered through transmission, degradation of the recipient's own storage media, or other causes.
5. If the recipient of an Electronic File converts/translates the Electronic File from its original system or format to an alternate system or format, the recipient assumes the risk that the conversion/translation created errors in the converted/translated file.
6. The Owner and DB shall each maintain and operate its own computer

systems and storage media in a commercially reasonable way and take reasonable steps to prevent errors in and deterioration of the Electronic Files it creates, provides, and receives.

7. In the event of a discrepancy between information contained in a paper version of a document and the Electronic File of that document, the paper version will govern.
8. This Section 11.1.3 does not relieve the DB of its responsibility for the preparation, completeness, or accuracy of the DB's Documents.

11.2 Public Relations.

11.2.1 Publicity prior to completion of the Project. Prior to completion of the Project, public relations or publicity about the Project shall be solely within the control, and with the consent of, the Owner.

11.2.2 Publicity after completion of the Project. After completion of the Project, the DB may exercise reasonable public relations and marketing efforts related to the Project, provided the DB properly identifies the Owner and its participation in the Project.

11.2.3 Professional Photography. If the DB commissions photography of the completed Project, the DB shall include in its photography agreements a release for unrestricted and unlimited use of photographs by the Owner and shall provide the Owner with a reasonable quantity of photographs for use in the Owner's marketing and awareness activities, including, but not limited to, profiles of the Project on its websites and social media platforms.

11.2.4 Design Awards, Craft Awards, and Other Recognition. If the DB submits the Project for design awards, craft awards, or other similar venues for recognition of the Project, the DB shall properly identify the Owner and its participation in the Project. In addition, if the Project receives any design award, craft award, or other recognition, the DB shall provide duplicate copies of the award plaque or other memento of the award to the Owner.

11.3 Application and Governing Law.

11.3.1 The Contract and the rights of the parties thereunder shall be governed by the laws of the state of Ohio and only the Common Pleas Court of Lake County, Ohio shall have jurisdiction over any action or proceeding concerning the Contract and/or performance thereunder. The DB irrevocably consents to such jurisdiction.

11.3.2 The parties to the Contract shall comply with Applicable Law.

11.3.3 Other rights and responsibilities of the DB and Owner are set forth throughout the Contract Documents and included under different titles, articles, and paragraphs for convenience.

11.4 Conditions of the Contract. These General Conditions govern, take precedence over, and shall not be superseded or amended by Drawings and Specifications, unless so provided in Supplementary Conditions prepared and approved by the Owner.

11.5 Notice of Commencement.

11.5.1 The Owner shall prepare a Notice of Commencement and make it available as required under R.C. § 1311.252.

11.5.2 Upon request, the Owner or DB shall furnish the Notice of Commencement to Subcontractors or any other member of the public.

11.6 Written Notice.

11.6.1 Notice under the Contract Documents shall be validly given if:

1. delivered personally to a member of the organization for whom the notice is intended;
2. delivered, or sent by registered or certified mail, to the last known business address of the organization; or
3. sent by facsimile, email, or web-based project management software, provided the original, signed document is delivered within three (3) business days after the date of the electronic transmission.

11.6.2 In the event of an emergency involving the Project, including, but not limited to, a fatality, serious injury, fire, collapse, flood, utility, or power loss to occupied facilities, explosion, or environmental damage, the DB shall immediately notify the Owner by telephone.

11.6.3 The Owner or DB may, by written notice given hereunder, designate addresses, telephone numbers, email addresses, or facsimile numbers to which notices, certificates, requests, or communications shall be sent.

11.7 Taxes.

11.7.1 Only those materials that ultimately become a part of the completed structure or improvement that constitutes the Project shall be exempt from state sales tax and state use tax.

11.7.2 The purchase, lease, or rental of material, equipment, parts, or expendable items such as concrete form lumber, tools, oils, greases, and fuels, which are used in connection with the Work, are subject to the application of state sales tax and state use tax.

11.8 Computing Time.

11.8.1 When the Contract Documents refer to a period of time by a number of days, the period shall be computed to exclude the first and include the last day of the period. If the last day of the period falls on a Saturday, Sunday, or a legal holiday, that day shall be omitted from the computation and the period shall end on the next succeeding day that is not a Saturday, Sunday, or legal holiday.

11.8.2 Except as excluded under Section 11.8.1, the Contract Times and all other periods referred to in the Contract Documents includes Saturdays, Sundays, and all days recognized as legal holidays.

11.9 Time of the Essence.

11.9.1 Time limits stated in the Contract Documents are of the essence of the Contract and all obligations under the Contract. By signing, the DB acknowledges that the Contract Times are reasonable, taking into consideration the usual weather and other conditions prevailing in the locality of the Project. The DB further acknowledges that any specified Milestone dates are reasonable, taking into consideration the usual weather and other conditions prevailing in the locality of the Project.

1. The DB shall perform the Work in a reasonable, efficient, and economical sequence, and in the order and time as may be provided.
2. The DB acknowledges that it may be subject to interference, disruption, hindrance, or delay in the progress of the Work from any cause. The sole remedy for such interference, disruption, hindrance, or delay shall be an extension of the Contract Times under Article 7.

11.10 Successors and Assigns.

11.10.1 The Owner and DB each bind themselves, their successors, assigns, and legal representatives, to the other party to this Contract and to the successors, assigns, and legal

representatives of the other party with respect to all terms of this Contract.

11.10.2 The Owner and DB each state that there are no intended third-party beneficiary(ies) of this Contract.

11.10.3 The DB shall not assign, or transfer any right, title, or interest in this Contract without the Owner's prior written consent.

11.11 Extent of Contract.

11.11.1 Entire Agreement. The Contract Documents represent the entire and integrated agreement between the Owner and DB and supersede all prior negotiations, representations, or agreements, either written or oral.

11.11.2 Multiple Counterparts. This Contract may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

11.11.3 Captions. The captions and headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions or sections hereof.

11.11.4 Precedence. If there are any inconsistencies between the provisions of the Contract Documents and the provisions of the Request for Bid Proposals or this Contract, the provisions of this Contract shall prevail.

11.12 Severability. If any term or provision of this Contract or the application thereof to any Person or circumstance, is finally determined to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Contract or the application of such term or provision to other Persons or circumstances, shall not be affected thereby, and each term and provision of this Contract shall be valid and enforced to the fullest extent permitted by Applicable Law.

11.13 Electronic and Facsimile Signatures. Any party hereto may deliver a copy of its counterpart signature page to this Contract via electronic signature software, fax, e-mail, or web-based project management software. Each party hereto shall be entitled to rely upon an electronic, scanned or facsimile signature of any other party delivered in such a manner as if such signature were an original.

11.14 No Third-Party Interest. Unless expressly provided in this Contract, (1) no person or entity, other than the Owner and DB, will have any right or interest under the Contract, and (2) the Contract does not create a contractual relationship of any kind between any people or entities other than the Owner and DB.

11.15 Ohio Retirement System.

11.15.1 All individuals employed by the DB that provide personal services to the Owner are not public employees for the purposes of R.C. Chapter 145, as amended.

11.15.2 If the DB is a PERS retirant, as defined by R.C. § 145.38, the DB shall notify the Owner of such status in writing prior to commencement of Work. The Owner is not responsible for changes to the DB's retirement benefits resulting from entering into this Contract.

11.16 No Waiver.

11.16.1 The failure of the Owner or DB to insist in any one or more instances upon the strict performance of any one or more of the provisions of the Contract or to exercise any rights under the Contract or provided by law will not be construed as a waiver or relinquishment of that provision or right or of the right to subsequently demand strict performance or exercise the right and the rights will continue unchanged and remain in full force and effect.

11.17 Rights and Remedies. The duties, obligations, rights, and remedies under the Contract are

in addition to and not a limitation of the duties, obligations, rights, and remedies otherwise imposed by or available under Applicable Law.

11.18 Survival of Obligations. All representations, indemnity obligations, warranties, guarantees, and necessarily continuing obligations under the Contract, will survive final payment, completion and acceptance of the Work, and termination or completion of the Contract.

**END OF
DOCUMENT**

SUPPLEMENTARY CONDITIONS

Prevailing Wages

PREVAILING WAGE RATES

1.1 Payment of Prevailing Wage Rates.

1.1.1 The DB shall pay the prevailing wage rates of the Project locality, as issued by the Ohio Department of Commerce, Wage and Hour Bureau to laborers and mechanics performing Work on the Project.

1.1.2 The DB shall comply with the provisions, duties, obligations, and is subject to the remedies and penalties of R.C. Chapter 4115.

1.1.3 If the DB or its Subcontractors fail to comply with R.C. Chapter 4115, the Owner may withhold payment pursuant to Section 8.3.1 of the General Conditions. The DB is liable for violations committed by the DB or its Subcontractors to the extent provided in R.C. Chapter 4115.

1.1.4 The DB shall submit all payroll reports necessary for compliance with the requirements of Section 1.2 for all of the employees of the DB and of the DB's Subcontractors.

1.1.5 By executing a Contract, the DB certifies that it based its Bid upon the prevailing rates of wages as ascertained by the Ohio Department of Commerce, Wage and Hour Bureau for the Project as provided in R.C. §§ 4115.03 through 4115.14, which are inserted at the end of this Document.

1.2 Prevailing Wage Rate Revisions.

1.2.1 The Owner shall, within seven (7) business days after receipt of a notice of a change in the prevailing wage rates, notify the DB of the change.

1.2.2 The DB shall pay any revised wage rates issued during the term of the Contract.

1.3 Prevailing Wage Coordinator. Owner shall within three (3) days of its Notice to Proceed designate and notify the DB the name of its prevailing wage coordinator.

1.4 Payroll Schedule. Within ten (10) days of the date of the Notice to Proceed, the DB shall provide the Owner a schedule of dates during the term of the Contract on which wages shall be paid to employees for the Project.

1.5 Payroll Records and Reports.

1.5.1 The DB shall submit payroll reports to the prevailing wage coordinator within two weeks after the initial pay date, which reports shall be certified by the DB that the payroll is correct and complete and the wage rates shown are not less than those required by the Contract. The DB is responsible for submitting all payroll reports of its Subcontractors. Supplemental reports for each month thereafter unless the life of the contract is expected to be no more than four months from the beginning of performance in which event supplemental reports shall be filed each week after the initial report.

1.5.2 The certification of each payroll shall be executed by the DB and shall recite that the payroll is correct and complete and that the wage rates shown are not less than those required by the contract.

1. Each payroll report shall indicate the period covered and include a list

containing each employee's name, current address, and last four digits of their social security number.

2. Each payroll report shall list the number of hours each employee worked each day on the Project during the reporting period, the total hours each week on the Project, the employee's hourly rate of pay, job classification, hourly rate of fringe benefits, and all deductions from wages and net pay.
3. Each payroll report shall list each fringe benefit and state if it is paid as cash to the employee or to a named plan.
4. The DB and its Subcontractors shall submit apprenticeship agreements for all apprentices utilized on the Project.

1.6 The DB shall file with the Owner upon completion of the Project and prior to final payment an affidavit stating that the DB and Subcontractors have fully complied with R.C. §§ 4115.03 to 4115.16.

**END OF
DOCUMENT**

City of Mentor

Robert Fowler
Assistant City Manager