

# DRAFT AIA® Document A141® - 2014

## Standard Form of Agreement Between Owner and Design-Build Contractor

**AGREEMENT** made as of the « » day of « » in the year « 2023 »  
(In words, indicate day, month and year.)

**BETWEEN** the Owner:  
(Name, legal status, address and other information)

« Dexter Community Schools »« (DCS) »  
« 2704 Baker Road »  
« Dexter, MI 48130 »  
« »

and the Design-Build Contractor (DBC):  
(Name, legal status, address and other information)

« Draft Agreement »« »  
« As negotiated and approved by the Dexter Board of Education »  
« »  
« »

for the following Project:  
(Name, location and detailed description)

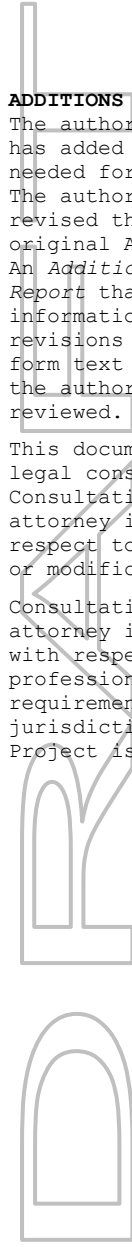
« Proposed Dexter Community Schools Solar Energy System »  
« as located within certain properties owned by DCS and identified within the RFP attached »  
« Dexter, MI 48130 »

The Owner and Design-Build Contractor agree as follows.

**ADDITIONS AND DELETIONS:**  
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.



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### ARTICLE 1 GENERAL PROVISIONS

#### § 1.1 Owner's Criteria

This Agreement is based on the Owner's Criteria set forth in this Section 1.1.

As per Owner's Request For Proposals (RFP) Dexter Community Schools Solar Energy System (DCS-SES) issued March 23, 2023 including incorporation and full compliance with all attachments issued with the RFP.

#### § 1.1.1 The Owner's program for the Project:

The Program requirements for the project are stated within the RFP. The selected Design-Build Contractor (the DBC) shall submit a fully compliant proposal per the RFP, then present a 50% complete set of design documents and its proposed schedule. This 50% construction document shall be submitted to the Owner along with a written narrative electronically one week prior to this presentation. At its in-person presentation the DBC will explain how the 50% documents and schedule comply with the RFP and seek input and clarification from the Owner as to the Owner's needs and any other input required by the DBC. The Owner shall make its comments and ask for revisions or clarifications within one week after the in-person presentation. The DBC shall incorporate all of the Owner's comments or respond in writing why it does not recommend the inclusion of any specific Owner comment(s).

The DBC shall then complete its construction documents and again present its completed plans to the Owner in a similar fashion as the 50% submittal. After receipt and incorporation of the Owner's final construction document comments, the DBC shall submit its construction documents to Authority(s) Having Jurisdiction and the local utility company, incorporate their requirements and obtain all required permits. Thereafter the Contractor will begin work per its proposed and Owner approved schedule. The DBC shall be solely responsible for the safe undertaking and execution of its work within the DCS' active school environment. See the RFP for all other specific elements of the Owner's program and its requirements of the Bid.

**§ 1.1.2** The Owner's design requirements for the Project and related documentation:

As per Owner's Request for Proposals (RFP) Dexter Community Schools Solar Energy System issued March 23, 2023 including incorporation and full compliance with all attachments issued with the RFP.

As required, throughout design and construction phases, the Design Build Contractor shall meet with the Owner, all Authorities Having Jurisdiction over the project and Utility Providers who may have interest in the project and gain their input as required to allow the project to proceed legally in full compliance with the RFP, to the Board of Education for their approval to commence work.

The Design-Build Contractor shall obtain and pay for all required survey, geotechnical investigation, utility studies and required utility services and costs as required by the utility provider, including any meter, relocation or disconnect/re-connection costs required by such utility provider to incorporate the DCS SES project to the Owner's outdoor primary service switchgear and transformer yard. The DBC shall provide and pay for materials, labor, equipment and approvals to construct the complete project including all required coordination, site development, the work's safe installation and restoration of all existing facilities or ground finishes disturbed by the work.

**§ 1.1.3** The Project's physical characteristics:

The Solar Walkway Canopy portion of the DCS Solar Energy System project shall be constructed behind the student sidewalk at the DCS Bus Hub off Dan Hoey Road behind Wylie Elementary School. The entrance to the Bus Hub is located west of Anchor Elementary School, which is at 7480 Dan Hoey Rd, Dexter, Michigan.

The solar array shall be constructed on a plateau parcel owned by DCS immediately west of the Bus Loop entrance road.

Both elements of the solar energy system shall be connected to the exterior primary switch gear and transformer yard immediately behind Wylie, which serves three elementary schools, a middle school, and the community pool .

See plans included within the RFP for locations of these three project element locations.

**§ 1.1.4** The Owner's anticipated Sustainable Objective for the Project, if any:

As per Owner's Request For Proposals (RFP) Dexter Community Schools Solar Energy System issued March 23, 2023 including incorporation and full compliance with all attachments issued with the RFP and as agreed by the parties in writing at each stage of design approval..

**§ 1.1.5** Incentive programs the Owner intends to pursue for the Project, including those related to the Sustainable Objective, and any deadlines for receiving the incentives that are dependent on, or related to, the DBC's services, are as follows:

As per Owner's Request for Proposals (RFP) Dexter Community Schools Solar Energy System issued March 23, 2023 including incorporation and full compliance with all attachments issued with the RFP.

**§ 1.1.6** The Owner's budget for the Work to be provided by the DBC is set forth below:

As per Owner's Request for Proposals (RFP) Dexter Community Schools Solar Energy System issued March 23, 2023 including incorporation and full compliance with all attachments issued with the RFP.

**§ 1.1.7** The Owner's design and construction milestone dates:

**.1** Design phase milestone dates:

« To be agreed between the Parties prior to execution of this Agreement and incorporated thereafter by written Change Order to the Agreement. »

**.2 Submission of DBC Proposal:**

« Thursday, April 27, 2023 unless revised by written Addendum issued by the Owner. »

**.3 Phased completion dates:**

« To be agreed between the Parties prior to execution of this Agreement and incorporated thereafter by written Change Order to the Agreement. »

**.4 Substantial Completion date:**

« To be agreed between the Parties prior to execution of this Agreement and incorporated thereafter by written Modification to the Agreement. »

**.5 Other milestone dates:**

« To be agreed between the Parties prior to execution of this Agreement and incorporated thereafter by written Modification to the Agreement. »

**§ 1.1.8** The Owner requires the DBC to retain any required Architect/Engineer, any other needed Consultants and Contractors at the DBC's cost, and to disclose all of these parties along with a description of their respective roles within its Bid Proposal:  
*(List name, legal status, address and other information.)*

**.1 Architect/Engineer**

« By selected Design Build Contractor »

**.2 Consultants**

« By selected Design Build Contractor »

**.3 Contractors**

« By selected Design Build Contractor »

**§ 1.1.9** Additional Owner's Criteria upon which the Agreement is based:  
*(Identify special characteristics or needs of the Project not identified elsewhere, such as historic preservation requirements.)*

« As per Owner's Request for Proposals (RFP) Dexter Community Schools Solar Energy System (DCS-SES) issued March 23, 2023 including incorporation and full compliance with all attachments issued with the RFP.»

**§ 1.1.10** The DBC shall confirm that the information included in the Owner's Criteria complies with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

**§ 1.1.10.1** If the Owner's Criteria conflicts with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the DBC shall notify the Owner of the conflict in writing before submission of its Bid Proposal.

**§ 1.1.11** If there is a change in the Owner's Criteria, the Owner and the DBC shall execute a Modification in accordance with Article 6.

§ 1.1.12 If the Owner and DBC intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions. Unless otherwise agreed, the parties will use AIA Document E203™–2013 to establish the protocols for the development, use, transmission, and exchange of digital data and building information modeling.

## § 1.2 Project Team

§ 1.2.1 The Owner identifies the following representative in accordance with Section 7.1.1:  
(List name, address and other information.)

« Craig McCalla, Principal for Operations »  
« Dexter Community Schools »  
« 2704 Baker Rd »  
« Dexter, MI 48130 »

§ 1.2.2 The persons or entities, in addition to the Owner’s representative, who are required to review the DBC’s Submittals are as follows:  
(List name, address and other information.)

« The Owner’s Consultants shown in Article 1.2.3 and as designated in writing by the Owner Representative or by the DCS School Superintendent »

§ 1.2.3 The Owner will retain the following consultants and separate contractors:  
(List discipline, scope of work, and, if known, identify by name and address.)

« Peter Basso Associates, Inc as electrical engineering review consultant and Granger Construction Company as construction management review consultant who shall provide review of Design-Build Contractor proposal and construction documents »

§ 1.2.4 The DBC identifies the following representative in accordance with Section 3.1.2:  
(List name, address and other information.)

« »  
« »  
« »  
« »  
« »  
« »

§ 1.2.5 Neither the Owner’s nor the DBC’s representative shall be changed without ten days’ written notice to the other party.

## § 1.3 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Section 14.3, the method of binding dispute resolution shall be the following:  
(Check the appropriate box. If the Owner and DBC do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

[  ] Arbitration pursuant to Section 14.4

[  ] Litigation in a court of competent jurisdiction in the County of Washtenaw, State of Michigan

[  ] Other: (Specify)

« »

## § 1.4 Definitions

**§ 1.4.1 Design-Build Documents.** The Design-Build Documents consist of this Agreement between Owner and DBC and its attached Exhibits (hereinafter, the “Agreement”); other documents listed in this Agreement; and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, including the Design-Build Amendment, (2) a Change Order, or (3) a Change Directive.

**§ 1.4.2 The Contract.** The Design-Build Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Design-Build Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the DBC.

**§ 1.4.3 The Work.** The term “Work” means the design, construction and related services required to fulfill the DBC’s obligations under the Design-Build Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the DBC. The Work may constitute the whole or a part of the Project.

**§ 1.4.4 The Project.** The Project is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part, and may include design and construction by the Owner and by separate contractors.

**§ 1.4.5 Instruments of Service.** Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the DBC, Contractor(s), Architect/Engineer, and Consultant(s) under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models and other similar materials.

**§ 1.4.6 Submittal.** A Submittal is any submission to the Owner for review and approval demonstrating how the DBC proposes to conform to the Design-Build Documents for those portions of the Work for which the Design-Build Documents require Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples. Submittals are not Design-Build Documents unless incorporated into a Modification.

**§ 1.4.7 Owner.** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term “Owner” means the Owner or the Owner’s authorized representative.

**§ 1.4.8 DBC.** The DBC is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term “DBC” means the DBC or the DBC’s authorized representative.

**§ 1.4.9 Consultant.** A Consultant is a person or entity providing professional services for the DBC for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. To the extent required by the relevant jurisdiction, the Consultant shall be lawfully licensed to provide the required professional services.

**§ 1.4.10 Architect/Engineer.** The Architect/Engineer (AE) is a person or entity providing design services for the DBC for all or a portion of the Work, and is lawfully licensed to practice architecture and or engineering in the applicable jurisdiction. The Architect/Engineer and or AE is referred to throughout the Design-Build Documents as if singular in number.

**§ 1.4.11 Contractor.** A Contractor is a person or entity performing all or a portion of the construction, required in connection with the Work, for the DBC. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor.

**§ 1.4.12 Paragraph deleted.**

§ 1.4.13 **Contract Time.** Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, as set forth in the Design-Build Amendment for Substantial Completion of the Work.

§ 1.4.14 **Day.** The term “day” as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

§ 1.4.15 **Contract Sum.** The Contract Sum is the amount to be paid to the DBC for performance of the Work after execution of the Design-Build Amendment, as identified in Article A.1 of the Design-Build Amendment.

## ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS

### § 2.1 Compensation for Work Performed Prior To Execution of Design-Build Amendment

§ 2.1.1 Unless otherwise agreed, payments for Work performed prior to Execution of the Design-Build Amendment shall be made monthly. For the DBC’s performance of Work prior to the execution of the Design-Build Amendment, the Owner shall compensate the DBC as follows:

*(Insert amount of, or basis for, compensation, including compensation for any Sustainability Services, or indicate the exhibit in which the information is provided. If there will be a limit on the total amount of compensation for Work performed prior to the execution of the Design-Build Amendment, state the amount of the limit.)*

« »

§ 2.1.2 The hourly billing rates for services of the DBC and the DBC’s Architect/Engineer, Consultants and Contractors, if any, are set forth below. Base proposal includes all design services described in the Owner’s RFP. Other services required that the Parties agree in writing are additional services may be agreed between the Parties at contract date.

Individual or Position	Rate

### § 2.1.3 Compensation for Reimbursable Expenses Prior To Execution of Design-Build Amendment

§ 2.1.3.1 Reimbursable Expenses are in addition to compensation set forth in Section 2.1.1 and 2.1.2 and include expenses, directly related to the Project, incurred by the DBC and the DBC’s Architect/Engineer, Consultants, and Contractors, as follows:

(Paragraphs deleted)

- .9 Other Project-related expenditures, ONLY if not included within the RFP and if authorized in advance, in writing, by the Owner.

§ 2.1.3.2 For Reimbursable Expenses, the compensation shall be the expenses the DBC and the DBC’s Architect/Engineer, Consultants and Contractors incurred, plus an administrative fee of « zero » percent ( « 0 » %) of the expenses incurred.

### § 2.1.4 Payments to the DBC Prior To Execution of Design-Build Amendment

§ 2.1.4.1 Payments are due and payable within thirty (30) days of the DBC’s Owner approved invoice. Uncontested amounts unpaid « sixty » ( « 60 » ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the DBC.

*(Insert rate of monthly or annual interest agreed upon.)*

« Zero » % « 0% » per annum

§ 2.1.4.2 Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times for a period of two years following execution of the Design-Build Amendment or termination of this Agreement, whichever occurs first.

## § 2.2 Contract Sum and Payment for Work Performed After Execution of Design-Build Amendment

For the DBC's performance of the Work after execution of the Design-Build Amendment, the Owner shall pay to the DBC the Contract Sum in current funds as agreed in the Design-Build Amendment.

## ARTICLE 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT

### § 3.1 General

§ 3.1.1 The DBC shall comply with any applicable licensing requirements in the jurisdiction where the Project is located.

§ 3.1.2 The DBC shall designate in writing a representative who is authorized to act on the DBC's behalf with respect to the Project.

§ 3.1.3 The DBC shall perform the Work in accordance with the Design-Build Documents in a good and workmanlike manner using that degree of care and skill normally exercised by a DBC of recognized experience and expertise in providing design-build services for the construction of the specified services in and around public school facilities. The DBC shall not be relieved of the obligation to perform the Work in accordance with the Design-Build Documents by the activities, tests, inspections or approvals of the Owner.

§ 3.1.3.1 The DBC shall perform the Work in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the DBC performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, the DBC shall assume responsibility for such Work and shall bear the costs attributable to correction.

§ 3.1.3.2 Neither the DBC nor any Contractor, Consultant, or Architect/Engineer shall be obligated to perform any act which they believe will violate any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the DBC determines that implementation of any instruction received from the Owner, including those in the Owner's Criteria, would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the DBC shall notify the Owner in writing. Upon verification by the Owner that a change to the Owner's Criteria is required to remedy the violation, the Owner and the DBC shall execute a Modification in accordance with Article 6.

§ 3.1.4 The DBC shall be responsible to the Owner for acts and omissions of the DBC's employees, Architect/Engineer, Consultants, Contractors, and their agents and employees, and other persons or entities performing portions of the Work.

§ 3.1.5 **General Consultation.** The DBC shall schedule and conduct periodic meetings with the Owner to review matters such as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.6 When applicable law requires that services be performed by licensed professionals, the DBC shall provide those services through qualified, licensed professionals. The Owner understands and agrees that the services of the DBC's Architect/Engineer and the DBC's other Consultants are performed in the sole interest of, and for the exclusive benefit of, the DBC.

§ 3.1.7 The DBC, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

### § 3.1.8 Progress Reports

§ 3.1.8.1 The DBC shall keep the Owner informed of the progress and quality of the Work. On a monthly basis, or otherwise as agreed to by the Owner and DBC, the DBC shall submit written progress reports to the Owner, showing estimated percentages of completion and other information identified below:

- .1 Work completed for the period, including photos to support the status report;
- .2 Project schedule status, including any schedule recovery actions deemed necessary;
- .3 Submittal schedule and status report, including a summary of outstanding Submittals;
- .4 Responses to requests for information to be provided by the Owner;
- .5 Approved Change Orders and Change Directives;
- .6 Pending Change Order and Change Directive status reports;
- .7 Tests and inspection reports;
- .8 Status report of Work rejected by the Owner;



- .9 Status of Claims previously submitted in accordance with Article 14;
- .10 Cumulative total of the Cost of the Work to date including the DBC's compensation and Reimbursable Expenses, if any;
- .11 Current Project cash-flow and forecast reports; and
- .12 Additional information as agreed to by the Owner and DBC.

§ 3.1.8.2 In addition, where the Contract Sum is the Cost of the Work with or without a Guaranteed Maximum Price, the DBC shall include the following additional information in its progress reports:

- .1 DBC's work force report;
- .2 Equipment utilization report; and
- .3 Cost summary, comparing actual costs to updated cost estimates.

### § 3.1.9 DBC's Schedules

§ 3.1.9.1 The DBC, promptly after execution of this Agreement, shall prepare and submit for the Owner's information and approval a detailed schedule for the Work. The schedule, including the time required for design, submittals, procurement activities and construction, shall not exceed time limits current under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. Predecessor and successor logic shall be provided for all activities. No activity, except procurement activities, on the submitted schedule shall exceed two weeks in duration, unless approved in writing by the Owner.

§ 3.1.9.2 The DBC shall perform the Work in general accordance with the most recent schedules submitted to and approved by the Owner.

§ 3.1.10 **Certifications.** Upon the Owner's written request, the DBC shall obtain from the Architect/Engineer, Consultants, and Contractors, and furnish to the Owner, certifications with respect to the documents and services provided by the Architect/Engineer, Consultants, and Contractors (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications relate (i) are consistent with the Design-Build Documents, except to the extent specifically identified in the certificate, and (ii) comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications. The DBC's Architect/Engineer, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

### § 3.1.11 DBC's Submittals

§ 3.1.11.1 Prior to submission of any Submittals, the DBC shall prepare a Submittal schedule, and shall submit the schedule for the Owner's approval. The Owner's approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (1) be coordinated with the DBC's schedule provided in Section 3.1.9.1, (2) allow the Owner reasonable time to review Submittals, and (3) be periodically updated to reflect the progress of the Work. If the DBC fails to submit a Submittal schedule, the DBC shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of Submittals.

§ 3.1.11.2 By providing Submittals the DBC represents to the Owner that it has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Design-Build Documents.

§ 3.1.11.3 The DBC shall perform no portion of the Work for which the Design-Build Documents require Submittals until the Owner has approved the respective Submittal.

§ 3.1.11.4 The Work shall be in accordance with approved Submittals except that the DBC shall not be relieved of its responsibility to perform the Work consistent with the requirements of the Design-Build Documents. The Work may deviate from the Design-Build Documents only if the DBC has notified the Owner in writing of a deviation from the Design-Build Documents at the time of the Submittal and a Modification is executed authorizing the

identified deviation. The DBC shall not be relieved of responsibility for errors or omissions in Submittals by the Owner's approval of the Submittals.

**§ 3.1.11.5** All professional design services or certifications to be provided by the DBC, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. The Owner and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

**§ 3.1.12 Warranty.** The DBC warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Design-Build Documents require or permit otherwise for a period of two (2) years from the date of substantial completion. The DBC further warrants that the Work will conform to the requirements of the Design-Build Documents and will be free from defects, except for those inherent in the quality of the Work or otherwise expressly permitted by the Design-Build Documents. Work, materials, or equipment not conforming to these requirements may be considered defective. The DBC's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the DBC, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the DBC shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

**§ 3.1.13 Royalties, Patents and Copyrights**

**§ 3.1.13.1** The DBC shall pay all royalties and license fees.

**§ 3.1.13.2** The DBC shall defend suits or claims for infringement of copyrights and patent rights and shall indemnify and hold the Owner and its separate contractors and consultants harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Owner. However, if the DBC has reason to believe that the design, process or product required in the Owner's Criteria is an infringement of a copyright or a patent, the DBC shall be responsible for such loss unless such information is promptly furnished to the Owner. If the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the DBC, the Owner shall give prompt written notice to the DBC.

**§ 3.1.14 Indemnification**

**§ 3.1.14.1** To the fullest extent permitted by law, the DBC shall indemnify, defend and hold harmless the Owner, including the Owner's officials, agents and employees, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, but only to the extent caused directly or indirectly by (1) the negligent acts, errors or omissions of the DBC, Architect/Engineer, a Consultant, a Contractor, a Subcontractor (of any tier) or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, (2) any breach of the terms of this Agreement by the DBC, its employees, agents or its consultants, (3) any breach of any representation or warranty by the DBC, its employees, agents or its consultants under this Agreement or any warranty obligation undertaken by the DBC, its employees, agents, or its consultants. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.1.14..

**§ 3.1.14.2** The indemnification obligation under this Section 3.1.14 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for DBC, Architect/Engineer, a Consultant, a Contractor, or anyone directly or indirectly employed by them, under workers' compensation acts, disability benefit acts or other employee benefit acts.

**§ 3.1.15 Contingent Assignment of Agreements**

**§ 3.1.15.1** Each agreement for a portion of the Work is assigned by the DBC to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause, pursuant to Sections 13.1.4 or 13.2.2, and only for those agreements that the Owner accepts by written notification to the DBC and the Architect/Engineer, Consultants, and Contractors whose agreements are accepted for assignment; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of an agreement, the Owner assumes the DBC's rights and obligations under the agreement.

§ 3.1.15.2 Upon such assignment, if the Work has been suspended for more than 30 days, the compensation under the assigned agreement shall be equitably adjusted for increases in cost resulting from the suspension.

§ 3.1.15.3 Upon such assignment to the Owner under this Section 3.1.15, the Owner may further assign the agreement to a successor DBC or other entity. If the Owner assigns the agreement to a successor DBC or other entity, the Owner shall nevertheless remain legally responsible for all of the successor DBC's or other entity's obligations under the agreement.

§ 3.1.16 **DBC's Insurance and Bonds.** The DBC shall purchase and maintain insurance and provide bonds as set forth in the Owner's RFP dated March 23, 2023.

## ARTICLE 4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT

### § 4.1 General

§ 4.1.1 Any information submitted by the DBC, and any interim decisions made by the Owner, shall be for the purpose of facilitating the design process and shall not modify the Owner's Criteria unless the Owner and DBC execute a Modification.

§ 4.1.2 The DBC shall advise the Owner on proposed site use and improvements, selection of materials, and building systems and equipment. The DBC shall also provide the Owner with recommendations, consistent with the Owner's Criteria, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

### § 4.2 Evaluation of the Owner's Criteria

§ 4.2.1 The DBC shall schedule and conduct meetings with the Owner and any other necessary individuals or entities to discuss and review the Owner's Criteria as set forth in Section 1.1. The DBC shall thereafter again meet with the Owner to discuss a preliminary evaluation of the Owner's Criteria. The preliminary evaluation shall address possible alternative approaches to design and construction of the Project and include the DBC's recommendations, if any, with regard to accelerated or fast-track scheduling, procurement, or phased construction. The preliminary evaluation shall consider cost information, constructability, and procurement and construction scheduling issues.

§ 4.2.2 After the DBC meets with the Owner and presents the preliminary evaluation, the DBC shall provide a written report to the Owner, summarizing the DBC's evaluation of the Owner's Criteria. The report shall also include

- .1 allocations of program functions, detailing each function and their square foot areas;
- .2 a preliminary estimate of the Cost of the Work, and, if necessary, recommendations to adjust the Owner's Criteria to conform to the Owner's budget;
- .3 a preliminary schedule, which shall include proposed design milestones; dates for receiving additional information from, or for work to be completed by, the Owner; anticipated date for the DBC's Proposal; and dates of periodic design review sessions with the Owner; and
- .4 the following:  
*(List additional information, if any, to be included in the DBC's written report.)*

« Design Build Contractor's Architect/Engineer code review and compliance plan »

§ 4.2.3 The Owner shall review the DBC's written report and, if acceptable, provide the DBC with written consent to proceed to the development of the Preliminary Design as described in Section 4.3. The consent to proceed shall not be understood to modify the Owner's Criteria unless the Owner and DBC execute a Modification.

### § 4.3 Preliminary Design

§ 4.3.1 Upon the Owner's issuance of a written consent to proceed under Section 4.2.3, the DBC shall prepare and submit a Preliminary Design to the Owner. The Preliminary Design shall include a report identifying any deviations from the Owner's Criteria, and shall include the following:

- .1 Confirmation of the allocations of program functions;
- .2 Site plan;

- .3 Building plans, sections and elevations;
- .4 Structural system;
- .5 Selections of major building systems, including but not limited to mechanical, electrical and plumbing systems; and
- .6 Outline specifications or sufficient drawing notes describing construction materials.

The Preliminary Design may include some combination of physical study models, perspective sketches, or digital modeling.

§ 4.3.2 The Owner shall review the Preliminary Design and, if acceptable, provide the DBC with written consent to proceed to development of the DBC's Proposal. The Preliminary Design shall not modify the Owner's Criteria unless the Owner and DBC execute a Modification.

#### § 4.4 DBC's Proposal

§ 4.4.1 Upon the Owner's issuance of a written consent to proceed under Section 4.3.2, the DBC shall prepare and submit the DBC's Proposal to the Owner. The DBC's Proposal shall include the following:

- .1 A list of the Preliminary Design documents and other information, including the DBC's clarifications, assumptions and deviations from the Owner's Criteria, upon which the DBC's Proposal is based;
- .2 The proposed Contract Sum, not to exceed its proposed sum of \$ (TO BE AGREED BETWEEN THE PARTIES) including the compensation method and, if based upon the Cost of the Work plus a fee, a written statement of estimated cost organized by trade categories, allowances, contingencies, DBC's Fee, and other items that comprise the Contract Sum;
- .3 The proposed date the DBC shall achieve Substantial Completion;
- .4 An enumeration of any qualifications and exclusions, if applicable;
- .5 A list of the DBC's key personnel, Contractors and suppliers; and
- .6 The date on which the DBC's Proposal expires.

§ 4.4.2 Submission of the DBC's Proposal shall constitute a representation by the DBC that it has visited the site and become familiar with local conditions under which the Work is to be completed.

§ 4.4.3 If the Owner and DBC agree on a proposal, the Owner and DBC shall execute the Design-Build Amendment setting forth the terms of their agreement.

### ARTICLE 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT

#### § 5.1 Construction Documents

§ 5.1.1 Upon the execution of the Design-Build Amendment, the DBC shall prepare Construction Documents. The Construction Documents shall establish in complete and unambiguous detail the quality levels of materials and systems required. The Construction Documents shall be consistent with the Design-Build Documents. The Construction Documents shall comply with applicable laws, statutes, codes, rules, and regulations.

§ 5.1.2 The DBC shall provide the Construction Documents to the Owner for the Owner's information and approval. Approval of the Construction Documents shall not constitute approval of the means, techniques, or particular material(s) recommended by the DBC. If the Owner discovers any deviations between the Construction Documents and the Design-Build Documents, the Owner shall promptly notify the DBC of such deviations in writing. The Construction Documents shall not modify the Design-Build Documents unless the Owner and DBC execute a Modification. The failure of the Owner to discover any such deviations shall not relieve the DBC of the obligation to perform the Work in accordance with the Design-Build Documents.

#### § 5.2 Construction

§ 5.2.1 **Commencement.** Except as permitted in Section 5.2.2, construction shall not commence prior to execution of the Design-Build Amendment.

§ 5.2.2 If the Owner and DBC agree in writing, portions of the procurement or construction may proceed prior to the execution of the Design-Build Amendment. However, such authorization shall not waive the Owner's right to reject the DBC's Proposal.

§ 5.2.3 The DBC shall supervise and direct the Work, using the DBC Contractor's best supervision, skill and attention on a full-time basis, whenever work is underway on the jobsite. The DBC shall be solely responsible for,

and have control over, construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, unless the Design-Build Documents give other specific instructions concerning these matters. The DBC shall inspect the Work on a full time basis whenever work is underway to be sure the Work is being performed in a fine workmanlike manner, there are no defects or deficiencies in the Work, and that the Work conforms in all respects to the Contract Documents.

**§ 5.2.4** The DBC shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

### **§ 5.3 Labor and Materials**

**§ 5.3.1** Unless otherwise provided in the Design-Build Documents, the DBC shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services, necessary for proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.

**§ 5.3.2** When a material or system is specified in the Design-Build Documents, the DBC may make substitutions only in accordance with Article 6.

**§ 5.3.3** The DBC shall enforce strict discipline and good order among the DBC's employees and other persons carrying out the Work. The DBC shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

### **§ 5.4 Taxes**

The DBC shall pay sales, consumer, use and similar taxes, for the Work provided by the DBC, that are legally enacted when the Design-Build Amendment is executed, whether or not yet effective or merely scheduled to go into effect.

### **§ 5.5 Permits, Fees, Notices and Compliance with Laws**

**§ 5.5.1** Unless otherwise provided in the Design-Build Documents, the DBC shall secure and pay for the building permit as well as any other permits, fees, licenses, and inspections by government agencies, necessary for proper execution of the Work and Substantial Completion of the Project.

**§ 5.5.2** The DBC shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, applicable to performance of the Work.

**§ 5.5.3 Concealed or Unknown Conditions.** If the DBC encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, the DBC shall promptly provide notice to the Owner before conditions are disturbed and in no event later than three (3) days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the DBC's cost of, or time required for, performance of any part of the Work, shall recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the DBC in writing, stating the reasons. If the DBC disputes the Owner's determination or recommendation, the DBC may proceed as provided in Article 14.

**§ 5.5.4** If, in the course of the Work, the DBC encounters human remains, or recognizes the existence of burial markers, archaeological sites, or wetlands, not indicated in the Design-Build Documents, the DBC shall immediately suspend any operations that would affect them and shall notify the Owner. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The DBC shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 14.

## **§ 5.6 Allowances**

**§ 5.6.1** There are no allowances agreed within the DBC's proposal, except those allowances the DBC included for its own purposes, for which the Owner has no responsibility to reimburse outside the stipulated lump sum amount.

## **§ 5.6.2 Deleted**

(Paragraphs deleted).

**§ 5.6.3** The Owner shall make selections of materials and equipment with reasonable promptness for allowances requiring Owner selection.

## **§ 5.7 Key Personnel, Contractors and Suppliers**

**§ 5.7.1** The DBC shall not employ personnel, or contract with Contractors or suppliers to whom the Owner has made reasonable and timely objection. The DBC shall not be required to contract with anyone to whom the DBC has made reasonable and timely objection.

**§ 5.7.2** If the DBC changes any of the personnel, Contractors or suppliers identified in the Design-Build Amendment, the DBC shall notify the Owner and provide the name and qualifications of the new personnel, Contractor or supplier. The Owner may reply within 14 days to the DBC in writing, stating (1) whether the Owner has reasonable objection to the proposed personnel, Contractor or supplier or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

**§ 5.7.3** Except for those persons or entities already identified or required in the Design-Build Amendment, the DBC, as soon as practicable after execution of the Design-Build Amendment, shall furnish in writing to the Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner may reply within 14 days to the DBC in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

**§ 5.7.3.1** If the Owner has reasonable objection to a person or entity proposed by the DBC, the DBC shall propose another to whom the Owner has no reasonable objection. If the rejected person or entity was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute person or entity's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the DBC has acted promptly and responsively in submitting names as required.

## **§ 5.8 Documents and Submittals at the Site**

The DBC shall maintain at the site for the Owner one copy of the Design-Build Documents and a current set of the Construction Documents, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Submittals in high resolution pdf file format. The DBC shall deliver these items to the Owner in accordance with Section 9.10.2 as a record of the Work as constructed at substantial completion.

## **§ 5.9 Use of Site**

The DBC shall confine operations at the site within a safety fence and/or barricade to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment.

## **§ 5.10 Cutting and Patching**

The DBC shall not cut, patch or otherwise alter fully or partially completed construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The DBC shall not unreasonably withhold from the Owner or a separate contractor the DBC's consent to cutting or otherwise altering the Work.

## **§ 5.11 Cleaning Up**

**§ 5.11.1** The DBC shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract on a daily basis. At completion of the Work, the DBC shall remove waste materials, rubbish, the DBC's tools, construction equipment, machinery and surplus materials from and about the Project and restore the site to the specified conditions or at a minimum to the condition which existed prior to the Work.

**§ 5.11.2** If the DBC fails to clean up as provided in the Design-Build Documents, the Owner may do so and Owner shall be entitled to reimbursement from the DBC.

## **§ 5.12 Access to Work**

The DBC shall provide the Owner and its separate contractors and consultants access to the Work in preparation and progress wherever located. The DBC shall prohibit smoking and other tobacco use on the Owner's property at all times. The DBC shall ensure good behavior by all parties on its site appropriate to an elementary public school environment. The DBC shall put in place and maintain a safety program in full compliance with MIOSHA and other applicable rules and regulations. The DBC shall permanently remove and exclude any party(ies) who do not comply with these requirements. The DBC shall make known and clearly notify the Owner and all other parties who may enter the work area(s) regarding Project safety criteria and programs, which the Owner, and its contractors and consultants, shall comply with while at the site.

## **§ 5.13 Construction by Owner or by Separate Contractors**

### **§ 5.13.1 Owner's Right to Perform Construction and to Award Separate Contracts**

**§ 5.13.1.1** The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces; and to award separate contracts in connection with other portions of the Project, or other construction or operations on the site, under terms and conditions identical or substantially similar to this Contract, including those terms and conditions related to insurance and waiver of subrogation. The Owner shall notify the DBC promptly after execution of any separate contract. If the DBC claims that delay or additional cost is involved because of such action by the Owner, the DBC shall make a Claim as provided in Article 14.

**§ 5.13.1.2** When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "DBC" in the Design-Build Documents in each case shall mean the individual or entity that executes each separate agreement with the Owner.

**§ 5.13.1.3** The Owner shall provide for coordination of the activities of the Owner's own forces, and of each separate contractor, with the Work of the DBC, who shall cooperate with them. The DBC shall participate with other separate contractors and the Owner in reviewing their construction schedules. The DBC shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the DBC, separate contractors and the Owner until subsequently revised.

**§ 5.13.1.4** Unless otherwise provided in the Design-Build Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or separate contractors, the Owner shall be deemed to be subject to the same obligations, and to have the same rights, that apply to the DBC under the Contract.

## **§ 5.14 Mutual Responsibility**

**§ 5.14.1** The DBC shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the DBC's construction and operations with theirs as required by the Design-Build Documents.

**§ 5.14.2** If part of the DBC's Work depends upon construction or operations by the Owner or a separate contractor, the DBC shall, prior to proceeding with that portion of the Work, prepare a written report to the Owner, identifying apparent discrepancies or defects in the construction or operations by the Owner or separate contractor that would render it unsuitable for proper execution and results of the DBC's Work. Failure of the DBC to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the DBC's Work, except as to defects not then reasonably discoverable.

**§ 5.14.3** The DBC shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the DBC's delays, improperly timed activities or defective construction. The Owner shall be responsible

to the DBC for costs the DBC incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 5.14.4 The DBC shall promptly remedy damage the DBC wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 5.14.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching the Work as the DBC has with respect to the construction of the Owner or separate contractors in Section 5.10.

#### § 5.15 Owner's Right to Clean Up

If a dispute arises among the DBC, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and will allocate the cost among those responsible.

### ARTICLE 6 CHANGES IN THE WORK

#### § 6.1 General

§ 6.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order or Change Directive, subject to the limitations stated in this Article 6 and elsewhere in the Design-Build Documents.

§ 6.1.2 A Change Order shall be based upon agreement between the Owner and DBC. The Owner may issue a Change Directive without agreement by the DBC.

§ 6.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the DBC shall proceed promptly, unless otherwise provided in the Change Order or Change Directive.

#### § 6.2 Change Orders

A Change Order is a written instrument signed by the Owner and DBC stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the DBC's compensation; and
- .3 The extent of the adjustment, if any, in the Contract Time.

#### § 6.3 Change Directives

§ 6.3.1 A Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the DBC's compensation, or Contract Time. The Owner may by Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the DBC's compensation, and Contract Time being adjusted accordingly.

§ 6.3.2 A Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 6.3.3 If the Change Directive provides for an adjustment to the Contract Sum or, if prior to execution of the Design-Build Amendment, an adjustment in the DBC's compensation, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Design-Build Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee not to exceed 15%; or
- .4 As provided in Section 6.3.7.

§ 6.3.4 If unit prices are stated in the Design-Build Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or DBC, the applicable unit prices shall be equitably adjusted.



§ 6.3.5 Upon receipt of a Change Directive, the DBC shall promptly proceed with the change in the Work involved and advise the Owner of the DBC's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the DBC's compensation, or Contract Time.

§ 6.3.6 A Change Directive signed by the DBC indicates the DBC's agreement therewith, including adjustment in Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the DBC's compensation, and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 6.3.7 If the DBC does not respond promptly or disagrees with the method for adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the method for adjustment in the DBC's compensation, the Owner shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 6.3.3.3, the DBC shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section 6.3.7 shall be limited to the following:

- .1 Additional costs of professional services;
- .2 Costs of labor, including social security, unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .3 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .4 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the DBC or others;
- .5 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .6 Additional costs of supervision and field office personnel directly attributable to the change.

§ 6.3.8 The amount of credit to be allowed by the DBC to the Owner for a deletion or change that results in a net decrease in the Contract Sum or, if prior to execution of the Design-Build Amendment, in the DBC's compensation, shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 6.3.9 Pending final determination of the total cost of a Change Directive to the Owner, the DBC may request payment for Work completed under the Change Directive in Applications for Payment. The Owner will make an interim determination for purposes of certification for payment for those costs deemed to be reasonably justified. The Owner's interim determination of cost shall adjust the Contract Sum or, if prior to execution of the Design-Build Amendment, the DBC's compensation, on the same basis as a Change Order, subject to the right of DBC to disagree and assert a Claim in accordance with Article 14.

§ 6.3.10 When the Owner and DBC agree with a determination concerning the adjustments in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the DBC's compensation and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Owner and DBC shall execute a Change Order. Change Orders may be issued for all or any part of a Change Directive.

## ARTICLE 7 OWNER'S RESPONSIBILITIES

### § 7.1 General

§ 7.1.1 The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization. The DBC recognizes and acknowledges that the Owner is a public body and that certain decisions will require approval of the Owner's Board of Education.

§ 7.1.2 The Owner shall endeavor to render decisions in a timely manner and in accordance with the DBC's schedule agreed to by the Owner.

## **§ 7.2 Information and Services Required of the Owner**

**§ 7.2.1** The Owner shall furnish information or services required of the Owner by the Design-Build Documents with reasonable promptness.

**§ 7.2.2** The Owner shall provide, to the extent under the Owner's control and if not required by the Design-Build Documents to be provided by the DBC, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems; chemical, air and water pollution; hazardous materials; or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site. Upon receipt of a written request from the DBC, the Owner shall also provide surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site under the Owner's control. The DBC shall propose the locations of the project on the property for the Owner's review and approval and therein obtain approvals as required from all authorities having jurisdiction for site plan reviews as determined by the Owner.

**§ 7.2.3** The Owner shall obtain easements where required by law and essential to the executions of the Project as identified and applied for by the DBC.

**§ 7.2.4** The Owner shall cooperate with the DBC in securing necessary building and other permits, licenses and inspections.

**§ 7.2.5** No services, information, surveys and reports are required to be provided by the Owner under this Agreement, unless agreed in writing between the Parties. The Owner will cooperate with the DBC in applying for necessary utility changes, but the DBC shall secure the compliant coordination of the utility and pay all necessary costs to gain required services or approval of the utility. In no event shall the DBC be relieved of its responsibility to exercise proper precautions relating to the safe performance of the Work.

**§ 7.2.6** If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the DBC. The Parties recognize and agree that the Owner has no duty nor obligation to inspect or observe the Work for faults or defects.

**§ 7.2.7** Paragraph Deleted

**§ 7.2.8** Except as otherwise provided in the Design-Build Documents or when direct communications have been specially authorized, the Owner shall communicate through the DBC with persons or entities employed or retained by the DBC as identified in this Agreement.

**§ 7.2.9** Unless required by the Design-Build Documents to be provided by the DBC, the Owner shall not, furnish the services of geotechnical engineers or other consultants for investigation of subsurface, air and water conditions if such services are reasonably necessary to properly carry out the design services furnished by the DBC. In such event, the DBC shall provide and pay for any such services required. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of DBC's geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations with copies to the Owner.

**§ 7.2.10** The Owner shall purchase and maintain insurance as set forth in the Owner's RFP dated March 23, 2023..

## **§ 7.3 Submittals**

**§ 7.3.1** The Owner shall review and approve or take other appropriate action on Submittals. Review of Submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities; or for substantiating instructions for installation or performance of equipment or systems; or for determining that the Submittals are in conformance with the Design-Build Documents, all of which remain the responsibility of the DBC as required by the Design-Build Documents. The Owner's action will be taken in accordance with the submittal schedule approved by the Owner or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Owner's judgment to permit adequate review. The Owner's review of Submittals shall not relieve the DBC of the obligations under Sections 3.1.11, 3.1.12, and 5.2.3. The Owner's review shall not constitute approval of safety precautions or, unless otherwise

specifically stated by the Owner, of any construction means, methods, techniques, sequences or procedures. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**§ 7.3.2** Upon review of the Submittals required by the Design-Build Documents, the Owner shall notify the DBC of any non-conformance with the Design-Build Documents the Owner discovers.

**§ 7.4** Visits to the site by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quality or quantity of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, because these are solely the DBC's rights and responsibilities under the Design-Build Documents.

**§ 7.5** The Owner shall not be responsible for the DBC's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of, and will not be responsible for acts or omissions of the DBC, Architect/Engineer, Consultants, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the DBC.

**§ 7.6** The Owner has the authority to reject Work that does not conform to the Design-Build Documents. The Owner shall have authority to require inspection or testing of the Work in accordance with Section 15.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the DBC, the Architect/Engineer, Consultants, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

**§ 7.7** The Owner shall determine the date or dates of Substantial Completion in accordance with Section 9.8 and the date of final completion in accordance with Section 9.10.

**§ 7.8 Owner's Right to Stop Work**

If the DBC fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section 11.2 or fails to carry out Work in accordance with the Design-Build Documents, or if the Owner determines that an emergency requires a work stoppage, the Owner may issue a written order to the DBC to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the DBC or any other person or entity.

**§ 7.9 Owner's Right to Carry Out the Work**

If the DBC defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the DBC the reasonable cost of correcting such deficiencies. If payments then or thereafter due the DBC are not sufficient to cover such amounts, the DBC shall be obligated for and pay the difference to the Owner.

**§ 7.10** The rights of the Owner set forth in Sections 7.8 and 7.9 or elsewhere in the Contract Documents are cumulative and not a limitation of any rights of the Owner granted in the Contract Documents, at law, or in equity.

**ARTICLE 8 TIME**

**§ 8.1 Progress and Completion**

**§ 8.1.1** Time limits stated in the Design-Build Documents are of the essence of the Contract. By executing the Design-Build Amendment the DBC confirms that the Contract Time is a reasonable period for performing the Work.

**§ 8.1.2** The DBC shall not, except by agreement of the Owner in writing, commence the Work prior to the effective date of insurance, other than property insurance, required by this Contract. The Contract Time shall not be adjusted as a result of the DBC's failure to obtain insurance required under this Contract.

**§ 8.1.3** The DBC shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

## **§ 8.2 Delays and Extensions of Time**

**§ 8.2.1** If the DBC is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a consultant or separate contractor employed by the Owner; or by changes ordered in the Work by the Owner; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the DBC's control; or by delay authorized by the Owner pending mediation and binding dispute resolution or by other causes that the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

**§ 8.2.2** Claims relating to time shall be made in accordance with applicable provisions of Article 14.

**§ 8.2.3** This Section 8.2 does not preclude recovery of damages for delay by either party under other provisions of the Design-Build Documents.

**§ 8.2.4** Any other provisions of the Contract Documents to the contrary notwithstanding (including Subparagraph 8.2.1), extensions in Contract Time shall be granted only to the extent that such delay; 1) warrants an extension to the scheduled completion of the Work, 2) has not been caused by the DBC, its agents or consultants, 3) is of a duration of not less than three days, 4) is grounds for an extension of the Contract Time, 5) is not concurrent with any other delay, 6) is in addition to any time contingency (or available float) periods set forth in the critical path for completion of the Work, and 7) the Owner determines that an extension is beneficial for the Project.

If the period of time stated for Substantial Completion has elapsed, or if the Owner's operational requirements require it, the Owner shall have the right to occupy all or part of the Work when such may be safely and reasonably done. It shall be understood by the Parties that such occupancy or usage of any or all of the Work may not be construed to imply acceptance or Substantial Completion.

## **ARTICLE 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION**

### **§ 9.1 Contract Sum**

The Contract Sum is stated in the Design-Build Amendment.

### **§ 9.2 Schedule of Values**

Where the Contract Sum is based on a stipulated sum or Guaranteed Maximum Price, the DBC, prior to the first Application for Payment after execution of the Design-Build Amendment shall submit to the Owner a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the DBC's Applications for Payment.

### **§ 9.3 Applications for Payment**

**§ 9.3.1** At least ten days before the date established for each progress payment, the DBC shall submit to the Owner an itemized Application for Payment for completed portions of the Work. The application shall be notarized, if required, and supported by data substantiating the DBC's right to payment as the Owner may require, such as copies of requisitions from the Architect/Engineer, Consultants, Contractors, and material suppliers, and shall reflect retainage if provided for in the Design-Build Documents.

**§ 9.3.1.1** As provided in Section 6.3.9, Applications for Payment may include requests for payment on account of changes in the Work that have been properly authorized by Change Directives, or by interim determinations of the Owner, but not yet included in Change Orders.

**§ 9.3.1.2** Applications for Payment shall not include requests for payment for portions of the Work for which the DBC does not intend to pay the Architect/Engineer, Consultant, Contractor, material supplier, or other persons or entities providing services or work for the DBC, unless such Work has been performed by others whom the DBC intends to pay.

**§ 9.3.2** Unless otherwise provided in the Design-Build Documents, payments shall be made for services provided as well as materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the DBC with procedures satisfactory to the Owner to establish the Owner's title to

such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

**§ 9.3.3** The DBC warrants that title to all Work, other than Instruments of Service, covered by an Application for Payment will pass to the Owner no later than the time of payment. The DBC further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the DBC's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the DBC, Architect/Engineer, Consultants, Contractors, material suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the Work.

#### **§ 9.4 Certificates for Payment**

The Owner shall, within seven days after receipt of the DBC's Application for Payment, issue to the DBC a Certificate for Payment indicating the amount the Owner determines is properly due, and notify the DBC in writing of the Owner's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

#### **§ 9.5 Decisions to Withhold Certification**

**§ 9.5.1** The Owner may withhold a Certificate for Payment and the Owner may withhold payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the DBC's Application for Payment, or the quality of the Work is not in accordance with the Design-Build Documents. If the Owner is unable to certify payment in the amount of the Application, the Owner will notify the DBC as provided in Section 9.4. If the DBC and Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount that the Owner deems to be due and owing. The Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the DBC is responsible because of

- .1 defective Work, including design and construction, not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the DBC;
- .3 failure of the DBC to make payments properly to the Architect/Engineer, Consultants, Contractors or others, for services, labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;  
or
- .7 repeated failure to carry out the Work in accordance with the Design-Build Documents.

**§ 9.5.2** When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

**§ 9.5.3** If the Owner withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the DBC and to the Architect/Engineer or any Consultants, Contractor, material or equipment suppliers, or other persons or entities providing services or work for the DBC to whom the DBC failed to make payment for Work properly performed or material or equipment suitably delivered.

**§ 9.5.3** If the DBC disputes any determination by the Owner with respect to any payment, the DBC shall nevertheless expeditiously continue to prosecute the Work, provided all undisputed amounts are paid. If the Owner withholds payment for any reason the Owner will promptly notify the DBNC of its reasons for doing so.

#### **§ 9.6 Progress Payments**

**§ 9.6.1** After the Owner has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Design-Build Documents.

**§ 9.6.2** The DBC shall pay each Architect/Engineer, Consultant, Contractor, and other person or entity providing services or work for the DBC no later than the time period required by applicable law, but in no event more than seven days after receipt of payment from the Owner the amount to which the Architect/Engineer, Consultant, Contractor, and other person or entity providing services or work for the DBC is entitled, reflecting percentages

actually retained from payments to the DBC on account of the portion of the Work performed by the Architect/Engineer, Consultant, Contractor, or other person or entity. The DBC shall, by appropriate agreement with each Architect/Engineer, Consultant, Contractor, and other person or entity providing services or work for the DBC, require each Architect/Engineer, Consultant, Contractor, and other person or entity providing services or work for the DBC to make payments to subconsultants and subcontractors in a similar manner.

**§ 9.6.3** The Owner will, on request and if practicable, furnish to the Architect/Engineer, a Consultant, Contractor, or other person or entity providing services or work for the DBC, information regarding percentages of completion or amounts applied for by the DBC and action taken thereon by the Owner on account of portions of the Work done by such Architect/Engineer, Consultant, Contractor or other person or entity providing services or work for the DBC.

**§ 9.6.4** The Owner has the right to request written evidence from the DBC that the DBC has properly paid the Architect/Engineer, Consultants, Contractors, or other person or entity providing services or work for the DBC, amounts paid by the Owner to the DBC for the Work. If the DBC fails to furnish such evidence within seven days, the Owner shall have the right to contact the Architect/Engineer, Consultants, and Contractors to ascertain whether they have been properly paid. The Owner shall have no obligation to pay or to see to the payment of money to a Consultant or Contractor, except as may otherwise be required by law.

**§ 9.6.5** DBC payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

**§ 9.6.6** A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Design-Build Documents.

**§ 9.6.7** Unless the DBC provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the DBC for Work properly performed by the Architect/Engineer, Consultants, Contractors and other person or entity providing services or work for the DBC, shall be held by the DBC for the Architect/Engineer and those Consultants, Contractors, or other person or entity providing services or work for the DBC, for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the DBC, shall create any fiduciary liability or tort liability on the part of the DBC for breach of trust or shall entitle any person or entity to an award of punitive damages against the DBC for breach of the requirements of this provision.

## **§ 9.7 Failure of Payment**

If the Owner does not issue a Certificate for Payment, through no fault of the DBC, within the time required by the Design-Build Documents, then the DBC may, upon seven additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the DBC's reasonable costs of shut-down and start-up, plus interest as provided for in the Design-Build Documents.

## **§ 9.8 Substantial Completion**

**§ 9.8.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion is the date certified by the Owner in accordance with this Section 9.8.

**§ 9.8.1.1** Substantial Completion shall not be deemed to occur, and the Work will not be considered suitable for Substantial Completion review, until; all project systems included in the Work are operational as designed and scheduled; all designated or required governmental inspections, certifications and approvals have been made and posted; a temporary or final certificate of occupancy or approved usage with respect to all portions of the Work have been issued; all final finishes within the Contract Documents are in place; the Project is available for its intended use subject to agreed corrections and completion of Punch List Items; and the DBC has submitted to the Owner for review, acceptance and approval a certificate which states that the Work has been substantially completed in full compliance with the Construction Documents, all equipment, systems, materials guarantee certificates; the DBC's 2 year warranty and guarantee; all operations and maintenance manuals, all keys, all software integration, and all waiver of monies due (lien) certificates that accurately reflect all payments made up to Substantial Completion.

**§ 9.8.2** When the DBC considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the DBC shall prepare and submit to the Owner a comprehensive list of items to be completed or corrected prior to final payment, including the costs of completing or correcting such items. Failure to include an item on such list does not alter the responsibility of the DBC to complete all Work in accordance with the Design-Build Documents.

**§ 9.8.3** Upon receipt of the DBC's list, the Owner shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not included on the DBC's list, which is not sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the DBC shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner. In such case, the DBC shall then submit a request for another inspection by the Owner to determine Substantial Completion.

**§ 9.8.4** Prior to issuance of the Certificate of Substantial Completion under Section 9.8.5, the Owner and DBC shall discuss and then determine the parties' obligations to obtain and maintain property insurance following issuance of the Certificate of Substantial Completion.

**§ 9.8.5** When the Work or designated portion thereof is substantially complete, the DBC will prepare for the Owner's signature a Certificate of Substantial Completion that shall, upon the Owner's signature, establish the date of Substantial Completion; establish responsibilities of the Owner and DBC for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the DBC shall finish all items on the list accompanying the Certificate. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

**§ 9.8.6** The Certificate of Substantial Completion shall be submitted by the DBC to the Owner for written acceptance of responsibilities assigned to it in the Certificate. Upon the Owner's acceptance, and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents.

### **§ 9.9 Partial Occupancy or Use**

**§ 9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the DBC, provided such occupancy or use is consented to, by endorsement or otherwise, by the insurer providing property insurance and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and DBC have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Design-Build Documents. When the DBC considers a portion substantially complete, the DBC shall prepare and submit a list to the Owner as provided under Section 9.8.2. Consent of the DBC to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and DBC.

**§ 9.9.2** Immediately prior to such partial occupancy or use, the Owner and DBC shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

**§ 9.9.3** Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Design-Build Documents.

### **§ 9.10 Final Completion and Final Payment**

**§ 9.10.1** Upon receipt of the DBC's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection. When the Owner finds the Work acceptable under the Design-Build Documents and the Contract fully performed, the Owner will, subject to Section 9.10.2, promptly issue a final Certificate for Payment.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the DBC submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which the Owner or the Owner's property might be responsible or encumbered, (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect, (3) a written statement that the DBC knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, (5) as-constructed record copy of the Construction Documents marked to indicate field changes and selections made during construction on paper and one scanned electronic file delivered in pdf file format, (6) manufacturer's warranties, product data, and maintenance and operations manuals, and (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, or releases and waivers of liens, claims, security interests, or encumbrances, arising out of the Contract, to the extent and in such form as may be designated by the Owner. If an Architect/Engineer, a Consultant, or a Contractor, or other person or entity providing services or work for the DBC, refuses to furnish a release or waiver required by the Owner, the DBC may furnish a bond satisfactory to the Owner to indemnify the Owner against such liens, claims, security interests, or encumbrances. If such liens, claims, security interests, or encumbrances remains unsatisfied after payments are made, the DBC shall refund to the Owner all money that the Owner may be compelled to pay in discharging such liens, claims, security interests, or encumbrances, including all costs and reasonable attorneys' fees.

**§ 9.10.3** If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the DBC or by issuance of Change Orders affecting final completion, the Owner shall, upon application by the DBC, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the DBC to the Owner prior to issuance of payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

**§ 9.10.4** Paragraph Deleted.

**§ 9.10.5** Acceptance of final payment by the DBC shall constitute a waiver of claims by the DBC except those previously made in writing and identified by the DBC as unsettled at the time of final Application for Payment.

## **ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

### **§ 10.1 Safety Precautions and Programs**

The DBC shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

### **§ 10.2 Safety of Persons and Property**

**§ 10.2.1** The DBC shall be responsible for precautions for the safety of, and reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the DBC or the Architect/Engineer, Consultants, or Contractors, or other person or entity providing services or work for the DBC; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, or structures and utilities not designated for removal, relocation or replacement in the course of construction.

**§ 10.2.2** The DBC shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property, or their protection from damage, injury or loss. The DBC shall comply with all required safety procedures.

**§ 10.2.3** The DBC shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notify owners and users of adjacent sites and utilities of the safeguards and protections.



§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods, are necessary for execution of the Work, the DBC shall first obtain written notice from the Owner stipulating their understanding of this potentially hazardous activity, exercise utmost care, and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The DBC shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3, caused in whole or in part by the DBC, the Architect/Engineer, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the DBC is responsible under Sections 10.2.1.2 and 10.2.1.3; except damage or loss attributable to acts or omissions of the Owner, or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the DBC. The foregoing obligations of the DBC are in addition to the DBC's obligations under Section 3.1.14.

§ 10.2.6 The DBC shall designate a responsible member of the DBC's organization, at the site, whose duty shall be the prevention of accidents. This person shall be the DBC's superintendent unless otherwise designated by the DBC in writing to the Owner.

§ 10.2.7 The DBC shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 **Injury or Damage to Person or Property.** If the Owner or DBC suffers injury or damage to person or property because of an act or omission of the other, or of others for whose acts such party is legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

### § 10.3 Hazardous Materials

§ 10.3.1 The DBC is responsible for compliance with any requirements included in the Design-Build Documents regarding hazardous materials. If the DBC encounters a hazardous material or substance not addressed in the Design-Build Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the DBC, the DBC shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing.

§ 10.3.2 Upon receipt of the DBC's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the DBC and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Design-Build Documents, the Owner shall furnish in writing to the DBC the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The DBC will promptly reply to the Owner in writing stating whether or not the DBC has reasonable objection to the persons or entities proposed by the Owner. If the DBC has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the DBC has no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and DBC. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the DBC's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 Paragraph deleted.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the DBC brings to the site unless such materials or substances are required by the Owner's Criteria. The Owner shall be responsible for materials or substances required by the Owner's Criteria, except to the extent of the DBC's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The DBC shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the DBC brings to the site and negligently handles, or (2) where the DBC fails to perform its

obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

**§ 10.3.6** If, without negligence on the part of the DBC, the DBC is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Design-Build Documents, the Owner shall, to the extent permitted by law, indemnify the DBC for all cost and expense thereby incurred.

#### **§ 10.4 Emergencies**

In an emergency affecting safety of persons or property, the DBC shall act, at the DBC's discretion, to prevent threatened damage, injury or loss.

### **ARTICLE 11 UNCOVERING AND CORRECTION OF WORK**

#### **§ 11.1 Uncovering of Work**

The Owner may request to examine a portion of the Work that the DBC has covered to determine if the Work has been performed in accordance with the Design-Build Documents. If such Work is in accordance with the Design-Build Documents, the Owner and DBC shall execute a Change Order to adjust the Contract Time and Contract Sum, as appropriate. If such Work is not in accordance with the Design-Build Documents, the costs of uncovering and correcting the Work shall be at the DBC's expense and the DBC shall not be entitled to a change in the Contract Time unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs and the Contract Time will be adjusted as appropriate.

#### **§ 11.2 Correction of Work**

**§ 11.2.1 Before or After Substantial Completion.** The DBC shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for any design consultant employed by the Owner whose expenses and compensation were made necessary thereby, shall be at the DBC's expense.

#### **§ 11.2.2 After Substantial Completion**

**§ 11.2.2.1** In addition to the DBC's obligations under Section 3.1.12, if, within two years after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found not to be in accordance with the requirements of the Design-Build Documents, the DBC shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the DBC a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the two-year period for correction of the Work, if the Owner fails to notify the DBC and give the DBC an opportunity to make the correction, the Owner waives the rights to require correction by the DBC and to make a claim for breach of warranty. If the DBC fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 7.9.

**§ 11.2.2.2** The two-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

**§ 11.2.2.3** The two-year period for correction of Work shall not be extended by corrective Work performed by the DBC pursuant to this Section 11.2.

**§ 11.2.3** The DBC shall remove from the site portions of the Work that are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the DBC nor accepted by the Owner.

**§ 11.2.4** The DBC shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether completed or partially completed, caused by the DBC's correction or removal of Work that is not in accordance with the requirements of the Design-Build Documents.

**§ 11.2.5** Nothing contained in this Section 11.2 shall be construed to establish a period of limitation with respect to other obligations the DBC has under the Design-Build Documents. Establishment of the two-year period for

correction of Work as described in Section 11.2.2 relates only to the specific obligation of the DBC to correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the DBC's liability with respect to the DBC's obligations other than specifically to correct the Work.

**§ 11.2.5** The fact that the Owner prior to the date of Substantial Completion of the Work has not discovered defective Work, or Work that otherwise fails to conform to the requirements of the Contract Documents, or incomplete or omitted Work, shall not bar the Owner from insisting that the DBC correct such Work and complete the incomplete or omitted Work. Regardless of when such defective, incomplete or omitted Work is discovered or rejected and regardless of when such defective incomplete or omitted Work is rejected or discovered and regardless of when the DBC may be ordered to correct or complete such defective, incomplete or omitted Work, the DBC shall have no claim against the Owner for any increase in Contract Sum or Contract Time, nor shall the DBC or any persons directly or indirectly engaged or employed by the DBC, have any claim against the Owner for payment or allowance of any kind on account of increased cost, damage, or loss that may be incurred for correcting defective, incomplete or omitted Work, or any Work that otherwise fails to comply with the Contract Documents including repair of adjacent finishes and surfaces which may become damaged due to the correction of the defective, incomplete or omitted Work.

### **§ 11.3 Acceptance of Nonconforming Work**

If the Owner prefers to accept Work that is not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## **ARTICLE 12 COPYRIGHTS AND LICENSES**

**§ 12.1** Drawings, specifications, and other documents furnished by the DBC, including those in electronic form, are Instruments of Service. The DBC, and the Architect/Engineer, Consultants, Contractors, and any other person or entity providing services or work for any of them, shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements, or for similar purposes in connection with the Project, is not to be construed as publication in derogation of the reserved rights of the DBC and the Architect/Engineer, Consultants, and Contractors, and any other person or entity providing services or work for any of them.

**§ 12.2** The DBC and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

**§ 12.3** Upon execution of the Agreement, the DBC grants to the Owner an irrevocable and non-exclusive license to use the Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under the Design-Build Documents. The license granted under this section permits the Owner to authorize its consultants and separate contractors to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the DBC rightfully terminates this Agreement for cause as provided in Section 13.1.4 or 13.2.1 the license granted in this Section 12.3 shall not terminate.

**§ 12.3.1** The DBC shall obtain non-exclusive licenses from the Architect/Engineer, Consultants, and Contractors, that will allow the DBC to satisfy its obligations to the Owner under this Article 12. The DBC's licenses from the Architect/Engineer and its Consultants and Contractors shall also allow the Owner, in the event this Agreement is terminated for any reason other than the default of the Owner or in the event the DBC's Architect/Engineer, Consultants, or Contractors terminate their agreements with the DBC for cause, to obtain a limited, irrevocable and non-exclusive license solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project.

**§ 12.3.2** In the event the Owner alters the Instruments of Service without the author's written authorization or uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the DBC, Architect/Engineer, Consultants, Contractors and any other person or entity providing services or work for any of

them, from all claims and causes of action arising from or related to such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the DBC, Architect/Engineer, Consultants, Contractors and any other person or entity providing services or work for any of them, from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service under this Section 12.3.2. The terms of this Section 12.3.2 shall not apply if the Owner rightfully terminates this Agreement for cause under Sections 13.1.4 or 13.2.2.

## **ARTICLE 13 TERMINATION OR SUSPENSION**

### **§ 13.1 Termination or Suspension Prior to Execution of the Design-Build Amendment**

**§ 13.1.1** If the Owner fails to make payments to the DBC for Work prior to execution of the Design-Build Amendment in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the DBC's option, cause for suspension of performance of services under this Agreement. If the DBC elects to suspend the Work, the DBC shall give seven days' written notice to the Owner before suspending the Work. In the event of a suspension of the Work, the DBC shall have no liability to the Owner for delay or damage caused by the suspension of the Work. Before resuming the Work, the DBC shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the DBC's Work. The DBC's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

**§ 13.1.2** If the Owner suspends the Project, the DBC shall be compensated for the Work performed prior to notice of such suspension. When the Project is resumed, the DBC shall be compensated for expenses incurred in the interruption and resumption of the DBC's Work. The DBC's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

**§ 13.1.3** If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the DBC, the DBC may terminate this Agreement by giving not less than seven days' written notice.

**§ 13.1.4** Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

**§ 13.1.5** The Owner may terminate this Agreement upon not less than seven days' written notice to the DBC for the Owner's convenience and without cause.

**§ 13.1.6** In the event of termination not the fault of the DBC, the DBC shall be compensated for Work performed prior to termination, together with Reimbursable Expenses then due and any other expenses directly attributable to termination for which the DBC is not otherwise compensated. In no event shall the DBC's compensation under this Section 13.1.6 be greater than the compensation set forth in Section 2.1.

### **§ 13.2 Termination or Suspension Following Execution of the Design-Build Amendment**

#### **§ 13.2.1 Termination by the DBC**

**§ 13.2.1.1** The DBC may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the DBC, the Architect/Engineer, a Consultant, or a Contractor, or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the DBC, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Owner has not issued a Certificate for Payment and has not notified the DBC of the reason for withholding certification as provided in Section 9.5.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Design-Build Documents; or
- .4 Paragraph Deleted.

**§ 13.2.1.2** The DBC may terminate the Contract if, through no act or fault of the DBC, the Architect/Engineer, a Consultant, a Contractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the DBC, repeated suspensions, delays or interruptions of the entire

Work by the Owner as described in Section 13.2.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 13.2.1.3 If one of the reasons described in Section 13.2.1.1 or 13.2.1.2 exists, the DBC may, upon seven days' written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination.

§ 13.2.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the DBC or any other persons or entities performing portions of the Work under contract with the DBC because the Owner has repeatedly failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the DBC may, upon seven additional days' written notice to the Owner, terminate the Contract and recover from the Owner as provided in Section 13.2.1.3.

## § 13.2.2 Termination by the Owner For Cause

§ 13.2.2.1 The Owner may terminate the Contract if the DBC

- .1 fails to submit the Proposal by the date required by this Agreement, or if no date is indicated, within a reasonable time consistent with the date of Substantial Completion;
- .2 refuses or fails to supply an Architect/Engineer, or enough properly skilled Consultants, Contractors, or workers or proper materials;
- .3 fails to make payment to the Architect/Engineer, Consultants, or Contractors for services, materials or labor in accordance with their respective agreements with the DBC;
- .4 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .5 is otherwise guilty of substantial breach of a provision of the Design-Build Documents; or
- .6 files a petition under any federal or state law concerning bankruptcy, reorganization, insolvency, or relief from creditors, or if such a petition is filed against DBC without its consent.

§ 13.2.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the DBC and the DBC's surety, if any, seven days' written notice, terminate employment of the DBC and may, subject to any prior rights of the surety:

- .1 Exclude the DBC from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the DBC;
- .2 Accept assignment of the Architect/Engineer, Consultant and Contractor agreements pursuant to Section 3.1.15; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the DBC, the Owner shall furnish to the DBC a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 13.2.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 13.2.2.1, the DBC shall not be entitled to receive further payment until the Work is finished.

§ 13.2.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the DBC. If such costs and damages exceed the unpaid balance, the DBC shall pay the difference to the Owner. The obligation for such payments shall survive termination of the Contract.

## § 13.2.3 Suspension by the Owner for Convenience

§ 13.2.3.1 The Owner may, without cause, order the DBC in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 13.2.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 13.2.3.1. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the DBC is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

## § 13.2.4 Termination by the Owner for Convenience

§ 13.2.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 13.2.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the DBC shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and,
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Project agreements, including agreements with the Architect/Engineer, Consultants, Contractors, and purchase orders, and enter into no further Project agreements and purchase orders.

§ 13.2.4.3 In case of such termination for the Owner's convenience, the DBC shall be entitled to receive payment for Work executed, and reasonable direct costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

## ARTICLE 14 CLAIMS AND DISPUTE RESOLUTION

### § 14.1 Mediation

§ 14.1.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as provided herein as a condition precedent to binding dispute resolution:

.1 The

*(Paragraph Deleted)*

party bringing a claim shall give notice to the other party and, in writing, propose a meeting within fourteen (14) days after the claim arises in which to discuss and attempt to resolve the claim.

.2 In the event the meeting between the parties to resolve the claim does not resolve the dispute or  
*(Paragraph Deleted)*

does not take place within said fourteen (14) day period, the parties shall designate, by mutual agreement, an independent mediator who shall convene a meeting of the parties within a period of

*(Paragraph Deleted)*

fourteen (14) days of  
the later of the  
*(Paragraphs Deleted)*

initial meeting between the parties or the date notice was given pursuant to  
*(Paragraph Deleted)*

Section 8.2.1.1 above. The mediator shall render his or her decision within fourteen (14) days of said meeting.

.3 The purpose of mediation is to attempt to resolve the dispute between the parties. The mediator shall not be empowered with the authority to render a binding opinion or award.

.4 In the event the independent mediator's attempt to resolve the dispute between the parties fails, then each party will be free to pursue recover of claims at law.

.5 During the pendency of this alternative dispute resolution process, the parties agree that any statute of limitations applicable to all claims that are the subject of  
*(Paragraph Deleted)*

this process shall be tolled.

§ 14.1.2 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon.

§ 14.2 Any dispute not settled within Mediation shall be settled by litigation submitted by the claimant to any Court of competent jurisdiction within Washtenaw County, Michigan.

## **ARTICLE 15 MISCELLANEOUS PROVISIONS**

### **§ 15.1 Governing Law**

The Contract shall be governed by the law of State of Michigan

### **§ 15.2 Successors and Assigns**

**§ 15.2.1** The Owner and DBC, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Design-Build Documents. Neither party to the Contract shall assign the Contract without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

### **§ 15.2.2 Paragraph Deleted.**

**§ 15.2.3** If the Owner requests the DBC, Architect/Engineer, Consultants, or Contractors to execute certificates, other than those required by Section 3.1.10, the Owner shall submit the proposed language of such certificates for review at least 14 days prior to the requested dates of execution. If the Owner requests the DBC, Architect/Engineer, Consultants, or Contractors to execute consents reasonably required to facilitate assignment to a lender, the DBC, Architect/Engineer, Consultants, or Contractors shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to them for review at least 14 days prior to execution. The DBC, Architect/Engineer, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

### **§ 15.3 Written Notice**

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

### **§ 15.4 Rights and Remedies**

**§ 15.4.1** Duties and obligations imposed by the Design-Build Documents, and rights and remedies available thereunder, shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

**§ 15.4.2** No action or failure to act by the Owner or DBC shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

### **§ 15.5 Tests and Inspections**

**§ 15.5.1** Tests, inspections and approvals of portions of the Work shall be made as required by the Design-Build Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the DBC shall make arrangements for, provide and pay for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The DBC shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the DBC.

**§ 15.5.2** If the Owner determines that portions of the Work require additional testing, inspection or approval not included under Section 15.5.1, the Owner will instruct the DBC to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the DBC shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section 15.5.3, shall be at the Owner's expense.

**§ 15.5.3** If such procedures for testing, inspection or approval under Sections 15.5.1 and 15.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure shall be at the DBC's expense.

§ 15.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the DBC and promptly delivered to the Owner.

§ 15.5.5 If the Owner is to observe tests, inspections or approvals required by the Design-Build Documents, the Owner will do so promptly and, where practicable, at the normal place of testing.

§ 15.5.6 Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 15.6 Paragraphs Deleted

§ 15.7 Capitalization

Terms capitalized in the Contract include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 15.8 Interpretation

§ 15.8.1 In the interest of brevity the Design-Build Documents frequently omit modifying words such as “all” and “any” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 15.8.2 Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

ARTICLE 16 SCOPE OF THE AGREEMENT

§ 16.1 This Agreement is comprised of the following documents listed below:

- .1 AIA Document A141™–2014, Standard Form of Agreement Between Owner and DBC
- .2 AIA Document A141™–2014, Exhibit A, Design-Build Amendment, if executed
- .3 Insurance and Bonds as defined in the Owner’s RFP dated March 23, 2023
- .4 The Owner’s Advertisement and DCS Solar System Request For Proposals including all referenced attachments, dated March 23, 2023
- .5 The Design-Build Contractor’s Proposal dated April 27, 2023 to the extent its terms do not conflict in any way with the Owner’s RFP unless stipulated agreement in writing by both Parties accepts a particular deviation from the terms of the Owner’s RFP dated March 23, 2023

« »

- .6 Other:

« As agreed in writing by both Parties »

This Agreement entered into as of the day and year first written above.

\_\_\_\_\_  
OWNER (Signature)

« »« »

\_\_\_\_\_  
(Printed name and title)

\_\_\_\_\_  
DBC (Signature)

« »« »

\_\_\_\_\_  
(Printed name and title)