REQUEST FOR QUALIFICATION BASED

PROPOSALS FOR

DESIGN/BUILD PROJECT DELIVERY SERVICES

SANTA FE COUNTY PUBLIC SAFETY COMPLEX - PHASE II RENOVATION PROJECT

SANTA FE, NEW MEXICO

RFP #2019-0037-CORR/BT

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I. ADVERTISEMENT

SANTA FE COUNTY
Request for Qualifications Based Proposals
For
Design Build Project Delivery Services
Santa Fe County Public Safety Complex – Phase II
(PSC)
Renovation and Additions Project
RFP #2019-0037-CORR/BT

Santa Fe County (County) is requesting proposals from licensed, qualified Offeror's to provide Design Build Delivery Services based upon the scope of work outlined in this Request for Qualifications Based Proposal (RFP). All potential Offeror's are to read, understand and accept the requirements of this RFP. All proposals submitted shall be valid for ninety (90) days subject to action by the County. The County reserves the right to reject any and all proposals in part or in whole. A completed proposal shall be submitted in a sealed container indicating the proposal title and number along with the Offeror's name and address clearly marked on the outside of the container. All proposals shall be received by **2:00 PM (MDT) on October 23, 2018**, at the Santa Fe County Purchasing Division, 142 W. Palace Avenue (2nd Floor), Santa Fe, New Mexico 87501. By submitting a proposal for the requested services, each Offeror is certifying that it is a qualified firm and its proposal complies with regulations and requirements stated within the Request for Proposals.

A Pre-Proposal Conference will be held on **October 9, 2018, at 10:00 AM (MDT)** in the Public Safety Complex located at 35 Camino Justica, off State Highway 14 in Santa Fe, New Mexico, 87501. Attendance at the Pre-proposal conference is not mandatory.

EQUAL EMPLOYMENT OPPORTUNITY: All qualified Offeror's will received consideration of contract(s) without regard to race, color, religion, sex or national origin, ancestry, age, physical and mental handicap, serious medical conditions, disability, spousal affiliation, sexual orientation or gender identity.

Request for proposals will be available by contacting Maricela Martinez, Procurement Specialist, Senior, 142 W. Palace Avenue (2nd Floor), Santa Fe, New Mexico 87501, by telephone at (505) 992-9864, or by email at mcmartinez@santafecountynm.gov or via the County website at www.santafecountynm.gov/services/currentsolicitations.

PROPOSALS RECEIVED AFTER THE DATE AND TIME SPECIFIED ABOVE WILL NOT BE CONSIDERED AND WILL BE REJECTED BY SANTA FE COUNTY.

II. INTRODUCTION

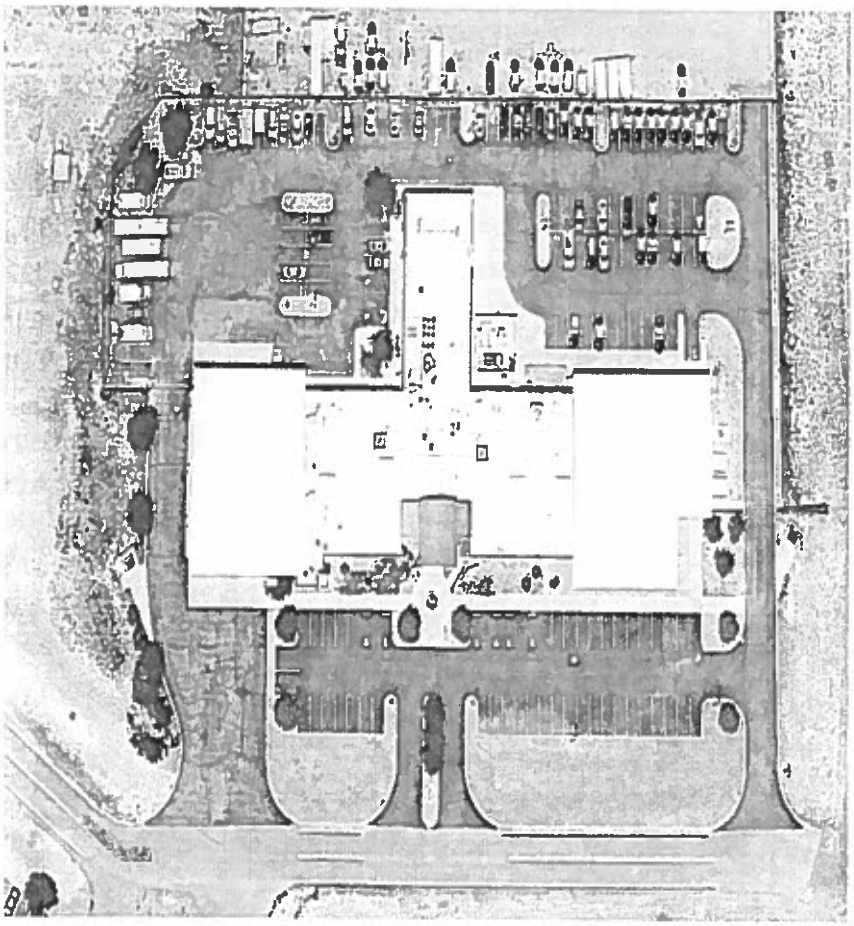
A. PURPOSE OF THE REQUEST FOR PROPOSALS

Santa Fe County (County) is requesting proposals for Design-Build project delivery services for the Santa Fe County Public Safety Complex – Phase II Renovation and Addition Project (PSC) based upon the Scope of Work described below.

All potential Offerors are to read, understand and accept the requirements of this Request for Qualification Based Proposal. It is the County's intent to select the most qualified Design-Build Delivery Team using a **two phase evaluation process** for recommended selection for the desired services.

B. BACKGROUND

The PSC was opened in 2002, occupies approximately 4.5 acres representing a portion of Tract 1 of the Rancho Viejo Partnership and is located on the north side of Camino Justicia.



The PSC comprises of the Santa Fe County Regional Emergency Communications Center (RECC), Sheriff's Office, Fire Department and the Public Safety Department administrative functions. The RECC is a 24 hour, 7 days a week operation that receives calls and dispatches emergency information for Sheriff, fire, medical, animal control, emergency 911 and non-emergency calls for three jurisdictions and is one of the more critical operations within Santa Fe County. This operation initiates all public safety communications and direction within Santa Fe County, including the City of Santa Fe.

A recent assessment of the operational functionality of the PSC has identified certain space and infrastructure needs at the facility to areas of the RECC and Sheriff's Office.

C. SCOPE OF WORK

In 2014, the County commissioned a program and assessment of the PSC and utilizing a Design-Build project delivery method, the County is authorized to plan, design and construct improvements to the PSC.

The Project will involve improvements to specific elements of the Public Safety Complex. RECC improvements include new administrative offices, a training room, break room, dispatch area remodel and facilities to house the Information Technology Disaster Recovery Center (ITDRC). HVAC, electrical and IT connectivity improvements are integral to the scope work and should be planned with safety, security and redundancy where recommended to protect the operations of the complex. Site work will include modification/expansion of parking facilities to replace lost capacity and improve functionality. Other improvements include modifications to the Sherriff's office and Sheriff's evidence impound area to maintain efficient operations and increase current capacity.

The proposed upgrades are estimated to include approximately 7000 square feet (sf) of new building expansion and interior remodeling of 3400 square feet within the existing building and approximately 2500 square feet outside area for secured vehicle evidence storage, and utility relocations for new additions. Electrical, Natural Gas, Water, Communications, and other utilities may be affected and should be addressed as part of this scope of work. In addition, the scope of work will include an Emergency Generator, a redundant network/data connection into the RECC building and the ITDRC and the modification/replacement of the Fire Alarm System and other essential infrastructure as necessary to support the expanded facilities.

RECC

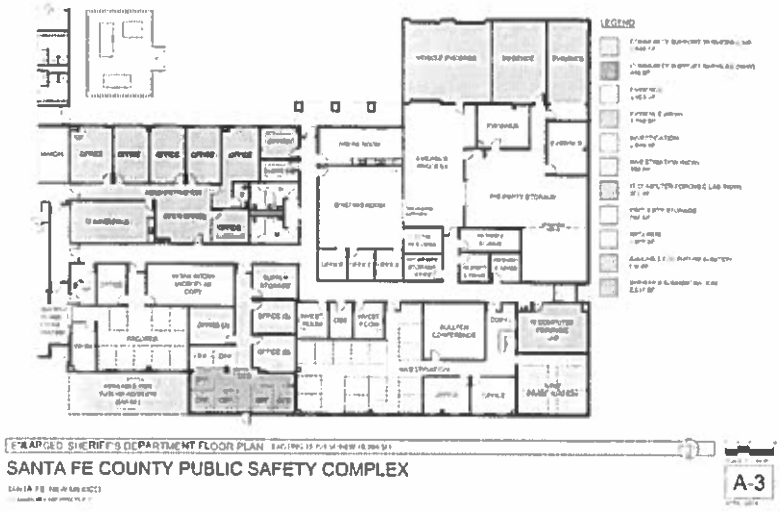
The RECC is currently undersized in terms of administrative, records storage, and training-conference space. The Project will include the renovation of existing administrative office space and the addition of new space.

The following floor plan for the improvements is only included for visual representation of the areas involved in the Project.

Sheriff's Office

Other improvements include modifications to the Sherriff's office and Sheriff's evidence impound area to maintain and increase current capacity. The proposed upgrades are planned to expansion of the building footprint to accommodate new evidence areas as well as additionally office space.

The following floor plan for the improvements is only included for visual representation of the areas involved in the Project.



The intent of the project is to create an emergency facility environment that provides the highest-level of operational efficiency, including ease of ingress and egress, ease of maintenance, as well as comfort and support for building users and visitors.

It addition, the expansion and improvements in the project shall integrate building materials and methods that promote environmental quality and energy efficiency with special consideration to renewable energy sources to offset operating cost, wherever possible.

The nature of operations at the Complex mandate certain unique design and construction considerations and as an emergency communications center, the facility must meet appropriate levels of security and resiliency and the provision of redundant systems for HVAC, electrical and communications.

On-going operations of the RECC will need to be maintained continuously during the construction of improvements. Accordingly, construction will need to be phased to allow temporary relocation of critical communications equipment into new space in advance of remodeling of existing space.

The Maximum Allowable Construction Cost (MACC) for this project (all phases) is $2,227,000 *exclusive* of NMGRT.

D. SCHEDULE OF SERVICES

As a design-build project allows the use of multiple concurrent elements, the goal of the project is to have the entire project (all phases) complete by December of 2019.

The County intends to work with the selected Offeror and develop a project/construction schedule in phases.

E. INSURANCE REQUIREMENTS

Please refer to the attached SAMPLE STANDARD FORM OF AGREEMENT BETWEEN OWNER AND DESIGN BUILDER for the insurance requirements.

F. PROCUREMENT MANAGER

The County has designated a Procurement Manager who is responsible for the conduct of this procurement whose name, address, and telephone number is listed below. All deliveries via express carrier should be addressed as followed:

Maricela Martinez, Purchasing Manager
Santa Fe County Purchasing Division
142 W. Palace Avenue, 2nd Floor
Santa Fe, NM 87501
(505) 992-9864
Email: mcmartinez@santafecountynm.gov

Any inquiries or requests regarding this procurement should only be submitted to the Procurement Manager in writing. Offeror's may contact **ONLY** the Procurement Manager regarding this procurement. ***Other County employees do not have the authority to respond on behalf of the County.***

G. DEFINITION OF TERMINOLOGY

This section contains definitions and abbreviations that are used throughout the Request for Qualifications Based Proposal (RFP), including appropriate abbreviations.

"Architect" means a member of the Design Build Team who is a New Mexico licensed architect and is responsible for the architectural

"BCC" means the elected Board of County Commissioners whom all powers of the County are vested and who are responsible for the proper and efficient administration of the County government.

"Close of Business" means 5:00 PM Mountain Standard or Mountain Daylight Time, whichever is in effect on the date provided in the RFP.

"Construction Contractor" means a member of the Design Build Team who is a New Mexico licensed general contractor and is responsible for the construction services and who will sign the Contract.

"Contract" or **"Agreement"** means a written agreement between the County (the Owner) and a firm for the work covered by this RFP.

"County" means Santa Fe County.

"Design Build Project Delivery System" means a procurement process by which a the County contracts with one firm who has the responsibility for the design, construction and delivery of a project under a single contract with the County.

"Design Build Team" or **"firm"** as the terms are used herein, are synonymous with one another and, within the broad definition mean any offeror, who may be a person, a legal entity, a consortium of experts, a joint venture, a team of persons who, through partnership, general of limited or other legal entity, corporation, association, other organizations, or any combination thereof, formally organized so that it may submit a qualified offer in response to a request for proposal and, as a result, who may be considered for a contract award for a design build project delivery systems with a Using Agency/Owner. No distinction is made between formally organized design build firms and a project-specific design build firm.

"Determination" means the written documentation of a decision by the Chief Procurement Officer including findings of fact supporting a decision. A determination becomes part of the procurement file.

"Desirable" the terms "may", "can", "should", "preferable", or "prefers" identify a desirable of discretionary item or factor (as opposed to "mandatory").

"Evaluation Committee" or **"Selection Committee"** means a body appointed by the County to perform the evaluations of Offeror proposals. A body constituted in accordance with Section 13-1-121 NMSA 1978 to evaluate proposals and make recommendations and or selections of the heighted ranked Offerors based on qualifications and cost.

"Finalist" means an Offeror who meets all mandatory specifications of this Request for Proposals and whose score on evaluation factors is sufficiently high to merit further consideration by the Evaluation Committee.

"MACC" means the maximum allowable construction cost which may include the estimated construction cost, the cost of design, utility connection fees, site development costs, built in equipment and furnishings, and a maximum contingency allowance of ten percent (10%).

"Mandatory" the terms "must", "shall", "will", "is required", or "are required", identify a mandatory term or factor (as opposed to desirable) of this RFP. Failure to meet a mandatory item or factor will result in the rejection of the Offeror's proposal. Rejection of the proposal will be subject to review of the Selection Committee and a final decision on the rejection will be made the County's Chief Procurement Officer.

"Offeror" is any person, corporation, or partnership who chooses to submit a proposal in response to this RFP, with the intent of providing design build services for this project.

"Owner" as defined in the Agreement between the Owner and the Design Builder shall be Santa Fe County.

"Owner Team" means a Project Manager, the County Operations Division, County Manger's Office, the County Planning Division, and the using agency.

"Procurement Manager" means the person or designee authorized by the County to manage or administer a procurement requiring the evaluation of competitive sealed proposals.

"Project" for the purposes of this solicitation means the East Mountain Regional Health Facility.

"Project Team" means all members of the Design Build team including all consultants who will be responsible for the completion of the Project.

"Purchasing Division" means the County Purchasing Office of the County Finance Division.

"Proposal" is the Offerors phased response to this RFP.

"Request for Qualifications Based Proposals" or "RFP" means all documents including those attached or incorporated by reference, used for soliciting proposals for this Project.

"Responsible Offeror" or **"Responsive Proposal"** means an Offeror who submits a responsive proposal or who has furnished, when required, information and data to prove that their financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services or items of tangible personal property described in the proposal of this RFP.

"Responsive Offeror" or **"Responsible Proposal"** means an offer or proposal which conforms in all material respects to the requirements set forth in the RFP as determined by the Selection Committee.

Material respects of a request for proposals included but are not limited to: quality, quantity or delivery requirements.

"Selection" means a formal written notice by the Chair of the Selection Committee that a firm has been selected to enter into a contract for services.

"Technical Irregularities" are matters of form rather than substance evident from the proposal document, or insignificant mistakes that can be waived or corrected without prejudice to other Offeror's; that is, where there is no effect on price, quality or quantity. If discussions are not held or if best and final offers upon which award will be made have been received, the Selection Committee may waive such irregularities or allow an Offeror to correct them if either is in the best interest of the County. Examples include the failure of an Offeror to:

a) Submit the number of signed proposals required by the RFP;
b) Sign the proposal, but only if the unsigned proposal is accompanied by other material indicating the Offeror's intent to be bound; or
c) Acknowledge receipt of an amendment involved had not effect on price, quality or quantity.

"Using Agency" means Santa Fe County and its' departments and offices.

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III. CONDITIONS GOVERNING THE PROCUREMENT

This section of the RFP contains the schedule governing the procurement, which describes the major procurement events and the conditions.

A. SEQUENCE OF EVENTS

The Procurement Manager will make every effort to adhere to the following schedule:

Action	Responsibilities	Estimated Date
Issue RFP	County/Purchasing	30/31-Sept-18
Pre-Proposal Conference	County/Offeror's	9-Oct-18
Acknowledgement Form Due	Offeror's/Purchasing	9-Oct-18
Deadline to Receive Written Questions For Phase I of the RFP	Offeror's/Purchasing	11-Oct-18
Response to Written Questions	Purchasing/Offeror's	12-Oct-18
Submission of Phase I Proposal	Offeror's/Purchasing	13-Oct-18
Proposal Shortlisting	County/Evaluation Committee	31-Oct-18
Notice of Shortlisted Offeror's	County Purchasing - CPO	31-Oct-18
Release of Phase II Documents to Shortlisted Offeror's	County/Purchasing	2-Nov-18
Phase II Mandatory Pre-proposal Conference/Site Visit	Purchasing	9-Nov-18
ATC/Questions/Clarifications for Phase II	Offeror's/Purchasing	13-Nov-18
Amendments/Responses to Ph II Written Questions	County/Purchasing	16-Nov-18
Phase II Proposals Due	Offeror's/Purchasing	30-Nov-18
Review of Proposals	County/Evaluation Committee	7-Dec-18
Interviews	County/Offeror's	14-Dec-18
Final Selection and Notice of Intent to Award	County/CPO	14-Dec-18
Award of Contract	County/Successful Offeror	Dec - 18

B. EVALUATION PROCESS

Background: Owner will utilize a two-phase request for proposal procedure for awarding the Contract as follows:

a. During **Phase I**, the Selection Committee will evaluate each Offeror's experience,

technical competence and capability to perform; the past performance of the Offeror's team; and, other appropriate factors submitted by the team of Offeror in response to the RFP. Qualifications of Offeror's will be evaluated as described in Section IV.A., and a **maximum of 3 Offerors** will be short-listed in accordance with technical and qualification based criteria.

b. During **Phase II**, each short-listed Offeror will receive Phase II documents with the RFP requirements, guidelines and criteria. County will invite short-listed Offerors to submit detailed specific technical concepts and solutions, costs, and scheduling. A MANDATORY Phase Offeror's Conference will be conducted to allow short-listed Offeror's the opportunity to submit questions of clarification. Short-listed Offeror's will be evaluation by the Selection Committee using the criteria described in Section VI.B.1. Upon completion of the evaluation process, the selection will be made and the Contract awarded to the highest ranked Offeror.

The following sections describe the activities listed in the sequence of events shown in Section III A.

1. Issue of RFP – this RFP is issued by the Santa Fe County Purchasing Division in accordance with the provisions of Section 13-1-119 through 13-1-124 NMSA 1978.

2. Pre-proposal Conference – a Pre-proposal Conference is scheduled to occur on the date indicated in the "Sequence of Events" in Section III.A. Questions may be submitted at the Pre-proposal Conference and after up to and until the deadline indicated in the "Sequence of Events" in Section III.A. A public log will be kept of the names of potential Offerors that attended the Pre-proposal Conference.

3. Acknowledgment of Receipt Form – a potential Offeror shall hand deliver, return by facsimile or email the "Acknowledgement of Receipt Form" provided in Appendix A to have its name and frim placed on the procurement distribution list. The form shall be signed by an authorized representative of the organization, dated, and returned by close of business on the date indicated in the "Sequence of Events" in Section III.A.

The procurement distribution list will be used for the distribution of written responses to questions and any RFP addenda.

4. Deadline to Submit Additional Written Questions – potential Offerors may submit written questions regarding this RFP until the close of business indicated in the "Sequence of Events" in Section III.A. All written questions must be addressed to the Procurement Manager listed in Section III.F and sent via facsimile or email. **Any contact with any other County staff member other than the Procurement Manager named in this solicitation may be grounds for rejection of a Proposal.**

5. Response to Written Questions – written responses to written questions and any RFP addenda will be distributed on the date indicated in the "Sequence of Events" in Section III.A. to all potential Offerors whose names appear on the procurement distribution list.

6. Submission of Phase I Proposal – proposals shall be submitted in sealed envelopes, addressed to:

Santa Fe County Purchasing Division
RFP #2018-0150-CMO/BT
142 W. Palace Avenue – 2nd Floor
Santa Fe, New Mexico
ATTENTION: Ms. Maricela Martinez, Procurement Manager

ALL OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN **2:00 PM (MST) October 23, 2018**. **Proposals received after this deadline will not be accepted. The date and time will be recorded on each proposal**. Proposals must be addressed and delivered to the Procurement Manager at the address listed in Section II F.

A pubic log will be kept of the names of all Offerors that have submitted proposals. Pursuant to Section 13-1-116 NMSA 1978, the contents of any proposal shall not be disclose to competing Offerors prior to contract award.

Receipt of Proposals: The Purchasing Division will time-stamp proposals as the Purchasing Office and proposals will be held in a secure location. Proposals received after the deadline will be deemed non-responsive and will be returned unopened to the Offeror.

Confidentiality of Proposals: Proposals will not be opened publicly and shall not be open to public inspections until after an Offeror has been selected for the award of the contract and conclusion of successful contract negotiations. An Offeror may request in writing non-disclosure of confidential data. Such data shall accompany the proposal and shall be readably separable from the proposal in order to facilitate eventual public inspections of the non-confidential portion of the proposal.

Non-Conforming Proposals: Proposals will be reviewed for completeness, format and compliant with the requirements of the RFP. In any proposal is deemed non-responsive by the Selection Committee, the Offeror will notified in writing of such determination.

7. Phase I Proposal/Shortlisting – the Selection Committee will review each proposal. Points will be allocated per Section IV.A. of the RFP be each committee member. Member's point totals will be translated to a numeric ranking. The Selection Committee member rankings will be totaled to determine the overall ranking of the firms. The Selection Committee shall determine the rankings without the possibility of a tie. A maximum of three (3) firms will be short-listed.

The evaluation of proposal will be performed by an Evaluation Committee appointed by County Management. The process will take place during the timeframe indicated in the "Sequence of Events" described in III.A. During this time, the Procurement Manager may initiate discussions with Offerors who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals, but proposals may be accepted and evaluated without such discussion. Discussion SHALL NOT be initiated by any Offeror.

8. Phase II Proposal Requirements – each shortlisted Offeror will receive Phase II Bridging Documents, to include but not limited to proposal requirements, guidelines, previously completed space programs, site, and design standards to the extent the information is known and available, previously completed archeological reports, survey documents, transportation studies, and as-built plans (as available).

9. Phase II Mandatory Pre-proposal Conference/Site Visit – provides shortlisted Offerors an opportunity to discuss the details of the project criteria with the Owner's Team. **SELECTED OFFEROR'S ARE REQUIRED TO ATTEND.**

10. Alternative Technical Concepts/Questions/Clarifications – between issuing the Phase II documents and submission of the Phase II proposals, shortlisted Offerors will be scheduled to present any alternative technical concepts (ATC) to the Owner that are being considered by the Offeror. In addition, the shortlisted Offerors may contact the Procurement Manager with questions about the scope of the project or the RFP schedule.

Maricela Martinez, Procurement Specialist, Senior

mcmartinez@santafecountynm.gov

11. Amendments/ Responses to Ph II Written Questions – if an RFP amendment is deemed necessary, it will be issued prior to the submission deadline. The Purchasing Division will distribute the amendment in writing to all short-listed Offerors.

12. Phase II Proposals Due – proposals shall be submitted in sealed envelopes, addressed to:

Santa Fe County Purchasing Division
RFP #2019-0037-CORR/BT
142 W. Palace Avenue – 2nd Floor
Santa Fe, New Mexico
ATTENTION: Maricela Martinez, Procurement Specialist, Senior

Receipt of Proposals: The Purchasing Division will time-stamp proposals as the Purchasing Office and proposals will be held in a secure location. Proposals received after the deadline will deemed non-responsive and will be returned unopened to the Offeror.

Confidentiality of Proposals: Proposals will not be opened publicly and shall not be open to public inspections until after an Offeror has been selected for the award of the contract and conclusion of successful contract negotiations. An Offeror may request in writing non-disclosure of confidential data. Such data shall accompany the proposal and shall be readably separable from the proposal in order to facilitate eventual public inspections of the non-confidential portion of the proposal.

Non-Conforming Proposals: Proposals will be reviewed for completeness, format and compliant with the requirements of the RFP. In any proposal is deemed non-responsive by the Selection Committee, the Offeror will notified in writing of such determination.

13. Interviews/Award – Overall rankings after the interview shall determine the firm to be awarded the project. Notice to finalist will include the interview date, time, and location. The purpose of the interview is to allow the Offeror to present its qualifications, past performance, quality of proposed design, quality of construction approach, demonstrated response to program requirements, management plan for constructing the project, and cost and schedule. It will also provide an opportunity for the Selection Committee to seek clarification of the Offeror's proposal. Ninety (90) minutes will be allotted for each interview to include a thirty (30) minute question and answer session by the Selection Committee. Points will be allocated by each member of the Committee. Each member's point totals will be translated into a numeric ranking of the interviewed firms. Individual member rankings will be totaled together to determine the overall ranking after the interview. Points received from Phase I evaluation will ***only*** be used or carried over to the Phase II evaluation in the event of a tie. The tie shall be broken by utilizing or carrying over the points awarding to the firm from the shortlist, Phase I evaluation. All calculations of point standings shall occur during the Selection Committee meeting for this project with all members in attendance.

14. Notice of Intent to Award – the Procurement Manager will notify the selected Offeror in writing of the final intent to award. This notice will include the overall rankings for the project award. At this time, the Purchasing Division will maintain at least one copy of each Offeror's proposal. Proposals are opened for public inspection after the award and conclusion of successful contract negotiations. Any unsuccessful Offeror wishing to retrieve all copies of their proposal must do so within one (1) month after the Notice of Intent to Award.

15. Contract Negotiations – the Owner and successful Offeror will begin contact negotiations as soon as possible after the Notice of Intent to Award. If contract negotiations are not finalized within thirty (30) days after Notice of Intent to Award, Owner may conclude negotiations with the selected Offeror and begin negotiations with the next ranked Offeror based on final ranking.

16. Right to Protest and Protest Period – in accordance with Section 13-1-172 NMSA 1978, any Offeror who is aggrieved in connection with a solicitation or the award of a contract may protest in writing to the Procurement Manager. The written protest must be submitted within fifteen (15) calendar days after knowledge of the facts or occurrences giving rise to the protest. Protests must be submitted in written form to:

Mr. Bill Taylor, Procurement Manager
Santa Fe County Purchasing Division
P.O. Box 276
Santa Fe, New Mexico 87504

Protests must include the name and address of the protestant, the solicitation number, and the statement of grounds for the protest, including appropriate supporting exhibits. Protests received after the deadline will not be accepted.

IV. GENERAL REQUIREMENTS INFORMATION

This section contains information about the RFP process and conditions under which this RFP is issued and how the intended project will be completed.

This procurement will be conducted in accordance with Chapter 13, NMSA 1978, NMAC 1.4.1 and Santa Fe County Procurement regulations.

A. Roles and Responsibilities of the Design Build Team – The following general services shall be provided by the Design Build Team in connection with the Project. The Design Build Team shall at a minimum:

- Become fully informed about the Project and have the experience and ability necessary to perform the related services.
- Provide human resources, equipment and facilities necessary to furnish the required services through all phases of the Project. This shall include, but not be limited to:
  - Coordinating and working closely with the Project Manager's from Santa Fe County.
  - Site Development and Planning.
  - Consider County and Using Agency's input on conceptual design.
  - Design development documents at 30%, 60%, 90%, and final.
  - Make presentations to and obtain feedback from County and Using Agency.
  - Prepare plans, specifications and construction documents (all materials used in construction shall meet all applicable code and regulatory requirements).
  - Obtain approval for the Project budget and Design from the County's Project Team at the completion of the various phases of design and construction document development.
  - Provide general architectural/engineering supervision and contract administration during construction.
  - Provide on-site observation during construction.
  - Analyze alternatives and design the most sustainable project consistent with economic feasibility, environmental characteristics, expected life of improvement, operations and maintenance, energy conservation and state-of-the-art technology.
  - Provide periodic estimate updates to assure the County that the actual construction costs remain with the Project budget.
  - Perform required services in an expeditious manner to coincide with the Project schedule.
  - Furnish qualified construction personnel who keep the County's team advised on A/E matters pertaining to the construction of the Project, and who will work towards the goals of obtaining results prescribed by the plans and specifications. This shall require cooperate between the County's team and the designated Project Manager with meetings on a weekly basis.
  - Possess professional ethics and qualifications and represent the County in accordance with a high standard of professional conduct.

- Secure all applicable building permits.

B. Roles and Responsibilities of the County's Team – Examine documents submitted by the Design Build team and render decisions promptly to avoid unreasonable delay in the project.

- If the County observes or otherwise becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents, prompt written notice thereof shall be given by the County to the Design Build team.

C. Acceptance of Conditions Governing Procurement – Offerors shall indicate their acceptance of the Conditions Governing the Procurement section in their Letter of Transmittal. Submission of a proposal constitutes acceptance of the Evaluation Factors contained in Section IV of this RFP.

D. Incurring Cost – Any cost incurred by the Offeror in preparation, transmittal, presentation of any proposal or material submitted in response to this RFP shall be borne solely by the Offeror.

E. Consultants and Subcontractors – Since the award is made on the qualifications-based evaluation process, replacement of consultants/subcontractors after award of and prior to the contract execution may cause the Offeror to be disqualified. The Contractor must perform all work that may result from this RFP, and payments will be made only to the Contractor. Use of sub consultants/subcontractors identified in the proposal is permitted, but since the award of the contract is to be made on a qualifications-based evaluation process, subcontracting the responsibilities of the Construction Contractor portion of the work is not permitted. Use of subcontractors must be clearly explained in the proposal, and major subcontractors must be identified by name. The Contractor shall be wholly responsible for the entire performance whether or not subcontractors are used.

F. Amended Proposals – An Offeror may submit an amended proposal before the deadline for receipt of proposals. Such amended proposals must be completed replacements for a previously submitted proposal and must be clearly identified as such in the transmittal letter. County personnel will not merge, collate, or assemble proposed materials.

G. Proposal Offer Firm – Responses to this RFP, including proposal prices, will be considered firm for ninety (90) days after the due date for receipt of proposals or ninety (90) days after receipt of a best and final offer.

H. Disclosure of Proposal Contents – Proposals are not open to public inspection until after an Offeror(s) has been selected for contract award.

An Offeror may request non-disclosure of confidential information in its proposal. Proprietary or confidential date shall be readably separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal. Confidential data is normally restricted confidential financial information concerning the Offeror's organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, 57-3A-1 to 57-3A-7 NMSA 1978. The

price of products offered or the cost of services proposed shall not be designated as proprietary or confidential information.

If a request for disclosure of information for which an Offeror has made a written request for confidentiality, the Procurement Manager shall examine the Offeror's request and make a written determination that specifies which portions of the proposal should be disclosed. Unless the Offeror takes legal action to prevent the disclosure, the proposal will be disclosed. The proposal shall be open to public inspection subject to any statutory prohibition on the disclosure of confidential data.

I. No Obligation – This procumbent in no manner obligates the County or any of its departments to the use of any proposed professional services until a valid written contract is awarded and approved by the appropriate authorities.

J. Termination – This RFP may be cancelled at any time and any and all proposals may be rejected in whole or in part when the County determines such action to be in the best interest of the County.

K. Sufficient Appropriation – Any contract awarded as a result of this RFP process may be terminated if sufficient appropriations or authorizations do not exist. Such termination will effected by sending written notice to the Contractor. The County's decisions as to whether sufficient appropriations and authorizations are available will be accepted by the Contractor as final.

L. Legal Review – The County requires that all Offerors agree to be bound by the General Requirements contained in this RFP. Any Offeror concerns must be promptly brought to the attention of the Procurement Manger.

M. Governing Law – This procurement and any agreement with Offerors that may result shall be governed by the laws of the state of New Mexico.

N. Basis for Proposal – Only information supplied by the County in writing through the Procurement Manager or in this RFP should be used as the basis for the preparation of the Offeror proposals.

O. Contract Terms and Conditions – The contract between the County and the Contractor will follow the format specified by the County and contain the terms and conditions set forth by the County in Appendix D - Standard Form of Agreement between Owner and Design/Builder Lump Sum as modified by the County. Any questions about the contract terms and conditions must be brought to the attention of the Procurement Manger.

P. Contract Deviations – Any additional terms and conditions which may be the subject of negotiation, will be discussed only between the County and the selector Offeror and shall not be deemed an opportunity to amend the Offeror's proposal.

Q. Offeror Qualifications – The Selection Committee may make such investigations as necessary to determine the ability of the Offeror to adhere to the requirements specified within this RFP. The

Selection Committee will reject the proposal of any Offeror who is deemed not a Responsible Offeror or fails to submit a Responsive Offer as defined by NMSA 1978 13-1-83 and 13-1-85, and herein. The Selection Committee reserves the right to waive minor technical irregularities. This right is at the sole discretion of the Selection Committee, subject to Procurement Manager approval.

R. Clarification from Offerors – The Selections Committee after review of the proposals and/or interviews may request clarifications on information submitted by any and all Offerors in a written format with a specified deadline for response.

S. Release of Information – Only the Procurement Manager is authorized to release information about the Project covered by this RFP. Offerors must refer to the Procurement Manager any requests to release any information that pertains to the work or activities covered by any action or award related to this RFP.

T. Right to Waive Minor Irregularities – The Selection Committee reserves the right to recommend the waiver of minor irregularities. The Selection Committee also reserves the right to recommend the waiver of mandatory requirements provided that all of the otherwise responsive proposals failed to meet the mandatory requirements and/or doing so does not otherwise materially affect the procurement. This right is as the sole discretion of the Procurement Manager.

U. Change in Contractor Representatives – The County reserves the right to require a change in contractor representatives if the assigned representatives are not, in the opinion of the County meeting its needs adequately. Any change in contractor representatives must receive prior County approval.

V. Notice – The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and misdemeanor criminal penalties for its violation. In addition the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kick-backs.

W. County Rights – The County reserves the right to accept all or a portion of an Offeror's proposal.

X. Right to Publish – Throughout the duration of this procurement process and contract term, potential Offerors and contractors must secure from the County written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement or subsequent contract. Failure to adhere to this requirement may result in disqualification of the Offeror's proposal or termination of the contract.

Y. Ownership of Proposals – All documents submitted in response to the RFP shall become property of the County. However, any technical or user documentation submitted with the proposals on the non-selected Offerors shall be returned after the expiration of the protest period.

Z. Electronic Mail Address Required – A large part of communication regarding this procurement will be conducted by electronic mail (e-mail). It is recommended that Offeror should have a valid e-mail address to receive this correspondence.

AA. Hold Harmless – If service delivered hereunder is covered by any patent, copyright, trademark or application thereof, the Design Build Team will indemnify and hold the County harmless form any and all losses, costs, expenses, and legal fees on account of any claims or legal actions filed for infringement of such rights by the Design Build Team.

BB. Purchase Order – The County will not be responsible for any service performed without its written and approved purchase order, contract or approved change under signed by the authorized representative.

CC. Compliance with Applicable Laws – The Design Build Team shall comply with all federal and state laws and regulations pertaining to work under its charge and shall bear all expenses associated with such compliance. The Design Build Team agrees to comply with state laws and rules applicable to worker's compensation benefits for its employees. If the Design Build Team fails to comply with applicable worker's compensation laws and rules, the County may terminate the contract. The Design Build Team will be responsible for obtaining all required insurance.

DD. Conflict of Interest – The Design Build Team shall warrant that it presently has no interest and will not acquire any interest, directly or indirectly, which could conflict in any manner or degree with the performance of service under the award of the contract.

EE. Stipend – At the conclusion of Phase Two of this RFP, those short-listed firms who were not selected for contract negotiations will receive a flat stipend of 7,000.00 inclusive of NMGRT, payable within thirty (30) days of a written Award of Contract, notwithstanding the provisions described under "Incurring Cost". The stipend payment may be denied if the "non-selected", short-listed firm fails to submit an acceptable design solution with their Phase Two response.

FF. Bid Bond – Securing in the amount of not less than five percent (5%) of the total amount of the proposal submitted is required of each short-listed, selected Offeror. An acceptable Bond or Cashier's Check must accompany each proposal as a guarantee that, if awarded the contract, the Offeror will enter into a contract promptly and execute the required Contract Documents. The successful Offeror's security will be retained until they have signed a contract and furnished required Payment and Performance Bonds. The security will become part of the County as liquidated damages for delay and additional expenses caused thereby in the event that the contract is not executed and/or acceptable one-hundred percent (100%) Performance and Payment bonds are not delivered within the time set forth. The County reserves the right to retain the security of the next two ranked Offerors until the accepted Offeror enters into a contract or until forty-five (45) days after the receipt of proposals, whichever is shorter. All other security will be returned within seven (7) days of the selection announcement.

GG. Preferences in Procurement by Santa Fe County – **NOTE: Preferences will only apply in the Phase One/Shortlisting Evaluation of the RFP. General Contractor may receive Resident in-state or Veteran in-state preference and the Architect/Engineering Firm may receive a Santa Fe County Preference (Ex. Possible for D-B Team to receive a total of 15% in preferences)**

A. ***New Mexico In-state Preference***

New Mexico Law, Section 13-1-21 NMSA 1978, provides a preference in the award of public works contracts for an **"in-state resident business"**. Application of a resident business preference for any Offeror requires that the Offeror to provide a copy of a valid and current certificate as a resident business. Certifications are issued by the state Taxation and Revenue Department.

If an Offeror submits with its proposal a copy of a valid and current in-state resident business certificate, 5% of the total weight of all evaluation factors used in the evaluation of proposals may be awarded or added to the Offeror's score.

Certifications by the state Taxation and Revenue Department for the resident contractor takes into consideration such activities as the business or contractor's payment of property taxes or rent and payment of unemployment insurance on employees who are residents of the state.

OR

B. ***New Mexico Resident Veteran Preference***

New Mexico Law, Section 13-1-22 NMSA 1978, provides a preference in the award of public works contracts for a **"resident veteran business"**. Certification by the state Taxation and Revenue Department for the resident veteran business requires the Offeror to provide evidence of annual revenue and other evidence of veteran status.

An Offeror who wants the veteran contractor preference to be applied to its proposal is required to submit with its proposal the certification from the state Taxation and Revenue Department and the sworn affidavit attached hereto as Appendix C.

If an Offeror submits with its proposal a copy of a valid and current veteran resident business certificate, 10%, 8%, or &5 of the total weight of all evaluation factors used in the evaluation of proposals may be awarded or added to the Offeror's score, depending on the business' annual revenue.

C. **Santa Fe County Preference**

Santa Fe County Ordinance 2012-4 provides for a **County Preference** for a "Santa Fe County Business". Application of the County preference in procurement requires an Offeror to obtain and provide a Santa Fe County Business Certificate issued by the Santa

Fe County Procurement Manager. Certification by the Procurement Manager takes into consideration the business' corporate standing in the state, business licensure or registration, the duration of the business' primary office location and the payment of taxes.

If an Offeror submits with its proposal a copy of its Santa Fe County Business Certificate issued by the Procurement Manager, 5% of the total weight of all the evaluation factors used in the evaluation of proposals may be awarded to the Offeror's score.

The in-state, veteran or County preferences do not apply to procurement of services or goods involving federal funds or federal grant funds.

HH. Double-sided Documents – All submitted bids/proposal documents shall be double-sided, pursuant to Santa Fe County Resolution 2013-7, Adopting Sustainable Resource Management Principles, Section 2.A. "Waste Reduction and Reuse... all documents shall be double-sided, including those that are generated by outside entities using County funds and consultants and contractors doing business with the County".

II. Living Wage – Contractor shall comply with the requirements of Santa Fe County Ordinance 2014-1 (Establishing a Living Wage).

V. RESPONSE FORMAT, ORGANIZATION, AND SPECIFICATIONS

A. Number of Responses – Only one proposal may be submitted by each Offeror for this project. Offerors shall provide one original and five (5) identical copies of their proposal at the location specified in Section I.

B. Phase I Proposal Format – The proposal shall be limited in format and length. Format will be 8-1/2" x 11" with foldout sheets allowed up to 11" x 17" in size. All foldout sheets, up to a maximum of 11" x 17" sheets will be counted as two pages and shall be labeled as such. Length of the proposal shall be limited to a maximum of twenty (20) numbered pages (printed sheet faces) of text no smaller than 10 point and/or graphics. If there is any question as to format requirements contact the Procurement Manager for clarification prior to submittal of the proposal.

Material excluded from the twenty (20) pages maximum count is limited to:

- Front Cover (photos with captions on inside cover allowed)
- Divider pages (blank except for title information)
- Back cover (photos with captions on inside back cover allowed)
- Submittal letter (two page maximum)
- Table of Contents page (one page maximum, number as i)
- Certificate(s) of Insurance (include as Attachment A)

- Required Forms

C. Proposal Organization – All pages shall be numbered except for those specifically excluded from the page county. Double-sided pages and all foldout pages shall be counted as two (2) pages and shall be numbered as such. Proposals shall be organized and tabbed in the same order as the evaluation criteria.

D. Submittal Letter – (Two page maximum) Each proposal must be accompanied by a submittal letter. The submittal letter shall identify the Offerors as follows:

- Identify the name and title of the person(s) authorized to contractually obligate the Offeror for the purpose of the RFP and the contract; and the name and license number of the A/E of record in New Mexico and the name and license number of the General Contractor.
- Identify the names, titles, telephone and fax numbers, and email address of persons to be contacted for clarification questions regarding this RFP.
- Shall represent that the information provided in the RFP proposal documents is truthful, accurate and complete and that the firm and individual responsible for the submission shall be fully responsible for and bound by all information, data, certifications, disclosures and attachments included in the RFP proposal documents.
- Agree to compliance with all codes, regulation, facilities, Santa Fe County standards and requirements in law.
- Be signed by the person authorized to contractually obligate the Offeror
- Acknowledge receipt of any and all addendums/amendments to this RFP.

E. Completed Campaign Contribution Disclosure Form – Refer to Required Forms and include as Attachment B.

VI. INSURANCE

A. Insurance Requirements – The minimum requirements for this RFP are:

- Architects Professional Liability (Errors and Omissions): a minimum of $250,000 per occurrence and $1,000,000 in the aggregate. Please refer to the Agreement for actual requirements. With this proposal submit a certification of Insurance showing current coverage equal to or greater than what is required in this RFP.
- Contractor's Commercial General Liability: a minimum of $10,000,000 per occurrence and $20,000,000 in the aggregate.
- Umbrella Policy in the amount of $20,000,000

If the Design Build Team is a joint venture and/or association, the required insurance coverage will be in the name of the joint venture or association.

VII. EVALUATION

A. PHASE I EVALUATION CRITERIA

Phase I of this solicitation will result in the narrowing of Offeror's to a maximum of three (3) firms based upon the Phase I evaluation factors. A maximum of three (3) firms will be selected to then submit Technical and Price proposals for Phase II.

Shortlisting – A maximum of 1000 points are possible in scoring each proposal for the shortlist evaluation. The Selection Committee will evaluate the Phase I proposals applying for selection. The evaluation criteria to be used by the Selection Committee for the proposal shortlist and the corresponding point values for each criterion are as follows:

Criteria	Max. Points
Specialized design and technical competence of the business, including a joint venture or association regarding the type of structure required	300
Past Performance, documents record of performance of the team on projects of a similar nature relative to budget and schedule, quality of work and customer satisfaction, compliance with applicable laws and regulations and safety record.	200
Project staffing/craft labor capabilities, reliable staffing sources, reliable project staffing	150
Capacity and capability of business, including any consultants and their representatives, qualifications and locations to perform the work, including any specialized services within the time limitations.	150
Management plan, management and administration of the team and team resources	50
Health and Safety with respect to site safety and quality assurance/quality control	50
Proximity, familiarity and experience with the Project area and Site	50
New Mexico produced work	50

A.1. EVALUATION FACTORS

A brief explanation of each evaluation category is listed below. Information in one category may overlap information in other categories. Offeror's are encouraged to fully address each category completely, as points are assigned for responses to each. Responses to the RFP shall include information and past project experiences specific to the team submitting the proposal.

Specialized Design and Technical Competence (300 points)

- Vision/mission and project delivery philosophy to include expectation statements concerning:
- Elements for successful partnering
- Proposed Design Period Peer technical/administrative review by the County's Team
- Brief history of firm in New Mexico
- List all design consultants and how they provide value to this project
- Firm's experience and ability to incorporate energy conserving and sustainable measures into project design and construction.

Past Record of Performance (200 points)

The Selection Committee will evaluate the quality of the Offeror's past performance. The assessment of the Offeror's past performance will be used as a means of evaluating the relative capability of the Offeror's to successfully meet the requirements of the RFP. The Offeror must provide the information requested below for past performance evaluation or affirmatively state that is possesses no relevant, directly related, or similar past performance.

Design Team: submit past performance date on as many as three (3) projects that demonstrate design past performances, in performing similar in scope, size and complexity to that described in the RFP. Include design awards, customer letters of recommendation etc., with points of contact and telephone numbers.

Construction Team: submit past performance date on as many as three (3) projects that demonstrate design past performances, in performing similar in scope, size and complexity to that described in the RFP. Include design awards, customer letters of recommendation etc., with points of contact and telephone numbers.

- Information on previous design/build projects to include clear descriptions of the specific roles of the design and construction team owner's project budget, final construction cost estimates, bid price including accepted alternates, total number and cost of Change Orders.
- Explain any project difficulties and how the Offeror handled these issues.
- Attach Contractor's Final Application and Certification of Payment (AIA Form G702 or equal) for these design build project.

***Offerors are cautioned that the Selection Committee will use date provided by the teaming partners as well as data obtained from other sources in the evaluation of past performance.*

Project Staffing (150 points)

Provide an organizational chart of key project personnel and also address how critical subcontractors will be selected and managed.

Design Team: Submit resumes for the Design Team Project Manager, Project Architect, Design Quality Control Manager, and other key members of the design team that will be assigned to this project. Also, describe as many as three (3) previous partnering/teaming arrangements with construction teams and any design-build projects.

Construction Team: Submit resumes for all key personnel (PM, QCM, Safety Manager and Proejct Superintendent) that demonstrates technical qualifications in all disciplines required to perform work similar to that described in the RFP. Also describe as many as three (3) previous partnering/teaming arrangements with construction teams and any design-build projects.

Capacity and Capability (150 points)

- Information regarding project team's past capability to meet schedules, meet budgets and meet project administration requirements.
- Indicate relationship of the project team's current workload to the project workload of this Project and personnel in the New Mexico office.
- Demonstrated ability to provide performance and labor/material payment bonds in amounts sufficient to cover the cost of the work on this Project.

Management Plan (50 points)

- Describe processes to minimize risk and to ensure that cost, schedule and quality status issues are clearly communicated with the team and the County's team.
- Firm's approach to project cost estimating and incorporation of Life Cycle Cost Analysis into design process.
- Communication protocol and software to support the same.

Health and Safety (50 points)

- Describe the processes and/or the plan to effectively and efficiently provide Quality Assurance/Quality Control and manage site safety.
- Submit insurance industry standard Experience Modifier Rate for each of the past three (3) years. If there are extenuating circumstances concerning ratings, provide background information and referenced for validation.

Proximity to and Familiarity with Santa Fe County and the Project site (50 points)

- Provide information relative to the project's location and how members of the project team can respond to issues at the site and with the community at large.
- Indicate previous projects completed in the close vicinity of this Project.

New Mexico Produced Work (50 points)

- The County's goal is to support New Mexico owned businesses. Indicate the volume of work to be produced by New Mexico firms, using New Mexico based employees on this Project. Indicate the number of New Mexico based employees that will be part of the Project Team.

B. PHASE II DOCUMENTS **(Note: this information is tentative; the actual Phase II Proposal Requirements will be issued with Phase II of the solicitation)**

Offeror's selected for the Phase II short-list will be notified of their selection and of the mandatory Phase II offeror's conference. The Phase II documents will be distributed to each Offeror and will include but not be limited to the following:

Section 1: Brief description of the requirements of the Phase II submission, and the general requirements for the quotes (using established wage rates, including NMGRT as a separate line item, conforming to all applicable laws, etc.); listing of requirements for all communications during the Phase II proposal submission process; identification of general insurance requirements, liability and professional liability (Errors and Omissions) insurance requirements, as well as any special insurance information; bonding requirements.

Section 2: Detailed Program of Requirements documents with a breakdown of the specific scope of work under this Project.

Section 3: Staging area site map and specific requirements for Contractor's field office, Project Manager's field office and other logistics/staging are requirements.

Section 4: General requirements for the Project including the requirements for working in and around the project, specific requirements for project signage, and specific requirements for interfacing with the County and Using Agency staff.

Section 5: Facility Design Guidelines, which provides outline specifications to help guide the Offeror's with materials selections and setting standards of quality.

Section 6: The Bid/Proposal Form, which will require Construction Contractor's signature and will record the following:

- Lump Sum: A lump sum amount for the design and construction of the work, per the requirements of the detailed scope of work and all other requirements. The NMGRT will be shown separately, as well as the total with the NMGRT included.
- Schedule: A schedule showing the start and completion dates for all major activities and phased of the work, to include design, design reviews and approvals, permits and other agency reviews and approvals, construction by major activity, punch list and completion. This schedule will be a part of the information used in the evaluation process to select the Contractor.
- Alternates. Quoted pricing for any identified alternates with the acknowledgement that the lump sums quoted for each alternate includes all required labor, equipment, materials, associated materials and/or equipment items, profit, overhead, fees and general conditions and design/engineering costs to provide the work in a complete and timely manner.

- Allowances: Listing of specified allowances with the acknowledgement that they are in the lump sum quoted amount, to include all associated profit, overhead, fees and general conditions, and general design/engineering costs.
- Additive and Deductive Change Orders:
- The percentage of mark-up (profit, overhead, general conditions, design and related costs) that will be applied to the Contractor's direct construction costs for any additive or deductive change order quotes and/or work.
- The percentage of mark-up (profit, overhead, general conditions, design and related costs) that will be applied to the Contractor's direct construction costs for any additive or deductive change order quotes and/or work, where the design is provided by another entity.
- The total amount of mark-up (profit, overhead, general conditions, design and related costs) the Contractor will allow on any subcontractor's or supplier's direct labor, equipment, and/or material costs for any additive or deductive change order quotes and/or work.

Section 7: Owner provided information including, but not limited design guidelines, previously completed space programs, site, previously completed archeological reports, survey documents, and as-built plans (as available).

B.1. PHASE II EVALUATION CRITERIA **(Note: this information is tentative; the actual Phase II Evaluation Criteria will be issued with Phase II of the solicitation)**

A maximum of as many as three (3) Offeror's will advance to Phase II. Phase II will be evaluated on the Offeror's technical proposal and price proposal. Offeror's are required to submit separate technical and price proposals.

The success proposal will be the one that provides the best value to the County, based upon a total score calculated using the criteria listed below ("weighted criteria"). Criteria 3 and 4 below will primarily be evaluated considering the objectives stated in the project program, requirements stated in the performance specifications, service life span and guarantees, operating and maintenance costs, life cycle costs, appearance, operations fixtures and equipment.

Criteria	Max. Points
Project Staffing (previous score as Phase I unless conditions changed)	150
Past Performance (previous score as Phase I unless conditions changed)	200
Quality of Design Solution, including technical submittals	250
Quality of Construction Approach	100
Management Plan for constructing the Project	50
Cost and Schedule	250

B.2. EVALUATION FACTORS

A brief explanation of each evaluation category is listed below.

Project Staffing (150 points) (Offeror must indicate that conditions from Phase I have not changed) otherwise provide the following:
Provide an organizational chart of key project personnel and also address how critical subcontractors will be selected and managed.
Design Team: Submit resumes for the Design Team Project Manager, Project Architect, Design Quality Control Manager, and other key members of the design team that will be assigned to this project. Also, describe as many as three (3) previous partnering/teaming arrangements with construction teams and any design-build projects.
Construction Team: Submit resumes for all key personnel (PM, QCM, Safety Manager and Project Superintendent) that demonstrates technical qualifications in all disciplines required to perform work similar to that described in the RFP. Also describe as many as three (3) previous partnering/teaming arrangements with construction teams and any design-build projects.

Past Record of Performance (200 points) (Offeror must indicate that conditions from Phase I have not changed) otherwise provide the following:
The Selection Committee will evaluate the quality of the Offeror's past performance. The assessment of the Offeror's past performance will be used as a means of evaluating the relative capability of the Offeror's to successfully meet the requirements of the RFP. The Offeror must provide the information requested below for past performance evaluation or affirmatively state that is possesses no relevant, directly related, or similar past performance.

Design Team: submit past performance date on as many as three (3) projects that demonstrate design past performances, in performing similar in scope, size and complexity to that described in the RFP. Include design awards, customer letters of recommendation etc., with points of contact and telephone numbers.

Construction Team: submit past performance date on as many as three (3) projects that demonstrate design past performances, in performing similar in scope, size and complexity to that described in the RFP. Include design awards, customer letters of recommendation etc., with points of contact and telephone numbers.

- Information on previous design/build projects to include clear descriptions of the specific roles of the design and construction team owner's project budget, final construction cost estimates, bid price including accepted alternates, total number and cost of Change Orders.
- Explain any project difficulties and how the Offeror handled these issues.
- Attach Contractor's Final Application and Certification of Payment (AIA Form G702 or equal) for these design build project.

***Offerors are cautioned that the Selection Committee will use date provided by the teaming partners as well as data obtained from other sources in the evaluation of past performance.*

Quality of Proposed Design solution, including required technical submittals (250 points)

Evaluation will consider conformance to the Project Program Requirements including functional organization, space allocation and functional and operational requirements as reflected in the site and building layout. Offeror is to prepare conceptual drawings and plans that illustrate the architectural image of the proposed facility. These images will show site plan, conceptual floor plan and building elevations. Unique characteristics that the Offeror is proposing shall be shown separately to clarify intent.

- 168 - 250 points of proposal exceeds specified minimum performance or capability requirements in a way beneficial to the County; proposal must have more strengths and no deficiencies.
- 84 - 167 points if proposal meets specified minimum performance or capability requirements delineated in the Request for Proposals; proposal must have no deficiencies but may have one or more strengths.
- 0 – 83 points if proposal does not clearly meet some specified minimum performance or capability requirements delineated in the Request for Proposal, but any such uncertainty is correctable.

Quality of Construction Approach (100 points)

Offeror is to describe the quality of products (building materials...) that have been included as part of the proposal. The discussion shall include any system enhancements to reduce life cycle costs of the building, and describe sustainable design features incorporated into the project.

- 68 – 100 points if the proposal exceeds specified minimum performance or capability requirements in a way beneficial to the County; proposal must have one or more strengths and no deficiencies.
- 34 – 67 points if proposal meets specified minimum performance or capability requirements delineated in the Request for Proposals; proposal must have no deficiencies but may have one or more strengths.

- 0 – 33 points if proposal does not clearly meet some specified minimum performance or capability requirements delineated in the Request for Proposal, but any such uncertainty is correctable.

Management Plan for constructing the Project (50 points)

Offeror is to provide any enhancements to the personnel and procedures identified in the Phase I Qualification Statement.

- Describe how the construction will be managed, including security and safety controls, staging areas, delivery routes, crane locations and interfaces required at the site with the Using Agency.
- Address project specific criteria, risks that have been identified by the RFP and additional risks that the team has identified. State how those risks will be mitigated.
- Address protocol to support optimization of sustainability principles.
    - 34 – 50 points if proposal exceeds specified minimum performance or capability requirements that benefit the County; proposal must have one or more strengths and no deficiencies.
    - 18 – 35 points if proposal meets specified minimum performance or capability requirements delineated in the Request for Proposal; proposal; must have no deficiencies but may have one or more strengths.
    - 0 – 17 points if proposal does not clearly meet some specified minimum performance or capability requirements delineated in the Request for Proposal, but any such uncertainty is correctable.

Project Schedule and Cost (250 points)

Offeror is to provide its proposed schedule dates for the Public Safety Complex Phase II Renovations Project including at a minimum the following:

- Indicate critical dates and other information in sufficient detail for the Selection Committee to determine if the time frames are reasonable.
- Describe ability of the firm to deliver the project within the construction time identified.

The proposal must address Final Completion and Certificate of Occupancy by December 31, 2018, but Offeror may propose an earlier date. Points will be awarded on basis of quality of viability of the schedule presented and the extent to which completion is within such December 31, 2018, date.

The total cost will be evaluated and substantiated for reasonableness and realistic cost assessment in relation to the proposed conceptual design. Offeror may submit a price proposal that is below the MACC, but in no case should a proposal be submitted in excess of the MACC inclusive of NMGRT. Lowest cost will be awarded 250 points. The following formula will be used to calculate points for each higher cost proposal:

Lowest Cost receives 250 points

Higher Cost ..... Lowest cost/higher cost - %, multiplied by 250 points = total points

END OF REQUEST FOR PROPOSALS

APPENDIX A

ACKNOWLEDGEMENT OF RECEIPT FORM

DESIGN/BUILD

RFP #2019-0037-COOR/BT

In acknowledgement of receipt this Request for Proposal of the undersigned agrees that he/she has received a complete copy, beginning with the title page and table of contents and ending in Appendix D.

The acknowledgement of receipt shall be signed and returned to the Procurement Manager no later than close of business on October 9, 2018. Only potential Offerors who elect to return this form completed with the indicated intention of submitting a proposal will receive copies of the all Offeror written questions and the County's responses to those questions as well as RFP amendments, if any are issued.

FIRM: _____

REPRESENTED BY: _____

TITLE: _____ PHONE NO.: _____

EMAIL: _____ FAX NO.: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

SIGNATURE: _____ DATE: _____

This name and address will be used for all correspondence related to this Request for Proposal.

Firm does intend to respond to this Request for Proposals.

Firm does not intent to respond to this Request for Proposals.

Maricela Martinez
Santa Fe County Purchasing Division
142 W. Palace Avenue, 2nd Floor
Santa Fe, NM 87501
(505) 992-9864
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APPENDIX B
CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to the Procurement Code, Sections 13-1-28, et seq., NMSA 1978 and NMSA 1978, § 13-1-191.1 (2006), as amended by Laws of 2007, Chapter 234, any prospective contractor seeking to enter into a contract with any state agency or local public body for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars ($250) over the two year period.

Furthermore, the state agency or local public body may cancel a solicitation or proposed award for a proposed contract pursuant to Section 13-1-181 NMSA 1978 or a contract that is executed may be ratified or terminated pursuant to Section 13-1-182 NMSA 1978 of the Procurement Code if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

The state agency or local public body that procures the services or items of tangible personal property shall indicate on the form the name or names of every applicable public official, if any, for which disclosure is required by a prospective contractor.

THIS FORM MUST BE INCLUDED IN THE REQUEST FOR PROPOSALS AND MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

"Applicable public official" means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive

sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

"Campaign Contribution" means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to statewide or local office. "Campaign Contribution" includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

"Family member" means spouse, father, mother, child, father-in-law, mother-in-law, daughterin-law or son-in-law of (a) a prospective contractor, if the prospective contractor is a natural person; or (b) an owner of a prospective contractor.

"Pendency of the procurement process" means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

"Prospective contractor" means a person or business that is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person or business qualifies for a sole source or a small purchase contract.

"Representative of a prospective contractor" means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

DISCLOSURE OF CONTRIBUTIONS:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Name of Applicable Public Official: _____

Date Contribution(s) Made: _____
_____

Amount(s) of Contribution(s): _____
_____

Nature of Contribution(s): _____

Purpose of Contribution(s): _____

_____

_____

(Attach extra pages if necessary)

_____ _____

Signature Date

_____

Title (position)

OR

NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS ($250) WERE MADE to an applicable public official by me, a family member or representative.

_____ _____

Signature Date

_____

Title (position)

APPENDIX C
RESIDENT VETERANS PREFERENCE CERTIFICATION

_____ (NAME OF CONTRACTOR) hereby certifies the following in regard to application of the resident veterans' preference to this procurement.

Please check the box below:

I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is up to $3M allowing me the 10% preference discount on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

I agree to submit a report or reports to the State Purchasing Division of the General Services Department declaring under penalty of perjury that during the last calendar year starting January 1 and ending on December 31, the following to be true and accurate:

In conjunction with this procurement and the requirements of this business application for a Resident Veteran Business Preference/Resident Veteran Contractor Preference under Sections 13-1-21 or 13-1-22 NMSA 1978, which awarded a contract which was on the basis of having such veterans Preference, I agree to report to the State Purchasing Division of the General Services Department the awarded amount involved. I will indicate in the report the award amount as a purchase from a public body or as a public works contract from a public body as the case may be.

I understand that knowingly giving false or misleading information on this report constitutes a crime.

I declare under penalty of perjury that this statement is true to the best of my knowledge. I understand that giving false or misleading statements about material fact regarding this matter constitutes a crime.

_____ _____

(Signature of Business Representative)* (Date)

*Must be an authorized signatory of the Business.

The representations made in checking the box constitutes a material representation by the business that is subject to protest and may result in denial of an award or un-award of the procurement involved if the statements are proven to be incorrect.

SIGNED AND SEALED THIS _____ DAY OF _____, 2018.

_____

NOTARY PUBLIC

My Commission Expires:

_____

APPENDIX D

DBIA

DESIGN-BUILD
INSTITUTE OF AMERICA

STANDARD FORM OF AGREEMENT BETWEEN OWNER AND DESIGN-BUILDER - LUMP SUM

Document No. 525
First Edition, 1998
© Design-Build Institute of America
Washington, DC

INSTRUCTIONS

For DBIA Document No. 525 Standard Form of Agreement Between Owner and Design-Builder - Lump Sum (1998 Edition)

Checklist

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

_____	Page 1	Owner's name, address and form of business
_____	Page 1	Design-Builder's name, address and form of business
_____	Page 1	Project name and address
_____	Section 2.1.9	Identify other Contract Documents
_____	Section 4.3.2	Complete blanks for additional sum for use of Work Product
_____	Section 5.2.1	Complete blanks for calendar days
_____	Section 5.2.2	Insert any interim milestones (optional)
_____	Section 5.4	Complete blanks for liquidated damages
_____	Section 5.5	Complete blanks for early completion bonus
_____	Section 6.1	Complete blanks for Contract Price
_____	Section 6.2	Insert markups for changes
_____	Section 7.1.1	Complete blanks for day of month
_____	Section 7.2.1	Complete blanks for retention percentage
_____	Section 7.4	Complete blanks for interest rate
_____	Section 8.1.3	Choose overhead/profit method for termination for convenience
_____	Section 8.2.1	Complete blanks for percentages
_____	Section 8.2.2	Complete blanks for percentages
_____	Section 9.1.1	Insert Owner's Senior Representative's name, etc. (optional)
_____	Section 9.1.2	Insert Owner's Representative's name, etc. (optional)
_____	Section 9.2.1	Insert Design-Builder's Senior Representative's name, etc. (optional)
_____	Section 9.2.2	Insert Design-Builder's Representative's name, etc. (optional)
_____	Section 10.1	Attach Insurance Schedule
_____	Section 10.2	Insert amount and conditions of bonds or other security
_____	Section 11.1	Insert any other provisions (optional)
_____	Page 8	Owner's and Design-Builder's execution of the Agreement

General Instructions

No.	Subject	Instruction
1.	Standard Forms	Standard form contracts have long served an important function in the United States and international construction markets. The common purpose of these forms is to provide an economical and convenient way for parties to contract for design and construction services. As standard forms gain acceptance and are used with increased frequency, parties are able to enter into contracts with greater certainty as to their rights and responsibilities.
2.	DBIA Standard Form Contract Documents	Since its formation in 1993, the Design-Build Institute of America (ADBIA@) has regularly evaluated the needs of owners, design-builders, and other parties to the design-build process in preparation for developing its own contract forms. Consistent with DBIA's mission of promulgating best design-build practices, DBIA believes that the design-build contract should reflect a balanced approach to risk that considers the legitimate interests of all parties to the design-build process. DBIA's Standard Form Contract Documents reflect a modern risk allocation approach, allocating each risk to the party best equipped to manage and minimize that

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No.	Subject	Instruction
		risk, with the goal of promoting best design-build practices.
3.	Use of Non-DBIA Documents	To avoid inconsistencies among documents used for the same project, DBIA's Standard Form Contract Documents should not be used in conjunction with non-DBIA documents unless the non-DBIA documents are appropriately modified on the advice of legal counsel.
4.	Legal Consequences	DBIA Standard Form Contract Documents are legally binding contracts with important legal consequences. Contracting parties are advised and encouraged to seek legal counsel in completing or modifying these Documents.
5.	Reproduction	DBIA hereby grants to purchasers a limited license to reproduce up to five copies of completed original Documents for use on a particular project. At least two original versions of the Agreement should be signed by the parties. Any other reproduction of DBIA Documents is prohibited.
6.	Modifications	Effective contracting is accomplished when the parties give specific thought to their contracting goals and then tailor the contract to meet the unique needs of the project and the design-build team. For that reason, these Documents may require modification for various purposes including, for example, to comply with local codes and laws, or to add special terms. Also, in some instances, these Documents must be modified to indicate the selection of a particular contract term. Any modifications to these Documents should be underlined to distinguish them from original language. Any handwritten modifications should be initialed by the parties. To delete provisions, strike through the printed words so that original language remains legible. At no time should a document be re-typed in its entirety. Re-creating the document violates copyright laws and destroys one of the advantages of standard forms-familiarity with the terms. Additions to DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder*, 1998 Edition, ("General Conditions of Contract") shall be in the form of written Supplementary Conditions. These are referenced in Section 2.1.3 of DBIA Document No. 525, *Standard Form of Agreement Between Owner and Design-Builder - Lump Sum*, 1998 Edition, ("DBIA Document No. 525") and DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee with an Option for a Guaranteed Maximum Price*, 1998 Edition, ("DBIA Document No. 530").
7.	Execution	It is good practice to execute two original copies of the Agreement. Only persons authorized to sign for the contracting parties may execute the Agreement.

Specific Instructions

Section	Title	Instruction
General	Purpose of this document	DBIA Document No. 525 ("Agreement") should be used only when the parties intend that Owner pay Design-Builder a lump sum fixed price for the completion of all design and construction services. There will be greater mutual understanding and cooperation if the lump sum is established based on Owner's Project Criteria that are well defined. If there is uncertainty about Owner's Project Criteria, or it remains to be developed by Owner and Design-Builder jointly, a cost-plus/guaranteed maximum price ("GMP") contracting approach may be more suitable. In such case, the parties should use DBIA Document No. 530.
General	Purpose of These Instructions	These Instructions are not part of this Agreement, but are provided to aid the parties in their understanding of the Agreement and in completing the Agreement.
General	Related Documents	This Agreement shall be used in conjunction with the General Conditions of Contract. Other related Contract Documents are listed in Article 2 of this Agreement.

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Section	Title	Instruction
General	Date	On Page 1, enter the date when both parties reach a final understanding. It is possible, due to logistical reasons, that the dates when the parties execute the Agreement may be different. Once both parties execute the Agreement, the effective date of the Agreement will be the date recorded on Page 1. This date does not, however, determine Contract Time, which is measured according to the terms of Article 5.
General	Parties: Owner and Design-Builder	On Page 1 enter the legal name and full address of Owner and Design-Builder, as well as the legal form of each entity, e.g., corporation, partnership, limited partnership, limited liability company, or other.
2.1.5	Construction Documents	After execution of the Agreement, and consistent with the requirements of Section 2.4 of the General Conditions of Contract, Design-Builder will prepare Construction Documents subject to Owner's review and approval. DBIA attaches great importance to the process for preparing Construction Documents and accordingly believes the Construction Documents should take precedence over Owner's Project Criteria and Design Builder's Proposal, including any Deviation List.
2.1.6	Design-Builder's Deviation List	Prior to the execution of this Agreement, Design-Builder will have submitted its Proposal based on Owner's Project Criteria. To avoid ambiguities or conflicts between Owner's Project Criteria and Design-Builder's Proposal, Design-Builder's Proposal shall specifically list any deviations from Owner's Project Criteria. Design-Builder's Deviation List shall, if accepted by Owner, become a Contract Document and shall have precedence over Owner's Project Criteria.
3.1	Order of Precedence	The Contract Documents are listed in Section 2.1 in the order of their precedence. This hierarchy of documents reflects DBIA's belief that Owner's Project Criteria should take precedence over Design-Builder's Proposal, unless the Proposal calls attention to deviations from the program in Design-Builder's Deviation List. However, the Construction Documents subsequently developed by Design-Builder and approved by Owner should take precedence over the Deviation List (if any), Owner's Project Criteria, and the Proposal.
3.2	Definitions	Terms, words and phrases used in the Agreement shall have the same meanings used in the General Conditions of Contract.
4.1	Work Product	This Agreement provides that in all circumstances Design-Builder shall retain ownership of the Work Product it produces, but obligates Design-Builder to grant a limited license to Owner to use the Work Product according to the terms and circumstances described in Sections 4.2, 4.3, 4.4 and 4.5.
4.2	Owner's Limited License Upon Payment in Full	Design-Builder shall grant Owner, at Owner's sole risk, a limited license to use the Work Product at the completion of the Work in connection with Owner's occupation of the Project.
4.3	Owner's Limited License Upon Owner's Termination for Convenience or Design-Builder's Election to Terminate	Owner should not use the Termination for Convenience Clause to obtain Design-Builder's valuable design concepts, and then seek lower bids from other design-builders. Therefore, where Owner terminates this Agreement for its convenience, and then decides to complete the Project with its own or third party forces, Design-Builder shall grant Owner a limited license to use Design-Builder's Work Product to complete and subsequently occupy the Project at Owner's sole risk, provided Owner pays Design-Builder all amounts due Design-Builder as required by the Contract Documents, including paying Design-Builder an additional sum per Section 4.3.2 for the use of the Work Product. In the event Design-Builder elects to terminate this Agreement for cause, for reasons set forth in Section 11.4 of the General Conditions of Contract, these same conditions apply to Owner's use of the Work Product.
4.3.2	Additional Compensation	To minimize disputes, the parties should negotiate prior to execution of the Agreement the amount Owner shall pay Design-Builder for the use of Design-Builder's Work Product in the event Owner terminates this Agreement for its convenience or Design-Builder elects to terminate this Agreement for cause. Enter this amount.

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Section	Title	Instruction
4.4	Owner's Limited License Upon Design-Builder's Default	If Design-Builder is properly terminated for default, Owner is granted a limited license to use the Work Product, at Owner's sole risk, to complete and occupy the Project without the payment of an additional sum for the use of the Work Product.
4.5	Owner's Indemnification for Use of Work Product	Owner's use of the Work Product shall be at its sole risk, and Owner must agree to defend, indemnify and hold harmless Design-Builder and anyone working by or through Design-Builder, including Design Consultants of any tier.
5.1	Date of Commencement	Design-Builder's obligation to commence work is triggered by its receipt of a Notice to Proceed unless the parties mutually agree otherwise.
5.2.1	Substantial Completion of the Entire Work	Enter the calendar days duration by which Substantial Completion has to be achieved.
5.2.2	Interim Milestones	It may be that some portions of the Work must be completed in phases or within a prescribed period of time to accommodate Owner's needs. The parties may, at their option, identify these portions of the Work to be completed prior to Substantial Completion of the entire Work. Enter the calendar days, starting from the Date of Commencement, for achieving Substantial Completion of these identified portions of the Work. If these portions of the Work are required to be substantially completed by certain milestone dates, enter those dates.
5.4	Liquidated Damages	Owner should make a good faith evaluation of the amount that is reasonably necessary to compensate it for delay. Owner should not establish liquidated damages to penalize Design-Builder. Section 5.4 establishes a grace period between the Scheduled Substantial Completion Date and the assessment of liquidated damages in order to prevent disputes as to which party bears responsibility for only a few days of delay. The parties should enter the calendar days that may pass following the Scheduled Substantial Completion Date before liquidated damages will be assessed. Section 5.4 must also be modified if liquidated damages are applicable to any interim dates set forth in Section 5.2.2.
5.5	Early Completion Bonus	If the Project economics justify liquidated damages, then it is appropriate to couple these liquidated damages with an early completion bonus. The parties should enter the number of calendar days prior to the Scheduled Substantial Completion Date that will set the Bonus Date. Also, enter the amount of the bonus to be paid per day that will allow Owner to share with Design-Builder the economic benefits of early completion. Section 5.5 should also be modified if an early completion bonus is applicable to any interim dates set forth in Section 5.2.2.
6.1	Contract Price	Enter the lump sum price Owner will pay Design-Builder for the Scope of Work. The Contract Price should compensate Design-Builder for the services it provides and the risk it assumes in providing single point responsibility to Owner.
6.2	Markups for Changes	Enter the markups agreed upon by Design-Builder and Owner to be used for pricing Changes to the Work. Prior to negotiating or agreeing to these markups, both parties should familiarize themselves with Article 9 of the General Conditions of Contract, Changes to the Contract Price and Time.
7.1.1	Progress Payments	Enter the day of the month when Design-Builder shall submit its Application for Payment.

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Section	Title	Instruction
7.2.1	Retainage	Enter the percentage Owner will retain from Progress Payments to Design-Builder until fifty percent (50%) of the Work is completed. Owner should recognize that it creates undue hardship to hold retainage on Subcontractors that have completed their work early in the Project. Owner should accordingly consider releasing retainage on Subcontractors that complete work early in the Project, providing that these Subcontractors have satisfactorily performed their portion of the Work.
7.4	Interest	The parties should enter the rate at which interest will accrue on Design-Builder's payments if unpaid five (5) days after due. Late payment creates a hardship for Design-Builder, its Design Consultants and Subcontractors.
8.1.3	Termination for Convenience: Overhead and Profit	The parties should choose prior to execution of the Agreement the method that will be used to determine overhead and profit paid to Design-Builder in the event Owner terminates Design-Builder for its convenience. The parties may choose to set percentage rates for overhead and profit prior to execution of the Agreement, or may choose to determine reasonable sums to be paid for overhead and profit at the time of the termination. If the parties choose to set overhead and profit rates prior to execution of the Agreement, the percentages should be entered in Section 8.1.3.
8.2	Termination for Convenience: Additional Payments	Although it is important for Owner to have a process for terminating this Agreement for convenience, the process must consider the interests of Design-Builder. If Owner terminates this Agreement for its own convenience, compensating Design-Builder for its costs will not be adequate because Design-Builder will have committed its resources for a small amount of revenue. Therefore, in addition to the overhead and profit paid in Section 8.1, Owner shall pay Design-Builder an additional sum, calculated as a percentage of the remaining balance of the Contract Price. Enter the percentages Owner shall pay Design-Builder if Owner terminates this Agreement for its own convenience prior to or after the start of construction.
8.3	Termination for Convenience: Owner's Use of Work Product	Owner should not use the Termination for Convenience clause to obtain Design-Builder's valuable design concepts and then seek lower bids from another design-builder. If Owner terminates this Agreement for its own convenience, and chooses to proceed with the Project using Design-Builder's Work Product, Owner should pay an additional sum for the use of Design-Builder's Work Product pursuant to Section 4.3.
Article 9	Representatives of the Parties	Enter the name, title, address and telephone number of Owner's Senior Representative and Owner's Representative at Sections 9.1.1 and 9.1.2, respectively. Enter the name, title, address and telephone number of Design-Builder's Senior Representative and Design-Builder's Representative at Sections 9.2.1 and 9.2.2, respectively. The parties can elect to establish Representatives during the performance of the Project rather than at the time of execution of this Agreement. If Representatives are identified after execution of the Agreement, an appropriate amendment should be made to the Agreement at the time these individuals are designated.
10.1	Insurance	Attach an Insurance Schedule setting forth in detail the insurance coverages required for the Project. Parties are advised to familiarize themselves with the terms of Article 5 of the General Conditions of Contract, Insurance and Bonds, and to consult their insurance advisor. If the parties contemplate using "wrap-up" type insurance policies, these coverages must be detailed in the Insurance Schedule and Article 5 of the General Conditions of Contract must be modified accordingly.
10.2	Bonds	Enter the type and amount of bonds or other performance security required for the Project. Where bonding is not required by statute, Owner may want to evaluate the project risks versus the bonding costs in deciding what type of performance security to require.
11.1	Other Provisions	Insert any other provisions.

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INSTITUTE OF AMERICA

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

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

This **AGREEMENT** is made as of the _____ day of January in the year of 2018, by and between the following parties, for services in connection with the Project identified below.

OWNER:
(Name and address)

Santa Fe County
102 Grant Avenue
Santa Fe, New Mexico 87504

DESIGN-BUILDER:
(Name and address)

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

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

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Article 1

Scope of Work

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

Article 2

Contract Documents

2.1 The Contract Documents are comprised of the following:

.1 All written modifications, amendments and change orders to this Agreement issued in accordance with DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (1998 Edition) ("General Conditions of Contract");

.2 This Agreement, including all exhibits and attachments, executed by Owner and Design-Builder;

.3 Written Supplementary Conditions, if any, to the General Conditions of Contract;

.4 The General Conditions of Contract;

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

.6 Design-Builder's Deviation List, if any, contained in Design-Builder's Proposal, which shall specifically identify any and all deviations from Owner's Project Criteria;

.7 Owner's Project Criteria;

.8 Design-Builder's Proposal, except for the Deviation List, submitted in response to Owner's Project Criteria; and

.9 The following other documents, if any: *(Identify, for example, Unit Price Schedules, Design-Builder's allowances, Performance Standard Requirements, Owner's Permit List and any other document Owner and Design-Builder elect to make a Contract Document)*

Article 3

Interpretation and Intent

3.1 The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall take precedence in the order in which they are listed in Section 2.1 hereof.

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

3.3 The Contract Documents form the entire agreement between Owner and Design-Builder and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

Article 4

Ownership of Work Product

4.1 **Work Product.** All drawings, specifications and other documents and electronic data furnished by Design-Builder to Owner under this Agreement ("Work Product") are deemed to be instruments of service and Design-Builder shall retain the ownership and property interests therein, including the copyrights thereto.

4.2 **Owner's Limited License Upon Payment in Full.** Upon Owner's payment in full for all Work performed under the Contract Documents, Design-Builder shall transfer to Owner and property interests, including but not limited to any intellectual property rights, copyrights and/or patents, in the Work Product. Such transfer is conditioned on Owner's express understanding that its alteration of the Work Product without the involvement of the Design-Builder is at Owner's sole risk and without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier.

4.3 **Owner's Limited License Upon Owner's Termination for Convenience or Design-Builder's Election to Terminate.** If Owner terminates the Project for its convenience as set forth in Article 8 hereof, or if Design-Builder elects to terminate this Agreement in accordance with Section 11.4 of the General Conditions of Contract, Design-Builder shall, upon Owner's payment in full of the amounts due Design-Builder under the Contract Documents, grant Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, conditioned on the following:

.1 Use of the Work Product is at Owner's sole risk without liability or legal exposure to any Indemnified Party; and

.2 Owner agrees to pay Design-Builder the additional sum of Four Million Nine Hundred Ninety Five Thousand and No Cents
Dollars ($ 4,995,000.00) as compensation for the right to use the Work Product in accordance with this Article 4 if Owner resumes the Project through its employees, agents, or third parties.

4.4 **Owner's Limited License Upon Design-Builder's Default.** If this Agreement is terminated due to Design-Builder's default pursuant to Section 11.2 of the General Conditions of Contract and (i) it is determined that Design-Builder was in default and (ii) Owner has fully satisfied all of its obligations under the Contract Documents, Design-Builder shall grant Owner a limited license to use the Work Product in connection with Owner's completion and

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occupancy of the Project. This limited license is conditioned on Owner's express understanding that its use of the Work Product is at Owner's sole risk and without liability or legal exposure to any Indemnified Party.

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

Article 5

Contract Time

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

5.2 Substantial Completion and Final Completion

5.2.1 Substantial Completion of the entire Work shall be achieved no later than December 31, 2019 (360) calendar days after the Date of Commencement ("Scheduled Substantial Completion Date").

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

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

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

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

5.4 Liquidated Damages. Design-Builder understands that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Substantial Completion is not attained by December 31, 2019(7) days after the Scheduled Substantial Completion Date (the "LD Date"), Designer-Builder shall pay Owner Five Hundred Dollars ($ $ 500.00) as liquidated damages for each day that Substantial Completion extends beyond the LD Date. The liquidated damages provided herein shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature incurred by Owner which are occasioned by any delay in achieving Substantial Completion. *(If liquidated damages are applicable to any dates set forth in Section 5.2.2 hereof, this Section 5.4 will need to be modified accordingly)*

5.5 Early Completion Bonus. If Substantial Completion is attained on or before N/A (___N/A) days before the Scheduled Substantial Completion Date (the "Bonus Date"), Owner shall pay Design-Builder at the time of Final Payment under Section 7.3 hereof an early completion bonus of _____N/A Dollars ($ _____N/A___) for each day that Substantial Completion is attained earlier than the Bonus Date. *(If an early completion bonus is applicable to any dates set forth in Section 5.2.2 hereof, this Section 5.5 will need to be modified accordingly)*

Article 6

Contract Price

6.1 Contract Price. Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract the sum of Two Million Two Hundred Twenty-seven Thousand Dollars ($ 2,227,000.00) ("Contract Price"), subject to adjustments made in accordance with the General Conditions of Contract. Unless otherwise provided in the Contract Documents, the Contract Price is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

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

Article 7

Procedure for Payment

7.1 Progress Payments

7.1.1 Design-Builder shall submit to Owner on the February 1, 2019 (1st) day of each month, beginning with the first month after the Date of Commencement, Design-Builder's Application for Payment in accordance with Article 6 of the General Conditions of Contract.

7.1.2 Owner shall make payment within ten (21) days after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with Article 6 of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the General Conditions of Contract.

7.2 Retainage on Progress Payments

~~**7.2.1** Owner will retain _____ percent (_____%) of each Application for Payment provided, however, that when fifty percent (50%) of the Work has been completed by Design-Builder, Owner will not retain any additional amounts from Design-Builder's subsequent Applications for Payment. Owner will also reasonably consider reducing retainage for Subcontractors completing their work early in the Project.~~

7.2.2 Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, pursuant to Section 6.6 of the General Conditions of Contract, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion.

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

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7.4 **Interest.** Payments due and unpaid by Owner to Design-Builder, whether progress payments or final payment, shall bear interest commencing five (5) days after payment is due at the rate of One and one-half percent (___1.5_%).

7.5 **Record Keeping and Finance Controls.** With respect to changes in the Work performed on a cost basis by Design-Builder pursuant to the Contract Documents, Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of three (3) years after Final Payment, Owner and Owner's accountants shall be afforded access from time to time, upon reasonable notice, to Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to changes in the Work performed on a cost basis in accordance with the Contract Documents, all of which Design-Builder shall preserve for a period of three (3) years after Final Payment.

Article 8

Termination for Convenience

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

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

.2 The reasonable costs and expenses attributable to such termination, including demobilization costs and amounts due in settlement of terminated contracts with Subcontractors and Design Consultants; and

.3 ~~*(Choose one of the following:)*~~

The fair and reasonable sums for overhead and profit on the sum of items .1 and .2 above.

~~*or*~~

~~Overhead and profit in the amount of _____ percent (_____%) on the sum of items .1 and .2 above.~~

8.2 ~~In addition to the amounts set forth in Section 8.1 above, Design-Builder shall be entitled to receive one of the following as applicable:~~

~~.1 If Owner terminates this Agreement prior to commencement of construction, Design-Builder shall be paid _____ percent (_____%) of the remaining balance of the Contract Price.~~

~~.2 If Owner terminates this Agreement after commencement of construction, Design-Builder shall be paid _____ percent (_____%) of the remaining balance of the Contract Price.~~

8.3 If Owner terminates this Agreement pursuant to Section 8.1 above and proceeds to design and construct the Project through its employees, agents or third parties, Owner's rights to use the Work Product shall be as set forth in Section 4.3 hereof.

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

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Article 9

Representatives of the Parties

9.1 Owner's Representatives

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

Tony Flores, Deputy County Manager
102 Grant Ave.
Santa Fe, NM 87504
(505) 986-6216

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

Phillip Montano
Facilities Ops/Maintenance Manager
Santa Fe County, Public Works Department
2600 S. Galisteo Dr.
Santa Fe, NM 87505
(505) 992-3037

9.2 Design-Builder's Representatives

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

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

Article 10

Bonds and Insurance

10.1 Insurance. Design-Builder shall procure in accordance with Article 5 of the General Conditions of Contract the following insurance coverages:

Commercial Liability	$5,000,000 per occurrence/aggregate
Auto Liability	$2,000,000 per occurrence/aggregate
Workers Comp.	$1,000,000 per accident
Professional Liability	$2,000,000

(Attach Insurance Schedule indicating the required coverage, amount of required coverage, duration of coverage, required rating of insurance carriers and any other insurance requirements required of the parties)

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10.2 Bonds and Other Performance Security. Design-Builder shall provide the following performance bond and labor and material payment bond or other performance security for the full value of the Agreement. *(Insert the amount of bonds and any other conditions of the bonds or other security)*

Article 11

Other Provisions

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

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

OWNER:

_____
(Name of Owner)

_____
(Signature)

_____
(Printed Name)

_____
(Title)

Date: _____

DESIGN-BUILDER:

_____
(Name of Design-Builder)

_____
(Signature)

_____
(Printed Name)

_____
(Title)

Date: _____

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DBIA

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STANDARD FORM OF GENERAL CONDITIONS OF CONTRACT BETWEEN OWNER AND DESIGN-BUILDER

Document No. 535
First Edition, 1998
© Design-Build Institute of America
Washington, DC

INSTRUCTIONS

For DBIA Document No. 535 Standard Form of General Conditions of Contract Between Owner and Design-Builder (1998 Edition)

General Instructions

No.	Subject	Instruction
1.	Standard Forms	Standard form contracts have long served an important function in the United States and international construction markets. The common purpose of these forms is to provide an economical and convenient way for parties to contract for design and construction services. As standard forms gain acceptance and are used with increased frequency, parties are able to enter into contracts with greater certainty as to their rights and responsibilities.
2.	DBIA Standard Form Contract Documents	Since its formation in 1993, the Design-Build Institute of America (ADBIA@) has regularly evaluated the needs of owners, design-builders, and other parties to the design-build process in preparation for developing its own contract forms. Consistent with DBIA's mission of promulgating best design-build practices, DBIA believes that the design-build contract should reflect a balanced approach to risk that considers the legitimate interests of all parties to the design-build process. DBIA's Standard Form Contract Documents reflect a modern risk allocation approach, allocating each risk to the party best equipped to manage and minimize that risk, with the goal of promoting best design-build practices.
3.	Use of Non-DBIA Documents	To avoid inconsistencies among documents used for the same project, DBIA's Standard Form Contract Documents should not be used in conjunction with non-DBIA documents unless the non-DBIA documents are appropriately modified on the advice of legal counsel.
4.	Legal Consequences	DBIA Standard Form Contract Documents are legally binding contracts with important legal consequences. Contracting parties are advised and encouraged to seek legal counsel in completing or modifying these Documents.
5.	Reproduction	DBIA hereby grants to purchasers a limited license to reproduce up to five copies of completed original Documents for use on a particular project. At least two original versions of the Agreement should be signed by the parties. Any other reproduction of DBIA Documents is prohibited.
6.	Modifications	Effective contracting is accomplished when the parties give specific thought to their contracting goals and then tailor the contract to meet the unique needs of the project and the design-build team. For that reason, these Documents may require modification for various purposes including, for example, to comply with local codes and laws, or to add special terms. Also, in some instances, these Documents must be modified to indicate the selection of a particular contract term. Any modifications to these Documents should be underlined to distinguish them from original language. Any handwritten modifications should be initialed by the parties. To delete provisions, strike through the printed words so that original language remains legible. At no time should a document be re-typed in its entirety. Re-creating the document violates copyright laws and destroys one of the advantages of standard forms familiarity with the terms. Additions to DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder*, 1998 Edition, ("General Conditions of Contract") shall be in the form of written Supplementary Conditions. These are referenced in Section 2.1.3 of DBIA Document No. 525, *Standard Form of Agreement Between Owner and Design-Builder C Lump Sum*, 1998 Edition, (ADBIA Document No. 525@) and DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder C Cost Plus Fee with an Option for a Guaranteed Maximum Price*, 1998 Edition, (ADBIA Document No. 530@).

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No.	Subject	Instruction
7.	Execution	It is good practice to execute two original copies of the Agreement. Only persons authorized to sign for the contracting parties may execute the Agreement.

Specific Instructions

Section	Title	Instruction
General	Purpose of this Document	The General Conditions of Contract provide the terms and conditions under which the Work of the Project will be performed. This document accompanies DBIA Document No. 525 and DBIA Document No. 530 (each referred to herein generally as "agreement"). It may also be incorporated by reference into other related agreements, as between the Design-Builder and the Design Consultant, and the Design-Builder and the Subcontractor.
General	Checklist	The following Sections reference documents that are to be attached to the Agreement: Section 2.3.1 Performance Standard Requirements Section 3.5.1 Owner's Permit List Section 9.4.1 Unit Prices
2.2.1	Design Professional Services	The parties should be aware that in addition to requiring compliance with state licensing laws for design professionals, some states also require that the design professional have a corporate professional license.
2.3.1	Standard of Care for Design Professional's Services	Design-Builder's obligation is to deliver a design that meets prevailing industry standards. However, DBIA believes that if Owner has identified specific performance standards that can be objectively measured, Design-Builder is obligated to design the Project to satisfy these standards. To avoid any confusion and to ensure that the parties fully understand what their obligations are, the specific performance standards must be set forth in an exhibit to the Agreement entitled "Performance Standard Requirements."
3.5.1	Government Approvals and Permits	Design-Builder is responsible for obtaining all necessary permits, approvals and licenses, except to the extent specific permits, approvals, and licenses are set forth in an Owner's Permit List, which must be attached as an exhibit to the Agreement. The parties, prior to execution of the Agreement, should discuss which permits, approvals and licenses need to be obtained for the Project, and which party is in the best position to do so.
5.1.1	Design-Builder's Insurance Requirements	Design-Builder is obligated to provide insurance coverage from insurance carriers that meet the criteria set forth in the Insurance Schedule attached to Section 10.1 of the Agreement.
5.1.2	Coverage Amounts and Durations	Design-Builder's liability insurance must be written for the amounts set forth in the Insurance Schedule made part of the Agreement and must include completed operations insurance for the period of time set forth in the Insurance Schedule.
5.1.3	Exclusions to Design-Build	Parties are advised that standard liability insurance policies may contain exclusions for the design-build delivery method. This Section 5.1.3 requires that any such exclusions be deleted from the policy.
5.1.4	Errors and Omissions Insurance	This Section 5.1.4 does not require the purchase of errors and omissions insurance by the Design-Builder or its Design-Consultant. Should Owner, after its analysis of the risk factors involved, require this insurance, the coverage required shall be as set forth in the Insurance Schedule attached at Section 10.1 of the Agreement. To the extent such coverage is required, any exclusion for the design-build delivery method should be deleted.

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Section	Title	Instruction
5.4.1	Bonds and Other Performance Security	Design-Builder is only obligated to provide bonds or other forms of performance security to the extent called for in Section 10.2 of the Agreement.
9.4.1.1	Contract Price Adjustments	Unit prices, if established, shall be attached pursuant to Article 2 of the Agreement.
9.4.3	Payment/ Performance of Disputed Services	When Owner disputes Design-Builder's entitlement to a change order or disagrees with Design-Builder regarding the scope of Work, and nevertheless expects Design-Builder to perform the services, Design-Builder's cash flow and ability to complete the Work will be hampered if Owner fails to pay Design-Builder for the disputed services. This Section provides a balanced approach whereby Design-Builder is required to perform the services, but Owner is required to pay fifty percent (50%) of Design-Builder's reasonable estimated direct costs of performing such services until the dispute is settled. By so doing, Owner does not forfeit its right to deny total responsibility for payment, and Design-Builder does not give up its right to demand full payment. The dispute shall be resolved according to Article 10.
Article 10	Contract Adjustments and Disputes	DBIA endorses the use of partnering, negotiation, mediation and arbitration for the prevention and resolution of disputes. The General Conditions of Contract provides for the parties' Representatives and Senior Representatives to attempt to negotiate the dispute or disagreement. If this attempt fails, the dispute shall be submitted to mandatory, non-binding mediation. Any dispute that cannot be resolved by mediation shall then be submitted to binding arbitration.
10.3.4	Arbitration	The prevailing party in any arbitration shall receive reasonable attorneys' fees from the other party. DBIA supports this "loser pays" provision to encourage parties to negotiate or mediate their differences and to minimize the number of frivolous disputes.
10.4	Duty to Continue Performance	Pending the resolution of any dispute or disagreement, both Owner and Design-Builder shall continue to perform their respective duties under the Contract Documents, unless the parties provide otherwise in the Contract Documents.
10.5	Consequential Damages	DBIA believes that it is inappropriate for either Owner or Design-Builder to be responsible to the other for consequential damages arising from the Project. This limitation on consequential damages in no way restricts, however, the payment of liquidated damages, if any, under Article 5 of the Agreement.
11.4	Design-Builder's Right to Terminate for Cause	If Design-Builder properly terminates the Agreement for cause, it shall recover from Owner in the same way as if Owner had terminated the Agreement for convenience under Article 8 of the Agreement. Owner shall pay to Design-Builder its costs, reasonable overhead and profit on the costs, and an additional payment based on a percentage of the remaining balance of the Contract Price, all as more fully set forth in Article 8 of the Agreement.

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Standard Form of General Conditions of Contract Between Owner and Design-Builder

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

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Article 1

General

1.1 Mutual Obligations

1.1.1 Owner and Design-Builder commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.

1.2 Basic Definitions

1.2.1 *Agreement* refers to the executed contract between Owner and Design-Builder under either DBIA Document No. 525, *Standard Form of Agreement Between Owner and Design-Builder – Lump Sum* (1998 Edition) or DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder – Cost Plus Fee with an Option for a Guaranteed Maximum Price* (1998 Edition).

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

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

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

1.2.5 *General Conditions of Contract* refer to this DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (1998 Edition).

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

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

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

1.2.9 *Subcontractor* is any person or entity retained by Design-Builder as an independent contractor to perform a portion of the Work and shall include materialmen and suppliers.

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

1.2.11 *Substantial Completion* is the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete so that Owner can occupy and use the Project or a portion thereof for its intended purposes.

1.2.12 *Work* is comprised of all Design-Builder's design, construction and other services required by the Contract Documents, including procuring and furnishing all materials, equipment, services and labor reasonably inferable from the Contract Documents.

Article 2

Design-Builder's Services and Responsibilities

2.1 General Services

2.1.1 Design-Builder's Representative shall be reasonably available to Owner and shall have the necessary expertise and experience required to supervise the Work. Design-Builder's Representative shall communicate regularly with Owner and shall be vested with the authority to act on behalf of Design-Builder. Design-Builder's Representative may be replaced only with the mutual agreement of Owner and Design-Builder.

2.1.2 Design-Builder shall provide Owner with a monthly status report detailing the progress of the Work, including whether (i) the Work is proceeding according to schedule, (ii) discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution, (iii) health and safety issues exist in connection with the Work, and (iv) other items require resolution so as not to jeopardize Design-Builder's ability to complete the Work for the Contract Price and within the Contract Time(s).

2.1.3 Design-Builder shall prepare and submit, at least three (3) days prior to the meeting contemplated by Section 2.1.4 hereof, a schedule for the execution of the Work for Owner's review and response. The schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when Owner information and approvals are required to enable Design-Builder to achieve the Contract Time(s). The schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. Owner's review of and response to the schedule shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

2.1.4 The parties will meet within seven (7) days after execution of the Agreement to discuss issues affecting the administration of the Work and to implement the necessary procedures, including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents.

2.2 Design Professional Services

2.2.1 Design-Builder shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by Design-Builder, or procured from qualified, independent licensed Design Consultants, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work consistent with the Contract Documents. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant.

2.3 Standard of Care for Design Professional Services

2.3.1 The standard of care for all design professional services performed to execute the Work shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project. Notwithstanding the preceding sentence, if the parties agree upon specific performance standards for any aspect of the Work, which standards are to be set forth in an exhibit to the Agreement entitled "Performance Standard Requirements," the design professional services shall be performed to achieve such standards.

2.4 Design Development Services

2.4.1 Design-Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any interim design submissions that Owner may wish to review, which interim design submissions may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. On or about the time of the scheduled submissions, Design-Builder and Owner shall meet and confer about the submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any significant changes or deviations from the Contract Documents, or, if applicable, previously submitted design submissions. Minutes of the meetings will be maintained by Design-Builder and provided to all attendees for review. Following the design review meeting, Owner shall review and approve the interim design submissions in a time that is consistent with the turnaround times set forth in Design-Builder's schedule.

2.4.2 Design-Builder shall submit to Owner Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Work. The Construction Documents shall be consistent with the latest set of interim design submissions, as such submissions may have been modified in a design review meeting. The parties shall have a design review meeting to discuss, and Owner shall review and approve, the Construction Documents in accordance with the procedures set forth Section 2.4.1 above. Design-Builder shall proceed with construction in accordance with the approved Construction Documents and shall submit one set of approved Construction Documents to Owner prior to commencement of construction.

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2.4.3 Owner's review and approval of interim design submissions and the Construction Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. Neither Owner's review nor approval of any interim design submissions and Construction Documents shall be deemed to transfer any design liability from Design-Builder to Owner.

2.4.4 To the extent not prohibited by the Contract Documents or Legal Requirements, Design-Builder may prepare interim design submissions and Construction Documents for a portion of the Work to permit construction to proceed on that portion of the Work prior to completion of the Construction Documents for the entire Work.

2.5 Legal Requirements

2.5.1 Design-Builder shall perform the Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements.

2.5.2 The Contract Price and/or Contract Time(s) shall be adjusted to compensate Design-Builder for the effects of any changes in the Legal Requirements enacted after the date of the Agreement affecting the performance of the Work, or if a Guaranteed Maximum Price is established after the date of the Agreement, the date the parties agree upon the Guaranteed Maximum Price. Such effects may include, without limitation, revisions Design-Builder is required to make to the Construction Documents because of changes in Legal Requirements.

2.6 Government Approvals and Permits

2.6.1 Except as identified in an Owner's Permit List attached as an exhibit to the Agreement, Design-Builder shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project.

2.6.2 Design-Builder shall provide reasonable assistance to Owner in obtaining those permits, approvals and licenses that are Owner's responsibility.

2.7 Design-Builder's Construction Phase Services

2.7.1 Unless otherwise provided in the Contract Documents to be the responsibility of Owner or a separate contractor, Design-Builder shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Design-Builder to complete construction of the Project consistent with the Contract Documents.

2.7.2 Design-Builder shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Design-Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

2.7.3 Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Owner may reasonably object to Design-Builder's selection of any Subcontractor, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that Owner's decision impacts Design-Builder's cost and/or time of performance.

2.7.4 Design-Builder assumes responsibility to Owner for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

2.7.5 Design-Builder shall coordinate the activities of all Subcontractors. If Owner performs other work on the Project or at the Site with separate contractors under Owner's control, Design-Builder agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

2.7.6 Design-Builder shall keep the Site reasonably free from debris, trash and construction wastes to permit Design-Builder to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, Design-Builder shall remove all debris, trash,

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construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit Owner to occupy the Project or a portion of the Project for its intended use.

2.8 Design-Builder's Responsibility for Project Safety

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

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

2.8.3 Design-Builder's responsibility for safety under this Section 2.8 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages or accidents resulting from their performance of the Work.

2.9 Design-Builder's Warranty

2.9.1 Design-Builder warrants to Owner that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work by persons other than Design-Builder or anyone for whose acts Design-Builder may be liable. Nothing in this warranty is intended to limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this Section 2.9 or the Contract Documents. Design-Builder will provide Owner with all manufacturers' warranties upon Substantial Completion.

2.10 Correction of Defective Work

2.10.1 Design-Builder agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 2.9 hereof, within a period of one year from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by the Contract Documents.

2.10.2 Design-Builder shall, within seven (7) days of receipt of written notice from Owner that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Design-Builder fails to commence the necessary steps within such seven (7) day period, Owner, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder with written notice that Owner will commence correction of such nonconforming Work with its own forces. If Owner does perform such corrective Work, Design-Builder shall be responsible for all reasonable costs incurred by Owner in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the seven (7) day periods identified herein shall be deemed inapplicable.

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2.10.3 The one year period referenced in Section 2.10.1 above applies only to Design-Builder's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies Owner may have regarding Design-Builder's other obligations under the Contract Documents.

Article 3

Owner's Services and Responsibilities

3.1 Duty to Cooperate

3.1.1 Owner shall, throughout the performance of the Work, cooperate with Design-Builder and perform its responsibilities, obligations and services in a timely manner to facilitate Design-Builder's timely and efficient performance of the Work and so as not to delay or interfere with Design-Builder's performance of its obligations under the Contract Documents.

3.1.2 Owner shall provide timely reviews and approvals of interim design submissions and Construction Documents consistent with the turnaround times set forth in Design-Builder's schedule.

3.2 Furnishing of Services and Information

3.2.1 Unless expressly stated to the contrary in the Contract Documents, Owner shall provide, at its own cost and expense, for Design-Builder's information and use the following, all of which Design-Builder is entitled to rely upon in performing the Work:

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

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

.3 Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable Design-Builder to perform the Work;

.4 A legal description of the Site;

.5 To the extent available, as-built and record drawings of any existing structures at the Site; and

.6 To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site.

3.2.2 Owner is responsible for securing and executing all necessary agreements with adjacent land or property owners that are necessary to enable Design-Builder to perform the Work. Owner is further responsible for all costs, including attorneys' fees, incurred in securing these necessary agreements.

3.3 Financial Information

3.3.1 At Design-Builder's request, Owner shall promptly furnish reasonable evidence satisfactory to Design-Builder that Owner has adequate funds available and committed to fulfill all of Owner's contractual obligations under the Contract Documents. If Owner fails to furnish such financial information in a timely manner, Design-Builder may stop Work under Section 11.3 hereof or exercise any other right permitted under the Contract Documents.

3.3.2 Design-Builder shall cooperate with the reasonable requirements of Owner's lenders or other financial sources. Notwithstanding the preceding sentence, after execution of the Agreement Design-Builder shall have no obligation to execute for Owner or Owner's lenders or other financial sources any documents or agreements that require Design-Builder to assume obligations or responsibilities greater than those existing obligations Design-Builder has under the Contract Documents.

3.4 Owner's Representative

3.4.1 Owner's Representative shall be responsible for providing Owner-supplied information and approvals in a timely manner to permit Design-Builder to fulfill its obligations under the Contract Documents. Owner's Representative shall also provide Design-Builder with prompt notice if it observes any failure on the part of Design-Builder to fulfill its contractual

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obligations, including any errors, omissions or defects in the performance of the Work.

3.5 Government Approvals and Permits

3.5.1 Owner shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees set forth in the Owner's Permit List attached as an exhibit to the Agreement.

3.5.2 Owner shall provide reasonable assistance to Design-Builder in obtaining those permits, approvals and licenses that are Design-Builder's responsibility.

3.6 Owner's Separate Contractors

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

Article 4

Hazardous Conditions and Differing Site Conditions

4.1 Hazardous Conditions

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

4.1.2 Upon receiving notice of the presence of suspected Hazardous Conditions, Owner shall take the necessary measures required to ensure that the Hazardous Conditions are remediated or rendered harmless. Such necessary measures shall include Owner retaining qualified independent experts to (i) ascertain whether Hazardous Conditions have actually been encountered, and, if they have been encountered, (ii) prescribe the remedial measures that Owner must take either to remove the Hazardous Conditions or render the Hazardous Conditions harmless.

4.1.3 Design-Builder shall be obligated to resume Work at the affected area of the Project only after Owner's expert provides it with written certification that (i) the Hazardous Conditions have been removed or rendered harmless and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or Site.

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

4.1.5 To the fullest extent permitted by law, Owner shall indemnify, defend and hold harmless Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly for any of them, and their officers, directors, employees and agents, from and against any and all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from the presence, removal or remediation of Hazardous Conditions at the Site.

4.1.6 Notwithstanding the preceding provisions of this Section 4.1, Owner is not responsible for Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable. Design-Builder shall indemnify, defend and hold harmless Owner and Owner's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable.

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4.2 Differing Site Conditions

4.2.1 Concealed or latent physical conditions or subsurface conditions at the Site that (i) materially differ from the conditions indicated in the Contract Documents or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work are collectively referred to herein as "Differing Site Conditions." If Design-Builder encounters a Differing Site Condition, Design-Builder will be entitled to an adjustment in the Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance are adversely impacted by the Differing Site Condition.

4.2.2 Upon encountering a Differing Site Condition, Design-Builder shall provide prompt written notice to Owner of such condition, which notice shall not be later than fourteen (14) days after such condition has been encountered. Design-Builder shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

Article 5

Insurance and Bonds

5.1 Design-Builder's Insurance Requirements

5.1.1 Design-Builder is responsible for procuring and maintaining from insurance companies authorized to do business in the state in which the Project is located, and with a minimum rating set forth in the Agreement, the following insurance coverages for certain claims which may arise from or out of the performance of the Work and obligations under the Contract Documents:

.1 Coverage for claims arising under workers' compensation, disability and other similar employee benefit laws applicable to the Work;

.2 Coverage for claims by Design-Builder's employees for bodily injury, sickness, disease, or death;

.3 Coverage for claims by any person other than Design-Builder's employees for bodily injury, sickness, disease, or death;

.4 Coverage for usual personal injury liability claims for damages sustained by a person as a direct or indirect result of Design-Builder's employment of the person, or sustained by any other person;

.5 Coverage for claims for damages (other than to the Work) because of injury to or destruction of tangible property, including loss of use;

.6 Coverage for claims of damages because of personal injury or death, or property damage resulting from ownership, use and maintenance of any motor vehicle; and

.7 Coverage for contractual liability claims arising out of Design-Builder's obligations under Section 7.4.1 hereof.

5.1.2 Design-Builder's liability insurance required by Section 5.1.1 above shall be written for the coverage amounts set forth in the Agreement and shall include completed operations insurance for the period of time set forth in the Agreement.

5.1.3 Design-Builder's liability insurance set forth in Sections 5.1.1.1 through 5.1.1.7 above shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project.

5.1.4 To the extent Owner requires Design-Builder or any Design Consultant to provide professional liability insurance for claims arising from the negligent performance of design services by Design-Builder or the Design Consultant, the coverage limits, duration and other specifics of such insurance shall be as set forth in the Agreement. Any professional liability shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project. Such policies shall be provided prior to the commencement of any design services hereunder.

5.1.5 Prior to commencing any construction services hereunder, Design-Builder shall provide Owner with certificates evidencing that (i) all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect for the duration required by the Contract Documents and (ii) no insurance coverage will be canceled, renewal refused,

or materially changed unless at least thirty (30) days prior written notice is given to Owner.

5.2 Owner's Liability Insurance

5.2.1 Owner shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located such liability insurance to protect Owner from claims which may arise from the performance of Owner's obligations under the Contract Documents or Owner's conduct during the course of the Project.

5.3 Owner's Property Insurance

5.3.1 Unless otherwise provided in the Contract Documents, Owner shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located property insurance upon the entire Project to the full insurable value of the Project, including professional fees, overtime premiums and all other expenses incurred to replace or repair the insured property. The property insurance obtained by Owner shall include as additional insureds the interests of Owner, Design-Builder, Design Consultants, Subcontractors and Sub-Subcontractors, and shall insure against the perils of fire and extended coverage, theft, vandalism, malicious mischief, collapse, flood, earthquake, debris removal and other perils or causes of loss as called for in the Contract Documents. The property insurance shall include physical loss or damage to the Work, including materials and equipment in transit, at the Site or at another location as may be indicated in Design-Builder's Application for Payment and approved by Owner.

5.3.2 Unless the Contract Documents provide otherwise, Owner shall procure and maintain boiler and machinery insurance that will include the interests of Owner, Design-Builder, Design Consultants, Subcontractors and Sub-Subcontractors.

5.3.3 Prior to Design-Builder commencing any Work, Owner shall provide Design-Builder with certificates evidencing that (i) all Owner's insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect until Design-Builder has completed all of the Work and has received final payment from Owner and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to Design-Builder. Owner's property insurance shall not lapse or be canceled if Owner occupies a portion of the Work pursuant to Section 6.6.3 hereof. Owner shall provide Design-Builder with the necessary endorsements from the insurance company prior to occupying a portion of the Work.

5.3.4 Any loss covered under Owner's property insurance shall be adjusted with Owner and Design-Builder and made payable to both of them as trustees for the insureds as their interests may appear, subject to any applicable mortgage clause. All insurance proceeds received as a result of any loss will be placed in a separate account and distributed in accordance with such agreement as the interested parties may reach. Any disagreement concerning the distribution of any proceeds will be resolved in accordance with Article 10 hereof.

5.3.5 Owner and Design-Builder waive against each other and Owner's separate contractors, Design Consultants, Subcontractors, agents and employees of each and all of them, all damages covered by property insurance provided herein, except such rights as they may have to the proceeds of such insurance. Design-Builder and Owner shall, where appropriate, require similar waivers of subrogation from Owner's separate contractors, Design Consultants and Subcontractors and shall require each of them to include similar waivers in their contracts.

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5.4 Bonds and Other Performance Security

5.4.1 If Owner requires Design-Builder to obtain performance and labor and material payment bonds, or other forms of performance security, the amount, form and other conditions of such security shall be as set forth in the Agreement.

Article 6

Payment

6.1 Schedule of Values

6.1.1 Within ten (10) days of execution of the Agreement, Design-Builder shall submit for Owner's review and approval a schedule of values for all of the Work. The Schedule of Values will (i) subdivide the Work into its respective parts, (ii) include values for all items comprising the Work and (iii) serve as the basis for monthly progress payments made to Design-Builder throughout the Work.

6.2 Monthly Progress Payments

6.2.1 On or before the date established in the Agreement. Design-Builder shall submit for Owner's review and approval its Application for Payment requesting payment for all Work performed as of the date of the Application for Payment. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by Section 2.1.4 hereof.

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

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

6.3 Withholding of Payments

6.3.1 On or before the date established in the Agreement, Owner shall pay Design-Builder all amounts properly due. If Owner determines that Design-Builder is not entitled to all or part of an Application for Payment, it will notify Design-Builder in writing at least five (5) days prior to the date payment is due. The notice shall indicate the specific amounts Owner intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Design-Builder must take to rectify Owner's concerns. Design-Builder and Owner will attempt to resolve Owner's concerns prior to the date payment is due. If the parties cannot resolve such concerns, Design-Builder may pursue its rights under the Contract Documents, including those under Article 10 hereof.

6.3.2 Notwithstanding anything to the contrary in the Contract Documents, Owner shall pay Design-Builder all undisputed amounts in an Application for Payment within the times required by the Agreement.

6.4 Right to Stop Work and Interest

6.4.1 If Owner fails to pay Design-Builder any amount that becomes due, Design-Builder, in addition to all other remedies provided in Contract Documents may stop Work pursuant to Section 11.3 hereof. All payments due and unpaid shall bear at the rate set forth in the Agreement.

6.5 Design-Builder's Payment Obligations

6.5.1 Design-Builder will pay Design Consultants and Subcontractors, in accordance with its contractual obligations to such parties, all the amounts Design-Builder has received from Owner on account of their work. Design-Builder will impose similar requirements on Design Consultants and Subcontractors to pay those parties with whom they have contracted. Design-Builder will indemnify and defend Owner against any claims for payment and mechanic's liens as set forth in Section 7.3 hereof.

6.6 Substantial Completion

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

6.6.2 Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion.

6.6.3 Owner, at its option, may use a portion of the Work which has been determined to be substantially complete, provided, however, that (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in Section 6.6.1 above, (ii) Design-Builder and Owner have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project, and (iii) Owner and Design-Builder agree that Owner's use or occupancy will not interfere with Design-Builder's completion of the remaining Work.

6.7 Final Payment

6.7.1 After receipt of a Final Application for Payment from Design-Builder, Owner shall make final payment by the time required in the Agreement, provided that Design-Builder has completed all of the Work in conformance with the Contract Documents.

6.7.2 At the time of submission of its Final Application for Payment, Design-Builder shall provide the following information:

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

.2 a general release executed by Design-Builder waiving, upon receipt of final payment by Design-Builder, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment;

.3 consent of Design-Builder's surety, if any, to final payment;

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

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

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

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Article 7

Indemnification

7.1 Patent and Copyright Infringement

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

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

7.1.3 Sections 7.1.1 and 7.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by Owner and not offered or recommended by Design-Builder to Owner or (ii) arising from modifications to the Work by Owner or its agents after acceptance of the Work. If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Owner shall defend, indemnify and hold harmless Design-Builder to the same extent Design-Builder is obligated to defend, indemnify and hold harmless Owner in Section 7.1.1 above.

7.1.4 The obligations set forth in this Section 7.1 shall constitute the sole agreement between the parties relating to liability for infringement of violation of any patent or copyright.

7.2 Tax Claim Indemnification

~~7.2.1 If, in accordance with Owner's direction, an exemption for all or part of the Work is claimed for taxes, Owner shall indemnify, defend and hold harmless Design-Builder from and against any liability, penalty, interest, fine, tax assessment, attorneys' fees or other expenses or costs incurred by Design-Builder as a result of any action taken by Design-Builder in accordance with Owner's directive.~~

7.3 Payment Claim Indemnification

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

7.4 Design-Builder's General Indemnification

7.4.1 Design-Builder, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Owner, its officers, directors, employees and agents from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) to the extent resulting from the negligent acts or omissions of Design-Builder, Design

Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable.

7.4.2 If an employee of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable has a claim against Owner, its officers, directors, employees, or agents, Design-Builder's indemnity obligation set forth in Section 7.4.1 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Design-Builder, Design Consultants, Subcontractors, or other entity under any employee benefit acts, including workers' compensation or disability acts.

~~**7.5 Owner's General Indemnification**~~

~~**7.5.1** Owner, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Design-Builder and any of Design-Builder's officers, directors, employees, or agents from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) to the extent resulting from the negligent acts or omissions of Owner's separate contractors or anyone for whose acts any of them may be liable.~~

Article 8

Time

8.1 Obligation to Achieve the Contract Times

8.1.1 Design-Builder agrees that it will commence performance of the Work and achieve the Contract Time(s) in accordance with Article 5 of the Agreement.

8.2 Delays to the Work

8.2.1 If Design-Builder is delayed in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom Design-Builder is responsible, the Contract Time(s) for performance shall be reasonably extended by Change Order. By way of example, events that will entitle Design-Builder to an extension of the Contract Time(s) include acts or omissions of Owner or anyone under Owner's control (including separate contractors), changes in the Work, Differing Site Conditions, Hazardous Conditions, wars, floods, labor disputes, unusual delay in transportation, epidemics abroad, earthquakes, adverse weather conditions not reasonably anticipated, and other acts of God.

8.2.2 In addition to Design-Builder's right to a time extension for those events set forth in Section 8.2.1 above, Design-Builder shall also be entitled to an appropriate adjustment of the Contract Price provided, however, that the Contract Price shall not be adjusted for those events set forth in Section 8.2.1 above that are beyond the control of both Design-Builder and Owner, including the events of war, floods, labor disputes, earthquakes, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God.

Article 9

Changes to the Contract Price and Time

9.1 Change Orders

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

.1 The scope of the change in the Work;

.2 The amount of the adjustment to the Contract Price; and

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

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

9.1.3 If Owner requests a proposal for a change in the Work from Design-Builder and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse Design-Builder for reasonable costs incurred for estimating services, design services and services involved in the preparation of proposed revisions to the Contract Documents.

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9.2 Work Change Directives

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

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

9.3 Minor Changes in the Work

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

9.4 Contract Price Adjustments

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

.1 Unit prices set forth in the Agreement or as subsequently agreed to between the parties;

.2 A mutually accepted, lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by Owner;

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

.4 If an increase or decrease cannot be agreed to as set forth in items .1 through .3 above and Owner issues a Work Change Directive, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit, as may be set forth in the Agreement. If the net result of both additions and deletions to the Work is an increase in the Contract Price, overhead and profit shall be calculated on the basis of the net increase to the Contract Price. If the net result of both additions and deletions to the Work is a decrease in the Contract Price, there shall be no overhead or profit adjustment to the Contract Price. Design-Builder shall maintain a documented, itemized accounting evidencing the expenses and savings associated with such changes.

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

9.4.3 If Owner and Design-Builder disagree upon whether Design-Builder is entitled to be paid for any services required by Owner, or if there are any other disagreements over the scope of Work or proposed changes to the Work, Owner and Design-Builder shall resolve the disagreement pursuant to Article 10 hereof. As part of the negotiation process, Design-Builder shall furnish Owner with a good faith estimate of the costs to perform the disputed services in accordance with Owner's interpretations. If the parties are unable to agree and Owner expects Design-Builder to perform the services in accordance with Owner's interpretations, Design-Builder shall proceed to perform the disputed services, conditioned upon Owner issuing a written order to Design-Builder (i) directing Design-Builder to proceed and (ii) specifying Owner's interpretation of the services that are to be performed. If this occurs, Design-Builder shall be entitled to submit in its Applications for Payment an amount equal to fifty percent (50%) of its reasonable estimated direct cost to perform the services, and Owner agrees to pay such amounts, with the express understanding that (i) such payment by Owner does not prejudice Owner's right to argue that it has no responsibility to pay for such services and (ii) receipt of such payment by Design-Builder does not prejudice Design-Builder's right to seek full payment of the disputed services if Owner's order is deemed to be a change to the Work.

9.5 Emergencies

9.5.1 In any emergency affecting the safety of persons and/or property, Design-Builder shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time(s) on account of emergency work shall be determined as provided in this Article 9.

Article 10

Contract Adjustments and Disputes

10.1 Requests for Contract Adjustments and Relief

10.1.1 If either Design-Builder or Owner believes that it is entitled to relief against the other for any event arising out of or related to the Work or Project, such party shall provide written notice to the other party of the basis for its claim for relief. Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of these General Conditions of Contract. In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed twenty-one (21) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later. Such notice shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.

10.2 Dispute Avoidance and Resolution

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

10.2.2 Design-Builder and Owner will first attempt to resolve disputes or disagreements at the field level through discussions between Design-Builder's Representative and Owner's Representative.

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

10.2.4 If after meeting the Senior Representatives determine that the dispute or disagreement cannot be resolved on terms satisfactory to both parties, the parties shall submit the dispute or disagreement to non-binding mediation. The mediation shall be conducted by a mutually agreeable impartial mediator, or if the parties cannot so agree, a mediator designated by the American Arbitration Association ("AAA") pursuant to its Construction Industry Mediation Rules. The mediation will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by procedures established by the mediator.

10.3 Arbitration

10.3.1 Any claims, disputes or controversies between the parties arising out of or relating to the Agreement, or the breach thereof, which have not been resolved in accordance with the procedures set forth in Section 10.2 above shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the AAA then in effect, unless the parties mutually agree otherwise.

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

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10.3.3 Design-Builder and Owner expressly agree that any arbitration pursuant to this Section 10.3 may be joined or consolidated with any arbitration involving any other person or entity (i) necessary to resolve the claim, dispute or controversy, or (ii) substantially involved in or affected by such claim, dispute or controversy. Both Design-Builder and Owner will include appropriate provisions in all contracts they execute with other parties in connection with the Project to require such joinder or consolidation.

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

10.4 Duty to Continue Performance

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

10.5 CONSEQUENTIAL DAMAGES

10.5.1 Notwithstanding anything herein to the contrary (except as set forth in section 10.5.2 below), neither design-builder nor owner shall be liable to the other for any consequential losses or damages, whether arising in contract, warranty, tort (including negligence), strict liability or otherwise, including but not limited to losses of use, profits, business, reputation or financing.

10.5.2 The consequential damages limitation set forth in Section 10.5.1 above is not intended to affect the payment of liquidated damages, if any, set forth in Article 5 of the Agreement, which both parties recognize has been established, in part, to reimburse Owner for some damages that might otherwise be deemed to be consequential.

Article 11

Stop Work and Termination for Cause

11.1 Owner's Right to Stop Work

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

11.1.2 Design-Builder is entitled to seek an adjustment of the Contract Price and/or Contract Time(s) if its cost or time to perform the Work has been adversely impacted by any suspension of stoppage of work by Owner.

11.2 Owner's Right to Perform and Terminate for Cause

11.2.1 If Design-Builder persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Design Consultants or Subcontractors, (v) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time(s), as such times may be adjusted, or (vi) perform material obligations under the Contract Documents, then Owner, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Sections 11.2.2 and 11.2.3 below.

11.2.2 Upon the occurrence of an event set forth in Section 11.2.1 above, Owner may provide written notice to Design-Builder that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Design-Builder's receipt of such notice. If Design-Builder fails to cure, or reasonably commence to cure, such problem, then Owner may give a second written notice to Design-Builder of its intent to terminate within an additional seven (7) day period. If Design-Builder, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Owner may declare the Agreement terminated for default by providing written notice to Design-Builder of such declaration.

11.2.3 Upon declaring the Agreement terminated pursuant to Section 11.2.2 above, Owner may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the

performance of the Work, all of which Design-Builder hereby transfers, assigns and sets over to Owner for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items. In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, if the unpaid balance of the Contract Price exceeds the cost and expense incurred by Owner in completing the Work, such excess shall be paid by Owner to Design-Builder. Notwithstanding the preceding sentence, if the Agreement establishes a Guaranteed Maximum Price, Design-Builder will only be entitled to be paid for Work performed prior to its default. If Owner's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Design-Builder shall be obligated to pay the difference to Owner. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by Owner in connection with the reprocurement and defense of claims arising from Design-Builder's default, subject to the waiver of consequential damages set forth in Section 10.5 hereof.

11.2.4 If Owner improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Article 8 of the Agreement.

11.3 Design-Builder's Right to Stop Work

11.3.1 Design-Builder may, in addition to any other rights afforded under the Contract Documents or at law, stop work for the following reasons:

.1 Owner's failure to provide financial assurances as required under Section 3.3 hereof; or

.2 Owner's failure to pay amounts properly due under Design-Builder's Application for Payment.

11.3.2 Should any of the events set forth in Section 11.3.1 above occur, Design-Builder has the right to provide Owner with written notice that Design-Builder will stop work unless said event is cured within seven (7) days from Owner's receipt of Design-Builder's notice. If Owner does not cure the problem within such seven (7) day period, Design-Builder may stop work. In such case, Design-Builder shall be entitled to make a claim for adjustment to the Contract Price and Contract Time(s) to the extent it has been adversely impacted by such stoppage.

11.4 Design-Builder's Right to Terminate for Cause

11.4.1 Design-Builder, in addition to any other rights and remedies provided in the Contract Documents or by law, may terminate the Agreement for cause for the following reasons:

.1 The Work has been stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, because of court order, any government authority having jurisdiction over the Work, or orders by Owner under Section 11.1.1 hereof, provided that such stoppages are not due to the acts or omissions of Design-Builder or anyone for whose acts Design-Builder may be responsible.

.2 Owner's failure to provide Design-Builder with any information, permits or approvals that are Owner's responsibility under the Contract Documents which result in the Work being stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, even though Owner has not ordered Design-Builder in writing to stop and suspend the Work pursuant to Section 11.1.1 hereof.

.3 Owner's failure to cure the problems set forth in Section 11.3.1 above after Design-Builder has stopped the Work.

11.4.2 Upon the occurrence of an event set forth in Section 11.4.1 above, Design-Builder may provide written notice to Owner that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of

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Owner's receipt of such notice. If Owner fails to cure, or reasonably commence to cure, such problem, then Design-Builder may give a second written notice to Owner of its intent to terminate within an additional seven (7) day period. If Owner, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Design-Builder may declare the Agreement terminated for default by providing written notice to Owner of such declaration. In such case, Design-Builder shall be entitled to recover in the same manner as if Owner had terminated the Agreement for its convenience under Article 8 of the Agreement.

11.5 Bankruptcy of Owner or Design-Builder

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

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

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

If the Bankrupt Party fails to comply with its foregoing obligations, the non-Bankrupt Party shall be entitled to request the bankruptcy court to reject the Agreement, declare the Agreement terminated and pursue any other recourse available to the non-Bankrupt Party under this Article 11.

11.5.2 The rights and remedies under Section 11.5.1 above shall not be deemed to limit the ability of the non-Bankrupt Party to seek any other rights and remedies provided by the Contract Documents or by law, including its ability to seek relief from any automatic stays under the United States Bankruptcy Code or the right of Design-Builder to stop Work under any applicable provision of these General Conditions of Contract.

Article 12

Miscellaneous

12.1 Assignment

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

12.2 Successorship

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

12.3 Governing Law

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

12.4 Severability

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

12.5 No Waiver

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

12.6 Headings

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

12.7 Notice

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

12.8 Amendments

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

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APPENDIX D

Design-Build Change Order Form

For Use with DBIA Document No. 525, *Standard Form of Agreement Between Owner and Design-Builder – Lump Sum* (2010 Edition) and DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder – Cost Plus Fee with an Option for A Guaranteed Maximum Price* (2010 Edition)

Change Order Number:	Change Order Effective Date: (date when executed by both parties)
Project:	Design-Builder's Project No:
	Date of Agreement:
Owner:	Design-Builder:

Scope of the Change:

Original Contract Price: $ _____

Net Change by Previous Change Order No(s): to: $ _____

This Change Order Increase/Decrease (attach breakdown): $ _____

New Contract Price: $ _____

Original Contract Completion Date: _____ 20____

Adjustments by Change Order No(s) to: _____ (calendar days)

This Change Order Contract Time Increase/Decrease: _____ (calendar days)

Revised Substantial Completion Date: _____ 20____

By executing this Change Order, Owner and Design-Builder agree to modify the Agreement's Scope of Work, Contract Price and Contract Time as stated above. Upon execution, this Change Order becomes a Contract Document issued in accordance with DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder*, (2010 Edition).

OWNER:	DESIGN-BUILDER:
By: _____	By: _____
Printed Name: _____	Printed Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

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