

Village of Mantua, Ohio
ORDINANCE 2026-24

**AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A
MODIFIED STANDARD FORM OF PRELIMINARY AGREEMENT
BETWEEN OWNER AND DESIGN-BUILDER WITH DAVEY RESOURCE
GROUP, INC. AND DECLARING AN EMERGENCY.**

WHEREAS, this Council has previously approved the selection of Davey Resource Group, Inc. as the best value firm to provide design-build services for the Mantua failing bridge removal and streambank stabilization project; and

WHEREAS, this Council has previously authorized the Mayor and Fiscal Officer, working with other administrators and legal counsel, to negotiate, on behalf of the Council, pricing and an agreement for the preliminary design-build services for the Project and to present the negotiated agreement to the Council for approval.

NOW THEREFORE BE IT ORDAINED by the Council of the Village of Mantua, Portage County, Ohio, by at least two-thirds of the members elected thereto concurring that:

SECTION 1. The Mayor is hereby authorized and directed to execute a Modified Standard Form of Preliminary Agreement between Owner and Design-Builder with the Davey Resource Group, Inc. attached hereto as “EXHIBIT A” and incorporated herein by reference.

SECTION 2. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that deliberations of this Council and any of its committees that resulted in such formal actions were in meetings open to the public, in compliance with Section 121.22 of the Ohio Revised Code.

SECTION 3. This Ordinance is hereby declared to be an emergency measure in order to support the Mats Road Bridge Removal Project and shall become immediately effective upon its proper passage by two-thirds or more of the members elected to this Council.

PASSED IN COUNCIL AS EMERGENCY this _____ day of _____, 2026.

ATTEST:

Tammy Meyer, Mayor

Maryann Fabian, Fiscal Officer

Village of Mantua, Ohio
ORDINANCE 2026-24

I hereby certify the above Ordinance was duly posted as required pursuant to Mantua Village Codified Ordinances Section 123.01 for no less than two consecutive weeks, beginning on the ____ day of _____, 2026.

Maryann Fabian, Fiscal Officer

Approved as to legal form:

William D. Mason, Solicitor



MODIFIED STANDARD FORM OF PRELIMINARY AGREEMENT BETWEEN OWNER AND DESIGN- BUILDER

The author of this document has revised the text of the original DBIA standard form.

Document No. 520

Second Edition, 2010

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Washington, DC

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Modified Standard Form of Preliminary Agreement Between Owner and Design-Builder

This **AGREEMENT** is made as of the date of execution by the Owner, by and between the following parties, for services in connection with the Project identified below.

OWNER:

Village of Mantua, Ohio
4650 High Street
Mantua, Ohio 44255

Owner's Representative: Tammy Meyer, Mayor of the Village of Mantua

The Owner's Representative shall be the point of contact for the Design-Builder on the Project. In addition to the other requirements contained herein, all communications, submissions or notices to the Owner from the Design-Builder related to the Project shall be directed to the Owner's Representative.

CRITERIA ARCHITECT:

Hugh R. Holley, P.E.
gvmustang75@gmail.com

The Criteria Architect may also be referred to as the Criteria Engineer in the Contract Documents.

DESIGN-BUILDER:

(Name and address)

Davey Resource Group, Inc.
333 Martinel Drive
Kent, Ohio 44240

PROJECT:

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

Mantua Failing Bridge Removal & Streambank Stabilization Project
Location: Upon and adjacent to the Mats Road Bridge within the Village of Mantua, Ohio

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

Article 1

General

1.1 Duty to Cooperate and Design-Builder's Pledge. The Design-Builder acknowledges that this is a public project involving public funds and that the Owner expects and requires the Design-Builder to adhere to the highest ethical and performance standards. The Design-Builder pledges and agrees that (a) it will act at all times with absolute integrity and truthfulness in its dealings with the Owner, (b) it will use its best efforts to cooperate with the Owner and at all times will act with professionalism and dignity in its dealings with the Owner and the Criteria Architect, (c) it will assign only competent supervisors, designers and workers to the Project, each of whom is fully qualified to perform the tasks that are assigned to him/her, and (d) it has read, understands and will comply with the terms of this Agreement and the Design-Build Agreement attached hereto as Exhibit 3.

1.1.1 The terms of the DBIA Document No. 535, *Modified Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2010 Edition) ("General Conditions of Contract") apply to this Agreement, as set forth herein.

1.1.2 In the event inconsistencies, conflicts, or ambiguities between or among the Contract Documents are discovered after execution of the Agreement, Design-Builder shall provide the better quality or greater quantity of Work or comply with the more stringent requirements. In the event of any inconsistency, the provisions of this Agreement shall control over any proposal, document, or other attachment.

1.2 Definitions. Terms, words and phrases used in this Agreement shall have the meanings given them in DBIA Document No. 530, *Modified Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee with an Option for a Guaranteed Maximum Price* and the General Conditions of Contract.

1.2.1 To the extent that any service hereunder shall be performed by consultants or subcontractors retained by the Design-Builder, the term "Design-Builder" as used in this Agreement shall be deemed to include any such consultant or subcontractor.

1.3 Background Information. The Owner provided the Design-Builder with the Request for Proposals ("RFP") and Design Criteria produced by the Criteria Architect engaged by the Owner. Design-Builder was selected by Owner following the process outlined in the Ohio Revised Code (ORC) and Ohio Administrative Code (OAC) as the design-builder firm providing the best value for the Project. Design-Builder warrants that a competent person has diligently reviewed each part of the information provided and represents and agrees, based upon its diligent review of the information provided, that it is not aware of any conflicts, inconsistencies, errors, or omissions of which it has not notified the Owner. Services provided under this Agreement shall begin immediately and continue through design of the improvements described herein.

1.4 Site Conditions and Reliance upon Technical Data. The Design-Builder warrants that a competent person has carefully and diligently inspected and examined the entire Site and the surrounding area(s), including all parts of the Site applicable to the Work, including location, condition, and layout of the Site and the location of utilities, and carefully correlated the results of the inspection with the information provided by the Owner related to the Project. The Design-Builder shall include in its Guaranteed Maximum Price ("GMP") proposal for the Project all costs attributable to Site and surrounding area conditions that would have been discovered by such careful and diligent inspection and examination of the Site and the surrounding area, and the Design-Builder shall not be entitled to any Change Order, additional compensation, or additional time on account of such conditions.

1.4.1 Design-Builder shall field verify actual conditions and take such conditions into account in performing its services. Design-Builder shall review current conditions and note any discrepancies between its field survey and provided record documents. To the extent applicable, Design-Builder shall provide surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines.

1.4.2 To the extent applicable, the Design-Builder shall be responsible for all geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site.

1.4.3 The Design-Builder shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

1.4.4 The Design-Builder shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations. The Design-Builder shall collaborate with the geotechnical engineer on the number and locations of such tests and borings.

1.5 Bonds and Insurance

1.5.1 Payment and Performance Bonds Prior to execution of this Preliminary Services Agreement, Design-Builder must provide payment and performance bonds in the statutory forms per OAC 153:4-1-02, provided as **Exhibit 1** to the DBIA Document No. 530, *Modified Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee with an Option for a Guaranteed Maximum Price*. The Design-Builder shall provide replacement payment and performance bonds in the full amount of the GMP at the time the GMP is accepted by Owner. If the Project is phased, involving multiple GMPs, the bond must be amended each time a new GMP is accepted, so that the penal sum of the bond is equal to the most updated GMP. If any accepted GMP is increased at any time after the Design-Builder provides or amends the bond, the Design-Builder shall cause the penal sum of the bond to be increased as necessary to equal one hundred percent of the GMP as revised. The delivery of written consent from the affected surety or sureties to the Owner confirming any increased penal sum is a condition precedent to the Owner's obligation to pay the Design-Builder for any portion of the Work associated with the increase in the GMP. The surety shall be a company qualified and registered to conduct business in the state in which the Project is located.

1.5.2 Insurance

Design-Builder shall procure the insurance coverage(s) set forth in Article 5 of the General Conditions of Contract. All insurance provided on the Project, except professional liability insurance, shall designate the Owner as an additional insured and shall not contain any exemption from coverage for claims between insureds. Prior to commencing any services hereunder, Design-Builder shall provide Owner and each additional insured with Owner-approved certificates, endorsements, and other documentation as required by Article 5 of the General Conditions of Contract.

Article 2

Design-Builder's Services and Responsibilities (the "Work")

2.1 Design Services. Design-Builder shall, consistent with applicable state licensing laws and the Standard of Care set forth herein, provide design services, including architectural, engineering and other professional services, required by this Agreement. Such design services shall be provided through qualified, licensed design professionals who are either (i) employed by Design-Builder, or (ii) procured by Design-Builder from independent sources in accordance with Ohio law. Except as provided herein, nothing in this Agreement shall be construed to create any legal or contractual relationship of any kind between Owner and any design professional procured or otherwise engaged by the Design-Builder. The Design-Builder shall be responsible for the acts and omissions of the design professionals procured or otherwise engaged by the Design-Builder under this Agreement. Any agreement or contract awarded for the Project to any subcontractor, sub-subcontractor, design consultants, or design sub-consultant or material supplier shall name the Owner as an intended third party beneficiary, and shall entitle the Owner to enforce any rights thereunder for its benefit. The Design-Builder shall incorporate the obligations of this Agreement into its respective agreements and subcontracts. The team assigned by the Design Builder to perform the services required by this Agreement shall be the team identified in Design Builder's proposal.

2.1.1 Compliance with Laws and Regulations. The Design-Builder, at its expense, will comply with all applicable federal, state, and local laws, rules, and regulations applicable to the Work, and will require its Subcontractors to comply. The Design-Builder shall also comply with all federal, state, and local laws, rules, and regulations applicable to the construction of public facilities, including any applicable safety and security laws and regulations and Chapter 4115 of the Ohio Revised Code. The design will conform to all applicable codes and standards, and all other national, state, and local regulatory and statutory requirements. In the event of conflicting requirements, the Design-Builder shall comply with the more stringent requirements.

2.1.2 The Design-Builder shall prepare the design documents in accordance with the Design Criteria prepared by the Criteria Architect as set forth in the Request for Proposals, which are incorporated herein by reference. During the design phase, Design-Builder shall keep Owner apprised of any deviation from Owner's design documents, or Design Criteria and respond timely to Owner's comments regarding any such deviation. In the event that the design documents deviate from the Owner's Design Criteria or the Project as-designed exceeds the budget for the Cost of the Work or the Construction Budget for the Project, unless the Owner has approved such deviation in writing, if requested by the Owner, the Design-Builder shall re-design the design documents in accordance with the Owner's Design Criteria and/or the Owner's budget, at no additional cost. The Construction Budget includes the budget for the Cost of the Work and the Design Services Fee, Preconstruction Fee, Design-Build Services Fee, General Conditions, and Contingency as defined in Article 6 of the DBIA 530.

2.1.3 Design-Builder shall be responsible for performing the following duties including, but not limited to, cost estimating, budgeting, value engineering, constructability review, scheduling, and preconstruction planning throughout the Preliminary Services Phase.

2.1.4 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 for similar projects taking into account any unique requirements of the Owner and the location of the Project ("Standard of Care").

2.1.5 If the Design-Builder breaches any of its obligations under Section 2.1.4, the Design-Builder will reimburse the Owner for its damages and expenses, including but not limited to attorneys' and consultants' fees and expenses, arising out of or related to such breach.

2.2 Preliminary Services.

2.2.1 Owner shall provide Design-Builder with Owner's Project Criteria describing Owner's program requirements and objectives for the Project. The Project Criteria may also be referred to as the Design Criteria in the Contract Documents. Owner's Project Criteria shall include Owner's use, space, price, Site, performance and expandability requirements. Owner's Project Criteria may include conceptual documents, design specifications, design performance specifications and other technical materials and requirements prepared by or for Owner. The Owner's total Project budget is approximately **\$263,290**. The budget is subject to change in the Owner's sole discretion. Throughout the term of this Agreement the Design-Builder will perform its services based upon the Owner's then-current budget.

2.2.2 If Owner's Project Criteria have not been developed prior to the execution of this Agreement, Design-Builder will assist Owner in developing Owner's Project Criteria. If Owner has developed Owner's Project Criteria prior to executing this Agreement, Design-Builder shall review and prepare a written evaluation of such criteria, including recommendations to Owner for cost savings, operational efficiency, and different and innovative approaches to the design and construction of the Project. The parties shall meet to discuss Design-Builder's written evaluation of Owner's Project Criteria and agree upon what revisions, if any, should be made to such criteria. Design-Builder shall not revise the Owner's Project Criteria unless the Design-Builder receives a written directive to change the Project Criteria from the Owner.

2.2.2.1 By providing Design-Builder with Owner's Project Criteria, the Owner does not assume any responsibility for the design of the Project. Design-Builder acknowledges and agrees that it is responsible for preparing all aspects of the design necessary for the completion of the Project, including the verification of any representations made in the Project Criteria or any assumption made by the Design-Builder based upon the Project Criteria.

2.2.3 Preconstruction Services and Cost Estimates. Design-Builder shall be responsible for performing the following duties including, but not limited to, cost estimating, budgeting, value engineering, constructability reviews, scheduling, and preconstruction planning throughout its Design Documents services, at the intervals set forth herein and otherwise agreed to by the Owner. As the Design-Builder progresses with the preparation of the Schematic Design, Design Development, and Construction Documents, the Design-Builder shall prepare and update, at the intervals set forth in this Agreement, estimates of the Cost of the Work of increasing detail and refinement in a format acceptable to the Owner and allowing for the further development of the design. If the Design-Builder suggests alternative materials and systems, the Design-Builder shall provide cost evaluations of those alternative materials and systems. In addition the Design-Builder shall prepare a GMP Narrative Statement which is a detailed listing of any materially incomplete elements, and the Design-Builder's statement of intended scope with respect to such incomplete elements. Such estimates shall make the Owner aware of any discrepancies, inconsistencies, and/or potential impact to the GMP, inclusive of the elements within the GMP Narrative Statement, make recommendations for corrective action, and shall be provided for the Owner's review and approval.

2.3 Design Documents.

2.3.1 Schematic Design Documents. Design-Builder shall prepare the Schematic Design Documents based on Owner's Project Criteria, as may be revised in accordance with Section 2.2.2 hereof. The Schematic Design Documents shall include design criteria, drawings, diagrams and specifications setting forth the requirements of the Project. Pursuant to 2.3.1.1, the parties shall meet to discuss the Schematic

Design Documents and agree upon what revisions, if any, should be made. Design-Builder shall perform such agreed-upon revisions.

2.3.1.1 Schematic Design Cost Estimate. When the Schematic Design Documents are at **100%** completion, the Design-Builder shall submit its cost estimate and GMP Narrative Statement, for the Owner's review and written approval. If requested by Owner, the Owner, Owner's consultants (if any), and the Design-Builder shall meet to discuss the Schematic Design Documents and to reconcile any questions, discrepancies or disagreements relating to the current cost estimate or the GMP Narrative Statement. With Owner's prior approval, the Design-Builder shall revise the Schematic Design Documents to address the items discussed and submit a revised Schematic Design Documents cost estimate for the Owner's review and written approval. The Design-Builder must receive the Owner's written approval before completing the Schematic Design Documents. Owner's review and approval of the Schematic Design Documents shall not be deemed to transfer any design liability from Design-Builder to Owner or Owner's consultants (if any).

2.3.1.2 The Design-Builder shall attend and participate in up to four meetings with the Owner to review the Schematic Design.

2.3.2 Design Development. Design-Builder shall prepare Design Development Documents based on the approved Schematic Design and Project Criteria. The Design Development Documents shall include consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems, and describe the size and character of the Project as to architectural, structural, mechanical, and electrical systems, and such other elements as may be appropriate. The Design-Builder shall also perform a building code review and analysis, and a zoning code review and analysis. The Design Development Documents shall include outline specifications that identify major materials and systems and establish in general their quality levels.

2.3.2.1 Design Development Documents Cost Estimate. When the Design Development Documents are at **100%** completion, the Design-Builder shall submit its cost estimate and GMP Narrative Statement, for the Owner's review and written approval. If requested by Owner, the Owner, Owner's consultants (if any), and the Design-Builder shall meet to discuss the Design Development Documents and to reconcile any questions, discrepancies or disagreements relating to the current cost estimate or the GMP Narrative Statement. With Owner's prior written approval, the Design-Builder shall revise the Design Development Documents to address the items discussed and submit a revised Design Development Documents cost estimate for the Owner's review and written approval. The Design-Builder must receive the Owner's written approval before completing the Design Development Documents. Owner's review and approval of the Design Development Documents shall not be deemed to transfer any design liability from Design-Builder to Owner or Owner's consultants (if any).

2.3.2.2 The Design-Builder shall attend and participate in up to four meetings with the Owner to review the Design Development Documents.

2.3.3 Construction Documents. Design-Builder shall prepare Construction Documents based on the approved Design Development Documents and Project Criteria.

2.3.3.2 Construction Documents Cost Estimate. When the Construction Documents are at **50%** completion, Design-Builder shall submit its cost estimate and GMP Narrative Statement, the Design-Builder shall submit its cost estimate and GMP Narrative Statement, for the Owner's review and written approval. If requested by Owner, the Owner, Owner's consultants (if any), and the Design-Builder shall meet to discuss the Construction

Documents and to reconcile any questions, discrepancies or disagreements relating to the current cost estimate or the GMP Narrative Statement. With Owner's prior written approval, the Design-Builder shall revise the Construction Documents to address the items discussed and submit a revised Construction Documents cost estimate for the Owner's review and written approval. The Design-Builder must receive the Owner's written approval before completing the Construction Documents. Owner's review and approval of the Construction Documents shall not be deemed to transfer any design liability from Design-Builder to Owner or Owner's consultants (if any).

2.4 GMP Proposal. At **100%** completion of Construction Documents, based on Owner's Project Criteria, the Construction Documents approved by Owner, Design-Builder shall submit a Guaranteed Maximum Price Proposal to Owner (the "GMP Proposal"), which shall include the following unless the parties mutually agree otherwise:

2.4.1 A proposed contract price for the design and construction of the Project, which price shall be in the form of cost plus a fee with an option for a Guaranteed Maximum Price ("GMP").

2.4.2 A schedule and the Date of Substantial Completion of the Project and the Date of Final Completion upon which the GMP for the Project is based.

2.4.3 A completed GMP Proposal Form, in the form attached to this Agreement as **Exhibit 1**, including the following as each are defined in the Modified DBIA 530 attached hereto as **Exhibit 3**:

- Design services fee;
- Preconstruction fee;
- Design-build services fee;
- General conditions;
- Contingency;
- Maximum Cost of the Work; and
- a Guaranteed Maximum Price.

2.4.4 Identify specific Construction Documents upon which the GMP is based, by page numbers.

2.4.5 A list of subcontractors proposed to be used on the Project and to the extent available, a copy of each proposed subcontractor's proposal for its respective work on the Project.

2.4.6 All other information necessary for the parties to enter into the DBIA Document No. 530, Modified *Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee with an Option for a Guaranteed Maximum Price* (2010 Edition), with the accompanying Modified General Conditions of Contract, DBIA Document 535, in the form attached to this Agreement as **Exhibit 3** including a list of the clarifications and assumptions made by the Design-Builder in the preparation of the Guaranteed Maximum Price proposal. However, any attempt by Design-Builder to alter the terms of the modified DBIA 530 and 535 attached to this Agreement as **Exhibit 3** shall be a material breach of this Agreement.

2.4.7 If requested and approved by Owner, the Design-Builder may submit multiple GMP Proposals for different components of the Project. Following the acceptance of the first GMP Proposal and execution of DBIA Document No. 530, Modified *Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee with an Option for a Guaranteed Maximum*

Price (2010 Edition) (“Design-Build Agreement”) for the first GMP, the Design-Build Agreement shall be modified by Change Order to incorporate subsequent GMP Proposals into the Agreement.

2.5 Review of GMP Proposal.

2.5.1 The Design-Builder, Owner and the Criteria Architect (along with selected engineers and consultants) may meet to reconcile any questions, discrepancies or disagreements relating to the GMP, its qualifications and assumptions, and the GMP Documents. If approved by the Owner, the reconciliation shall be documented in writing by revisions to the GMP Proposal or an addendum to the GMP. **Submission by the Design-Builder of a GMP Proposal that attempts to modify or alter the Design Fee, Preconstruction Fee, Design-Builder Fee, General Conditions, or Contingency submitted with its original Proposal submitted in response to the Owner’s RFP shall be a material breach of this Agreement by the Design-Builder. In addition, any attempt by the Design-Builder to alter the terms of DBIA Document No. 530, Modified Standard Form of Agreement Between Owner and Design-Builder – Cost Plus Fee with an Option for a Guaranteed Maximum Price and the General Conditions of Contract that were included in the Owner’s RFP as a condition or assumption of the GMP Proposal shall be a material breach of this Agreement by the Design-Builder.**

2.5.2 If the Owner, in its sole discretion approves the GMP Proposal, including any qualifications and assumptions, the Design-Build Agreement will be prepared, in the form attached hereto as **Exhibit 3 (Design-Build Agreement)**, incorporating applicable portions of the Design-Builder’s Proposal to the extent such portions are consistent with the contract included in the RFP. If for any reason, the Design-Builder and the Owner are unable to execute the Design-Build Agreement, the Owner may suspend negotiations with the Design-Builder and initiate an RFP or other selection process based upon the Construction Documents prepared by the Design-Builder under this Agreement. The Owner reserves the right to terminate negotiations of the GMP at any time and implement a different project delivery method. The Owner reserves the right, in its sole discretion, to cancel the negotiations of the design build contract in its entirety.

2.6 Completion of This Agreement. Design-Builder’s services under this Agreement shall be deemed completed upon meeting with Owner to discuss the GMP Proposal if such meeting is requested by Owner, making those revisions to the GMP Proposal, if any, Design-Builder finds acceptable and Design-Builder’s submission of record design documents as requested by the Owner, in the form(s) requested by Owner.

2.7 Additional Services. With Owner’s prior written authorization, Design-Builder may perform Additional Services as set forth in a fully executed amendment to this Agreement. The cost for such services shall be as mutually agreed upon by Owner and Design-Builder, with the Contract Price for this Agreement, as set forth in Section 6.1 hereof, being adjusted accordingly.

Article 3

Owner’s Services and Responsibilities

3.1 Timely Performance. Owner shall throughout the performance of this Agreement cooperate with Design-Builder. Owner shall perform its responsibilities, obligations and services, including its reviews and approvals of Design-Builder’s submissions, in a reasonably timely manner.

3.2 Owner Provided Information. If available, Owner may 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 its obligations hereunder:

3.2.1 [Not Used.]

- 3.2.2 Temporary and permanent easements;
- 3.2.3 A legal description of the Site;
- 3.2.4 To the extent available, as-built and record drawings of any existing structures at the Site; and
- 3.2.5 To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including, but not limited to, Hazardous Conditions, in existence at the Site.

3.3 Owner Right to Terminate.

3.3.1 Termination for Convenience. The Owner may terminate this Agreement upon not less than 3 days' written notice to the Design-Builder for the Owner's convenience and without cause. In the event of such termination the Design-Builder shall be equitably compensated for the portion of any Design Services performed pursuant to this Agreement, prior to receipt of a notice of termination. Design-Builder shall not be paid on account of loss of anticipated overhead, profits or revenue or other economic loss arising out of or resulting from such termination. In no event shall the Design-Builder's compensation under this Section exceed the compensation set forth in Section 6.1.

3.3.2 Termination for Cause. The Owner may terminate this Agreement upon 3 days' written notice if Design-Builder materially breaches a term of this Agreement or any other agreement in place between the Owner and the Design-Builder. If Design-Builder is in material breach of this Agreement, Owner shall have the right to terminate any or all other agreements in place between Design-Builder and Owner, at Owner's sole discretion. Owner may set off any costs or damages that it incurs due to such termination for cause against any contract payment owed to Design-Builder and may recover from Design-Builder, any amounts that exceed the payments owed.

3.3.3 If the Owner terminates this Agreement, the Owner may initiate an RFP or other selection process or complete the Project by any other available means, based upon the design documents prepared by the Design-Builder under this Agreement, in its sole discretion. To the extent that the Owner or one of the Owner's contractors elects to take legal assignment of subcontracts and purchase orders (including rental agreements) the Design-Builder shall, as a condition of receiving the payments referred to in this Section 3.3, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Design-Builder, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Design-Builder under such subcontracts or purchase orders. All subcontracts, purchase orders and rental agreements entered into by the Design-Builder will contain provisions allowing for assignment to the Owner or Owner's contractor as described above. If Owner terminates this Agreement and proceeds to design and construct the Project through its employees, agents or third parties, Owner's rights with regard to Design-Builder's Instruments of Service are set forth in Article 4.

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 ("Instruments of Service") are deemed to be instruments of service and the Owner is deemed to hold the ownership and property interests therein, including but not limited to any intellectual property rights, copyrights and/or patents, subject to the provisions set forth below. The Design-Builder shall obtain the necessary permissions from the Design-Builder's consultants, for such

transfer of ownership, consistent with this Agreement. This transfer of ownership shall survive any termination of this Agreement.

4.2 [Not Used.]

4.3 Failure to Enter into Contract. If Owner fails to enter into a contract on this Project with Design-Builder to complete the design and construction of the Project and Owner proceeds to design and construct the Project through its employees, agents or third parties, Design-Builder hereby, upon payment in full of the amounts due Design-Builder for any satisfactory services rendered as of the date of the termination under this Agreement exclusive of any amounts which are in dispute between the parties, transfers to Owner all ownership and property interests, including but not limited to any intellectual property rights, copyrights and/or patents, in the Instruments of Service. Such transfer is conditioned on the following:

4.3.1 Use of the Instruments of Service is at Owner's sole risk without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier.

4.4 Owner's License Upon Termination of the Design-Builder. In the event of termination of this Agreement for whatever reason, the Design-Builder hereby grants the Owner a nonexclusive license permitting the Owner to authorize another design-builder to reproduce and, as permitted by law, to make changes, corrections, or additions to the Instruments of Service solely for the purposes of completing, using, maintaining and modifying the Project.

Article 5

Contract Time

5.1 Commencement Date. Design-Builder shall commence performance of the services set forth in this Agreement within five (5) days of Design-Builder's receipt of Owner's Notice to Proceed for this Preliminary Services Agreement, which may take the form of an email, or in the absence of written Notice to Proceed, the date this Preliminary Services Agreement is executed by the Owner ("Date of Commencement") unless the parties mutually agree otherwise in writing.

5.2 Interim Dates. Interim milestone dates, if any, of identified portions of the services set forth in this Agreement shall be achieved as set forth below (none if none are listed.)

Article 6

Contract Price

6.1 Contract Price. The Contract Price for this Preliminary Services Agreement only is: **\$53,536.83**. This Contract Price for the Preliminary Services shall not be included in the GMP.

6.2 Scope of Contract Price. The Contract Price shall be the full compensation due Design-Builder for the performance of all services set forth in this Preliminary Services Agreement, and shall be deemed to include all the sales, use, consumer activity, and other taxes mandated by applicable Legal Requirements. The Contract Price shall be adjusted to reflect any Additional Services agreed upon by the parties after execution of this Agreement. The Owner's cumulative total liability, including the payments previously made to the Design-Builder, under this Agreement shall be limited to the amount set forth in the Fiscal Officer's certificate accompanying this Agreement. Under no circumstances will the elected officials, employees, council members, or agents of the Owner be personally liable for any obligations or claims arising out of or related to this Agreement.

Article 7

Procedure for Payment

7.1 Payment. Design-Builder shall invoice the Owner monthly in proportion to services performed, on the tenth day of each month for Work completed through the last day of the previous month. Payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Design-Builder's proper and complete invoice, in compliance with all of Owner's policies, procedures, and requirements as set forth in the Contract Documents.

7.2 Interest. Payments due and unpaid by Owner to Design-Builder shall bear interest commencing sixty (60) days after payment is due, at 0%. However, Design Builder shall give Owner fourteen (14) days written notice before interest shall begin to accrue.

Article 8

Electronic Data

8.1 Electronic Data.

8.1.1 The parties agree that the Contract Documents, including drawings, specifications and three-dimensional modeling (such as Building Information Models) and other Instruments of Service may be transmitted among Owner, Design-Builder and others in electronic media (collectively "Electronic Data") provided that the same Contract Documents are also provided to the Owner in an electronic .dwg file.

8.2 Transmission of Electronic Data.

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

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

8.2.3 By transmitting Instruments of Service in electronic form, the transmitting party does not transfer or assign its rights in the Instruments of Service. The rights in the Electronic Data shall be as set forth in Article 4 of the Agreement. Under no circumstances shall the transfer of ownership of Electronic Data be deemed to be a sale by the transmitting party of tangible goods.

8.3 Electronic Data Protocol.

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

Consultants to agree to the following protocols, terms and conditions set forth in this Section 8.3.

8.3.2 Electronic Data will be transmitted in the format agreed upon in Section 8.2.1 above, including file conventions and document properties, unless prior arrangements are made in advance in writing.

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

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

Article 9

Other Provisions

9.1 Dispute Resolution.

9.1.1 Mediation. Any claim, dispute or controversy arising out of or relating to this Agreement or the breach thereof that cannot be resolved through discussions by the parties may be submitted to non-binding mediation administered by a mutually agreeable impartial mediator, if both parties agree to mediation, in writing. Unless otherwise agreed to by the parties, such mediation shall take place in the county in which the Project is located and all mediation costs shall be split equally between the parties.

9.1.2 Litigation. If the parties do not resolve a dispute through mediation or do not mutually agree to mediation, the method of binding dispute resolution shall be litigation in the Court of Common Pleas in the County where the Project is located. The parties waive their right to remove any action under this Agreement to any federal court.

9.1.3 Unless otherwise agreed in writing, the Design-Builder shall continue to provide services and shall maintain progress during any mediation, arbitration or litigation proceedings, and the Owner shall continue to make payments to the Design-Builder in accordance with this Agreement, however the Owner shall be under no obligation to make payments on or against any claim or amounts in dispute during the pendency of any mediation, arbitration or litigation proceeding to resolve those claims or amount in dispute.

9.2 Taxes. Design-Builder shall pay all sales, consumer, use, commercial activity and other similar taxes required to be paid by Design-Builder in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work. The Design-Builder acknowledges that the Owner is a political subdivision of the State of Ohio or tax exempt organization and is exempt from state sales and use taxes.

9.2.1 Materials purchased for use or consumption in connection with the proposed Work will be exempt from the State of Ohio Sales Tax, as provided in Section 5739.02 of the Ohio Revised Code, and also from the State of Ohio Use Tax, as provided in Section 5741.01 of the Ohio Revised Code. The Owner will provide the Design-Builder with a Construction Tax Exempt Certificate upon

request, made in writing to the Owner.

9.2.2 Purchases by the Design-Builder of expendable items, such as form lumber, tools, oil, greases, fuel, or equipment rentals, are subject to the application of Ohio Sales or Use Taxes.

9.2.3 [Not Used.]

9.3 [Not Used.]

9.4 Indemnification. In regard to all services performed under this Agreement besides professional design services, during the term of this Agreement and for a period of two (2) years following completion of the Work or earlier termination of this Agreement, the Design-Builder agrees, to the fullest extent permitted by law, to indemnify and hold the Owner harmless from any damage, liability, or cost (including reasonable attorney fees) but only to the extent caused by negligent acts, errors or omissions in the performance of Design-Builder's services under the Agreement and those of its consultants, subcontractors, or anyone for whose performance the Design-Builder is legally liable, regardless of tier.

Notwithstanding any other provision in this Agreement to the contrary and in regard to Design-Builder's design professional services, during the term of this Agreement and for a period of two (2) years following completion of the Work or earlier termination of this Agreement, the Design-Builder shall indemnify and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties for death or injury, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Design-Builder, its employees and its consultants in the performance of professional services under this Agreement. Such indemnification shall be in accordance with Ohio Revised Code Section 153.81 and shall only be for the liabilities incurred from the proportionate share of the tortious conduct, as determined pursuant to section 2307.23 of the Revised Code, of the Design-Builder or any consultant, subcontractor, or other entity used by the Design-Builder, in performing professional design services under this Agreement. Nothing in this provision prohibits the Owner from commencing a civil action for damages against the Design-Builder for the breach of this Agreement or for the breach of the Standard of Care.

9.5 Ethics. The Design-Builder certifies that it is aware of the ethics responsibilities contained in Ohio Revised Code Section 3517.13 and is in compliance with this section of the Ohio Revised Code.

9.6 Privileged Communications. The Design-Builder acknowledges and agrees that the Owner's legal counsel may from time to time provide legal services to the Project and that in doing so may communicate with the Criteria Architect. The Design-Builder agrees that such communications will be privileged communications and, if there is a Claim contemplated or pending, any written communications between the Criteria Architect and the Owner's legal counsel will be confidential work product.

9.7 Form of Subcontract. For any person or entity who undertakes to perform any part of the Work on the Project that is in privity with the Design-Builder, the Design-Builder shall use the form of subcontract included in Ohio Administrative Code Section 153:1-3-02. As prescribed in OAC Section 153:1-3-02, this subcontract form must include a provision indicating that the Owner is an intended third party beneficiary of the subcontract, entitled to enforce any rights thereunder for its benefit.

9.8 Permits. The Design-Builder shall secure the building permit as well as other permits, including but not limited to zoning permits, fees, licenses, and inspections by governmental agencies necessary for proper execution and completion of the Work. The Design-Builder shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. If the Design-Builder performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful order of public authorities, the Design-Builder shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

9.9 Modification. No modification or waiver of any of the terms of this Agreement or of any other Contract Documents will be effective against a party unless set forth in writing and signed by or on behalf of a party. Under no circumstances will forbearance, including the failure or repeated failure to insist upon compliance with the terms of the Contract Documents, constitute the waiver or modification of any such terms. The parties acknowledge that no person has authority to modify this Agreement or the other Contract Documents or to waive any of its or their terms, except as expressly provided in this Agreement.

9.10 Partial Invalidity. If any term or provision of this Agreement is found to be illegal, unenforceable, or in violation of any laws, statutes, ordinances, or regulations of any public authority having jurisdiction, then, notwithstanding such term or provision, this Agreement will remain in full force and effect and such term will be deemed stricken; provided this Agreement will be interpreted, when possible, so as to reflect the intentions of the parties as indicated by any such stricken term or provision.

9.11 Counterparts. This Agreement may be executed in any number of counterparts each of which when so executed and delivered will be an original hereof, and it will not be necessary in making proof of this Agreement to produce or account for more than one counterpart hereof. This Agreement may be executed and delivered by facsimile or via electronic mail.

9.12 Construction. The parties acknowledge that each party has reviewed this Agreement and voluntarily entered into this Agreement. Accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement, or any amendments or exhibits to it.

9.13 Captions. The captions denoting each article of this Agreement shall have no application in the interpretation thereof; the language of the Article shall be fully controlling.

9.14 Entire Agreement. This Agreement forms the entire and integrated agreement between Owner and Design-Builder and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Design-Builder.

9.15 Included Contract Documents: The Contract Documents include the following:

Exhibit 1 – GMP Proposal Form

Exhibit 2 – Design-Builder's Proposal dated March 13, 2026 (to the extent not inconsistent with this Agreement). Any terms and conditions included in the Proposal are expressly rejected by Owner.

Exhibit 3 – DBIA Document No. 530, Modified Standard Form of Agreement Between Owner and Design-Builder – Cost Plus Fee with an Option for a Guaranteed Maximum Price and DBIA Document No. 535, Modified Standard Form of General Conditions of Contract Between Owner and Design-Builder agreed upon by the Parties (to be executed upon Owner's acceptance of the GMP Proposal).

Owner's Request for Qualifications and Request for Proposals, dated February 11, 2026 are incorporated by reference, to the extent not inconsistent with this Agreement.

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: Village of Mantua, Ohio

DESIGN-BUILDER: Davey Resource Group, Inc.

(Signature)

(Signature)

(Printed Name)

(Printed Name)

(Title)

(Title)

Date: _____

Date: _____

CERTIFICATE

(Section 5705.41, R.C.)

The undersigned, fiscal officer of the Owner, certifies that the moneys required to pay that part of the Contract Price coming due during the current fiscal year, under this Agreement to which this Certificate is attached have been lawfully appropriated for such purpose and are in the appropriate account of the Owner, or in the process of collection to the credit of the appropriate account or fund, free from any previous encumbrances. Moneys due in excess of the Contract Price shall require an additional and separate Fiscal Officer's Certificate.

DATED: _____

Fiscal Officer

Exhibit 1

GUARANTEED MAXIMUM PRICE PROPOSAL*

This form shall be submitted at the conclusion of the preliminary services.

Fee Item	Proposed Price
(A) Design Services Fee	\$ _____
(B) Preconstruction Fee	\$ _____
(C) Design-Build Services Fee	_____ % of the Cost of the Work, which equates to: \$ _____ when applied to the Maximum Cost of the Work provided in (F) below.
(D) General Conditions**	\$ _____ (which is equal to the monthly cost of \$ _____ multiplied by _____ month Project duration)
(E) Contingency	_____ % of the Cost of the Work, which equates to: \$ _____ when applied to the Maximum Cost of the Work provided in (F) below.
(F) Maximum Cost of the Work	\$ _____
Guaranteed Maximum Price (A)+(B)+(C)+(D)+(E)+(F)	\$ _____

*These values must be consistent with/shall not exceed the values in Proposer's Initial Proposal, which was submitted with the Proposal for the Project.

**When fully and actively engaged in construction phase Work, as set forth in Proposer's Itemized General Conditions, included with the Proposal.

Proposal

Village of Mantua

Mantua Failing Bridge Removal & Streambank Stabilization Project



Prepared for:

The Village of Mantua
4650 W. High Street
Mantua, Ohio 44255

Prepared By:

Davey Resource Group, Inc.
333 Martinel Drive
Kent, Ohio 44240

Tab 1 – Proposal Transmittal Letter



Corporate Office
295 S. Water Street
Suite 300
Kent, Ohio 44240

Local Office
333 Martinel Drive
Kent, OH 44240
330.673.5685

March 13, 2026

Village of Mantua, Ohio,
ATTN: Tammy Meyer
Mayor of the Village of Mantua, Ohio

RE: Mantua Failing Bridge Removal & Streambank Stabilization Project (the Project)

Dear Ms. Meyer,

Davey Resource Group, Inc. (the “Proposer”) hereby submits its Proposal in response to the Request for Proposals (“RFP”) for the Project issued by the Owner on February 11, 2026, as amended.

As a duly authorized representative of the Proposer, I hereby certify, represent, and warrant as follows in connection with the Proposal:

1. The Proposer acknowledges receipt of the RFP and the following Addenda:

No.	Date
___ 1 ___	___ March 9, 2026 ___
___ Questions and Answers ___	___ March 2, 2026 ___
___	___

2. The submittal of the Proposal has been duly authorized by, and in all respects is binding upon, the Proposer. Attachment 1 to this Proposal Form is a Certificate of Authorization which evidences my authority to submit the Proposal and bind the Proposer.
3. All Project Team Members identified to date are identified in Attachment 2 to this Proposal Form.
4. Copies of appropriate Ohio licenses and certificates or registrations are included as Attachment 3 to this Proposal Form.
5. A completed Design-Builder’s Personal Property Tax Affidavit is included in Attachment 4 to this Proposal Form.

6. The Proposal contains the requisite Proposal security for assuring that the Proposer will enter into the Agreement if determined to be the Selected Proposer.
7. The Proposer has reviewed and understands the requirements of the RFP and all Addenda thereto and, if determined to be the Selected Proposer, agrees to execute the Agreement.
8. The Payment and Performance Bond issued on behalf of Davey Resource Group, Inc. as the Proposer assuring that the Design-Builder will perform its duties in accordance with the terms of the Agreement, will be provided by:

Federal Insurance Company

202B Halls Mill Road, Whitehouse Station, NJ 08889

Name

Address

Attach a letter from the surety named above, confirming Proposer's bonding capacity. Pursuant to Ohio Administrative Code Chapter 153:1-4, separate performance and payment bonds, with the penal sum of each bond being equal one hundred per cent of the Contract Sum, in the forms required by the OAC, shall be provided to the Owner before the Selected Proposer begins any Work (including preconstruction services) on the Project. If the Contract Bond increases at any time (e.g., via Change Orders or at the time of the Design-Build Agreement) the Selected Proposer shall cause the penal sum of such bonds to increase accordingly.

9. The Insurance required by the Contract Documents will be provided or brokered by Marsh USA LLC. **Attach a sample insurance certificate.**
10. All information and statements contained in the Proposal are current, correct and complete, and are made with full knowledge that the Owner will rely on such information and statements in selecting the Selected Proposer and executing the Agreement(s).
11. The Proposal has been prepared and is submitted without collusion, fraud or any other action taken in restraint of free and open competition for the services contemplated by the Project.
12. Neither the Proposer nor any Project Team Member is currently suspended or debarred from doing business with any governmental entity.
13. The Proposer has reviewed all of the engagements and pending engagements of the Proposer, and no potential exists for any conflict of interest or unfair advantage.
14. No person or selling agency has been employed or retained to solicit the award of the Agreements under an arrangement for a commission, percentage, brokerage or contingency fee or on any other success fee basis, except bona fide employees of the Proposer.
15. Proposer accepts all of the terms and conditions of the RFP, including without limitation those dealing with the disposition of Proposal security. This Proposal will remain subject to acceptance for the time period set forth in the RFP. Proposer will sign the Preliminary Services Agreement and will furnish the required security, and other required documents within the time periods set forth in the Agreement(s).

16. The Proposer has visited the Site and is familiar with and is satisfied as to the general, local and conditions of the Site that may affect cost, progress, and performance for the Work.
17. The Proposer is familiar with and is satisfied as to all Laws or Regulations that may affect cost, progress and performance of the Work.
18. Proposer does not consider that any further examinations, investigations, explorations, tests, studies or data are necessary for the determination of this Proposal for performance of the Work at the price(s) and within the times and in accordance with the other terms and conditions of the Agreements.
19. The Proposer has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions at or contiguous to the Site which may affect cost, progress or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by Proposer, including applying the specific means, methods, techniques, sequences, and procedures of construction expressly required by the Agreements, to be employed by Proposer, and safety precautions and programs incident thereto.
20. Proposer has correlated the information known to Proposer, information and observations obtained from visits to the Site, reports and drawings identified in the RFP and Contract Documents and all additional examinations, investigations, explorations, tests, studies and data provided by the Owner.
21. Proposer has given the Owner written notice of all conflicts, errors, ambiguities, or discrepancies that Proposer has discovered in the Agreements, and the written resolution thereof by the Owner is acceptable to Proposer.
22. The Agreements are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Proposal is submitted.
23. The Proposer has carefully examined all documents constituting the RFP and the Addenda thereto and, being familiar with the Work and the conditions affecting the Work contemplated by the RFP and such Addenda, offers to furnish all plant, labor, materials, supplies, equipment, facilities, and services which are necessary, proper, or incidental to carry out such Work as required by and in strict accordance with the RFP and the Proposal, all for the prices set forth in the Proposal Forms.
24. The principal Proposer contact person who will serve as the interface between the Owner and the Proposer for all communications is:

Name: Kaley Zatorski

Title: Project Manager

Address: 295 S. Water Street, Suite 300
Kent, Ohio 44240

Phone: 330-593-9177 - Cell

Fax: N/A

Email: Kaley.Zatorski@davey.com

25. The key technical and legal representatives available to provide timely response to written inquiries submitted, and to attend meetings requested by the Owner are:

Technical Representative:

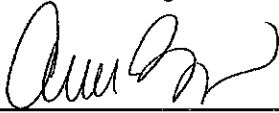
Name: Matt Coppage, P.E.
Title: Lead Engineer
Address: 1310 Sharon Copley Rd.
Sharon Center, OH 44274
Phone: 330-883-1948
Fax: _____
Email: matthew.coppage@davey.com

Legal Representative:

Name: Aaron J. MacDiarmid, CPCM
Title: Supervisor of Contract Management
Address: 5300 Wellington Branch Drive, Suite 100
Gainesville, Virginia 20155
Phone: D: 614.307.5306
Fax: _____
Email: amacdiarmid@wetlands.com

Davey Resource Group, Inc.
Name of Proposer

Ana Burns
Name of Designated Signatory


Signature

Senior Area Manager
Title

Eileen Frank
(Notary Public)


State of Ohio
County of Portage

On this 13th day of March, 2026, before me appeared Ana Burns personally known to me to be the person described in and who executed this Proposal for the Mantua Failing Bridge Removal & Streambank Stabilization Project and acknowledged that (she/he) signed the same freely and voluntarily for the uses and purposes therein described. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

In witness thereof, I have hereunto set my hand and affixed by official seal the day and year last written above.



EILEEN FRANK
NOTARY PUBLIC
STATE OF OHIO
Comm. Expires
07-25-2026


Notary Public in and for the State of OH

Eileen Frank
(Name printed) 295 S. Water Street
Suite 300
Working at Kent, Ohio 44240

My commission expires 7/25/2026

TRANSMITTAL LETTER ATTACHMENT 1

CERTIFICATE OF AUTHORIZATION*

I, Erika Schoenberger, a resident of Kent in the State of Ohio DO HEREBY CERTIFY that I am the Clerk/Secretary of Davey Resource Group, Inc a corporation duly organized and existing under and by virtue of the laws of the State of Delaware; that I have custody of the records of the corporation; and that as of the date of this certification, Erika Schoenberger holds the title of General Counsel, Secretary of the corporation, and is authorized to execute and deliver in the name and on behalf of the corporation the Proposal submitted by the corporation in response to the Combined Request for Qualifications and Request for Proposals for Design Build Services for a Project less than \$4 Million for the Village of Mantua, Ohio's Mantua Failing Bridge Removal & Streambank Stabilization Project published on February 11, 2026, as amended; and all documents, letters, certificates and other instruments which have been executed by such officer on behalf of the corporation in connection therewith.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the corporation this day of March 12, 2026.



Erika J. Schoenberger
Clerk/Secretary

* **Note:** *Separate certifications shall be submitted if more than one corporate officer has executed documents as part of the Proposal. Proposers shall make appropriate conforming modifications to this Certificate in the event that the signatory's address is outside of the United States.*

CHUBB®

Surety
202B Halls Mill Road, PO Box 1650
Whitehouse Station, NJ 08889-1650

O + 908.903.3485
F + 908.903.3656

Federal Insurance Company

March 12, 2026

Village of Mantua, Ohio
4650 High Street
Mantua, Ohio 44255

Re: Davey Resource Group, Inc. – Combined Request for Qualifications and Request for Proposals for Design Build Services for a Project Less Than \$4 Million – Mantua Failing Bridge Removal & Steambank Stabilization Project

To Whom It May Concern:

Federal Insurance Company, a corporation under the laws of the State of Indiana, with an office and place of business at 202B Halls Mill Road, Whitehouse Station, NJ 08889, represents Davey Resource Group, Inc., for its surety bonding needs.

At the present time, Davey Resource Group, Inc. is in a position to consider single projects up to \$5,000,000.00 within an aggregate limit of \$110,000,000.00. The statement of these values is neither a commitment nor a limitation of the bonding capacity of Davey Resource Group, Inc. At the request of Davey Resource Group, Inc., Federal Insurance Company will give favorable consideration to providing the required performance and payment bonds.

Please note that the decision to issue performance and payment bonds is a matter between Davey Resource Group, Inc., and Federal Insurance Company, and will be subject to our standard underwriting at the time of the final bond request, which will include but not limited to the acceptability of the contract documents, bond forms and financing. We assume no liability to Davey Resource Group, Inc., third parties, or to you if for any reason we do not execute said bonds.

If you have any questions or need any additional information, please do not hesitate to contact me.

Sincerely,



Amanda Ference, Attorney-In-Fact

Federal Insurance Company

A++ by AM BEST CO Financial Size Category XV





Power of Attorney

Federal Insurance Company | Vigilant Insurance Company | Pacific Indemnity Company
Westchester Fire Insurance Company | ACE American Insurance Company

Know All by These Presents, that FEDERAL INSURANCE COMPANY, an Indiana corporation, VIGILANT INSURANCE COMPANY, a New York corporation, PACIFIC INDEMNITY COMPANY, a Wisconsin corporation, WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY corporations of the Commonwealth of Pennsylvania, do each hereby constitute and appoint Teresa M. Cole, Amanda Ference, Marc Owens, Rachel W. Slippy and Kaylee Yutzky of Kent, Ohio -----

each as their true and lawful Attorney-in-Fact to execute under such designation in their names and to affix their corporate seals to and deliver for and on their behalf as surety thereon or otherwise, bonds and undertakings and other writings obligatory in nature thereof (other than bail bonds), not to exceed Five Million and 00/100 Dollars (\$ 5,000,000.00), given or executed in the course of business on behalf of THE DAVEY TREE EXPERT COMPANY and all Subsidiaries alone or in joint venture as principal. And the execution of such bond or obligation by such Attorney-in-Fact in the Company's name and on its behalf as surety thereon or otherwise, under its corporate seal, in pursuance of the authority hereby conferred shall, upon delivery thereof, be valid and binding upon the Company.

In Witness Whereof, said FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, PACIFIC INDEMNITY COMPANY, WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY have each executed and attested these presents and affixed their corporate seals on this 31st day of October, 2023.

Dawn M. Chloros

Dawn M. Chloros, Assistant Secretary

Stephen M. Haney

Stephen M. Haney, Vice President



STATE OF NEW JERSEY
County of Hunterdon ss.

On this 31st day of October, 2023 before me, a Notary Public of New Jersey, personally came Dawn M. Chloros and Stephen M. Haney, to me known to be Assistant Secretary and Vice President, respectively, of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, PACIFIC INDEMNITY COMPANY, WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY, the companies which executed the foregoing Power of Attorney, and the said Dawn M. Chloros and Stephen M. Haney, being by me duly sworn, severally and each for herself and himself did depose and say that they are Assistant Secretary and Vice President, respectively, of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, PACIFIC INDEMNITY COMPANY, WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY and know the corporate seals thereof, that the seals affixed to the foregoing Power of Attorney are such corporate seals and were thereto affixed by authority of said Companies; and that their signatures as such officers were duly affixed and subscribed by like authority.

Notarial Seal



Albert Contursi
NOTARY PUBLIC OF NEW JERSEY
No 50202369
Commission Expires August 22, 2027

Albert Contursi
Notary Public

CERTIFICATION

Resolutions adopted by the Boards of Directors of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY on August 30, 2016; WESTCHESTER FIRE INSURANCE COMPANY on December 11, 2006; and ACE AMERICAN INSURANCE COMPANY on March 20, 2009:

"RESOLVED, that the following authorizations relate to the execution, for and on behalf of the Company, of bonds, undertakings, recognizances, contracts and other written commitments of the Company entered into in the ordinary course of business (each a "Written Commitment"):

- (1) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise.
(2) Each duly appointed attorney-in-fact of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise, to the extent that such action is authorized by the grant of powers provided for in such person's written appointment as such attorney-in-fact.
(3) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to appoint in writing any person the attorney-in-fact of the Company with full power and authority to execute, for and on behalf of the Company, under the seal of the Company or otherwise, such Written Commitments of the Company as may be specified in such written appointment, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.
(4) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to delegate in writing to any other officer of the Company the authority to execute, for and on behalf of the Company, under the Company's seal or otherwise, such Written Commitments of the Company as are specified in such written delegation, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.
(5) The signature of any officer or other person executing any Written Commitment or appointment or delegation pursuant to this Resolution, and the seal of the Company, may be affixed by facsimile on such Written Commitment or written appointment or delegation.

FURTHER RESOLVED, that the foregoing Resolution shall not be deemed to be an exclusive statement of the powers and authority of officers, employees and other persons to act for and on behalf of the Company, and such Resolution shall not limit or otherwise affect the exercise of any such power or authority otherwise validly granted or vested."

I, Dawn M. Chloros, Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, PACIFIC INDEMNITY COMPANY, WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY (the "Companies") do hereby certify that

- (i) the foregoing Resolutions adopted by the Board of Directors of the Companies are true, correct and in full force and effect,
(ii) the foregoing Power of Attorney is true, correct and in full force and effect.

Given under my hand and seals of said Companies at Whitehouse Station, NJ, this 12th day of March, 2026



Dawn M. Chloros

Dawn M. Chloros, Assistant Secretary



IN THE EVENT YOU WISH TO VERIFY THE AUTHENTICITY OF THIS BOND OR NOTIFY US OF ANY OTHER MATTER, PLEASE CONTACT US AT: Telephone (908) 903- 3493 Fax (908) 903- 3656 e-mail: surety@chubb.com



CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY)
09/02/2025

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Aon Risk Services Northeast, Inc. Cleveland OH Office 950 Main Avenue Suite 1600 Cleveland OH 44113 USA	CONTACT NAME: PHONE (A/C. No. Ext): (866) 283-7122 FAX (A/C. No.): 800-363-0105		
	E-MAIL ADDRESS:		
INSURED Davey Resource Group, Inc. 295 S Water Street Suite 300 Kent OH 44240 USA	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A: QBE Specialty Insurance Company		11515
	INSURER B:		
	INSURER C:		
	INSURER D:		
	INSURER E:		

Holder Identifier :

COVERAGES **CERTIFICATE NUMBER:** 570115217925 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS. **Limits shown are as requested**

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:						EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION						EACH OCCURRENCE AGGREGATE
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						<input type="checkbox"/> Y / <input type="checkbox"/> N N / A PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT E.L. DISEASE-EA EMPLOYEE E.L. DISEASE-POLICY LIMIT
A	E&O - Professional Liability - Primary			130007894 Claims Made SIR applies per policy terms & conditions	09/01/2025	09/01/2026	Per Claim \$5,000,000 Aggregate \$5,000,000

Certificate No : 570115217925

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Evidence of Insurance.

CERTIFICATE HOLDER Davey Resource Group, Inc. 295 S. Water Street, Suite 300 Kent OH 44240 USA	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
--	--





ADDITIONAL REMARKS SCHEDULE

AGENCY MARSH USA LLC.		NAMED INSURED Davey Resource Group, Inc. 295 S. Water Street, Suite 300 Kent, OH 44240	
POLICY NUMBER		EFFECTIVE DATE:	
CARRIER	NAIC CODE		

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: 25 **FORM TITLE:** Certificate of Liability Insurance

Workers Compensation does not apply in MN. Coverage is obtained from Workers Compensation reinsurance association (W.C.R.A.) as required by the state. Minnesota
 Employers Liability is covered by policy number MWC 314040 25.

TRANSMITTAL LETTER ATTACHMENT 2

KEY PROJECT STAFF

PROJECT TEAM MEMBER LIST

Names and roles of all Project team members identified to date:

<u>NAME</u>	<u>ROLE</u>
<u>Kaley Zatorski</u>	<u>Project Manager</u>
<u>Christina Znidarsic</u>	<u>QA/QC</u>
<u>Matt Coppage, P.E.</u>	<u>Project Design</u>
<u>Guy Haney, P.S.</u>	<u>Survey Manager</u>
<u>Cole Rashilla, E.I.</u>	<u>Engineering Coordinator</u>
<u>Maritza Gonzalez</u>	<u>Construction Manager</u>
<u>Jeff Pettit</u>	<u>Ecological Assessments</u>
<u>Mark Szakacs, Jr. (Marks)</u>	<u>Constructibility Manager</u>
<u>Gyle Sines (Marks)</u>	<u>Construction Site Manager</u>

TRANSMITTAL LETTER ATTACHMENT 3

LICENSES AND CERTIFICATES

Provide copies of the appropriate Ohio licenses and certificates.

STATE OF OHIO
CERTIFICATE

The State Board of Registration for Professional
Engineers and Surveyors herewith certifies that

Davey Resource Group, Inc.

Is hereby authorized to provide the professional services of

Engineering and Surveying

In the State of Ohio, and in accordance with the provision of
the Ohio Revised Code, is granted this

Certificate of Authorization No. 06111

**This certificate is valid from 7/1/2024 through 6/30/2026
and must be renewed biennially.**

In testimony whereof, I affix my hand and the board seal



John Greenhalge
Executive Director

License Look Up

3/12/2026 2:32 PM

Matthew Adam Coppage	
License Number	PE.83490
Status	Active
Sub-Status	
Board	Engineers and Surveyors Board
License Type	Professional Engineer
Compact/Multi-State Eligible	
License Issue Date	6/4/18
License Expiration Date	12/31/27
License Effective Date	1/1/26
City	Girard
State	OH
Country	United States
Board Action	No

Current date & time: **3/12/2026 2:32 PM**

Disclaimer: The Joint Commission and NCQA consider on-line status information as fulfilling the primary source verification requirement for verification of licensure in compliance with their respective credentialing standards.

License Look Up

3/12/2026 2:32 PM

Guy Patrick Haney	
License Number	PS.7631
Status	Active
Sub-Status	
Board	Engineers and Surveyors Board
License Type	Professional Surveyor
Compact/Multi-State Eligible	
License Issue Date	6/20/94
License Expiration Date	12/31/27
License Effective Date	1/1/26
City	Brunswick
State	OH
Country	United States
Board Action	No

Current date & time: **3/12/2026 2:32 PM**

Disclaimer: The Joint Commission and NCQA consider on-line status information as fulfilling the primary source verification requirement for verification of licensure in compliance with their respective credentialing standards.

TRANSMITTAL LETTER ATTACHMENT 4

**DB'S PERSONAL PROPERTY TAX AFFIDAVIT
(O.R.C. § 5719.042)**

State of Ohio,
County of Portage, ss:

Ana Burns, being first duly sworn, deposes and says that he/she
(Name)

is the Senior Area Manager of Davey Resource Group, Inc. ("Design-Builder"), with
(Title) (Design-Builder)

offices located at 295 S. Water Street, Suite 300, Kent, Ohio 44240
(Address of Design-Builder)

and as the Design-Builder's duly authorized representative, states that effective this

13th day of March, 2026, the Design-Builder:

is charged with delinquent personal property taxes on the general list of personal property as set forth below:

<u>County</u>	<u>Amount</u> (include total amount of penalties and interest thereon)
_____ County	\$ _____
_____ County	\$ _____
_____ County	\$ _____

is not charged with delinquent personal property taxes on the general list of personal property in any Ohio county.

Ana Burns
(Affiant)

Sworn to and subscribed this 13th day of March, 2026. The notarial act certified hereby is a jurat. An oath or affirmation was administered to the signer with regard to the notarial act certified to hereby



EILEEN FRANK
NOTARY PUBLIC
STATE OF OHIO
Comm. Expires
07-25-2026

Eileen Frank
(Notary Public)

My commission expires
July 25, 2026

PROPOSAL FORM 3
PROPOSED ALTERNATIVE WORK ITEMS

(Proposer shall duplicate this form for each Proposed Work Item)

Proposed Work Item No. _____

Reference Proposal Drawing(s)/Criteria where Proposed Work Item is shown: _____

Description: N/A

Rationale: _____

Work Items that would not apply or be modified (describe): _____

Tab 2 – Proposed Modifications to the Agreements

*All Proposed Modifications are expressly rejected to the extent inconsistent with the Owner - Design-Builder Agreement

See below for the page number, section, original text, and comment from DRG to the agreements.

Page 13. 7.1.

Text

Payment. Design-Builder shall invoice the Owner monthly in proportion to services performed, on the first day [AM1] of each month for Work completed through the last day of the previous month. Payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Design-Builder’s proper and complete invoice, in compliance with all of Owner’s policies, procedures, and requirements as set forth in the Contract Documents.

Comment:

[AM1] DRG respectfully requests a modification to this requirement to all for a few additional days to submit an invoice. A one-day turnaround from work performed on the last day of the previous month may be a challenge, as sometimes it can take a day or more for our internal systems to accurately reflect the actual costs through the end of the previous month for invoicing.

Page 20. 5.1.2.5

Text

CGL policies shall be supplemented by an umbrella policy in the amount of \$5,000,000 each occurrence and \$5,000,000 aggregate. [AM1]

Comment

[AM1] DRG respectfully requests the ability to provide increased primary limits as opposed to an Umbrella Policy. We do not have an Umbrella Policy, but we can provide \$5M for each policy (CGL, AL, and PL). Our policy for Workers’ Comp will be in accord with Ohio Law.

Page 21. 5.1.4

Text

Prior to commencing any construction services hereunder, Design-Builder shall provide Owner and each additional insured with Owner-approved certificates, endorsements, and other documentation [AM1] 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. If any of the foregoing insurance coverages are required to remain in force after final payment are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the Final Application for Payment. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by the Design-Builder with reasonable promptness according to the Design-Builder's information and belief.

Comment

[AM1] DRG respectfully requests that "other documentation" not include copies of our full policies. DRG is a large nationwide organization with affiliates and subsidiaries that are included in our full policies documentation. As such, the data in our policies is considered proprietary and not open for disclosure.

Page 22. 5.3

Text

5.3 Property Insurance. [AM1]

Comment

[AM1] DRG respectfully requests the ability to use an Installation Floater insurance in place of property/builder risk insurance. It provides all-risk coverage for materials and equipment for the duration of the project.

Page 31. 7.4.1.1

Text

1. Notwithstanding any other provision in this Agreement to the contrary and in regard to Design-Builder's design professional services, [AM1] the Design-Builder shall indemnify, defend, and hold the Owner and the Owner's officers and employees harmless from liabilities arising from claims by third parties for death or injury, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Design-Builder,

its employees and its consultants in the performance of professional services under this Agreement. Such indemnification shall be in accordance with Ohio Revised Code Section 153.81 and shall only be for the liabilities incurred from the proportionate share of the tortious conduct, as determined pursuant to section 2307.23 of the Revised Code, of the Design-Builder or any consultant, subcontractor, or other entity used by the Design-Builder, in performing professional design services under this Agreement. Nothing in this provision prohibits the Owner from commencing a civil action for damages against the Design-Builder for the breach of this Agreement or for the breach of the Standard of Care.

Comment

[AM1] DRG acknowledges the ORC limitations and thanks the Village for proactively including these necessary codes, but we respectfully request a further limitation on our liability to the limits of the insurance required under this Contract document. We request to include the following: In no event will Design-Builder's aggregate liability arising out of or related to this Contract or the services performed under this Contract exceed the amount of the applicable insurance limits set forth in this Contract.

Tab 3 – Schedule

All project tasks will be managed by our team utilizing schedule and task management software, calendar invites, and templates for meetings adapted to each specific meeting purpose. The DRG team will be responsible for scheduling, documenting, and distributing notes for all virtual and onsite meetings. Our team prides itself on our ability to communicate and work closely with our clients from the initial kick-off meeting to the very last post-construction monitoring event. We will work closely with the Village and all project partners to develop a shared project schedule including regularly scheduled check-in meetings. The schedule is tightly aligned with design completion, authorization from regulatory agencies and restrictions for in-water work tree clearing outlined in permitting requirements, and optimal seasonal timeframes for in-water work. We will factor in the project deadline and work our way backwards to establish due dates for each specific deliverable. Below is a table for estimated timeframes for tasks. Duration from project award to completion of design services is four months. Duration from project award to project completion is nine months. Anticipated issues would be timelines for permits to be authorized. Regular check-ins with the regulatory agencies will be scheduled to keep on top of expected permit issuance.

Table 1. Delivery Schedule

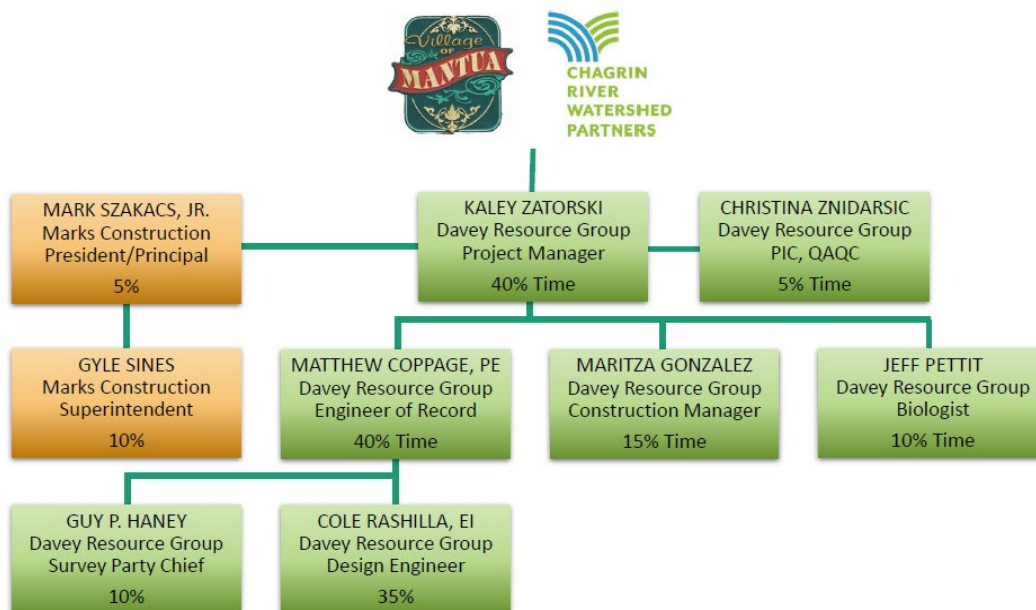
Estimated Timeframe	Task
March 30, 2026	Project Bidding and Award, Authorization to Proceed
April 2026	Kick Off Meeting, Ecological and Topographic/Bathymetric Surveys
May 2026 - July 2026	Design and Engineering (50-100), Design Review Meetings, Permitting Documentation Preparation and Submittal, GMP Submittal
June 2026	Mussel Survey
August - September 2026	Final Design Plans, Expected Permit Approvals, Pre-Construction Meeting, Construction, Construction Meetings, Punch-list Walk-through
September - October 2026	Seeding and Planting
November 2026	As-Built
December 30, 2026	All work complete
Spring 2027	Project inspection
October 2028	Plant Warranty Replacement

Tab 4 – Design and Preconstruction Approach

Phase 1: Pre-Construction Phase Services

Project Management and Communication

Prior to site assessment activities, the DRG team will lead a project kick-off meeting with the Village of Mantua and project partners to review the scope of work, project schedule, and our project approach. We will identify key project milestones, project deliverables, and review any existing information that the project partners may have regarding the site. We will identify all project management team members and establish meeting frequency as well as review any administrative items. During the kickoff meeting, we will address any external organizations that need to be contacted for the project including and how to handle that communication and chain of command. We will work closely with the Village and all project partners to develop a plan for the restoration site that is technically sound, sustainable, on-budget, and is consistent with your goals and expectations. Communications during the design phase will be led by Project Manager, Kaley Zatorski, with nine years of experience working on large scale projects for public clients, she is well accustomed to coordinating with clients, subcontractors, vendors, and the internal DRG team. Kaley will be the main point of contact for which all communication is passed in the design phase. She will be responsible for scheduling and documenting all meetings and correspondence. Our team organization chart is shown below for the design phase.



Site Assessment and Engineering Studies

DRG will determine the extent and character of existing water resources on the project site. We will use the wetland delineation procedures outlined in the 1987 Corps Manual and the North Central and Northeast Regional Supplement. We do not expect any wetlands to be impacted for this project, but if any wetlands are found we will also determine wetland quality using the Ohio EPA Ohio Rapid Assessment Method (ORAM). Other ecological assessments include the stream assessments potentially required by permits: QHEI and BEHI. Other ecological data collected will include non-native vegetation identification and cover, endangered species habitat evaluation, vegetative community identification and mapping, and mapping out existing large trees that may be utilized or preserved in the design. This task includes a Reconnaissance Survey for Unionid Mussels as The Cuyahoga River in this location is listed as a Group 1 stream within the Ohio Mussel Survey Protocol (April 2025). All native mussels in the state of Ohio are protected. Mussel surveys cannot be conducted until May 1 and up until October 1.

DRG will conduct a topographic survey and document the presence of any visible utilities (overhead lines, manholes, catch basins, utility markers, etc.) in the project area. They will also record the locations of observed drain tiles in the project area. The topographic data will be used to generate a channel profile and cross-sections of the stream channel to inform the design as well as quantify excavated material and fill. Any easements will also be recorded. A bathymetric survey of the riverbed will also be performed to also inform the design and measure water depths. This survey will cover all areas below the ordinary high-water mark of the river. Key features such as the thalweg, bottom of bank, and relevant geomorphic features such as riffles and pools will be identified.



DRG is a fully licensed civil engineering firm with Professional Surveyors in direct communication with our ecological team.

Develop Design Plans, Cost Estimates, GMP

Once site assessments and engineering studies have been completed, existing condition base maps will be generated and DRG will develop the 50% design for the site. Matt Coppage P.E., will be the lead DRG engineer for the project. He has been with DRG for four years and is experienced in water resource engineering for stream and wetland restoration projects. The 50% design will define the major elements of the project, including a general site grading plan. Hydrologic models will be created using NRCS TR-55 methodology to determine the baseline stormwater flow conditions on the project site. The stormwater flows from the sub-watershed will be determined based on localized regional curve models and used to further develop the restoration design plans. Using the U.S. Army Corps of Engineers (USACE) HEC-RAS River Analysis System model, the hydraulic model will be used to assess flood stage elevations, stream velocity, shear stress, and stream power for a range of storms, including bankfull, 1-, 2-, 10-, 25-, 50-, and 100-year storm events. This information, along with an assessment of channel dimensions upstream and downstream (where available) of the restoration areas, will be used for detailed design of the stream dimensions and restoration areas. The HEC-RAS modeling will be performed for both pre- and post-construction scenarios, to ensure that the construction does not cause issues upstream or downstream.

We will submit the 50% design for review and comment to the Village and project partners. Marks Construction will evaluate the plan for its constructability and cost feasibility throughout the design process, but substantially at the 50% phase. Mark Szakacs, Jr., constructability review manager and senior estimator will be responsible for construction cost estimates, but our team of biologists, engineers, construction managers and ecologists each have a role in developing the design to be value-engineered to the project budget. Value engineering promotes the substitution of materials and methods with less expensive alternatives to control costs while ensuring construction of a sustainable project that achieves project goals. The DRG team has worked together for 15 years on Design/Build projects and have developed a synergy between our team members that produces an end result that is greater than would have been achieved by our individual companies. We are committed to the precise quantification of project materials and the creation of the project schedule. This analysis is critical to the development of accurate fees. We will evaluate restoration measures with respect to their constructability, sustainability, cost, and benefit to the project. To avoid cost overruns, we will seek competitive pricing to obtain the best pricing for project materials. Upon agreement of project design and material quantities, all materials will be reserved to ensure availability for construction. As such, cost control begins with the development of a design that is cost effective and within budget. Other construction cost overruns are avoided with the development and regular updating of the project schedule that allows for realistic time management and prepares for weather time delays.

A detailed GMP cost estimate will be developed at the 50% and updated and reviewed, with subsequent submittal of the final GMP at the 100% stage of the construction documents. Throughout the design and permitting process, DRG will hold a minimum of two plan review meetings, at the 50% and 100% design phase, and will revise plans based on comments from the Village project partners, and the regulatory agencies. The project plans will be to the point of constructability by the 100% design stage. Developing the 100% design includes performing data analysis, calculations, and drafting to prepare and submit design drawings with sufficient detail for project sequencing. The 100% plans will include a revegetation plan only utilizing native species and the SWPPP. DRG will provide construction sequencing notes on the design drawings to specify proper soil management techniques. The notes will specify strategic ingress, egress, staging and stockpile locations, no disturbance areas, and minimal disturbance areas. Upon the 100% submittal, DRG will also submit:

- A copy of the drawings and specifications (GMP Drawings)
- A detailed listing of all incomplete design elements contained in the GMP Drawings
- Our proposed GMP and GMP Qualifications and Assumptions based on the GMP Drawings

Cost-saving approaches considered in the processes outlined above include potential reuse or repurposing of materials already available on-site, a way to integrate natural features, while reducing future construction costs. On-site materials, such as natural stone, gravel, topsoil, timber, or woody debris, will be evaluated for use in the restoration design to the greatest extent practicable. The DRG engineering team completes a meticulous quality control and quality assurance process prior to the issuance of design documents. This process includes a detailed review of project plans, calculations, and quantities estimates by multiple engineers with extensive experience in stream restoration.

Our Design/Build restoration construction partner is Marks Construction. Structural engineering services, if needed, will be requested from I.A. Lewin, P.E. and Associates, with whom we have a long-standing relationship.

Determine and Obtain Regulatory Permits

DRG will be responsible for obtaining authorization for the project under Sections 404/401 of the Clean Water Act. In our experience, 404/401 permitting delays have the greatest potential to negatively impact the timing of the project. Regular coordination with regulatory agencies will be done to ensure project authorization within a reasonable time frame. We surmise that the activities associated with this project can be permitted through the Nationwide Permit program, specifically Nationwide Permit 13 for Bank Stabilization.

The project exceeds the threshold of 500 linear feet of bank stabilization, so we will also need a Director's Authorization from the Ohio EPA. The fee for this permit is \$2,000 and is included in our Preliminary Services Fee.

DRG will prepare the above applications using USACE's Regulatory Request System and Ohio EPA's eBusiness Center website, both online applications. We will complete The State Historic Preservation Office (SHPO), U.S. Fish and Wildlife Service (USFWS), and Ohio Department of Natural Resources (ODNR) environmental review coordination which is necessary for complete USACE and Ohio EPA applications. A delineation report will be prepared for the application as well. The project area is within the Buffalo District of the Army Corps of Engineers. DRG has experience with all three Corps Districts present within Ohio. Submittal of the NWP application and Director's Authorization will coincide with the 50% design drawings when impacts to water resources have been quantified. We will also coordinate with the ODNR Scenic Rivers Program.

As mentioned, the Mahoning River is listed as a Group 1 stream in the Ohio Department of Natural Resources Mussel Protocol and federally listed species are not expected within the stream. Even so, work within the stream would require a Reconnaissance Survey for Unionid Mussels to determine if mussels are present. ODNR requires any live mussels found within the project area of direct impact or associated salvage zones be relocated to an upstream location prior to construction initiation to obtain the regulatory permits required for this project. Mussel surveys will be completed in the site assessment phase of the project.

Any necessary clearing and grubbing of trees greater than or equal to 3" DBH for the project will be conducted between October 1 and March 31 in compliance with state and federal restrictions to protect bat habitat, and in-water-work is restricted between April 15 to June 30.

According to the Federal Emergency Management Agency (FEMA), the project lies within the regulatory floodway and Zone AE. We will coordinate with the Village Engineer who is the floodplain administration for any floodplain development permits and any SWPPP review during the 50% design phase.

It is likely that more than one acre of soil will be disturbed to construct the project, therefore a Notice of Intent (NOI) for coverage under the State of Ohio's General Stormwater Permit will be required. We will apply for this permit at least 21 days prior to construction. Early and often coordination with the EPA and the Army Corps will be essential to keep the project on track. DRG will schedule planned permit check-ins with all regulatory agencies. Our pricing is inclusive of permitting fees. DRG will also monitor the site during and after construction to ensure that the project meets the requirements of the Stormwater General Construction Permit, the USACE's Nationwide Permit General and Special Conditions, and all other applicable permits. We will inspect the site with Jeffrey Hayes of the Scenic Rivers Program.

DRG does not foresee any critical issues with this Project; however there are common issues that arise during Design/Build projects such as permitting delays and agency requirements. We will coordinate early and often with regulatory agencies to ensure even if there are additional requirements, it does not delay the ultimate schedule of the project. Other unanticipated challenges often occur during Design/Build projects that are unique to each situation, but our firm is equipped to react quickly to solve issues.

Tab 5 – Services for Construction Phase

a. Plan and Approach to the Work

Technical Approach

DRG has provided a concept plan in Appendix A for this proposal. Our plan aligns with the goals of the project to remove an existing dilapidated bridge structure spanning the Upper Cuyahoga Scenic River within the Village of Mantua, Portage County, Ohio. Adjacent streambanks will be restored utilizing vegetated riprap and toe stone protection using native sandstone, utilizing bioengineering to provide long term stability via native plantings with stabilizing properties, habitat for wildlife, and eventual shade for the river. The project will protect the Cuyahoga's water quality through removal of the near-collapsed structure and stabilization of the banks. Care will be taken to avoid debris from entering the river. Our team is used to working in sensitive environments such as Scenic Rivers, cold water streams, and near category 3 wetlands. All debris will be hauled off site to a location determined by Marks Construction.

The DRG/Marks Design/Build team intends to evaluate approximately 670 linear feet of the Cuyahoga River for restoration potential. Our concept plan, which is constructable within the project budget, will result in the stabilization of 695 linear feet of streambanks within the project area. Our approach focuses on the removal of existing bridge infrastructure and the subsequent stabilization of all impacted portions of the streambanks within the project area. Based upon analysis of the site during the pre-proposal site visit, the primary areas of concern are river left downstream of the existing bridge (adjacent to the truck repair business parking lot), river right downstream of the bridge (adjacent to the existing tank battery), and river right upstream of the bridge (adjacent to the waste water treatment plant). River left upstream of the bridge exhibits the characteristics of a well-developed floodplain forest and will be preserved in DRG's project design.

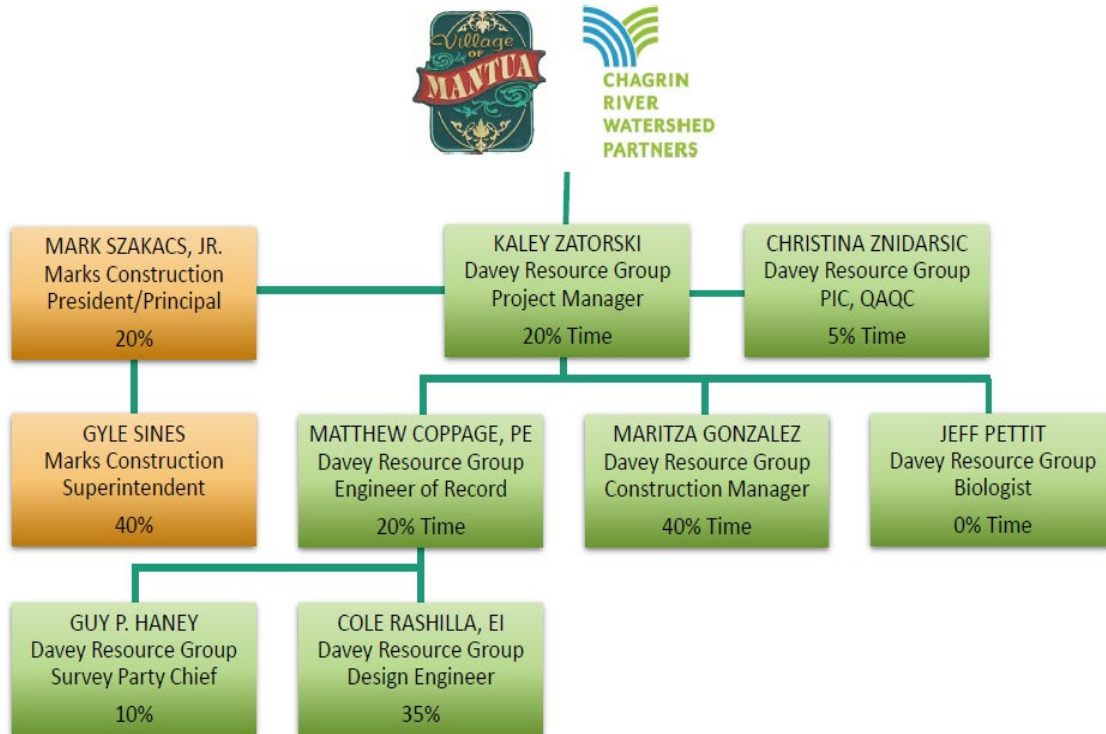
To stabilize the existing stream banks, DRG proposes the use of vegetated riprap along the banks bordering the truck repair parking lot and the wastewater treatment plant. This robust rock bioengineering technique uses a mixture of sandstone riprap, live stakes, and live poles to stabilize the streambanks and prevent future land loss adjacent to these critical pieces of infrastructure.

For the righthand streambank downstream of the bridge, a rock toe bank treatment will be applied to stabilize the bank with regrading and native revegetation utilized to stabilize the upper portions of the bank and establish a healthy riparian buffer within that area. Upstream of the bridge on river left, a small segment of rock toe protection will be utilized to stabilize and secure the downstream edge of the well-established floodplain bench. This technique will prevent erosion and subsequent land loss after the removal of the bridge and its associated abutment. The abutment structure is currently functioning as a de-facto retaining wall for this floodplain bench. By replacing it with a natural rock toe protection, both the structural and ecological integrity of the floodplain will be preserved and protected. Marks Construction has recent experience with bridge removal completing a project for the City of Massillon.

Construction and Site Preparation

Close to construction, DRG will stake all earthwork areas, followed by a pre-construction kickoff meeting between the Village, CRWP, DRG, and Marks and any other stakeholders to discuss ingress/egress routes, staging areas, erosion and sediment controls, and review of the design plans. Additional site meetings will be held at 50% construction completion and 100% construction completion prior to demobilization. Kaley Zatorski will still be the ultimate project manager, responsible for budgeting and invoicing, however; day-to-day communication between the client and our subcontractor will be managed by our Construction Manager, Maritza Gonzalez. Our firm is within capacity to perform the Project within its existing workload and within the desired timeframe of 2026.

DRG brings together a team of qualified and experienced key personnel to assist the Village of Mantua with your project. DRG will serve as your primary consultant, and Marks will serve as our team's subcontractor. Our Design/Build team is comprised of Davey Resource Group, Inc. out of Kent, Ohio and Marks Construction, Inc. out of Valley City, Ohio. No other subs with the exception of a possible structural engineer, I.A. Lewin, P.E. and Associates, out of Cleveland, Ohio are expected. See our construction stage organization on the next page.



The contractor will have project management, office support, and site safety oversight for the construction scope of work. Maritza Gonzalez, DRG’s dedicated construction manager, will manage construction oversight and the entire construction process. During construction activities, DRG will provide oversight to ensure the correct installation of the restoration design. To save on costs, an oversight representative may not be at the site every minute that Marks is on site, rather we communicate the need for oversight during the beginning stages, important milestones, at 50% completion, and prior to demobilization. During oversight, personnel inspect all aspects of the construction site and work for safety measures and compliance with all regulatory requirements. Erosion and sediment controls are inspected and documented. All site activities are monitored and inspected and verified that work is installed in accordance with plans. Photos are taken at all stages of the project, including drone imagery, and all materials are inspected and verified.

Our team will maintain daily construction logs to document progress and will provide weekly updates to the City, as well as progress reports at the 50% and 100% completion of construction that will include a punch list of items needing addressed.

b. Work Sequencing

No work will begin until all permits are secured. This is detailed in the design phase section. All construction BMPs, including safety, erosion, and sediment control measures, will be established before significant land disturbance and grading per the final design plan and the SWPPP. Construction grade may be controlled by GPS uploaded from AutoCAD® to the construction machines. The erosion control structures will be inspected within two days following a storm greater than 0.5 inches to ensure proper function, followed by implementation of maintenance, if necessary.

Internal construction access routes and staging will be identified and reviewed with construction team members to limit land disturbance. These corridors will be adhered to as reasonably as possible to minimize equipment trips outside designated access roads and staging areas. Our construction team is experienced with working in sensitive ecological areas, such as Category 3 wetlands. To the maximum extent possible, track equipment or low-ground pressure equipment will be utilized within the project area. As stated, construction oversight throughout the project duration ensures the restoration design is installed per plan.

c. Performance History of the Proposer

Below is a selection of recent ecological restoration projects where members of our core Design/Build team have worked together. Projects with an asterisk next to the delivery method indicate a project where Marks was the selected contractor or Design/Build project partner. Our work is mainly involved in stream and wetland restoration, but some projects include elements of trail and boardwalk work, culvert/dam removal and/or improvement, and other public amenities. The projects below mainly highlight the work we have accomplished with public entities such as municipalities, park districts, and non-profit organizations. We have worked on projects with a variety of public funding mechanisms such as WRRSP, Ohio 319 grants, Clean Ohio grants, H2Ohio funds, Sustain our Great Lakes, GLRI, FEMA and others. Marks has also been the prime contractor for several public projects with ODNR, Medina County Parks, City of Brunswick, and Summit Metroparks, constructing trails, bridges, hardscapes, and other amenities.

Notable projects where core team members, Kaley Zatorski, Matt Coppage, Cole Rashilla and Maritza Gonzalez have worked together include the Huber Wetlands Restoration project and the Northwood Nature Trails Stream Restoration project. Kaley, Cole, and Maritza also worked together on the Tiffin Hedges-Boyer Wetland, Chagrin River Headwaters Restoration, and Norton Stream Restoration projects. DRG has never worked with the Village of Mantua previously on a Design/Build restoration project but has worked with CRWP on many projects.

Table 2. DRG’s Selected Recent Design/Build Project Experience

Project	Client	Water Resource	Delivery Method	Summary	Date Complete	Project Cost
CHEERS: Cleveland Harbor Eastern Embayment Resiliency Study	ARUP (Prime Consultant), Cleveland Metroparks, Port of Cleveland	Lake Erie, Cuyahoga County, Ohio	Bid/Build	Early action planning and design of Phase 1 of a 25+ year dredge material beneficial reuse project creating barrier island and marsh habitat along Cleveland’s Lake Erie coastline	ongoing	Early Action: \$100,000 Phase 1 Design: \$80,000 Phase 1 Construction Estimate: \$16.5 million
East Branch Chagrin River Renewal	Kirtland County Club, Chagrin River Watershed Partners	East Branch Chagrin River	Design	Conceptual planning, grant writing, geomorphic assessment, permitting, and cost estimating of dam removal and approximately 3 miles of river restoration	ongoing	\$80,000
Gerber Wetlands Restoration	Lorain County SWMD	Unnamed wetlands	Bid/Build*	Design of 4,400 LF of stream realignment with 25 AC of floodplain and wetland restoration providing over 100 AC-FT of flood storage	2026	Design: \$105,480.00 Construction: \$3,100,000
Huber Wetlands Restoration	Johnny Appleseed Metropolitan Park District	Unnamed wetlands and Auglaize River	Bid/Build*	Design, planning, and oversight services for 45 acres of wetland restoration and floodplain reconnection with public access amenities	2025	Design: \$121,030 Construction: \$1,095,758
Maple Highlands Trail Stream and Wetland Restoration	City of Chardon	Unnamed tributary to Chagrin River	Design/Build*	Restoration of 1,000 LF of headwater stream: realignment, floodplain benching, and culvert removal	2024	\$297,352
Hedges-Boyer Wetland Restoration	City of Tiffin	Unnamed wetlands, Rock Creek	Bid/Build	Oxbow wetland design, elevated trails and culverts, oversight, 5 AC restoration	2024	Design: \$50,580 Construction: \$207,875
Smith Creek Stream Restoration	Bainbridge Township	Smith Creek, tributary to Aurora Branch Chagrin River	Design/Build*	750 LF stream restoration, channel realignment, removal of earthen dam, floodplain connection	2024	\$369,956
Lathrop Park Stream Restoration	Partners for Clean Streams	Tenmile Creek	Design/Build	stream stabilization and riparian enhancement within the Maumee AOC	2024	\$429,365
Norton Stream Restoration	City of Mentor	Newell Creek	Design/Build*	Stream realignment around old dam, wetland restoration	2024	\$366,000
Nature Trails Stream Restoration	City of Northwood	Dry Creek	Design/Build*	1400 LF stream restoration to reduce erosion and improve fish habitat	2024	\$335,000

Sand Run Phase 3	Summit Metro Parks	Sand Run, tributary to Cuyahoga River	Design/Build*	7,000 LF of stream restoration, concrete removal, fish passage improvements	2023	\$2,103,249
Chagrin River Headwaters Restoration	Chagrin River Watershed Partners, Inc. and Western Reserve Land Conservancy	Unnamed tributary to Chagrin River	Design/Build*	1,500 LF of stream restoration; removal and replacement of an 8-foot stone/gabion culvert	2023	\$276,783
FEMA-Cranberry Run North and South	Boardman Township	Unnamed tributary to Cranberry Run	Bid/Build	Design of a flood mitigation project along an urban tributary of the Mahoning River	2023	Design: (North) \$64,690.00 Design: (South) \$20,000
Johnson's Creek Stream Restoration	Cleveland Metroparks	Johnson's Creek	Design/Build*	stream restoration, horse crossing replacement, and culvert replacement/upsizing	2023	\$616,096
Litchfield Wetlands Nature Preserve	Medina County Park District	Unnamed wetlands	Design/Build*	62 AC wetland restoration with public amenities (gravel trail, observation areas, boardwalk trail)	2023	\$1,200,000
Kennard Wetlands	Medina County Park District	Unnamed wetlands, Chippewa Lake outlet channel	Design/Build*	7 AC wetland restoration activities on former agricultural field, amenities (kayak launch, parking, culvert, access drive)	2023	\$210,000
Springbrook Gardens Park Ph 2	City of Mentor	Unnamed tributary to Marsh Creek	Design/Build*	650 LF of stream restoration, 1 AC riparian and floodplain restoration, restore sinuosity, in-stream structures and substrate	2022	\$243,827
NDCL Stream Restoration	Munson Township	Unnamed tributary to the Chagrin River	Design/Build*	Bank grading, instream structure installation, floodplain expansion, guide for campus improvements	2022	\$273,000
Valley City Streambank Stabilization	Medina County Sanitary Engineers	Rocky River	Bid/Build*	emergency streambank stabilization on 900 LF to project to protect sanitary infrastructure	2022	Design: \$143,930 Construction: \$1,691,004
Pond Brook Ph. 3	Summit Metro Parks	Pond Brook	Bid/Build*	Contract administration, construction oversight, plantings for stream restoration	2020	\$1,618,004

Contact information for three of the projects in table 2 is listed below:

1. Huber Wetlands Restoration Project, Spencerville, Ohio, 2025
Johnny Appleseed Metropolitan Park District, Tyler Black, Executive Director,
TBlack@jampd.com, 419.221.1232
2. Sand Run Slope and Channel Stabilization, Phase 3 Project, Akron, Ohio, 2023
Summit Metro Parks
Mike Johnson, Chief of Conservation
Mjohnson@summitmetroparks.org, 330.865.8057 ext. 221
3. Hedges-Boyer Wetland Restoration, Tiffin, Ohio, 2024
City of Tiffin
Bryce Kuhn, Parks Director
bkuhn@tiffinohio.gov, 419.448.5408

d. Plan for Anticipated Procurement Difficulties or Other Project Challenges

Marks Construction will procure all construction materials. Marks maintains a fleet of owned equipment to perform the work. Rock will be available from a quarry in Kimpton, Ohio. Several other quarries are available and known to Marks should any issues with procurement arise. Live stakes and posts can be procured and harvested from any known source of appropriate species. They can also be purchased from several well-known vendors. Native seed will be purchased from a well-known local vendor, Ohio Prairie Nursery. Cover crop is widely available at local feed stores. Erosion control matting is widely available at our local Hanes Geo in Macedonia or from other local and national suppliers.

e. Plan for meeting diversity participation goals set as part of Owner's diversity and inclusion program.

In addition to our Equal Employment Opportunity policy, we maintain an Affirmative Action Program in accordance with applicable laws and regulations.

f. Plan for Additional Considerations

The advantage of the Design/Build process is that we can take our existing concept, which is constructible within the existing budget, and modify it with the client and project partners as desired during design phase discussions, while performing budget checks with our contractor, vendors, and internal team to ensure final constructability. As a result, our designs minimize the area of disturbance, improve water quality, and effectively restore wetland hydrology with as little extreme intervention to the landscape as feasible.

To help achieve our project goals, we utilize project management software including the Google Suite of services, which allows our team members to work from anywhere and collaborate on documents and spreadsheets. Schedules and milestones are viewed on the Google calendar. We also utilize Asana for project management, and Salesforce/ SAP for accounting management.

Our Design/Build team is comprised of Davey Resource Group, Inc. out of Kent, Ohio and Marks Construction out of Valley City, Ohio. No other subs with the exception of a possible structural engineer, I.A. Lewin, P.E. and Associates, out of Cleveland, Ohio are expected.

Safety Management

DRG adheres to rigorous safety standards to ensure the health and safety of our personnel, our clients, the public, and the environment. To attain high safety standards, our team has a comprehensive Safety and Loss Prevention Program that is designed to prevent workplace accidents, injuries, and illnesses. To maximize safe operations during construction, our team will:

- Plan the work to avoid personal injury and property damage.
- Minimize workplace hazards through written job plans and daily project briefings.
- Monitor work to provide early detection and correction of unsafe practices and conditions. Corrective measures will be taken toward prevention of incident recurrence.
- Protect adjacent properties to provide for the safety of the public.
- Comply with federal and state Occupational Health and Safety Act regulations (OSHA).

Testing

All project materials will be reviewed and evaluated to assure quality assurance and adherence to project specifications. For this restoration project, this refers to plant materials, grading, and stone. Plant material will be purchased from vendors approved by The Village and will only include native species. All species will be reviewed and approved by you prior to reservation of the plant order. Upon delivery of the plant material, our team will examine the plants to ensure healthy, disease-free stock and count plants to verify the correct number and species that were delivered.

All earthwork will be implemented using machinery equipped with Topcon GPS with grade control. This GPS is programmed with the project specifications to ensure the site is graded as designed with a high level of accuracy and efficiency. Spot elevations will be regularly checked to further verify accurate project grading.

Upon delivery of the stone, our team will verify the type and size of stone as specified in the project plan. All placement of the stone will be overseen by our team to ensure effective placement.

Following construction, our team will implement an as-built survey of the project area. A red-line version of the as-built will be generated to highlight any divergences from the project plan. Explanations of these divergences will be provided

Final start-up, project turnover, occupancy, and warranty period issues

In construction, final start up refers to the process of assuring that all systems and components of a project are designed, installed, tested, functional, and maintained according to the requirements of the owner. By continually involving The Village in the pre-construction phase of the project, we will ensure that the plans and specifications will contain all of the elements that you desire when it comes to the final startup.

During construction and after all construction and planting activities are complete, we will conduct inspections of the project with The Village to identify any potential deficiencies. Deficiencies will be defined as any aspect of construction or planting that does not meet the design and specifications that have been reviewed and approved by you. Our goal is zero deficiencies. Our team is committed to correcting any deficiencies to your satisfaction.

A complete and thorough project closeout determines that the project has been performed according to the contract documents, all costs have been billed and paid, the project complies with all permits and regulations, and that the owner can now take over management of the project.

During construction and planting activities, we will monitor the quality, accuracy, and progress of the construction project. Our construction manager will observe all aspects of construction related to approved plans and documents and will implement monitoring procedures to ensure complete project control is maintained. Items that will be monitored include:

- Construction Environment
- Quality Control
- Conformance with Plans and Specifications
- Scheduling
- Negotiations, Suppliers, and Supplier Performance
- Budget Tracking
- Construction Equipment
- Materials—Both Quality and Quantity
- Health and Safety

DRG will review construction drawings, contractor modification requests, payment requests, and undertake final inspections. Upon completion of all restoration activities, the project will be turned over to The Village. A smooth project turnover involves completion of a punch list which includes at minimum:

- Our team will inspect the site with the Village to ensure adherence to the project plans.
- Demobilize all job storage/trailers, lavatories, temporary facilities, staging areas, access areas, and equipment from the work site.
- Removal of all temporary erosion control devices upon completion of site stabilization.
- Ensure that permanent site stabilization has been achieved.
- Ensure the site is completely clean and ready for occupancy.
- Review and ensure completeness of as-built drawings.
- Ensure all owner site reviews and understanding of the project have been completed.
- Confirm that all permits have been obtained and are closed out including submittal of a Notice of Termination to Ohio EPA if needed.
- Confirm all project deliverables have been provided to the client.
- Identify all warranties and guarantees. This project will include a two-year warranty for plant material.
- Review all contractual requirements and ensure that all terms have been met.
- Perform final accounting to have a complete record of all project expenses.

Tab 6 – Proposed Alternative Work Items

DRG does not have any substantial proposed alternative work items.

Tab 7 – Price Proposal

Itemized General Conditions

Please see the included Form 4 with our full price proposal. Please note our preconstruction services are included in the preliminary services fee within the price proposal. Below are our itemized proposed General Conditions. The monthly estimate is based on a 2-month construction schedule. Our proposed pricing maximizes the available grant budget of \$238,190.

Table 3. Itemized General Conditions

Item	Amount
Project Manager	\$5,400.00
Construction Manager (on-site oversight and reporting)	\$18,000.00
Vehicle	\$1,248.00
Performance Bond	\$952.76
Maintenance Bond	\$476.38
Total	\$27,799.57
Monthly	\$13,899.79

**PROPOSAL FORM 4
INITIAL PRICE PROPOSAL**

Provide the following fee information as described in the RFP and the Contract Documents at Attachment C to the RFP.

Preliminary Services Fee, including Design Development Services, as specified in the DBIA Doc. No. 520 attached to this RFP	\$ <u>53,536.83</u>
Identify percent complete upon which Preliminary Services Fee is Based (between 80-100% Construction Documents)	<u>100</u> %

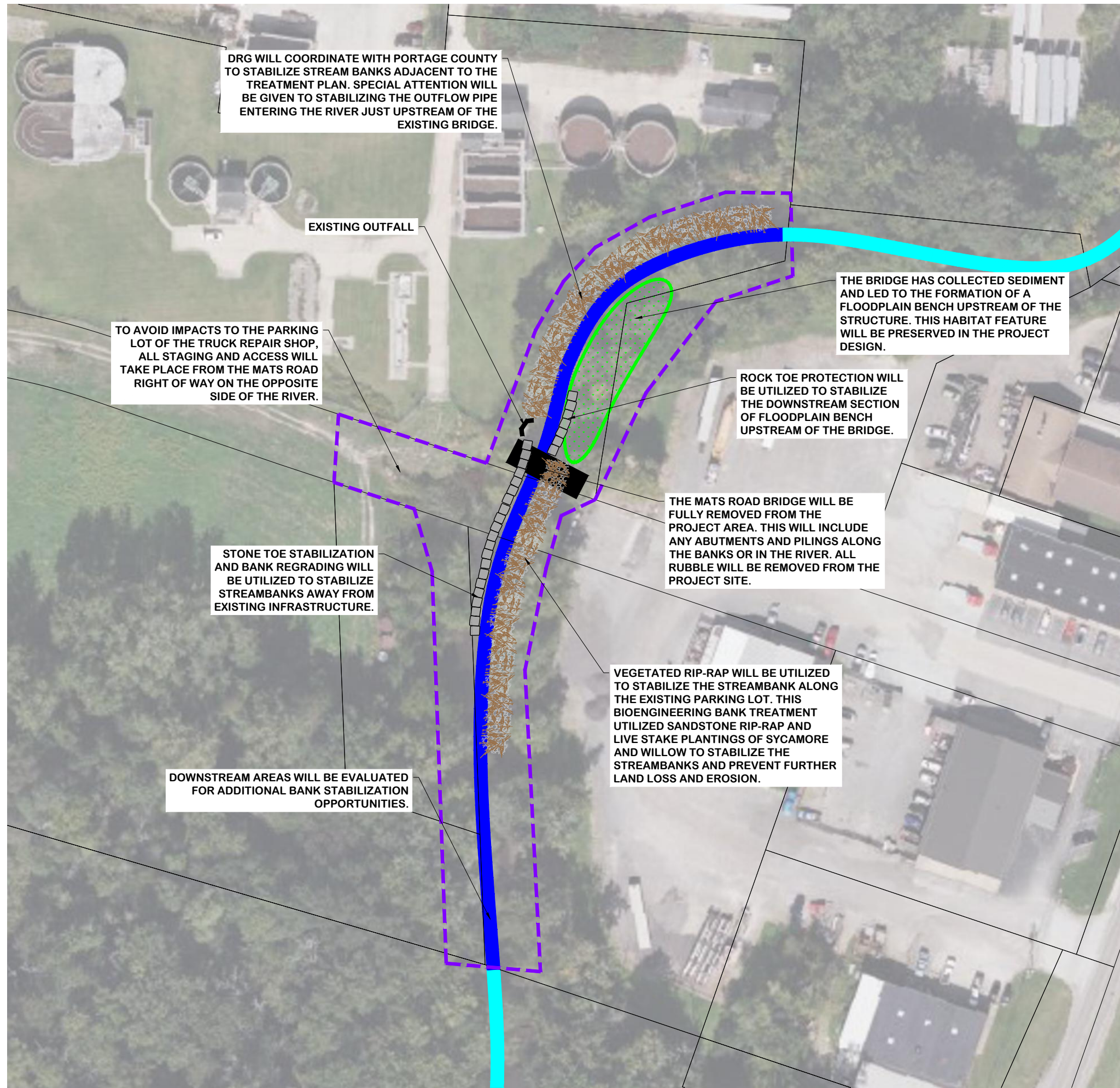
DESIGN-BUILDER FEES*

Item	Proposed Fee
(A) Design Services Fee	\$ <u>\$158,290.20</u>
(B) Preconstruction Fee	\$ <u>0</u>
(C) Design-Build Services Fee	<u>0.18</u> % of the Cost of the Work
(D) General Conditions**	\$ <u>13,038.57</u> per month (when DB is fully and actively engaged in construction phase Work)
(E) Contingency	6.31% of the Cost of the Work

* These values must be consistent with/not exceeded in Proposer's GMP Proposal. Design-Builder's Fee as specified in the DBIA 530 attached to this RFP.

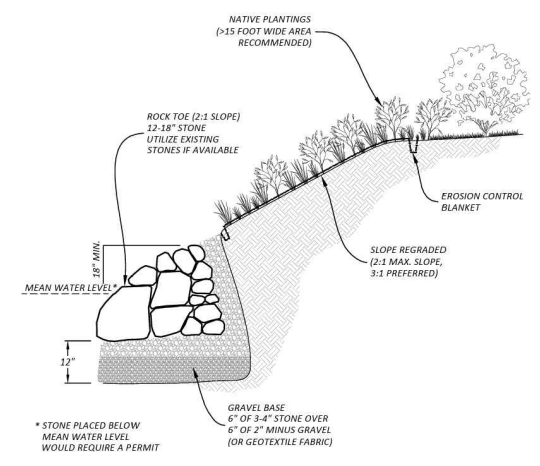
** Attach a separate sheet with a detailed breakdown of all items that comprise the General Conditions (Itemized General Conditions), which shall be consistent with the Contract Documents, including, but not limited to, Paragraph 6.2.1.4 of DBIA 530 included in Attachment C attached to the RFP. Any costs not listed in such Itemized General Conditions will be treated as if included in the Design-Build Services Fee.

Appendix A- Concept Plan



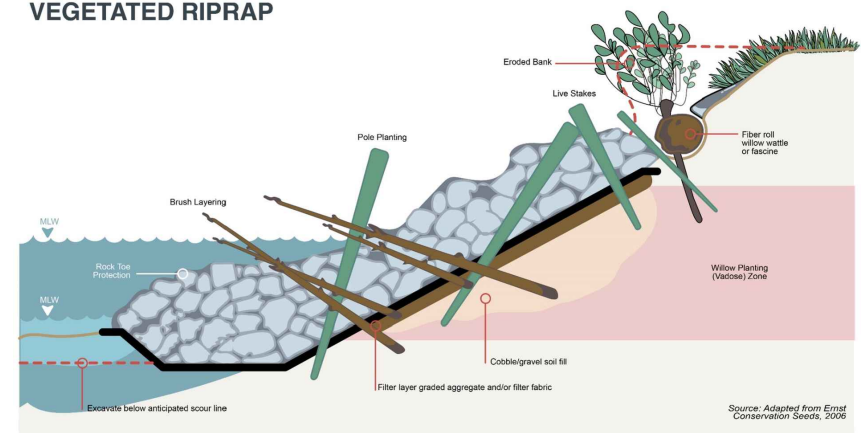
CONCEPT PLAN LEGEND

PROJECT AREA (1.35 AC)	
PROPOSED STREAM RESTORATION (670 LF)	
EXISTING STREAMS (TO REMAIN)	
EXISTING FLOODPLAIN	
PROPOSED VEGETATED RIP-RAP (490 LF)	
PROPOSED ROCK TOE PROTECTION (205 LF)	



ROCK TOE PROTECTION DETAIL

VEGETATED RIPRAP





**MODIFIED STANDARD FORM OF
AGREEMENT BETWEEN OWNER
AND DESIGN-BUILDER - COST PLUS
FEE WITH A GUARANTEED
MAXIMUM PRICE**

The author of this document has revised the text of the original DBIA standard form.

Document No. 530

Second Edition 2010

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Washington, DC

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Modified Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee with a Guaranteed Maximum Price

This **AGREEMENT** is made as of the date of execution by Owner, by and between the following parties, for services in connection with the Project identified below:

OWNER:

(Name and address)

Village of Mantua, Ohio
4650 High Street
Mantua, Ohio 44255

Owner's Representative: Tammy Meyer, Mayor of the Village of Mantua

The Owner's Representative shall be the point of contact for the Design-Builder on the Project. In addition to the other requirements contained herein, all communications, submissions or notices to the Owner from the Design-Builder related to the Project shall be directed to the Owner's Representative.

CRITERIA ARCHITECT:

Hugh R. Holley, P.E.
gvmustang75@gmail.com

The Criteria Architect may also be referred to as the Criteria Engineer in the Contract Documents.

DESIGN-BUILDER:

(Name and address)

Davey Resource Group, Inc.
333 Martinel Drive
Kent, Ohio 44240

Design-Builder's Representative: Kaley Zatorski, Project Manager, kaley.zatorski@davey.com

PROJECT:

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

Mantua Failing Bridge Removal & Streambank Stabilization Project
Location: Upon and adjacent to the Mats Road Bridge within the Village of Mantua, Ohio

DESCRIPTION OF THE PROJECT:

The Project is a turn-key design-build project. The Design-Builder will design and provide all of the Work necessary to complete the Project, which is anticipated to consist of the design and construction services necessary to remove the existing Mats Road Bridge structure over the Upper Cuyahoga Scenic River within the Village of Mantua, Ohio, and the restoration of the adjacent streambanks to a stable, ecologically functional condition, and other improvements associated therewith.

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

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. The team assigned by the Design Builder to perform the services required by this Agreement shall be the same team identified in Design Builder's proposal.
- 1.1.1 Compliance with Laws and Regulations.** The Design-Builder, at its expense, will comply with all applicable federal, state, and local laws, rules, and regulations applicable to the Work, will require its Subcontractors to comply. The Design-Builder shall also comply with all federal, state, and local laws, rules, and regulations applicable to the construction of public facilities, including any applicable safety and security laws and regulations. The design will conform to all applicable codes and standards, and all other national, state, and local regulatory and statutory requirements. In the event of conflicting requirements, the Design-Builder shall comply with the more stringent requirements.
- 1.1.2 Complete Design Documents.** To the extent the design documents are incomplete following completion of the Preliminary Services, Design-Builder shall complete the design documents in accordance with the Contract Documents, including the General Conditions of Contract. Design-Builder shall be responsible for performing the following duties including, but not limited to, cost estimating, budgeting, value engineering, constructability review, scheduling, and preconstruction planning and shall submit to the Owner, a summary of its constructability review of the 100% complete Construction Documents.
- 1.1.3** 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 for similar projects taking into account any unique requirements of the Owner and the location of the Project ("Standard of Care").
- 1.1.4** If the Design-Builder breaches any of its obligations under Section 1.1.3, the Design-Builder will reimburse the Owner for its damages and expenses, including but not limited to attorneys' and consultants' fees and expenses, arising out of or related to such breach.
- 1.1.5** To the extent necessary to complete the Work, Design-Builder shall be responsible for all topographic survey work, geotechnical investigation, and geotechnical recommendations as part of its scope of work. The Owner will not be responsible for contracting and separately supplying any surveying or geotechnical services to the Design-Builder.
- 1.1.6** Design-Builder shall not self-perform any construction trades work on the Project without the prior written permission of the Owner specific to a particular scope of work and submission of a sealed bid in accordance with all requirements of the Ohio Revised Code and the Ohio Administrative Code.
- 1.1.7** The Design-Builder shall secure the building permit as well as other permits, including but not limited to zoning permits, fees, licenses and inspections by governmental agencies necessary for proper execution and completion of the Work. The Design-Builder shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. If the Design-Builder performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful order of public authorities, the Design-Builder shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

Article 2 - Contract Documents

2.1 The Contract Documents are comprised of the following:

2.1.1 All written modifications, written 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* (2010 Edition), as modified.

2.1.2 The Owner's Request for Qualifications dated November 15, 2023, attached as Exhibit 2 to DBIA Document No. 520, *Standard Form of Preliminary Agreement Between Owner and Design-Builder* (2010 Edition), as modified, the Owner's Request for Proposals, dated December 4, 2023 (RFP and Addenda are incorporated by reference to the extent not inconsistent with this Agreement.)

2.1.3 This Agreement, including the following exhibits:

Exhibit 1	Statutory Form of Bonds, per O.A.C. 153:4-1-02
Exhibit 2	Design-Builder's GMP Proposal dated [REDACTED] (to the extent not inconsistent with this Agreement. Any terms and conditions included in the Proposal are expressly rejected by Owner)
Exhibit 3	Notice of Claim Form
Exhibit 4	Design-Builder's Affidavit with List of Subcontractors and Suppliers with Amounts Withheld
Exhibit 5	Design-Builder's Progress Payment Waiver and Release Affidavit
Exhibit 6	Subcontractors & Suppliers Progress Payment Waiver and Release Affidavit
Exhibit 7	Design-Builder's Final Lien Waiver and Release Agreement
Exhibit 8	Subcontractors Suppliers Final Waiver and Release Affidavit
Exhibit 9	Tax Exemption Certificate
Exhibit 10	Design-Builder's completed Personal Property Tax Affidavit (O.R.C. 5719.042)
Exhibit 11	Design-Builder's Itemized General Conditions

2.1.4 The General Conditions of the Contract DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2010 Edition), as modified ("General Conditions of Contract").

2.1.5 Construction Documents prepared and approved in accordance with the Contract Documents, including the DBIA 520, *Modified Standard Form of Preliminary Agreement Between Owner and Design Builder*, the General Conditions of Contract; and

2.1.6 The executed DBIA Document No. 520 – *Modified Standard Form of Preliminary Agreement Between Owner and Design-Builder*.

Article 3 - Interpretation and Intent

3.1 Design-Builder, prior to execution of the Agreement, shall carefully review all the Contract Documents, including the Owner's Project criteria and the Construction Documents, for any conflicts or ambiguities. Design-Builder and Owner will discuss and resolve any identified conflicts or ambiguities prior to execution of the Agreement.

3.2 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) and 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 inconsistencies, conflicts, or ambiguities between or among the Contract Documents are discovered after execution of the Agreement, or if applicable, after Owner's acceptance of the GMP Proposal, Design-Builder shall provide the better quality or greater quantity of Work or comply with the more stringent requirements. In the event of any inconsistency, the provisions of this Agreement shall control over any proposal, document, or other attachment, or exhibit.

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

3.4 All information provided by the Owner shall be verified by the Design-Builder.

3.5 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, including such documents identified in the General Conditions of Contract, furnished by Design-Builder to Owner under this Agreement ("Instruments of Service") are deemed to be instruments of service and the Owner is deemed to hold the ownership and property interests therein, including but not limited to any intellectual property rights, copyrights and/or patents, subject to the provision set forth below. The Design-Builder shall obtain the necessary permissions from the Design-Builder's consultants, for such transfer of ownership, consistent with this Agreement. This transfer of ownership shall survive any termination of this Agreement.

4.2 [Not Used.]

Article 5 - Contract Time

5.1 Date of Commencement. The date for commencement of the Work shall be the date of the Owner's written Notice to Proceed, which may take the form of an email, or in the absence of a written Notice to Proceed, the date this Agreement is executed by the Owner (the "Date of Commencement").

5.2 Substantial Completion and Final Completion.

5.2.1 Substantial Completion of the entire Work shall be achieved no later than calendar days after the Date of Commencement ("Date for Substantial Completion"). The Date for Substantial Completion shall only be changed or modified by Change Order, other Modification, or a Claim that is Finally Resolved regardless of any dates in any schedules, including the Progress Schedule, created by any person, including the Design-Builder.

5.2.1.1 Substantial Completion is defined in the General Conditions of Contract.

5.2.2 Interim milestones and/or Substantial Completion of identified portions of the Work ("Scheduled Interim Milestone Dates") shall be achieved as follows: (None if none are listed) *(Insert any interim milestones for portions of the Work with different scheduled dates for Substantial Completion)*

5.2.3 The Date for Final Completion of the Design-Builder's Work will be 30 calendar days after the Date for Substantial Completion ("Date for Final Completion"). The Date for Final Completion shall only be changed or modified by Change Order, other Modification, or a Claim that is Finally Resolved regardless of any dates in any schedules, including the Progress Schedule, created by any person, including the Design-Builder.

5.2.3.1 Final Completion is defined in the General Conditions of Contract.

5.2.4 All of the dates set forth in this Article 5 (collectively the “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. If the Design-Builder does not meet the Date for Substantial Completion or the Date for Final Completion, the Design-Builder shall pay the Owner (and the Owner may set off from sums coming due the Design-Builder) Liquidated Damages in the per diem amounts as set forth in the following tables, whichever may be applicable:

SCHEDULE OF LIQUIDATED DAMAGES – SUBSTANTIAL COMPLETION

GMP of More Than	To and Including	Liquidated Damages to be Deducted for Each Calendar Day of Overrun in Time past the Date for Substantial Completion
\$0.00	\$1,000,000.00	\$200.00
\$1,000,000.01	\$2,000,000.00	\$400.00
\$2,000,000.01	\$5,000,000.00	800.00
\$5,000,000.01	\$10,000,000.00	\$1,000.00
\$10,000,000.01	\$20,000,000.00	\$5,000.00
\$20,000,000.01	\$50,000,000.00	\$10,000.00
More than \$50,000,000.01		\$15,000.00

SCHEDULE OF LIQUIDATED DAMAGES – FINAL COMPLETION

GMP of More Than	To and Including	Liquidated Damages to be Deducted for Each Calendar Day of Overrun in Time past the Date for Final Completion
\$0.00	\$1,000,000.00	\$50.00
\$1,000,000.01	\$2,000,000.00	\$75.00
\$2,000,000.01	\$5,000,000.00	\$100.00
\$5,000,000.01	\$10,000,000.00	\$200.00
\$10,000,000.01	\$20,000,000.00	\$300.00
\$20,000,000.01	\$50,000,000.00	\$500.00
More than \$50,000,000.01		\$700.00

In addition to such Liquidated Damages, the Design-Builder shall indemnify, defend and hold the Owner and its employees and agents harmless from any and all claims or losses, whether or not such claims are proven, and from all costs and expenses incurred, as a result of or related to such claims or losses, including but not limited to attorneys’ and consultants’ fees and expenses, provided that such claims arise out of or are related to the Design-Builder’s failure to meet the Substantial Completion or Final Completion dates set forth herein. These Liquidated Damages are in addition to any other remedies available to the Owner under the Contract Documents.

The Design-Builder acknowledges that such amounts of Liquidated Damages represent a reasonable estimate of the actual damages for loss of or interference with the intended use of the Project that the Owner would incur if the Design-Builder’s Work is not Substantially Complete by its Date for Substantial Completion or Finally Complete by the required Date for Final Completion.

Article 6 - Contract Price and Guaranteed Maximum Price

6.1 Contract Price. Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract a contract price ("Contract Price") subject to the GMP established in this section and any adjustments made in accordance with the General Conditions of Contract. The Contract Price is the sum of the Design Services Fee, Preconstruction Fee, Design-Build Services Fee, and General Conditions, the actual Cost of the Work (as defined in this Agreement), and the amount of Contingency used, as each is defined in the Contract Documents, exclusive of the Preliminary Services Fee. The amounts included in the Contract Price are subject to open book pricing in accordance with Paragraph 7.5 of this Agreement.

6.2 The Guaranteed Maximum Price ("GMP") Established Upon Execution of this Agreement. Design-Builder guarantees that the Contract Price shall not exceed the GMP of _____ dollars (\$ _____), subject to additions and deductions by changes in the Work as provided in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price or GMP. The GMP and a list of the documents used as a basis for the GMP are identified in the GMP Proposal, which is included at **Exhibit 2**. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner. The GMP includes the Design Services Fee, Preconstruction Fee, Design-Build Services Fee, General Conditions, the Contingency, and the Maximum Cost of the Work, as defined herein. The amounts included in the GMP are subject to open book pricing in accordance with Paragraph 7.5 of the Agreement.

6.2.1 Design-Builder's Fee. Design-Builder's Fee shall be:

6.2.1.1 Design Services Fee. To the extent not included in the Preliminary Services Fee, the Design Services Fee is included in the GMP set forth in Paragraph 6.2 and is the compensation for services provided by the architect or engineer of record, including all sub-consultants. The Design-Builder's Design Services Fee for the Project is a \$ _____ fixed fee.

6.2.1.2 Preconstruction Fee. To the extent not included in the Preliminary Services Fee, the Preconstruction Fee is included in the GMP set forth in Paragraph 6.2 and is the combination of home office overhead and profit for preconstruction services. The Design-Builder's Preconstruction Fee for the Project is a \$ _____ fixed fee.

6.2.1.3 Design-Build Services Fee. The Design-Build Services Fee is included in the GMP set forth in Paragraph 6.2 and is the combination of home office overhead and profit for services provided during the construction phase of the Project as defined in the Contract Documents. The Design-Builder's Design-Build Services Fee for the Project is _____% of the Cost of the Work which totals \$ _____.

6.2.1.4 General Conditions. The General Conditions are included in the GMP set forth in Paragraph 6.2 and are the Design-Builder's costs for materials, services and equipment necessary to perform the Work on the Project but that are not incorporated into the Project. The amount of the Design-Builder's General Conditions costs for the Project is identified in the GMP Proposal attached hereto as **Exhibit 2** and includes Design-Builder's overhead and profit associated with such items. The General Conditions costs are not a Cost of the Work. The Design-Builder's General Conditions costs, to the extent applicable to the Project, may include:

- a. Design-Builder's home office management personnel, e.g. President, General Manager, Operations Manager, Business Development Manager, Corporate

- Counsel, Health and Safety Director, Procurement Manager, Finance and Accounting Manager, Quality Assurance Manager, Estimators;
- b. Project Management personnel (e.g., Project Executive, Project Manager, Deputy Project Manager, Construction Manager, Deputy Construction Manager, Resident Engineer, Safety Officer, Project Controls staff, superintendents, Quality Manager, contract administration staff, procurement staff, general clerical and administrative support staff, legal staff, estimators, finance and accounting staff);
 - c. progress scheduling;
 - d. compliance notices;
 - e. contract and subcontract administration;
 - f. trash removal for construction office;
 - g. project record keeping, documentation, document control, and status reporting;
 - h. fees and assessments for the building permit and for other permits, licenses and inspections for which the Design-Builder is required by the Contract Documents to pay
 - i. Ohio Utilities Protection Services/Dig Safe program notice and coordination;
 - j. Project health and safety program including but not limited to equipment, supplies, training, record keeping, plan development, incentives, audits and drills;
 - k. taxes, not including Commercial Activity Tax or income taxes which shall be the sole responsibility of Design-Builder;
 - l. staff expense allowances;
 - m. personnel and Site vehicle rental/mileage, fuel and maintenance;
 - n. relocation and temporary lodging and per diem expense;
 - o. ice and water;
 - p. drug testing;
 - q. communications equipment;
 - r. field/project offices including furnishings, office equipment, utilities, heat, office supplies, telephones, facsimile machines, internet connections, computers/networks/Cadd machinery, janitorial, mail and shipping, security systems, temporary fencing and barricades, office mobilization and demobilization;
 - s. badging and Site security including, but not limited to, security fencing, security locks, video surveillance, lighting, and alarm systems;
 - t. photography/progress photos;
 - u. tool trailer and hand tools;
 - v. project signage;
 - w. portable toilets, lockers and washrooms;
 - x. temporary utilities including, but not limited to, water, sewer, power and electric.
 - y. business licenses;
 - z. patent fees and royalties;
 - aa. training and recruiting; and,
 - bb. premiums for that portion of insurance and bonds required by the Contract Documents that can be attributed to this Agreement (but not including subcontractor default insurance or bonds). Self-insurance for either full or partial amounts of the coverages required by the Contract Documents may be included, with the Owner's prior approval. The premium charges will be set forth as a line item in the Itemized General Conditions attached hereto as **Exhibit 11**;

6.2.1.5 The General Conditions costs shall not include costs for any of the items listed above that are included in subcontract agreements. Notwithstanding any other

provisions to the contrary, the Design-Builder has represented that the Itemized General Conditions attached hereto as **Exhibit 11** identifies all of the costs that will be reimbursable as General Conditions for the amount set forth in the GMP Proposal (**Exhibit 2**) and that each item identified in the General Conditions will be billed on a not-to-exceed basis.

6.2.2 Cost of the Work. The Cost of the Work is included in the GMP set forth in Paragraph 6.2.

6.2.2.1 Cost of Work to Be Reimbursed Subject to GMP

Subject to the GMP, the term Cost of the Work shall mean costs necessarily incurred by the Design-Builder in the proper performance of the Work for the Construction Phase. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Section 6.2.2.1. The amounts included in Section 6.2.2.1 are subject to open book pricing in accordance with Paragraph 7.5 of this Agreement.

- .1 Where any cost is subject to the Owner's prior approval, the Design-Builder shall obtain this approval prior to incurring the cost.
- .2 Labor costs incurred by Design-Builder in self-performing Work on the Project.
 - a. Wages of construction workers directly employed by the Design-Builder to perform the construction of the Work at the Site or, with the Owner's prior approval, at off-site workshops.
 - b. [Not Used.]
 - c. Wages and salaries of the Design-Builder's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.
 - d. Costs paid or incurred by the Design-Builder for insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under subparagraphs a - c of this Section 6.2.2.1.2.
 - e. Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Design-Builder or paid to any Subcontractor or vendor, with the Owner's prior approval.
- .3 Payments made by the Design-Builder to Subcontractors in accordance with the requirements of the subcontracts.
- .4 Actual costs, without markup, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.
- .5 Actual costs, without markup of materials described in the preceding Section in excess of those actually installed to allow for reasonable waste and

spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Design-Builder. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

.6 Costs of Other Materials, Equipment, and Related Items

- a. To the extent not included in Design-Builder's General Conditions costs, actual costs, without markup of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the Site and fully consumed in the performance of the Work. Costs of materials, supplies machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Design-Builder shall mean fair market value.
- b. Actual rental charges without markup, for machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the Site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Design-Builder-owned item may not exceed the purchase price of any comparable item. Rates of Design-Builder-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.
- c. Actual costs, without markup of removal of debris from the Site of the Work and its proper and legal disposal.
- d. Costs of materials and equipment suitably stored off the Site at a mutually acceptable location, subject to the Owner's prior approval.

.7 [Not Used.]

.8 [Not Used.]

- .9** Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by any provision of the Contract Documents, and which do not fall within the scope of Section 6.2.2.1.13.

.10 [Not Used.]

.11 [Not Used.]

- .12** Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 9.5.1 of the General Conditions of Contract;

- .13** Actual costs, without markup of repairing or correcting damaged or nonconforming Work executed by the Design-Builder, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a contractual responsibility of the

Design-Builder and only to the extent that the cost of repair or correction is not properly recoverable by the Design-Builder from insurance, sureties, Subcontractors, suppliers, or others.

6.2.2.2 Costs Not to be reimbursed as a Cost of the Work

The Cost of the Work shall not include the items listed below:

- .1 Compensation for Design-Builder's personnel stationed at Design-Builder's principal or branch offices, except as provided for in Sections 6.3.1, 6.3.2 and 6.3.3 hereof;
- .2 Expenses of the Design-Builder's principal office and offices other than the Site office;
- .3 Overhead and general expenses, except as may be expressly included in Section 6.2.2.1;
- .4 General Conditions costs such as, but not limited to, field office expenses, temporary utilities, permits and inspections, and project management are not included in the Cost of the Work, in that they are priced separately as set forth herein;
- .5 The cost of Design-Builder's capital used in the performance of the Work;
- .6 Except as provided in Section 6.2.2.1.13 of this Agreement, costs due to the negligence or failure of the Design-Builder, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .7 If the parties have agreed on a GMP, costs that would cause the GMP, as adjusted in accordance with the Contract Documents, to be exceeded;
- .8 Costs for Preliminary Services Fee incurred during the Preliminary Services Phase.
- .9 Costs which are included in the Design-Builder's General Conditions;
- .10 Computers (desktop, laptop, tablet, etc.) and software unless such are acquired solely, not partially or substantially, for the beneficial use of the Project, and computers may not contain other unrelated Project or personal data unless otherwise specifically approved by Owner in writing;
- .11 Corporate accounting, data and check processing, and similar business transaction related costs related to the Work are part of Design-Builder's overhead business expenses and should have been included in Design-Builder's Fee;
- .12 [Not Used.];
- .13 Consultants to the Design-Builder not previously approved in writing by the Owner; and

- .14 Unless otherwise provided in the Agreement, Owner shall not reimburse the Design-Builder for rental charges more than two weeks prior to and one week after such temporary facilities, machinery and equipment that are needed to be used directly in the Work.
- .15 Relocation and temporary living allowances of personnel required for the Work unless such relocation meets the "distance test" under the United States Internal Revenue Publication 521; and
- .16 Costs resulting from an error or omission on the part of the Design-Builder or Design-Builder's consultants, subcontractors, or suppliers of any tier;
- .17 Costs resulting from the default of Design-Builder or Design-Builder's consultants, subcontractors, or suppliers of any tier;
- .18 Costs for subcontractor default insurance or bonds; and,
- .19 Any cost not specifically and expressly described in Section 6.2.2.1.

6.2.3 Contingency. A Contingency of [REDACTED] % of the Cost of the Work which equates to \$ [REDACTED] is included in the GMP set forth in Paragraph 6.2. The Contingency is available to the Design-Builder to cover those costs considered reimbursable as a Cost of the Work under the Contract Documents, provided the costs are not recoverable from a subcontractor, supplier, consultant or insurance, except as set forth below. When Contingency Work items are performed, the cost will be treated as a Cost of the Work to which the Design-Build Services Fee will be applied without any additional Fee or mark-up as the parties acknowledge that the Design-Builder Services Fee covers such overhead, profit and markup. The Design-Builder may use the Contingency for costs that the Design-Builder could not have foreseen or anticipated through the exercise of reasonable diligence at the time the GMP was submitted. The Design-Builder shall not use the Contingency for correction of defective, damaged or non-conforming Work, or design errors or omissions, however caused, and shall not use the Contingency to accelerate the Work if such acceleration was necessary to meet the completion dates as a result of Design-Builder's unexcused failure to timely perform its Work.

The Contingency is not available to Owner for increasing the scope of the Project. Design-Builder shall provide Owner prior notice of all anticipated charges against the Contingency, and shall provide Owner as part of the monthly status report required by the General Conditions of Contract an accounting of the Owner's Contingency, including all reasonably foreseen uses or potential uses of the Contingency in the upcoming three (3) months.

6.2.3.1 [Not Used.]

6.2.3.2 Any unused portion of the Contingency upon Final Payment shall be reallocated to the Savings and added to the remaining balance of the Savings.

6.2.3.3 The use of the Contingency by the Design-Builder is subject to open book pricing in accordance with Paragraph 7.5 of this Agreement.

6.3 Allowance Items and Allowance Values.

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

6.3.2 Design-Builder and Owner have worked together to review the Allowance Items and Allowance Values, if any, based on design information then available to determine that the Allowance Values constitute reasonable estimates for the Allowance Items. The cost of all Work contemplated by an Allowance Item shall be included in the corresponding Allowance Value. Accordingly, the Allowance Value will be the maximum amount charged to the Owner for all Work for the corresponding Allowance Item.

6.3.3 No work shall be performed on any Allowance Item without Design-Builder first obtaining in writing advanced authorization to proceed from Owner.

6.3.4 The Allowance Value for an Allowance Item includes the wages of direct employees performing Work at the Site or, with Owner's agreement, at locations off the Site, employee benefits, premiums, insurance, contributions and assessments, required by law or collective bargaining agreements, materials, equipment, transportation, taxes and insurance associated with the applicable Allowance Item. If an Allowance is in the Cost of the Work, then all other associated costs, including design fees, Design-Builder's overall project management and general conditions costs, overhead and fee, are deemed to be included in the original GMP, and are not subject to adjustment, regardless of the actual amount of the Allowance Item.

6.3.5 [Not Used.]

6.4 Savings. The Savings is the difference between the GMP and Contract Price. If the Contract Price is less than the GMP, as such GMP may have been adjusted over the course of the Project, the difference ("Savings") shall be retained 100% by Owner.

Article 7 - Procedure for Payment

7.1 Progress Payments.

7.1.1 Design-Builder shall submit its Application for Payment to Owner in accordance with Article 7 of this Agreement and Article 6 of the General Conditions of Contract.

7.1.2 Each Application for Payment shall be based upon the most-recent Schedule of Values which shall allocate the entire Contract Price. Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

1. Take that portion of the Cost of the Work properly allocable to completed Work (determined by multiplying the percentage of completion of each portion of the Work by the share of the Cost of the Work allocated to that portion of the Work in the schedule of values);
2. Add that portion of the Cost of the Work properly allocable to materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the Site at a location agreed upon in writing;
3. Subtract retainage for labor incorporated into the Work at the rate of 4% of the amount set forth in Contractor's payment application and approved by Owner and subtract retainage of 8% for the materials and equipment set forth in paragraph 2 above.
4. Add the Design-Build Services Fee, which shall be computed upon the Cost of the Work at the rate stated herein;
5. If applicable, add the amount of the Design Fee and the Preconstruction Fee in proportion to the percentage of the Work completed. (The Design Fee and Preconstruction Fee shall be shown as separate line items.)
6. Subtract the aggregate of previous payments made by the Owner;
7. Add General Conditions earned since previous Application for Payment. (The General Conditions shall be shown as a single separate line item.)

8. Subtract the shortfall, if any, indicated by the Design-Builder in the documentation to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
9. Subtract amounts, if any, for which the Owner has withheld per Section 6.3 of the General Conditions of Contract or as otherwise provided in the Contract Documents.

7.1.3 The Design-Builder will supply the Owner with all information necessary for the Owner to verify the amounts due to the Design-Builder, including but not limited to daily job logs, employee time records, internal job cost reports, original invoices for materials and equipment and documents showing that the Design-Builder has paid for such materials and equipment, and so as to verify that amounts due laborers, Subcontractors, and Sub-Subcontractors have been paid to them. Invoices in excess of \$1,000.00 shall be submitted with the Application for Payment. Invoices of \$1,000.00 or less shall be retained by the Design-Builder and produced to the Owner upon request. The failure to provide any such information shall be justification for withholding payment to the Design-Builder.

7.1.4 The Owner intends to conduct audits of the Design-Builder's records regarding the Project at times to be determined by the Owner.

7.2 Retainage on Progress Payments.

7.2.1 The Owner will withhold retainage in accordance with Ohio Revised Code Section 153.12, 153.13, and 153.14.

7.3 Final Payment. Design-Builder shall submit its Final Application for Payment to Owner in accordance with the General Conditions of Contract. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment (less any amount the parties may have agreed to set aside for warranty work) 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 the General Conditions of Contract.

7.4 [Not Used].

7.5 Open Book Pricing, Record Keeping and Audits. Design-Builder acknowledges that this Agreement is to be administered on an "open book" arrangement for determining actual Costs of the Work. 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. The Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control systems shall be satisfactory to the Owner. **The Owner and the Owner's accountants shall be afforded access to review and audit the Design-Builder's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda, timesheets, payroll, and other data relating to this Project, records of time spent by each person performing work on the Project and time spent on all other projects; such time and payroll records shall include the location of services, detailed description of time and work on this Project and any other projects (redacting the client name or description to the extent necessary) and the Design-Builder shall preserve these for a period of four years after final payment, or for such longer period as may be required by law.** Design-Builder shall make all such records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda, timesheets, payroll, and other data relating to this Project, available to the Owner and the Owner's accountants in the County where the Project is located or a location designated by Owner at the time of Owner's request. In the event that the Design-Builder's records are not available at the agreed upon time or place, or in the event that the Owner finds incomplete records or inaccurate accounting of paid expenses, the Design-Builder shall reimburse the Owner for its time, travel, related expenses and Design-Builder shall reimburse Owner the full amount of any discrepancies or overages.

Article 8 - Termination for Convenience

8.1 Upon three business days written notice to Design-Builder, the Owner may, without cause and without prejudice to any other right or remedy of the Owner, terminate the Agreement. Such termination shall be effective as of the date stated in the written notice. In such case, Design-Builder shall be paid for (without duplication of any items):

1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination; and
2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work.

8.2 Design-Builder shall not be paid on account of loss of anticipated overhead, profits or revenue or other economic loss arising out of or resulting from such termination.

8.3 Design-Builder shall require similar provisions to those contained in Article 8 in each of its subcontracts to protect Design-Builder from claims by Design Consultant, Design Sub-Consultant, Subcontractors and Sub-Subcontractors arising from the Owner's termination for convenience, or to minimize claims by such Design Consultant, Design Sub-Consultant, Subcontractors and Sub-Subcontractors. The remedy provided to Design-Builder under this Article 8 shall be the Design-Builder's sole remedy in the event of termination for convenience by the Owner.

8.4 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 Instruments of Service shall be as set forth in Article 4 hereof.

Article 9 - Representatives of the Parties

9.1 Owner's Representative

9.1.1 The Owner's Representative shall only have such authority as is authorized by the Owner and as is permitted under the laws of the State of Ohio.

9.2 Design-Builder's Representatives.

9.2.1 Design-Builder identified individuals in its Proposal as its Key Personnel. Design-Builder's Representative(s) identified herein and Key Personnel identified in its Proposal may be replaced only with the written approval of the Owner.

9.2.2 The Design-Builder shall not replace any of the representatives listed herein without the prior consent of the Owner while such representative is employed by the Design-Builder, except with another representative who is satisfactory to the Owner's Representative. If the Design-Builder proposes to change the representative, the Design-Builder shall submit to the Owner a written request for the change, including the justification for the change and the name and qualifications for the proposed replacement. The Design-Builder shall provide promptly any related additional information the Owner requests.

Article 10 - Bonds and Insurance

10.1 Insurance. Design-Builder and Owner shall procure the insurance coverage(s) set forth in Article 5 of the General Conditions of Contract.

10.2 Bonds and Other Performance Security. Before construction begins, Design-Builder shall provide performance bond and labor and material payment bonds, each having a penal sum equal to the full amount of the GMP. Such bonds shall be in the forms in **Exhibit 1**. The surety shall be a company qualified and registered to conduct business in the state in which the Project is located. If the GMP is increased at any time after the Design-Builder provides the bond, the Design-Builder shall cause the penal sum of the bonds to be increased as necessary to equal one hundred percent of the GMP as revised. The delivery of written consent from the affected surety or sureties to the Owner by the Design-Builder confirming the increased penal sums is a condition precedent to the Owner's obligation to pay the Design-Builder for any portion of the Work associated with the increase in the GMP.

10.2.1 If the Design-Builder elects to obtain a separate payment and performance bond from any Subcontractor or Sub-Subcontractor, in addition to the Design-Builder's bonds, such bonds shall be in the forms specified in **Exhibit 1** and the Design-Builder shall ensure that the Owner is listed as a co-obligee on all performance bonds and payment bonds obtained from Subcontractors and Sub-Subcontractors on the Project.

Article 11 - Other Provisions

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

11.1.1 MODIFICATION. No modification or waiver of any of the terms of this Agreement or of any other Contract Documents will be effective against the Owner unless set forth in writing and signed by or on behalf of the Owner. In the case of the Owner, the person executing the modification or waiver must have express authority to execute the Modification on behalf of the Owner pursuant to a resolution/ordinance that is duly adopted by the Owner. Under no circumstances will forbearance, including the failure or repeated failure to insist upon compliance with the terms of the Contract Documents, constitute the waiver or modification of any such terms by the Owner. The parties acknowledge that no person has authority to modify this Agreement or the other Contract Documents or to waive any of its or their terms, except as expressly provided in this paragraph.

11.1.2 CONSTRUCTION. The parties acknowledge that each party has reviewed this Agreement and the other Contract Documents and voluntarily entered into this Agreement. Accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement, the other Contract Documents, or any amendments or exhibits to it or them.

11.1.3 APPROVALS. Except as expressly provided herein, the approvals and determinations of the Owner will be subject to the sole discretion of the Owner and be valid and binding on the Design-Builder, provided only that they be made in good faith, i.e., honestly. If the Design-Builder challenges any such approval or determination, the Design-Builder will have the burden of proving that it was not made in good faith by clear and convincing evidence.

11.1.4 PARTIAL INVALIDITY. If any term or provision of this Agreement is found to be illegal, unenforceable, or in violation of any laws, statutes, ordinances, or regulations of any public authority having jurisdiction, then, notwithstanding such term or provision, this Agreement will remain in full force and effect and such term will be deemed stricken; provided this Agreement will be interpreted, when possible, so as to reflect the intentions of the parties as indicated by any such stricken term or provision.

11.1.5 PREVAILING WAGE RATES. Prevailing wage is required on the Project. Design-Builder and its subcontractors, regardless of tier, shall strictly comply with their obligation to pay their employees working on the Project site at the applicable prevailing wage rates for the type of work, including any changes thereto, and to comply with Owner's reporting requests pursuant to Ohio Revised Code Chapter 4115.

11.1.6 ETHICS. By signing and entering into this Agreement with the Owner, the Design-Builder represents that it is familiar with all applicable ethics law requirements, including without limitation Sections 102.04 and 3517.13 of the Ohio Revised Code and certifies that it is in compliance with such requirements. The Design-Builder understands that failure to comply with the ethics laws is, in itself, grounds for termination of this contract and may result in the loss of other contracts with the Owner.

11.1.7 PROPERTY TAX AFFIDAVIT. The Design-Builder's affidavit given under Section 5719.042, Ohio Revised Code, is incorporated herein.

11.1.8 ENTIRE AGREEMENT. This Agreement and the other Contract Documents, including but not limited to DBIA Document No. 520, as modified, constitute the entire agreement among the parties with respect to their subject matter and will supersede all prior and contemporaneous, oral or written, agreements, negotiations, communications, representations, and understandings with respect to such subject matter, and no person is justified in relying on such agreements, negotiations, communications, representations, or understandings.

11.1.9 THIRD-PARTY BENEFICIARY. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Design-Builder. However, it is understood that the Owner is an intended third-party beneficiary of Design-Builder's agreements with the Design Consultants, and Subcontractors, and Consultants' and Subcontractors' agreements with their Design Sub-Consultants, and Sub-Subcontractors. The Design-Builder shall incorporate the obligations of this Agreement into its respective agreements and subcontracts.

11.1.10 DESIGN-BUILDER'S DUTIES IN GENERAL. The Design-Builder acknowledges that the Owner is entering this Agreement in reliance on the Design-Builder's abilities to perform the design services requested under this Agreement on a timely basis. To the extent that any service hereunder shall be performed by consultants retained by the Design-Builder, the term "Design-Builder" as used in this Agreement shall be deemed to include any such consultant.

- .1 The Design-Builder acknowledges it will use its best professional skill and judgment to coordinate the design of the Project in order to (i) minimize disruption of the adjacent Owner's operations, and (ii) to ensure that the Project is coordinated as to phasing, timing, staging, design, and execution.
- .2 The Design-Builder's duties and obligations, as set forth herein, and any liabilities arising hereunder shall at no time be diminished or released by reason of any approval by the Owner of the Drawings and Specifications or any other documents prepared by the Design-Builder.
- .3 The Design-Builder, consistent with the applicable standard of care and professional skills, agrees that materials and equipment specified shall be adequate for the purposes for which they are specified.
- .4 The Design-Builder's services shall include services to investigate existing conditions and facilities or to make measured drawings thereof and other related services to verify the accuracy of drawings and any other information furnished by the Owner. The Design-Builder shall be responsible for reviewing and confirming information provided by the

Owner to the extent that it is an integral part of the Project. The Design-Builder shall use reasonable diligence in confirming information supplied by the Owner.

- .5 In regard to all services performed under this Agreement besides professional design services, the Design-Builder shall indemnify and hold harmless the Owner for all damages, losses, attorney fees or claims which the Owner sustains resulting from any breach of contract, negligent act, error, omission or failure to exercise reasonable care, skill or diligence on the part of the Design-Builder, its employees, its agents, or its Design Consultants, Subcontractors, Design Sub-Consultants and Sub-Subcontractors of any tier, respecting the performance of any Work or service in connection with the Project.
- .6 Notwithstanding any other provision in this Agreement to the contrary and in regard to Design-Builder's design professional services, during the term of this Agreement and for a period of two (2) years following completion of the Work or earlier termination of this Agreement, the Design-Builder shall indemnify, defend, and harmless from liabilities arising from claims by third parties for death or injury, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Design-Builder, its employees and its consultants in the performance of professional services under this Agreement. Such indemnification shall be in accordance with Ohio Revised Code Section 153.81 and shall only be for the liabilities incurred from the proportionate share of the tortious conduct, as determined pursuant to section 2307.23 of the Revised Code, of the Design-Builder or any consultant, subcontractor, or other entity used by the Design-Builder, in performing professional design services under this Agreement. Nothing in this provision prohibits the Owner from commencing a civil action for damages against the Design-Builder for the breach of this Agreement or for the breach of the Standard of Care. Notwithstanding anything to the contrary in this Agreement, in no event will Design-Builder be liable for any consequential, indirect, incidental, special, exemplary, punitive, or enhanced damages, lost profits or revenues, arising out of, or relating to, the services performed under this Agreement or in connection with any breach under this Agreement by Design-Builder or any subcontractor, employee or agent of Design-Builder. Additionally, in no event will Design-Builder's aggregate liability arising out of or related to this Agreement or the services performed under this Agreement, whether arising out of or related to breach of contract, tort (including negligence) or otherwise, exceed the combined amount specified for bonding and insurance coverages set forth in this Agreement.
- .7 Consistent with the Standard of Care defined in the DBIA 520 Preliminary Agreement, the Design-Builder shall endeavor to anticipate problems related to zoning, building permits, availability of utilities, equipment and material shortages, and supplier delays and to take steps to address such issues while providing timely written notification to Owner of such issues.
- .8 The Design-Builder owes a duty of trust and confidence to the Owner in the performance of all duties and obligations under this Agreement.

11.1.11 COUNTERPARTS. This Agreement may be executed in any number of counterparts each of which when so executed and delivered will be an original hereof, and it will not be necessary in making proof of this Agreement to produce or account for more than one counterpart hereof. This Agreement may be executed and delivered by facsimile or via electronic mail.

11.1.12 ATTORNEY-CLIENT CONFIDENTIAL AND PRIVILEGED COMMUNICATIONS. The Design-Builder acknowledges and agrees that the Owner's legal counsel may from time to time provide legal services to the Project and that in doing so may communicate with the Criteria Architect. The Design-Builder agrees that such communications will be privileged communications

and, if there is a Claim contemplated or pending, any written communications will be confidential work product.

11.1.13 DESIGN-BUILDER'S PLEDGE. The Design-Builder acknowledges that this is a public project involving public funds and that the Owner expects and requires the Design-Builder to adhere to the highest ethical and performance standards. The Design-Builder pledges and agrees that (a) it will act at all times with absolute integrity and truthfulness in its dealings with the Owner and Criteria Architect/Engineer, (b) it will use its best efforts to cooperate with the Owner and at all times will act with professionalism and dignity in its dealings with the Owner, (c) it will assign only competent supervisors, designers and workers to the Project, each of whom is fully qualified to perform the tasks that are assigned to him/her, and (d) it has read, understands and will comply with the terms of the Contract Documents.

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: Village of Mantua, Ohio

DESIGN-BUILDER: Davey Resource Group, Inc.

(Signature)

(Signature)

(Printed Name)

(Printed Name)

(Title)

(Title)

Date: _____

Date: _____

CERTIFICATE

(Section 5705.41, R.C.)

The undersigned, fiscal officer of the Owner, certifies that the moneys required to pay that part of the Contract Price coming due during the current fiscal year, under this Agreement to which this Certificate is attached have been lawfully appropriated for such purpose and are in the appropriate account of the Owner, or in the process of collection to the credit of the appropriate account or fund, free from any previous encumbrances. Moneys due in excess of the Contract Price shall require an additional and separate Fiscal Officer's Certificate.

DATED: _____

Fiscal Officer

Document 00 61 13.16 - Payment Bond Form
State of Ohio Standard Requirements for Public Facility Construction

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

KNOW ALL PERSONS BY THESE PRESENTS, that we, the undersigned _____

_____, as Principal,
and _____ as Sureties,

are hereby held and firmly bound unto **Village of Mantua, Ohio**

_____ as Obligee(s), in the penal sum of _____ dollars,
for the payment of which well and truly to be made, we jointly and severally bind ourselves, our heirs, executors,
administrators, successors, and assigns.

SIGNED AND SEALED this _____ day of _____, _____.

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

Project Number: _____
Project Name: Mantua Failing Bridge Removal & Streambank Stabilization Project
Contract Description: **Design-Build**
(e.g., Construction Manager at Risk, Design-Build)

NOW, THEREFORE, if the above-named Principal shall pay all lawful claims of subcontractors, material suppliers,
and laborers, for labor performed and materials furnished in the carrying forward, performing, or completing of said
Contract; we agreeing and assenting that this undertaking shall be for the benefit of any material supplier or laborer having a
just claim, as well as for the Obligee(s) herein; then this obligation shall be void; otherwise the same shall remain in full force
and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall in
no event exceed the penal amount of this obligation as herein stated.

THE SAID Surety hereby stipulates and agrees that no modifications, omissions, or additions, in or to the terms of
said Contract or in or to the Plans and Specifications therefore shall in any wise affect the obligations of said Surety on its
bond, and said Surety hereby waives notice of any such modifications, omissions or additions in or to the terms of the
Contract, the Work or the Contract Documents, including without limitation the Plans and Specifications.

PRINCIPAL:

Principal Signature

By: _____

Title: _____

SURETY:

Surety Signature

By: _____
Attorney-in-Fact

SURETY INFORMATION:

Street

City State Zip

Telephone Number

SURETY AGENT'S INFORMATION:

Agency Name

Street

City State Zip

Telephone Number

Email Address

END OF DOCUMENT

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

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

KNOW ALL PERSONS BY THESE PRESENTS, that we, the undersigned _____
_____, as Principal,
and _____ as Sureties,
are hereby held and firmly bound unto **Village of Mantua, Ohio**

_____ as Obligee(s), in the penal sum of _____ dollars,
for the payment of which well and truly to be made, we jointly and severally bind ourselves, our heirs, executors,
administrators, successors, and assigns.

SIGNED AND SEALED this _____ day of _____, _____.

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

Project Number: _____
Project Name: Mantua Failing Bridge Removal & Streambank Stabilization Project
Contract Description: **Design-Build**
(e.g., Construction Manager at Risk, Design-Build)

NOW, THEREFORE, if the above-named Principal shall well and faithfully do and perform the things agreed by the
Principal to be done and performed according to the terms of said Contract then this obligation shall be void; otherwise the
same shall remain in full force and effect; it being expressly understood and agreed that the liability of the Surety for any and
all claims hereunder shall in no event exceed the penal amount of this obligation as herein stated.

THE SAID Surety hereby stipulates and agrees that no modifications, omissions, or additions, in or to the terms of
said Contract or in or to the Plans and Specifications therefore shall in any way affect the obligations of said Surety on its
bond, and it does hereby waive notice of any such modifications, omissions or additions in or to the terms of the Contract, the
Work or the Contract Documents, including without limitation the Plans and Specifications.

PRINCIPAL:

Principal Signature

By: _____

Title: _____

SURETY:

Surety Signature

By: _____
Attorney-in-Fact

SURETY INFORMATION:

Street

City State Zip

Telephone Number

SURETY AGENT'S INFORMATION:

Agency Name

Street

City State Zip

Telephone Number

Email Address

END OF DOCUMENT

Exhibit 2

GUARANTEED MAXIMUM PRICE PROPOSAL
(Accepted Proposal to be Attached)

Exhibit 3

NOTICE OF CLAIM FORM
Claim No. ___ for Contractor

1. Name of Contractor: _____.

2. Contractor's representative to contact regarding the claim:

Name: _____ Title: _____

Telephone No. _____ (office) FAX No. _____

E-mail: _____

3. General description of claim:

4. Contract Documents. If the claim is based upon any part or provision in the Contract Documents, including but not limited to pages in the Drawings and/or paragraphs in the Specifications, Owner-Contractor Agreement, General Conditions or Supplementary General Conditions, state upon which parts or provisions the claim is based:

5. Delay claims:

5.1 Date delay commenced: _____

5.2 Duration or expected duration of the delay, if known: _____

5.3 Apparent cause of the delay and part of critical path affected:

5.4 Expected impact of the delay and recommendations for minimizing such impact:

6. Additional compensation. Set forth in detail all additional compensation to which the Contractor believes it is entitled with respect to this claim:

7. Truth of Claim. By submitting this claim, the Contractor and its representative certify that after conscientious and thorough review and to the best of his or her knowledge and belief a) the information in this Notice of Claim is accurate, b) the Contractor is entitled to recover the compensation in paragraph 7, and c) the Contractor has not knowingly presented a false or fraudulent claim. The Contractor by its authorized representative must acknowledge this Notice of Claim before a notary public.

CONTRACTOR: _____

By: _____

Name and Title: _____

Date: _____

CONTRACTOR'S ACKNOWLEDGMENT

State of Ohio
County of _____, ss:

_____ first being sworn, states that after conscientious and thorough review the statements made in attached Notice of Claim Form are true to the best of his or her knowledge and belief.

Subscribed and sworn to before me this _____ day of _____. The notarial act certified hereby is a jurat. An oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

Notary Public: _____

My Commission Expires: _____

WHEN COMPLETED, FORWARD A COPY OF THIS NOTICE OF CLAIM FORM TO THE OWNER AND ARCHITECT OR ENGINEER, AS APPLICABLE, AND AS DESCRIBED IN THE INSTRUCTIONS FOR COMPLETING THE NOTICE OF CLAIM FORM.

INSTRUCTIONS FOR COMPLETING THE NOTICE OF CLAIM FORM

1. Completing the Notice of Claim Form ("Claim Form") is a material term of the Contract. The Claim Form tells the Owner and Engineer that the Contractor is making a Claim and that they need to act promptly to mitigate the effects of the occurrence giving rise to the Claim. The Claim Form also provides them with information so that they can mitigate such effects. The Contractor acknowledges that constructive knowledge of the conditions giving rise to the Claim through job meetings, correspondence, site observations, etc. is inadequate notice, because knowledge of these conditions does not tell the Owner and Engineer that the Contractor will be making a Claim and most often is incomplete.
2. The Contractor must provide the required information in all blanks in the Claim Form within the period required by the Contract Documents. If the space provided in the Claim Form is insufficient, the Contractor, as necessary to provide complete and detailed information, must attach pages with the required information to the Claim Form.
3. Paragraph 4. The Contractor must state what it wants, *i.e.*, time and/or compensation, and the reason why it is entitled to time and/or compensation.
4. Paragraph 5. The Contractor must identify the exact provisions of the Contract Documents it is relying on in making its Claim. For example, if the Claim is for a change in the scope of the Contractor's Work, the Contractor must identify the specific provisions of the Specifications, and the Plan sheets and details that provide the basis for the scope change.
5. Paragraph 6. This paragraph applies to delay claims, including delays that the Contractor believes result in constructive acceleration. The Contractor must identify the cause of the delay, party or parties responsible, and what the party did or did not do that caused the delay, *i.e.*, specific work activities. The Contractor acknowledges that general statements are not sufficient, and do not provide the Owner with sufficient information to exercise the remedies available to the Owner or to mitigate the effects of the delay.

For example, if the Contractor claims a slow response time on submittals caused a delay, the Contractor must identify the specific submittals, all relevant dates, and then show on the applicable schedule, by circling or highlighting, the activities immediately affected by the delays. Also for example, if the Contractor claims it was delayed by another Contractor, the Contractor must identify the delaying Contractor, specifically what the delaying Contractor did or did not do that caused the delay, and then show on the applicable schedule, by circling or highlighting, the activities immediately affected by the delays. Further by example, if the Contractor seeks an extension of time for unusually severe weather, the Contractor must submit comparative weather data along with a record of the actual weather at the job site and job site conditions.

6. Paragraph 6.4. Time is of the essence under the Contract Documents. If there is a delay, it is important to know what can be done to minimize the impact of the delay. It therefore is important that the Contractor provide specific recommendations on how to do so.
7. Paragraph 7. The Contractor must provide a specific and detailed breakdown of the additional compensation it seeks to recover. For future compensation, the Contractor shall provide its best estimate of such compensation.
8. Paragraph 8 and Acknowledgment. In completing the Claim Form, the Contractor and its representative certify that after conscientious and thorough review and to the best of its knowledge and belief (a) the information in this Claim Form is accurate, (b) the Contractor is entitled to recover the compensation in Paragraph 7, and (c) the Contractor has not knowingly presented a false or fraudulent claim. The Contractor by its authorized representative must acknowledge this Notice of Claim before a notary public at the time of the preliminary submission and also when making the supplemental submission.

End of Instructions

DESIGN-BUILDER: [insert name]

BY: _____
(Signature of authorized representative)

NOTARY PUBLIC

State of: _____ County of _____

Subscribed and sworn to before me this _____ day of _____. The notarial act certified hereby is a jurat. An oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

Notary Public: _____

My Commission Expires: _____

Exhibit 5

**DESIGN-BUILDER'S PROGRESS PAYMENT WAIVER & RELEASE AFFIDAVIT
("AFFIDAVIT")**

Project: Mantua Failing Bridge Removal & Streambank Stabilization Project

The undersigned hereby acknowledges receipt of payment for all Work on the Project through the date of the prior Application for Payment by Village of Mantua, Ohio (the "Owner") with whom it has a contract for the Project.

In return for said payment, and pursuant to certain contractual obligations of the undersigned, the undersigned hereby waives and releases any rights it has or may have through the date of the last Application for Payment to any and all types of claims relating to the Project, including without limitation claims of payment, Mechanic's Lien, stop notice, equitable lien, labor and material bond, breach of contract or unjust enrichment, or any other claim against the Owner, for any labor, materials, or equipment the undersigned may have delivered or provided to the Project, except for any Claims the undersigned has made by properly and timely submitting a Notice of Claim. The undersigned further certifies that this Affidavit covers claims by all contractors, subcontractors, and suppliers who may have provided any labor, material, or equipment to the Project through the undersigned or at the undersigned's request. The undersigned acknowledges that all such contractors, subcontractors, sub-subcontractors and suppliers have signed an affidavit in the form of this Affidavit releasing any and all claims against the Owner, except for any Claims the undersigned has made by properly and timely submitting a written Notice of Claim. The undersigned hereby represents and warrants that it has paid any and all welfare, pension, vacation or other contributions required to be paid on account of the employment by the undersigned of any laborers on the Project.

This Affidavit is for the benefit of, and may be relied upon by the Owner. The undersigned hereby agrees to indemnify, defend and hold harmless each of the foregoing, the Project, work of improvement, and real property from any and all claims, or liens arising out of work covered by this release.

Company Name

Authorized Signature (Company Officer)

Title

Date

State of: _____ County of _____

Subscribed and sworn to before me this _____ day of _____. The notarial act certified hereby is a jurat. An oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

Notary Public: _____

My Commission Expires: _____

Exhibit 6

**SUBCONTRACTORS & SUPPLIERS
PROGRESS PAYMENT WAIVER & RELEASE AFFIDAVIT
("AFFIDAVIT")**

Project: Mantua Failing Bridge Removal & Streambank Stabilization

The undersigned hereby acknowledges receipt of payment for all Work on the Project through the date of the prior Application for Payment by the _____ ("Design-Builder") with whom it has a contract.

In return for said payment, and/or pursuant to certain contractual obligations of the undersigned, the undersigned hereby waives and releases any rights it has or may have through the date of the Design-Builder's last Application for Payment and to any and all types of claims relating to the Project, including without limitation claims of payment, Mechanic's Lien, stop notice, equitable lien, labor and material bond, breach of contract or unjust enrichment, or any other claim against the Design-Builder, the Design-Builder's surety, and/or the Village of Mantua, Ohio (the "Owner"), for any labor, materials, or equipment the undersigned may have delivered or provided to the Project, except for any Claims the undersigned has made by properly and timely submitting a Notice of Claim form, a copy of which has been delivered to the Owner. The undersigned further certifies that this Affidavit covers claims by all contractors, subcontractors and suppliers through the date of the Design-Builder's last Application for Payment who may have provided any labor, material, or equipment to the Project through the undersigned or at the undersigned's request. The undersigned acknowledges that all such contractors, subcontractors, sub-subcontractors and suppliers have signed an affidavit in the form of this Affidavit releasing any and all claims against the Design-Builder, the Design-Builder's surety, and/or the Owner, except for any Claims made by properly and timely submitting a Notice of Claim, a copy of which has been delivered to the Owner. The undersigned hereby represents and warrants that it has paid any and all welfare, pension, vacation or other contributions required to be paid on account of the employment by the undersigned of any laborers on the Project.

The undersigned agrees that upon receipt of the payment from the Design-Builder with respect to the Design-Builder's current Application for Payment, it shall, if applicable, immediately execute and cause to be filed or recorded a legally effective Satisfaction of Lien, Release of Lien, or any other legal instrument necessary to cause prejudicial dismissal and release of any lien, encumbrance, lawsuit, or other claim against the Design-Builder, the Design-Builder's surety and the Owner, the property where the Project is located, and/or any surety bond posted by the Design-Builder or the Owner to the extent of the foresaid payment. Upon request of the Design-Builder, the undersigned shall provide proof of having complied with this obligation.

This Affidavit is for the benefit of, and may be relied upon by, the Design-Builder, the Design-Builder's surety and the Owner. The undersigned hereby agrees to indemnify, defend and hold harmless each of the foregoing, the Project, its Work, and real property from any and all claims, or liens arising out of work covered by this release and from any liability, cost, or expense incurred as a result of any breach of this Affidavit by the undersigned.

Company Name

Authorized Signature (Company Officer)

Title

Date

State of: _____ County of _____

Subscribed and sworn to before me this _____ day of _____. The notarial act certified hereby is a jurat. An oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

Notary Public: _____

My Commission Expires: _____

Exhibit 7

**DESIGN-BUILDER’S FINAL WAIVER & RELEASE AFFIDAVIT
("AFFIDAVIT")**

Project: Mantua Failing Bridge Removal & Streambank Stabilization Project

In consideration for payment received from the Village of Mantua, Ohio (the "Owner") in the amount requested in Design-Builder’s Final Application for Payment to the Owner, the receipt of which is hereby acknowledged, the undersigned Design-Builder hereby waives and releases any rights it has or may have to any and all types of claims relating to the Project, including without limitation claims of payment, Mechanic’s Lien, stop notice, equitable lien, labor and material bond, breach of contract or unjust enrichment, or any other claim against the Owner, for any labor, materials, or equipment the undersigned may have delivered or provided to the Project, except for any Claims the undersigned has made by properly and timely submitting a Notice of Claim form. The undersigned further certifies that this Affidavit covers claims by all contractors, subcontractors, and suppliers who may have provided any labor, material, or equipment to the Project through the undersigned or at the undersigned’s request. The undersigned acknowledges that all such contractors, subcontractors, sub-subcontractors and suppliers have signed an affidavit in the form of this Affidavit releasing any and all claims against the Owner, except for any Claims the undersigned has made by properly and timely submitting a written Notice of Claim. The undersigned hereby represents and warrants that it has paid any and all welfare, pension, vacation or other contributions required to be paid on account of the employment by the undersigned of any laborers on the Project.

This Affidavit is for the benefit of, and may be relied upon by the Owner. The undersigned hereby agrees to indemnify, defend and hold harmless each of the foregoing, the Project, work of improvement, and real property from any and all claims, or liens that are or should have been released in accordance with this Affidavit.

Company Name

Authorized Signature (Company Officer)

Title

Date

State of: _____ County of _____

Subscribed and sworn to before me this _____
day of _____. The notarial
act certified hereby is a jurat. An oath or affirmation was
administered to the signer with regard to the notarial act
certified to hereby.

Notary Public: _____

My Commission Expires: _____

Exhibit 8
**SUBCONTRACTORS, SUPPLIERS
FINAL WAIVER & RELEASE AFFIDAVIT
("AFFIDAVIT")**

Project: Mantua Failing Bridge Removal & Streambank Stabilization Project

Upon receipt of payment in the amount of \$ _____ received from _____ ("Design-Builder") the undersigned Subcontractor or Supplier waives and relinquishes all rights of lien or claim that it may have either in law or equity (including but not limited to rights under Ohio Mechanics' Lien Laws, O.R.C. 1311.01 *et seq.*) with respect to the construction Project, for all labor, all equipment, and/or materials provided to or on behalf of the Project throughout its entirety, except for claims previously made pursuant to the agreement in place between Subcontractor or Supplier and Design-Builder, and any lien previously perfected and remaining unreleased.

The undersigned Subcontractor or Supplier acknowledges and agrees that such payment represents final payment in full for all such labor, equipment and/or materials including retainage, if any, and that the Subcontractor or Supplier has completed its work on the Project. The undersigned Subcontractor or Supplier certifies that all amounts have been paid by the Subcontractor or Supplier for all work or materials furnished by others to the Subcontractor or Supplier for which the Subcontractor or Supplier has received previous payments from Design-Builder, and Subcontractor or Supplier acknowledges that Design-Builder is now making payment to the Subcontractor or Supplier in reliance upon such certification. The undersigned Subcontractor or Supplier further certifies that it will pay all amounts lawfully owing for all work or materials furnished by others to the Subcontractor or Supplier with the payment received from Design-Builder referenced herein.

This Affidavit is for the benefit of, and may be relied upon by, the Design-Builder, the Design-Builder's surety and the Village of Mantua, Ohio ("Owner"). The undersigned hereby agrees to indemnify, defend and hold harmless each of the foregoing, the Project, its Work, and real property from any and all claims, or liens that are or should have been released in accordance with this Affidavit and from any liability, cost, or expense incurred as a result of any breach of this Affidavit by the undersigned.

IN WITNESS WHEREOF, the undersigned has caused this Affidavit to be executed by its authorized representative as of the date indicated below.

THE INDIVIDUAL SIGNING THIS AFFIDAVIT REPRESENTS THAT HE/SHE IS AUTHORIZED TO DO SO.

SUBCONTRACTOR OR SUPPLIER:

Company Name

Authorized Signature (Company Officer)

Title

Date

State of: _____ County of _____

Subscribed and sworn to before me this _____ day of _____. The notarial act certified hereby is a jurat. An oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

Notary Public: _____

My Commission Expires: _____



**Exhibit 9
Sales and Use Tax
Construction Contract Exemption Certificate**

Identification of Contract:

Contractee's (owner's) name Village of Mantua, Ohio

Exact location of job/project Upon and adjacent to the Mats Road Bridge within the Village of Mantua, Ohio

Name of job/project as it appears on contract documentation Mantua Failing Bridge Removal & Streambank Stabilization Project

The undersigned hereby certifies that the tangible personal property purchased under this exemption certificate is purchased exempt of the tax for incorporation into:

<input type="checkbox"/>	A building used exclusively for charitable purposes by a nonprofit organization operated exclusively for charitable purposes as defined in Ohio Revised Code (R.C.) section 5739.02(B)(12);	<input type="checkbox"/>	Real property that is owned, or will be accepted for ownership at the time of completion, by the United States government, its agencies, the state of Ohio or an Ohio political subdivision;
<input type="checkbox"/>	A horticulture structure or livestock structure for a person engaged in the business of horticulture or producing livestock;	<input checked="" type="checkbox"/>	Real property under a construction contract with the United States government, its agencies, the state of Ohio, or an Ohio political subdivision;
<input type="checkbox"/>	The original construction of a sports facility under R.C. section 307.696;	<input type="checkbox"/>	A building under a construction contract with an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986 when the building is to be used exclusively for the organization's exempt purposes;
<input type="checkbox"/>	A hospital facility entitled to exemption under R.C. section 140.08;	<input type="checkbox"/>	A house of public worship or religious education;
<input type="checkbox"/>	A computer data center entitled to exemption under R.C. 122.175; ___% exempt per OH Dept. of Development	<input type="checkbox"/>	Building and construction materials and services sold for incorporation into real property comprising a convention center that qualifies for property tax exemption under R.C. 5709.084 (until one calendar year after the construction is completed).
<input type="checkbox"/>	A megaproject entitled to exemption as described in R.C. 5739.02(B)(13).		
<input type="checkbox"/>	Real property outside this state if such materials and services, when sold to a construction contractor in the state in which the real property is located for incorporation into real property in that state, would be exempt from a tax on sales levied by that state;		

The original of this certificate must be signed by the owner/contractee and/or government official and must be retained by the prime contractor. Copies must be maintained by the owner/contractee and all subcontractors. When copies are issued to suppliers when purchasing materials, each copy must be signed by the contractor or subcontractor making the purchase.

Prime Contractor

Name _____

Signed by _____

Title _____

Street address _____

City, state, ZIP code _____

Date _____

Owner/Contractee

Name Village of Mantua, Ohio

Signed by _____

Title _____

Street address 4650 High Street

City, state, ZIP code Mantua, Ohio 44255

Date _____

Subcontractor

Name _____

Signed by _____

Title _____

Street address _____

City, state, ZIP code _____

Date _____

Political Subdivision

Name Same as Owner/Contractee

Signed by _____

Title _____

Street address _____

City, state, ZIP code _____

Date _____

Exhibit 10

**DESIGN BUILDER'S COMPLETED
PERSONAL PROPERTY TAX AFFIDAVIT**



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

The author of this document has revised the text of the original DBIA standard form.

Document No. 535

Second Edition, 2010

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Washington, DC

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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 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), as modified.

1.2.2 [Not Used.]

1.2.3 *Claim* is defined in Section 10.1 of the General Conditions of Contract.

1.2.4 [Not Used.]

1.2.5 *Construction Documents* are the documents, consisting of Drawings and Specifications, to be prepared or assembled by the Design-Builder in consultation with and subject to the approval of the Owner and consistent with the Owner's Project Criteria and the Owner-approved Schematic Design and Design Development Documents, as set forth in the Contract Documents.

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

1.2.7 *Design-Build Team* is comprised of the Design-Builder, the Design Consultant, and key Subcontractors identified by the Design-Builder subject to the approval of the Owner.

1.2.8 *Design Consultant* is a qualified, licensed design professional who is not an employee of Design-Builder, but is retained by Design-Builder, or employed or retained by anyone under contract with Design-Builder, to furnish design services required under the Contract Documents. A Design Sub-Consultant is a qualified, licensed design professional who is not an employee of the Design Consultant, but is retained by the Design Consultant or employed or retained by anyone under contract to Design Consultant, to furnish design services required under the Contract Documents. The Design-Builder warrants and represents that it, its Design Consultants, its Design Sub-Consultants, its Subcontractors, its Sub-Subcontractors and all of its other consultants presently have, and will at all times during the term of this Agreement maintain: (i) all skills, experience, knowledge, staffing and resources necessary to perform the services set forth herein, and (ii) all required licenses, accreditations, certifications and registrations necessary to perform the services set forth herein.

1.2.9 *Final Completion* shall mean that the Work is complete in accordance with the Contract Documents and the Design-Builder has submitted to the Owner all documents required to be submitted to the Owner for Final Completion.

1.2.10 *Force Majeure Events* are those events 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. Force Majeure Events do not include the COVID-19 pandemic.

1.2.11 *General Conditions of Contract* refer to this DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2010 Edition), as modified.

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

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

1.2.14 Notice of Claim Form means the Notice of Claim Form included in the Agreement as **Exhibit 3**.

1.2.15 Notice of Delays shall be provided by Design-Builder for all delays in accordance with Section 2.1.3.3.1 herein.

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

1.2.17 Site is the land or premises on which the Project is located. The term *Site* shall include all the land and premises on which the Project is located, if the Project occupies multiple locations. Site may also be referred to as Project site within the Contract Documents.

1.2.18 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 and is prequalified in accordance with all Legal Requirements and the requirements of the Contract Documents.

1.2.19 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.

1.2.20 Substantial Completion or *Substantially Complete* shall mean that the Work is complete and ready for full occupancy with only a very limited number of minor defects and/or items of incomplete or non-conforming Work that have no adverse impact on the use or occupancy of the Project. All finishes must be complete, all systems fully functional, including permanent power, and a Certificate of Occupancy (if applicable) issued by the authority having jurisdiction.

1.2.21 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.

2.1.2 Design-Builder shall provide Owner with a monthly status report detailing the progress of the Work, including (1) executive summary, (2) design reviews, issues and sign-off status, (3) status of all contracts, subcontracts, purchase orders and consultant agreements, (4) budget status and forecast, (5) buyout status, (6) change order status, (7) contingency status, (8) schedule status, (9) remedial action plan for any critical area behind schedule, (10) issues log and critical issues list, (11) items requiring Owner action, (12) outlook of scheduled activities for the next 30 days, (13) drawings and photos, (14) identification of discrepancies, conflicts, or ambiguities existing in the Contract Documents that require resolution, (15) identification of health and safety issues existing in connection with the Work; (16) identification of any items that require resolution so as not to jeopardize Design-Builder's ability to complete the Work for the Contract Price and within the Contract Time, and (17) any other information Design-Builder finds relevant to bring to the attention of the Owner.

2.1.3 Unless a schedule for the execution of the Work has been attached to the Agreement (or included in the GMP Proposal) as an exhibit at the time the Agreement is executed, 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 ("Progress Schedule"). The Progress Schedule shall indicate the dates for the start and completion of the various stages of Work, including reasonable dates when Owner information and approvals are required to enable Design-Builder to achieve the Contract Time(s), punch list, project close-out requirements, contract completion, and occupancy requirements. The Progress 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 only 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. The Progress Schedule shall be manpower loaded and utilize a critical path method network analysis and shall be accompanied by a bar chart schedule based thereon. The Progress Schedule shall be updated on a monthly basis or at any time that the Progress Schedule has been significantly impacted by any cause. A copy of the current revised Progress Schedule shall be submitted by the Design-Builder to the Owner each month with a report.

2.1.3.1 The Progress Schedule is for the purpose of coordinating the timing, phasing and sequence of the Work and shall not change or modify the Date for Substantial Completion. **The Date for Substantial Completion shall only be changed or modified by Change Order, other Modification or a Claim that is Finally Resolved, regardless of the date in any proposed schedule.**

2.1.3.2. The Design Builder's obligation to furnish requested scheduling information is a material term of its Contract. If the Design-Builder fails to furnish requested scheduling information in writing within five (5) days of a request for such information from the Owner, the Owner may withhold processing all current and future Applications for Payment until the Design-Builder furnishes the requested information.

2.1.3.3. THE PERIODS OF TIME IN THE PROGRESS SCHEDULE ARE OF THE ESSENCE TO THIS CONTRACT. THE DESIGN-BUILDER SHALL PROSECUTE ITS WORK IN ACCORDANCE WITH THE CURRENT PROGRESS SCHEDULE.

2.1.3.3.1. Notice of Delays. As a condition precedent to any increase in the Contract Price, use of Contingency, increase in Contract Times and/or increase in the GMP, the Design-Builder shall give the Owner written notice of any delay affecting its Work within two (2) business days of when the delay first becomes reasonably apparent or the actual commencement of the delay, whichever occurs first. In addition and also as a condition precedent to any increase in the Contract Price, use of Contingency, increase in Contract Times and/or increase in the GMP, the Design-Builder

shall give the Owner written notice of the delay within ten (10) business days of the commencement of the delay with specific recommendations about how to minimize the effect of the delay. The written notice of the delay shall conspicuously state that it is a "NOTICE OF DELAY." A notice of a delay shall not constitute the submission of a Claim. Contract Times shall only be changed as provided in the Agreement. The Design-Builder acknowledges and agrees that these notice provisions are material terms of the Contract Documents and give the Owner the opportunity to take action to minimize the cost and/or effect of delays.

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.

2.1.5 If the Owner determines that the performance of the Work has not progressed adequately and it is likely that the Design-Builder will not substantially complete its Work by its Date for Substantial Completion based upon the Design-Builder's failure to achieve specific milestone dates contained within the original construction schedule as adjusted by Excusable Delays, the Owner shall have the right to order the Design-Builder to take Corrective Measures necessary to expedite the Work, including, without limitation: (i) working additional shifts or overtime; (ii) supplying additional manpower, equipment, and facilities; and (iii) other similar measures (collectively referred to as "Corrective Measures"). If the Owner orders the Design-Builder to take such Corrective Measures, and regardless of any claims, disputes or objections, the Design-Builder shall take and continue such Corrective Measures until the Owner is satisfied that the Design-Builder is likely to substantially complete its Work by its Date for Substantial Completion. The Design-Builder shall not be entitled to adjustment in the Guaranteed Maximum Price in connection with the Corrective Measures required pursuant to this Section 2.1.5, unless the Design-Builder is able to establish that it is otherwise entitled to additional compensation under the terms of the Contract Documents.

2.1.6 Unless otherwise expressly provided in the Contract Documents, the Design-Builder shall provide typed or printed instructions covering the operation and maintenance of each item of equipment furnished in a notebook submitted to the Owner. The instructions, as applicable, shall include the following:

- .1 Any schematic piping and wiring diagrams;
- .2 Any valve charts and schedules;
- .3 Any lubrication charts and schedules;
- .4 Guides for troubleshooting;
- .5 Pertinent diagrams and maintenance instructions for all equipment;
- .6 Manufacturer's data on all equipment;
- .7 Operating and maintenance instructions for all equipment;
- .8 Manufacturer's parts list;
- .9 Any testing procedures for operating tests; and
- .10 Other instructions and materials as required by the Contract Documents.

The Design-Builder shall provide two (2) hard copies and one (1) additional copy in any electronic format requested by Owner of the above instruction books within 30 days after the Substantial Completion of the Work. The books shall describe the information to be covered clearly and in detail and shall be in form and content satisfactory to the Owner.

2.1.7 Unless otherwise provided in the Contract Documents, prior to Substantial Completion, the Design-Builder will organize, initiate, and conduct in training sessions for the Owner's maintenance personnel. These training sessions will cover the operation and maintenance of the Project's systems. The training will be of sufficient time and detail to train the Owner's maintenance personnel in how to maintain and operate these systems. Additionally, unless otherwise provided in the Contract Documents, during the first twelve (12) months following Final Completion of the Project, the Design-Builder (without additional compensation) will participate in tests on all systems

as reasonably requested by the Owner. The Owner will be advised when the testing will be conducted and may observe the testing. It is intended that the testing be a comprehensive series of operation tests designed to determine whether the systems are fully operational in accordance with appropriate design standards, the Owner's Design Criteria, and the requirements of the Contract Documents. If it appears that any of the systems, including equipment and software, do not conform to appropriate design standards, the Owner's Design Criteria, and the requirements of the Contract Documents, the Design-Builder will remedy the defective and/or non-conforming work as provided in Contract Documents.

2.1.8 The Design-Builder shall confine operations at the Site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders and all other requirements of public authorities and the Contract Documents and shall not unreasonably encumber the Site with materials or equipment.

2.1.9 The Design-Builder shall conduct the Work in a manner that minimizes disruption to the adjacent property owners' operations and minimizes disruption to the owners, tenants and sub-tenants of existing structures. Unless expressly permitted by the Contract Documents or by the Owner in writing, the Design-Builder shall not materially interfere with the operations of any businesses or buildings adjacent or near the site, shall not permit any of its employees or its Design Consultant's, Design Sub-Consultant's, Subcontractor's or Sub-Subcontractor's employees to use any existing facilities on the Project site, including, without limitation, lavatories, toilets, entrances, and parking areas, and shall not permit its employees or its Design Consultant's, Design Sub-Consultant's, Subcontractor's or Sub-Subcontractor's employees to bring any tobacco products, alcoholic beverages, controlled substances, or firearms onto the Project site or any other property owned or controlled by the Owner. Additionally, the Design-Builder shall not permit its employees or its Design Consultant's, Design Sub-Consultant's, Subcontractor's or Sub-Subcontractor's employees to use any radios, tape or compact disc players, or sound amplification equipment that is audible outside of the immediate area where the Work is being performed.

2.1.10 The Design-Builder shall conspicuously post notice of the prohibitions listed in the preceding subparagraphs at the Project site in the same locations as OSHA notices are required to be posted, and shall verbally inform all of the Design-Builder's employees, and the employees of the Design-Builder's Design Consultants, Design Sub-Consultants, Subcontractors and Sub-Subcontractors, regardless of tier, of such prohibitions.

2.1.11 SIGNAGE. The Design-Builder and any entity for whom the Design-Builder is responsible shall not erect any sign on the Project site without the prior written consent of the Owner, which may be withheld in the sole discretion of the Owner.

2.1.12 CUTTING AND PATCHING. The Design-Builder shall be responsible for cutting, fitting or patching as required to complete the Work or to make its parts fit together properly. The Design-Builder shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction or by excavation. The Design-Builder shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

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 or any Design Sub-Consultant except that it is understood that the Owner is an intended third-party beneficiary of Design-Builder's agreements with the Design Consultants, and Subcontractors, and Consultants' and Subcontractors' agreements with their Design Sub-Consultants, and Sub-Subcontractors. The Design-Builder shall incorporate the obligations of this Agreement into its respective agreements and subcontracts.

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 for similar projects taking into account any unique requirements of the Owner and the location of the Project.

2.3.2 The Design-Builder shall review laws, codes, and regulations applicable to the Design-Builder's services. The Design-Builder shall respond in the design of the Project to requirements imposed by governmental authorities having jurisdiction over the Project, and shall perform Design-Builder's services and design the Project in conformance with all such laws, codes, and regulations in effect at the time of design completion. The design will conform to all applicable codes and standards including but not limited to all national, state, and local regulatory and statutory requirements. In the event of conflicting requirements, the Design-Builder shall comply with the more stringent requirements.

2.4 Design Development Services.

2.4.1 Design-Builder and the 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. Interim design submissions shall be consistent with the Owner's Project Criteria and the Contract Documents. 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 changes to previously submitted design submissions. Minutes of the meetings, including a full listing of all changes, 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 and meeting minutes in a time that is consistent with any reasonable 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 and recorded in the meetings minutes. 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 in 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.

2.4.3 During the design development, Design-Builder shall keep Owner apprised of any deviation from Owner's preliminary design documents, design criteria, or Project Criteria and respond timely to Owner's comments regarding any such deviation. Owner's review and approval of interim design submissions, meeting minutes, 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, meeting minutes, and Construction Documents shall be deemed to transfer any design liability from Design-Builder to Owner.

2.4.4 To the extent agreed upon by the Owner in writing and 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 Except as set forth in Section 2.3.2, 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 or Addendum at issue, to the extent that they result in revisions Design-Builder is required to make to the Construction Documents that affect the cost of the Work or the schedule.

2.6 Government Approvals and Permits.

2.6.1 Design-Builder shall obtain and pay for all necessary fees, 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. This includes, but is not necessarily limited to utility fees (e.g. water and sewer tap fees, impact fees, meter fees, capacity fees, and the like), stormwater fees, and building permit fees.

2.6.2 Design-Builder shall provide reasonable assistance to Owner in obtaining those permits, approvals and licenses that are Owner's responsibility, if any. The Design-Builder shall assist the Owner in communications with and addressing local and government officials with jurisdiction over the Project. Because of the sensitive nature of these communications, the Design-Builder agrees and acknowledges that all communications will be at the direction of and in the discretion of the Owner.

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, Design Consultants, Design Sub-Subconsultants, Subcontractors or Sub-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 of a Design-Builder familiar with the construction of similar facilities in Ohio in order 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 Subcontractors.

2.7.3.1 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, Supplier, or other individual or entity. If the Design-Builder is in default because of the Subcontractor's performance, then the Design-Builder shall not be entitled to any adjustment in the Contract Price or Contract Time and shall remain liable to the Owner for any actual and direct damages or losses caused by such default. The objection or failure to object to any Subcontractor by the Owner shall not relieve the Design-Builder of its responsibility for performance of the Work, nor shall the approval of any particular Subcontractor be construed

as approval of any particular process, equipment, or material.

2.7.3.2 The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Design Consultants, Design Sub-Consultants, Subcontractors, Sub-Subcontractors and their agents and employees, and other persons or entities performing any portion of the Design-Builder's obligations under the Design-Build Documents. To the extent that any service hereunder shall be performed by consultants retained by the Design-Builder, the term "Design-Builder" as used in this Agreement shall be deemed to include any such consultant.

2.7.3.3 Design-Builder shall prequalify Subcontractors in accordance with all Legal Requirements, including the latest version of the Ohio Administrative Code 153:1-7-01. Design-Builder shall establish criteria for the prequalification of prospective bidders on subcontracts that shall:

2.7.3.3.1 include the experience of the bidder, the bidder's financial condition, conduct and performance on previous contracts, facilities, management skills, and the ability to execute the contract properly;

2.7.3.3.2 require prospective bidders to affirmatively state that they have not violated any affirmative action or equal opportunity program during the last five years preceding the date of the prequalification application;

2.7.3.3.3 require a prospective bidder to submit proof of current licenses held by Design-Builder, its Design Consultants, or Design Sub-Consultants to perform the work as required by the Owner or by applicable law.

2.7.3.4 The prequalification criteria established pursuant to Paragraph 2.7.3.3 by the Design-Builder are subject to the approval of the Owner. The Owner may approve or reject the criteria in whole or in part. In addition to any other remedies under the Contract Documents, the Owner shall have the right to stop payment or withhold monies due the Design-Builder until an acceptable Subcontractor is approved by the Owner.

2.7.3.5 Requirements for the award of Subcontracts.

2.7.3.5.1 All Subcontracts shall be awarded in accordance with all applicable Legal Requirements.

2.7.3.5.2 For each Subcontract to be awarded, the Design-Builder shall identify at least three prospective bidders that are prequalified to bid on each Subcontract, except that the Design-Builder shall identify fewer than three if the Design-Builder submits documentation to the satisfaction of the Owner, that fewer than three prequalified bidders are available. The Design-Builder will submit the names and qualifications of all of the qualified prospective bidders to the Owner.

2.7.3.5.3 The Owner will review the list of prospective Bidders submitted by the Design-Builder and may rely on the Design-Builder's representations to verify that the prospective Bidders meet the pre-qualifications criteria. The Owner may eliminate any prospective Bidder it determines is not qualified and will notify the Design-Builder of its decision. The Design-Builder shall solicit proposals from the remaining prospective bidders.

2.7.3.5.4 The solicitation and selection of a Subcontractor shall be conducted under an open-book pricing method consistent with Paragraph 7.5 of the Agreement.

2.7.3.5.5 Subject to the consent of the Owner, the Design-Builder is not required to award a Subcontract to a low bidder.

2.7.3.5.6 If the Design-Builder intends and is permitted by the Owner, in writing, to self-

perform a portion of the Work on the Project, the Design-Builder shall submit a sealed bid for the portion of the Work prior to accepting any bids from Subcontractors for the same Work, as required by Ohio law.

2.7.3.6 For all Subcontractors on the Project, the Design-Builder shall use a form of subcontract in compliance with in Ohio Administrative Code Section 153:1-3-02. Immediately upon execution of each subcontract with a subcontractor or supplier, the Design-Builder shall provide the Owner an executed copy of such subcontract. All subcontracts on the Project shall include the following terms and conditions:

2.7.3.6.1 Mutual rights and responsibilities: The subcontract form shall contain a provision requiring:

- a. the Design-Builder and the Subcontractor to be mutually bound to the terms of the Contract Documents;
- b. the Design-Builder to assume toward the Subcontractor the rights, remedies, obligations, and responsibilities that the Owner has and assumes toward the Design-Builder;
- c. the Subcontractor to assume toward the Design-Builder the rights, remedies, obligations, and responsibilities that the Design-Builder assumes towards the Owner; and,
- d. the Subcontractor to perform its portion of the work on the Project in accordance with the Contract Documents.

2.7.3.6.2 Contingent assignment: The subcontract form shall contain a provision providing for the assignment of the subcontract to the Owner, at the Owner's option, upon the termination of the Design-Builder's contract and written notice to the Subcontractor.

2.7.3.6.3 Intended third party beneficiary: The subcontract form used for the contract with Subcontractors, Sub-Subcontractors, Design Consultants, and Design Sub-Consultants shall contain a provision indicating that the Owner is an intended third party beneficiary of the subcontract, entitled to enforce any rights thereunder for its benefit.

2.7.3.6.4 Insurance: The subcontract form shall contain a provision requiring the Subcontractor to maintain insurance in accordance with the Contract Documents.

2.7.3.6.5 Right to audit: The subcontract form shall contain a provision entitling the Owner and any agents designated by the Owner to have access to and the right to audit and copy, at the Owner's reasonable cost, all of the Subcontractor's and Sub-Subcontractor's books, records, contracts, correspondence, instructions, drawings, receipts, vouchers, purchase orders and memorandum relating to the Work for not less than ten (10) years following completion of the Work, consistent with section 149.43 of the Ohio Revised Code

2.7.3.6.6 Indemnification: The subcontract form shall contain a provision requiring the Subcontractor and its Sub-Subcontractors to indemnify, defend and hold harmless, to the fullest extent permitted by law, the Owner, its consultants, and employees from all claims and expenses for bodily injury and property damage other than to the work itself that may arise from the performance of the subcontract work, but only to the extent caused by the negligence of the Subcontractor, its Sub-Subcontractors or a person or entity for whom the Subcontractor or Sub-Subcontractor may be liable. The subcontract form shall not require a Subcontractor to waive its immunity under the workers' compensation laws of this state from claims brought against the Subcontractor by the Subcontractor's

employees. The indemnification required by this provision is in addition to, and not a limitation of, the other indemnification requirements in the Contract Documents.

2.7.3.6.7 Prompt payment: The subcontract form shall contain a provision requiring the Design-Builder, notwithstanding a contingent payment clause, to make payments to the Subcontractor in accordance with applicable law, including section 4113.61 of the Ohio Revised Code, and that progress payments to the Subcontractor for satisfactory performance of the subcontract work shall be made no later than ten days after receipt by the Design-Builder of payment from the Owner for that subcontract work.

2.7.3.6.8 Retainage: The subcontract form shall contain a provision requiring that retainage shall be at a rate equal to or less than the percentage retained from the Design-Builder's payment by the Owner for subcontract work.

2.7.3.6.9 Warranty: The subcontract form shall contain a provision requiring that the Subcontractor fully warrant, for the benefit of the Owner, that all materials and equipment shall be new unless otherwise specified, of good quality, in conformance with the Contract Documents and free from defective workmanship or materials.

2.7.3.6.10 Non-waiver of lien or payment bond rights: The subcontract form and any supplemental terms to the contract between the Design-Builder and the Subcontractor shall not include any terms or conditions that seek to prohibit a Subcontractor from exercising its rights under chapter 1311 of the Ohio Revised Code or under any payment bond provided by the Design-Builder.

2.7.3.6.11 Nondiscrimination: The subcontract form shall contain a provision specifically requiring the Subcontractor to comply with applicable law regarding equal employment opportunity and, to the extent applicable, all executive orders issued by the Governor of the state of Ohio.

2.7.3.6.12 Dispute resolution: The subcontract form shall require the contract between the Design-Builder and Subcontractor to contain a dispute resolution provision that is comparable to the dispute resolution provision in the contract between the Design-Builder and the Owner.

2.7.3.7 The Design-Builder shall not substitute a Subcontractor, person or entity previously selected if the Owner objects to such substitute. The Owner may require the Design-Builder to change any Subcontractor previously approved and, except as provided hereafter, the Contract Price shall be increased or decreased by the difference in cost resulting from such change. If the Design-Builder is in default because of the Subcontractor's performance, then the Design-Builder shall not be entitled to any adjustment in the Contract Price and shall remain liable to the Owner for any actual and direct damages or losses caused by such default.

2.7.3.8 By appropriate written agreement, the Design-Builder shall require each Subcontractor and Design Consultant to the extent of the Work to be performed by the Subcontractor or Design Consultant, to be bound to the Design-Builder by terms of the Contract Documents, and to assume toward the Design-Builder all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Design-Builder, by these Documents, assumes toward the Owner. Each subcontract and consultant agreement shall preserve and protect the rights of the Owner under the Contract Documents with respect to the Work to be performed by the Subcontractor or Design Consultant so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor or Design Consultant, unless specifically provided otherwise in the subcontract/consultant agreement, the benefit of all rights, remedies and redress against the Design-Builder that the Design-Builder, by the Contract Documents, has against the Owner. Where appropriate, the Design-Builder shall require each Subcontractor and Design Consultant to enter into similar agreements with Sub-subcontractors or sub-consultants. The Design-Builder shall

make available to each proposed Subcontractor and Design Consultant, prior to the execution of the subcontract/consultant agreement, copies of the Contract Documents to which the Subcontractor or Design Consultant will be bound. Subcontractors and Design Consultants will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors or sub-consultants.

2.7.4 Design-Builder has a duty to inspect the Work of its Subcontractors, Sub-Subcontractors, Design Consultants and Design Sub-Consultants for appropriate design and conformance with the Contract Documents and assumes responsibility to Owner for the proper performance of the Work of Subcontractors, Sub-Subcontractors, Design Consultants, and Design Sub-Consultants 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 except that the Owner is an intended third-party beneficiary of Design-Builder's agreements with its Design Consultants, Design Sub-Consultants, Subcontractors, Sub-Subcontractors and suppliers. Design-Builder shall include provisions in such subcontracts and agreements establishing Owner as a third-party beneficiary of such subcontracts and agreements.

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 shall 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 disruption.

2.7.6 Design-Builder shall keep the Site 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, 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.

2.7.7 Design-Builder shall maintain at the Project site or other location approved by Owner and accessible for review and copying by the Owner or its designee, the following items:

- .1 A set of Drawings and Specifications as approved by the Authority having Jurisdiction;
- .2 A copy of the Drawings and Specifications upon which the Design-Builder shall record changes made during the course of its Work;
- .3 The Design-Builder shall keep an accurate record of all changes made to the Drawings to show actual installation where installation varies from Work as originally shown, including the exact location and depth of underground utility lines. Any such changes shall be noted by Change Order Number, if a Change Order was issued, and drawn neatly in a contrasting color on the drawings;
- .4 The Design-Builder shall keep record of all changes to the Specifications;
- .5 When Shop Drawings are used, the Design-Builder shall cross-reference the corresponding sheet numbers on the drawings and sections of the specifications;
- .6 A daily log at the Project site in which it has recorded Project-related information, including, but not limited to, the weather, number of workers on site, identification of equipment, Work accomplished, problems encountered, and other similar relevant Project data;
- .7 As applicable to its Work, all Bulletins, Addenda, approved Shop Drawings, Product Data, Samples, manufacturers' installation, operating and/or maintenance instructions

or requirements, certificates, warranties, Change Orders, Change Directives, other Modifications and complete back up data for all Change Orders, Change Directives and other Modifications; and

- .8 All the Design-Builder's communications, including but not limited to letters, memoranda, e-mail, invoices and bills of lading, arising out of or related to the Project with the Owner, other contractors, and/or its Design Consultant, Design Subconsultant, Subcontractor or Sub-Subcontractor.

2.7.8 The Design-Builder will, at the Design-Builder's expense, fully comply with all statutes and regulations regarding notification and disposal of construction and demolition debris, including, without limitation, Ohio Revised Code Chapter 3714 and the regulations enacted thereunder.

2.7.9 The Design-Builder, at least five (5) working days prior to commencing construction in an area that may involve underground utility facilities, concealed conditions, or may impact on life safety matters, shall comply with the obligations imposed upon excavators in Ohio Revised Code Sections 3781.25 to 3781.32 including but not limited to giving notice to the Owner and where underground utility facilities are involved also to the registered underground utility protection services and the owners of underground utility facilities.

2.7.10 The Design-Builder shall notify immediately the occupants of any premises near the Work and the Owner as to any emergency that it may create or discover. The Design-Builder shall notify immediately the operator of any underground utilities and the Owner of any break or leak in the lines of such operator or any dent, gouge, groove, or other damage to such lines or to their rating or cathodic protection, made or discovered in the course of excavation.

2.7.11 The Design-Builder shall perform its Work during normal business hours unless otherwise provided in the Contract Documents or approved in writing by the Owner. Any Work at other than normal business hours will be at the Design-Builder's expense without reimbursement, unless authorized by Change Order or Change Directive.

2.7.12 The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Design-Build Contract. The Design-Builder shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. The Design-Builder's employees and other persons carrying out the Design-Build Contract shall comply with all security and safety requirements of the Owner. The Design-Builder shall only assign competent supervisors and workers to the Project, each of whom is fully qualified to perform the tasks assigned. If the Owner deems any employee of the Design-Builder or of a Subcontractor, a Sub-Subcontractor, a Design Consultant, or a Design Sub-Consultant of any tier unsatisfactory, the Design-Builder will transfer or require its Subcontractor, Sub-Subcontractor, Design Consultant, or Design Sub-Consultant to transfer such employee from the Project immediately and replace or require the prompt replacement of such employee with a competent employee. The Owner, however, shall be under no obligation to do so.

2.8 Design-Builder's Responsibility for Project Safety.

2.8.1 Design-Builder shall take reasonable precautions for safety 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. The Design-Builder shall be responsible, at the Design-Builder's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein with respect to the Design-Builder's Work. The Design-Builder shall promptly repair any damage to such property or improvements at its sole cost and expense. 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, Design Consultant, Design Sub-Consultant, Subcontractor, Sub-Subcontractor and others as applicable.

2.8.2 Design-Builder, Subcontractors and its Sub-Subcontractors shall comply with all Legal Requirements relating to safety, as well as the Owner's rules, regulations, and policies including, but not limited to, the Owner's safety policies and programs. Design-Builder will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to Owner 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 injuries, losses, damages or accidents resulting from their performance of the Work.

2.8.4 When trenching, excavating or performing any other activities where the presence of a competent person is required, Design-Builder shall keep a competent person at the Site to comply with OSHA requirements. The competent person shall be one who is capable of identifying existing and predictable hazards in the surroundings, or working conditions that are unsanitary, hazardous or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them.

2.8.5 The Design-Builder shall provide the Owner with a list of names and contact information of the designated employees for the Design-Builder and for each Subcontractor to be contacted in case of emergency during non-working hours. A copy of the list will also be displayed at the jobsite by Design-Builder.

2.8.6 Failure to comply with the safety requirements set forth in this Section 2.8 shall be a material breach of the Design-Build Agreement.

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, suitable and fit for their intended use, in conformance with the Contract Documents and free of defects in materials, design and workmanship. Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work in a commercially reasonable manner. Nothing in this warranty is intended to limit any manufacturer's warranty which provides Owner 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.

2.9.2 Design-Builder's warranty period starts at the successful startup and testing in accordance with the Contract Documents or beneficial occupancy of the Project by the Owner, whichever comes later.

2.9.3 If the Design-Builder breaches any of its warranties under Section 2.9, the Design-Builder will pay the Owner for its damages and expenses, including but not limited to attorneys' and consultants' fees and expenses, arising out of or related to such breach.

2.9.4 [Not Used.]

2.9.5 Design-Builder's warranty provided under Section 2.9 is in addition to and not limited by any other warranties provided by the Design-Builder under the Contract Documents.

2.9.6 The Design-Builder further warrants that the Project shall be designed so that it (1) is fit for its intended purpose and (2) complies with all security and safety standards and requirements for similar buildings. Additionally, the Design-Builder warrants and represents that it and/or its Design Consultants, Design Sub-Consultants, Subcontractors and Sub-Subcontractors presently have, and will at all times during the term of this Agreement maintain: (i) all skills, experience, knowledge, staffing and resources necessary to perform the services set forth herein, and (ii) all required licenses, accreditations, certifications and registrations necessary to perform the services set forth herein.

2.10 Correction of Defective Work.

2.10.1 Design-Builder shall correct any Work that is found to be improperly designed, defective or to not be in conformance with the Contract Documents within the applicable statute of limitations period, including that part of the Work subject to Section 2.9 hereof, or within such longer period to the extent required by any specific warranty included in the Contract Documents.

2.10.2 If Design-Builder fails within two (2) business days of a written notice from the Owner, or such longer time as may be stated in such notice, to correct, or take reasonable steps to commence to correct defective or nonconforming Work, or to remove and replace, or take reasonable steps to remove and replace, the Work, or if Design-Builder fails to perform the Work in accordance with the Contract Documents, or if Design-Builder fails to comply with any other provision of the Contract Documents, the Owner may correct or remedy any such deficiency. In such case an appropriate unilateral Change Order shall be issued deducting from payments then or thereafter due the Design-Builder all the costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by the Owner in exercising the rights and remedies under this Section 2.10.2. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder and its surety shall pay the difference to the Owner. If such defective and non-conforming work results in a threat to the safety of any person or property including but not limited to the Work itself, the Design-Builder shall immediately commence to correct such defective and non-conforming work upon receipt of written or oral notice thereof.

2.11 Underground Facilities

2.11.1 The cost of all of the following will be included in the Contract Price, and the Design-Builder shall have full responsibility for:

- a. protecting all Underground Facilities in a manner at least as cautious and protective of safety and underground facilities as those methods identified in Ohio Revised Code Sections 3781.25 and 3781.27.
- b. coordination of the Work with the owners of such Underground Facilities during construction; and
- c. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

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 reasonably 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 any reasonable turnaround times set forth in Design-Builder's schedule.

3.1.3 Owner shall give Design-Builder notice of any Work that Owner notices to be defective or not in compliance with the Contract Documents. The failure of the Owner to provide said notice shall not relieve the Design-Builder of its obligation to correct all defective and non-conforming Work on the Project, or limit the Owner's rights under the Contract Documents.

3.2 Furnishing of Services and Information.

3.2.1 Unless expressly stated to the contrary in the Contract Documents, if available, Owner may 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:

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

3.2.1.2 Temporary and permanent easements;

3.2.1.3 A legal description of the Site;

3.2.1.4 To the extent available, record drawings of any existing structures at the Site; and

3.2.1.5 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; except that the Design-Builder shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment. Design-Builder shall provide the Owner with a copy of the agreement for use of additional land and a copy of the release confirming that restoration of the additional land has been completed to the satisfaction of the owner of the adjacent land or property.

3.3 Financial Information.

3.3.1 The Owner shall provide certification of available funds upon execution of the Agreement.

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-supplied Information.

3.4.1 Owner shall be responsible for providing Owner-supplied information and approvals in a reasonably timely manner to permit Design-Builder to fulfill its obligations under the Contract Documents.

3.5 Government Approvals and Permits.

3.5.1 Design-Builder shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees.

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, which were not known or could not have been reasonably anticipated by Design-Builder prior to commencement of the Work. 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 If the Owner and the Design-Builder cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price and/or Contract Times, as a result of such Work stoppage or any special conditions under which Work is to be resumed by the Design-Builder, either party may make a Claim therefor as provided in the Contract Documents.

4.1.5 [Not Used.]

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, Sub-

Subcontractors or anyone for whose acts they may be liable. To the fullest extent permitted by law, 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, Sub-Subcontractors or anyone for whose acts they may be liable.

4.2 Differing Site Conditions.

4.2.1 Concealed or latent physical conditions or subsurface conditions at the Site that (i) materially differ from the conditions indicated in the Contract Documents or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work, and which could not have been known to the Design-Builder given the exercise of reasonable diligence, taking into account the fact that the Design-Builder is responsible for the design, 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 and provided Design-Builder provides a timely notice of claim in accordance with Section 4.2.2 of these General Conditions.

4.2.2 Upon encountering a Differing Site Condition, as a condition precedent to any increase in the Contract Price and/or an extension of the Contract Time(s), Design-Builder shall provide immediate written notice to Owner of such condition. Design-Builder shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered. Design-Builder shall not further disturb such condition or perform any Work in connection therewith until receipt of written order to do so. Failure to provide such notice as required herein or disturbing the differing site condition shall be an irrevocable waiver of the Design-Builder's right to additional time or money arising out of the differing subsurface or physical condition.

4.2.3 Design-Builder will be entitled to an equitable adjustment to the GMP and/or Contract Time attributable to impact from the Differing Site Conditions, provided that Design-Builder timely requests a Change Order in accordance with Section 9.1.5 of these General Conditions in connection with same.

Article 5

Insurance and Bonds

5.1 Design-Builder's Insurance Requirements.

5.1.1 Design-Builder shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Design-Builder's performance of the Work and Design-Builder's other obligations under the Contract Documents, whether it is to be performed by Design-Builder, any Subcontractor or Sub-Contractors, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

.1 claims under workers' compensation, disability benefits, and other similar employee benefit acts;

.2 claims for damages because of bodily injury, occupational sickness or disease, or death of Design-Builder's employees;

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

.4 claims for damages insured by reasonably available personal injury liability coverage which are sustained:

a. by any person as a result of an offense directly or indirectly related to the employment of such person by Design-Builder, or

b. by any other person for any other reason;

.5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and

.6 claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

5.1.2 The limits of liability for the required policies shall be the following, unless a greater amount is required by law:

5.1.2.1 Commercial General Liability ("CGL"): Bodily injury (including death and emotional distress) and property damage with limits of \$7,000,000 each occurrence and \$7,000,000 aggregate. CGL shall include: (i) Premises-Operations, (ii) Explosion and Collapse Hazard, (iii) Underground Hazard, (iv) Independent Contractors' Protective, (v) Broad Form Property Damage, including Completed Operations, (vi) Contractual Liability, (vii) Products and Completed Operations, (viii) Personal Injury with no Employment Exclusion, (ix) Stopgap liability; (x) per project aggregate endorsement, and (xi) an endorsement or equivalent form redefining "occurrence" to include property damage arising from the faulty workmanship performed by the Design-Builder or on the Design-Builder's behalf by a Subcontractor or Subconsultant.

5.1.2.2 Automobile Liability, covering all owned, non-owned, and hired vehicles used in connection with the Work: Bodily injury (including death and emotional distress) and property damage with a combined \$5,000,000 each accident.

5.1.2.3 Workers' compensation with policy limits as established by Ohio law.

5.1.2.4 Professional Liability Insurance. Professional liability insurance coverage with a per claim limit of \$1,000,000 each occurrence and \$2,000,000 aggregate, covering claims for negligent errors, acts, and omissions by the Design-Builder arising out of the performance or failure to perform professional services under the Contract Documents.

5.1.2.5 [Not Used]

5.1.3 Design-Builder's insurance 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 Prior to commencing any construction services hereunder, Design-Builder shall provide Owner and each additional insured with Owner-approved certificates, and endorsements 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, unless at least thirty (30) days prior written notice is given to Owner. If any of the foregoing insurance coverages are required to remain in force after final payment are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the Final Application for Payment. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by the Design-Builder

with reasonable promptness according to the Design-Builder's information and belief.

5.1.4.1 Failure of the Owner to demand such certificates or other evidence of full compliance with these insurance requirements or failure of the Owner to identify a deficiency from evidence provided shall not be construed as a waiver of Design-Builder's obligation to maintain such insurance.

5.1.4.2 [Not Used.]

5.1.4.3 The Design-Builder is responsible for the deductible limit of the policy and all exclusions consistent with the risks the Design-Builder assumes under the Contract Documents and as imposed by law.

5.1.5 [Not Used.]

5.1.6 The following provisions shall also apply to the insurance provided by the Design-Builder:

5.1.6.1 Design-Builder's insurance shall be primary and non-contributory.

5.1.6.2 Insurance policies shall be written on an occurrence basis only, except for the professional liability policy.

5.1.6.3 The Design-Builder shall require all Subcontractors and Design Consultants to provide Workers' Compensation, CGL, and Automobile Liability Insurance with the same minimum limits specified herein, unless the Owner agrees to a lesser amount.

5.1.6.4 The Owner shall be included as an additional insured on the policies of insurance maintained by Design-Builder except for Design-Builder's professional liability insurance. The Design-Builder shall provide each additional insured with copies of the certificates of insurance.

5.1.6.5 The CGL additional insured endorsement shall be CG 20 10 07 04 and CG 20 37 07 04 or equivalent so that Completed Operations liability extends to the additional insureds.

5.1.6.7 Products and completed operations coverage shall commence with the certification of the final Certificate for Payment to the Design-Builder and extend for not less than two years beyond that date.

5.1.7 Design-Builder shall pay all deductible provisions applicable to claims related to the Project made under and paid by insurance.

5.2 Notwithstanding anything in the Agreement to the contrary, if the cause of any loss payment under any insurance or self-insurance is the fault of the Design-Builder or its Subcontractors, the Design-Builder shall pay the required insurance deductible as well as costs not covered because of such deductibles.

5.3 Property Insurance.

5.3.1. Design-Builder shall purchase and maintain property or equivalent installation floater insurance upon the Work at the Site in the amount of full replacement cost thereof.

(1) This insurance shall:

(a) include the interests of the Owner, Design-Builder, Subcontractors, Design Consultants, Sub-Subcontractors, Design Sub-Consultants and any other individuals or entities identified herein, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of any of them, each of whom is deemed to

have an insurable interest and shall be listed as an insured or additional insured (Insurance certificates shall specifically indicate by name the additional insureds, which are to include the Owner as well as other individuals or entities so identified.);

- (b) be written on a Builder's Risk "all-risk" form that shall at least include insurance for physical loss and damage to the Work, temporary buildings, falsework, and materials and equipment in transit and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism, malicious mischief, earthquake, collapse, wind, hail, tornadoes, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage (including that caused by flood or hydrostatic pressure), and such other perils or causes of loss as may be specifically required by these General Conditions;
- (c) include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);
- (d) cover the total value of materials and equipment supplied under the Contract from the time Design-Builder takes possession of them until they are installed and tested by Design-Builder and the Project is accepted as complete by the Owner under an endorsement to this policy or in the form of Installation Floater Insurance of the "all risk" type;
- (e) allow for partial utilization of the Work by the Owner;
- (f) shall not contain any exemption from coverage for claims between insureds.
- (g) include testing and startup; and
- (h) be maintained in effect until final payment is made unless otherwise agreed to in writing by the Owner and Design-Builder with 30 days written notice to each additional insured to whom a certificate of insurance has been issued.

5.3.2 Unless the Contract Documents provide otherwise, Owner, at its option, may procure and maintain boiler and machinery insurance that will include the interests of Owner, Design-Builder, Design Consultants, and Subcontractors of any tier. The Owner is responsible for the payment of any deductibles under the insurance required by this Section 5.3.2.

5.3.3 Prior to Design-Builder commencing any Work, Owner may 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 may 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 or the builder's risk insurance (whether provided by Owner or Design-Builder), as applicable, 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. These waivers of subrogation shall not contain any restriction or limitation that will impair the full and complete extent of its applicability to any person or entity unless agreed to in writing prior to the execution of this Agreement.

5.4 Bonds and Other Performance Security.

5.4.1 Design-Builder shall furnish a separate Performance Bond and a Payment Bond in the amount of the GMP set forth in the Agreement as security for the faithful performance and payment of all of Design-Builder's obligations under the Contract Documents. Such bonds shall be in the form set forth in the Agreement. Design-Builder shall also furnish any other bonds as are required by the Contract Documents. If the GMP is increased at any time after the Design-Builder provides the bonds, the Design-Builder shall cause the penal sum of each bond to be increased as necessary to equal one hundred percent of the GMP as revised. The delivery of written consent from the affected surety or sureties to the Owner by the Design-Builder confirming the increased penal sums is a condition precedent to the Owner's obligation to pay the Design-Builder for any portion of the Work associated with the increase in the GMP.

5.4.2 All bonds furnished by Design-Builder shall be in a form satisfactory to Owner. The surety shall be a company qualified and registered to conduct business in the state in which the Project is located.

5.4.3 Material Default or Termination. If the Owner notifies the Design-Builder's surety that the Design-Builder is in material default, the surety will complete an investigation of the claimed material default within 21 days. The surety is advised to start looking for a replacement contractor upon notice of material default. As part of its investigation, the surety shall promptly visit the offices of the Design-Builder, and the Owner to inspect and copy the available Project records. The Owner and Design-Builder, upon written request by the surety, shall make such records available during regular business hours for such inspection and copying. The Owner's making such records available as provided herein shall satisfy the Owner's obligation to the surety to furnish documents for the investigation. The surety will provide the Owner with the results of its investigation, including any written report or documents, prepared during the investigation.

If the Owner terminates the Design-Builder and the surety proposes to take-over the Work, the surety shall do so no later than the expiration of the 21-day investigation period or 10 days after the date the Owner terminates the Contract, whichever is later. If the Owner terminates the Contract, and the surety proposes to provide a replacement contractor, the replacement contractor shall be fully capable of performing the Work in accordance with the Contract Documents. If the Design-Builder is terminated for cause, the replacement design-builder shall not be the Design-Builder or its employees, unless the Owner agrees in writing. In the event the Surety takes over the Project, the surety's obligation shall not be limited to the penal sum of the Bond.

If the surety does not propose an acceptable contractor as required by this Paragraph 5.4.3, the Owner may complete the Work by such means as it deems appropriate. In the event the Owner agrees to accept a replacement design-builder, the replacement design-builder shall furnish its own bond for the replacement design-builder's scope of work, and neither the Design-Builder nor the surety shall be relieved of their obligations under the Contract Documents.

This Paragraph 5.4.3 is in addition to any other rights of the Owner under the Contract Documents and is not intended to create any rights of the surety, including but not limited to the right to take over the Design-Builder's obligations.

In the event of the Design-Builder's termination and if the surety does not take over the Work as provided in this Paragraph 5.4.3, the Owner may take possession of and use all materials, facilities and equipment at the Project Site or stored off-site for which the Owner has paid in whole or in part.

5.4.4 If at any time prior to Final Payment, any surety providing a surety bond for the Project (1) is adjudged bankrupt or has made a general assignment for the benefit of its creditors; (2) has liquidated all assets or has made a general assignment for the benefit of its creditors; (3) is placed in receivership; (4) otherwise petitions a state or federal court for protection from its creditors; or (5) allows its license to do business in Ohio to lapse or to be revoked, then the Design-Builder shall, within twenty-one days of any such action listed above, provide the Owner with new surety bonds in the form and amount described in the Contract Documents. The delivery to the Owner by the Design-Builder of replacement bonds is a condition precedent to the Owner's obligation to make any payment to the Design-Builder.

Article 6

Payment

6.1 Schedule of Values.

6.1.1 Unless required by the Owner upon execution of this Agreement, 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.

6.1.2 The Owner will timely review and approve the schedule of values so as not to delay the submission of the Design-Builder's first application for payment. The Owner and Design-Builder shall timely resolve any differences so as not to delay the Design-Builder's submission of its first application for payment. By submitting such schedule of values, the Design-Builder represents for the reliance of the Owner that the allocation of the values to the portions of the Work is a fair and reasonable estimate of such allocation.

6.1.3 Once approved by the Owner, the Design-Builder will not change the allocation of the Contract Price to the component parts of the Work without the Owner's written approval. The Owner thereafter may from time to time require the Design-Builder to adjust such schedule if the Owner determines it to be in any way unreasonable or inaccurate. The Design-Builder then shall adjust the schedule of values as required by the Owner within ten (10) days.

6.1.4 The Schedule of Values established as provided in Section 6.1 will serve as the basis for progress payments and will be incorporated into the form of Application for Payment. An Owner-approved Application for Payment form, which includes information on completed Schedule of Values items, is to be used by the Design-Builder when making an Application for Progress Payment. Progress payments on account of Unit Price Work will be based on the number of units completed.

6.2 Monthly Progress Payments.

6.2.1 On or before the tenth day of the month, Design-Builder shall submit to the Owner for review an Application for Payment on the Owner's Application and Certificate for Payment Summary Sheet and a Schedule of Values, described in Section 6.1 of these General Conditions, filled out and signed by Design-Builder covering the Work completed as of the last day of the previous month, and accompanied by a properly completed Design-Builder's Payment Application Checklist, all the documentation required to be submitted with such Checklist, and any other supporting documentation required by the Contract Documents or by the Owner. The Application

for Payment will be in the form and submitted with the number of copies of it and all related documents as required by the Contract Documents or requested by the Owner.

6.2.1.1 Beginning with the second Application for Payment, each Application shall include a) a Waiver and Release Affidavit for itself and a Subcontractor's – Supplier's Waiver and Release Affidavit for each of its subcontractors, and b) a Design-Builder's Affidavit with List of Subcontractors and Suppliers with Amounts Withheld.

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. Such materials and equipment not incorporated in the Work must be delivered and suitably stored at the Site or at another location agreed to in writing.

6.2.3 All discounts offered by Subcontractor, Sub-Subcontractors and suppliers to Design-Builder for early payment shall accrue one hundred percent to Design-Builder to the extent Design-Builder advances payment. Unless Owner advances payment to Design-Builder specifically to receive the discount, Design-Builder may include in its Application for Payment the full undiscounted cost of the item for which payment is sought.

6.2.4 The Application for Payment shall constitute Design-Builder's representation that the Work described therein 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.

6.2.5 By processing an Application for Payment, the Owner will not be deemed to have: (1) accepted the Work performed by the Design-Builder; or (2) waived any claims that the Owner may have related to the Project, including any claims related to the Work performed by the Design-Builder.

6.3 Withholding of Payments.

6.3.1 Upon receipt of each Application for Payment, the Owner will proceed with processing the Application for Payment or the Owner will, within thirty (30) calendar days after receipt of each Application for Payment, return the Application to Design-Builder indicating in writing the Owner's reasons for refusing to proceed with processing the Application for Payment. In the latter case, Design-Builder may make the necessary corrections and resubmit the Application.

6.3.1.1 By proceeding with processing of an Application for Payment, neither the Owner nor the Owner's Representative will thereby be deemed to have represented that:

a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work; or

b. that there may not be other matters or issues between the parties that might entitle the Owner to withhold payment to Design-Builder.

6.3.1.2 The Owner's or Owner's Representative's review of Design-Builder's Work for the purposes of determining whether to proceed with processing an Application for Payment, including final payment, will not impose responsibility on the Owner or Owner's Representative:

- a. to supervise, direct, design, or control the Work, or
- b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
- c. for Design-Builder's failure to comply with Laws and Regulations applicable to Design-Builder's performance of the Work, or
- d. to make any examination to ascertain how or for what purposes Design-Builder has used the moneys paid on account of the Contract Price, or
- e. to determine that title to any of the Work, materials, or equipment has passed to the Owner free and clear of any Liens.

6.3.1.3 When determining whether to proceed with processing an Application for Payment, the Owner may refuse to issue payment of the whole or any part of any Application for Payment, to such extent as may be necessary in the Owner's opinion to protect the Owner from loss because:

- a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
- b. the Contract Price has been reduced by Change Orders;
- c. the Owner has been required to correct defective Work or complete Work as set forth herein;
- d. of the occurrence of any of the events enumerated in Section 11.2;
- e. the Design-Builder is in default of any other Agreement it has with the Owner; or
- f. reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual damages for the anticipated delay.

6.3.1.4 Unless the Owner refuses to proceed with processing an Application for Payment under the Contract Documents, including Section 6.3.1 of the General Conditions, the amount approved by the Owner, subject to the provisions of Section 6.3.1, will become due thirty (30) calendar days after approval of the Application for Payment by the Owner and after the approval of any agencies and/or lenders, whichever comes later.

6.3.1.5 The Owner may also refuse to make payment of the full amount requested by Design-Builder in an Application for Payment because:

- a. claims have been made against the Owner on account of Design-Builder's performance or furnishing of the Work;

b. Liens have been filed in connection with the Work, except where Design-Builder has delivered a specific bond satisfactory to the Owner to secure the satisfaction and discharge of such Liens;

c. there are other items entitling the Owner to a set-off against the amount recommended; or

d. the Owner has actual knowledge of the occurrence of any of the events enumerated in Section 6.3.1.3.a through 6.3.1.3.c or the failure of the Design-Builder to comply with Section 6.2.

6.3.2 If the Design-Builder disputes any determination by the Owner with regard to any progress payment application, the Design-Builder shall nevertheless continue to prosecute the Work without delay or disruption. Notwithstanding the foregoing, the Owner shall pay all undisputed amounts to the Design-Builder, retaining only amounts reasonably believed necessary to protect the Owner from defective or non-conforming Work.

6.4 Right to Stop Work and Interest.

6.4.1 Subject to the Owner's right to withhold payment pursuant to Section 6.3, if Owner fails to pay timely Design-Builder any amount that becomes due, Design-Builder, in addition to all other remedies provided in the Contract Documents, may stop Work pursuant to Section 11.3 hereof. All payments due and unpaid shall bear interest 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 and will present to the Owner's Representative a list of all remaining items of Work that have to be completed before final payment ("Contractor's Punchlist"). Within five (5) days of Owner's receipt of Design-Builder's notice and Contractor's Punchlist, 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 and amend Contractor's Punchlist to create the "Joint Punchlist". If such Work is Substantially Complete as determined by the Owner, 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) incorporate the Joint Punchlist, (iii) identify 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) include 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 Design-Builder's Substantial Completion of the entire Work or, if applicable, any portion of the Work, completion of Joint Punchlist, submission of all documentation, and completion of any other requirements, as set forth in the Contract Documents, 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.

6.6.1.1 Joint Punchlist. Prior to the release of retainage, the Design-Builder shall complete all items on the Joint Punchlist within 30 days of the creation of the Joint Punchlist, unless other completion dates are agreed upon in writing by the Owner.

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 If, on the basis of the Owner's observation of the Work during construction and final inspection, and the Owner's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, the Owner is satisfied that the Design-Builder has submitted a proper and complete Application for Payment, in compliance with all of Owner's policies, procedures, and requirements as set forth in the Contract Documents and that the Project has reached Final Completion, the Owner will, within ten days after receipt of the final Application for Payment, give written notice to Design-Builder that the Work is acceptable and has reached Final Completion subject to the provisions of Sections 6.7.3 and 6.7.3.1. Otherwise, the Owner will return the Application for Payment to Design-Builder, indicating in writing the reasons for refusing to recommend final payment, in which case Design-Builder shall make the necessary corrections and resubmit the Application for Payment.

6.7.1.1 Thirty (30) calendar days after the Owner provides written notice required under Section 6.7.1 of the General Conditions, the amount requested by Design-Builder, less any sum the Owner is entitled to set off against the amount requested by Design-Builder, including but not limited to liquidated damages, will become due and will be paid by the Owner to Design-Builder.

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

6.7.2.1 A list of all Claims against the Owner that Design-Builder believes are unsettled;

6.7.2.2 A Final Design-Builder's Waiver and Release Affidavit for itself as of the date of the Final Application for Payment and Subcontractor's – Supplier's Waiver and Release Affidavits for each of its Subcontractors and Suppliers as of the date of the Final Application for Payment;

6.7.2.3 Consent of Design-Builder's surety to final payment;

6.7.2.4 Evidence that all Completion/Punchlist List items have been completed;

6.7.2.5 Where applicable, keys and keying schedule;

6.7.2.6 The documents, including as-built set of Drawings and Specifications, not otherwise required by the Contract Documents to be delivered earlier;

6.7.2.7 All operating manuals, warranties and other deliverables required by the Contract Documents; and

6.7.2.8 All documentation called for in the Contract Documents, including but not limited to certificates of insurance confirming that required coverages will remain in effect

consistent with the requirements of the Contract Documents and copies of all documents, records, and CAD (.dwg) drawings for the Project.

6.7.3 Upon making final payment, Owner waives all Claims against Design-Builder except Claims relating to (i) Unsettled Liens or Design-Builder's failure to satisfy its payment obligations, (ii) Design-Builder's failure to complete the Work consistent with the Contract Documents, including defects appearing after Substantial Completion, (iii) Design-Builder's failure to comply with the Contract Documents or the terms of any warranties or special guarantees specified therein, (iv) Design-Builder's continuing obligations under the Contract Documents, (v) design defects, and (vi) the terms of any special warranties required by the Contract Documents.

6.7.3.1 Upon receipt of final payment, Design-Builder waives all Claims by Design-Builder against the Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by the Owner in writing as still unsettled.

6.7.4 Deficiencies in the Work discovered after Substantial Completion, whether or not such deficiencies would have been included on the Punch List if discovered earlier, shall be deemed warranty Work. Such deficiencies shall be corrected by Design-Builder under the Contract Documents, including Sections 2.9 and 2.10 herein, and shall not be a reason to withhold final payment from Design-Builder, provided, however, that Owner shall be entitled to withhold from the Final Payment the reasonable value of completion of such deficient work until such work is completed.

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.

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 or violation of any patent or copyright.

7.2 Taxes.

7.2.1 Design-Builder shall pay all sales, consumer, use, commercial activity and other similar taxes required to be paid by Design-Builder in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

7.2.1.1 Materials purchased for use or consumption in connection with the proposed Work will be exempt from the State of Ohio Sales Tax, as provided in Section 5739.02 of the Ohio Revised Code, and also from the State of Ohio Use Tax, as provided in Section 5741.01 of the Ohio Revised Code. The Owner will provide the Design-Builder with a Construction Tax Exempt Certificate upon request, made in writing to the Owner.

7.2.1.2 Purchases by the Design-Builder of expendable items, such as form lumber, tools, oil, greases, fuel, or equipment rentals, are subject to the application of Ohio Sales or Use Taxes.

7.2.1.3 In addition to any other taxes required to be withheld by the Design-Builder, the Design-Builder shall withhold any income taxes due to the Owner for wages, salaries and commissions paid to its employees for work done under this Agreement and further agrees that any of its Subcontractors shall, by the terms of its subcontract, be required to withhold any such income taxes due for work performed under this Agreement.

7.3 Payment Claim Indemnification.

7.3.1 Provided 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 the furnishing of a mechanic's lien bond in the form specified by the Ohio Revised Code. 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 In regard to all services performed under this Agreement besides professional design services, Design-Builder, to the fullest extent permitted by laws and regulations, shall indemnify, hold harmless and defend the Owner, its officers, directors, partners, employees, agents, consultants, and subcontractors from and against all claims, demands, costs, losses, damages, and liabilities, including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs, arising out of or relating to the Work or any breach of Design-Builder's obligations under the Contract Documents, including but not limited to the breach of warranty provided in the Contract Documents.

Notwithstanding any other provision in this Agreement to the contrary and in regard to Design-Builder's design professional services, during the term of this Agreement and for a period of two (2) years following completion of the Work or earlier termination of this Agreement, the Design-Builder shall indemnify, defend, and hold the Owner and the Owner's officers and employees harmless from liabilities arising from claims by third parties for death or injury, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Design-Builder, its employees and its consultants in the performance of professional services under this Agreement. Such indemnification shall be in accordance with Ohio Revised Code Section 153.81 and shall only be for the liabilities incurred from the

proportionate share of the tortious conduct, as determined pursuant to section 2307.23 of the Revised Code, of the Design-Builder or any consultant, subcontractor, or other entity used by the Design-Builder, in performing professional design services under this Agreement. Nothing in this provision prohibits the Owner from commencing a civil action for damages against the Design-Builder for the breach of this Agreement or for the breach of the Standard of Care.

7.4.2 If an employee of Design-Builder, Design Consultants, Subcontractors, Design Sub-Consultants, Sub-Subcontractors, or 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 Sections 7.4.1 and 7.4.1.1 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, Design Sub-Consultants, Sub-Subcontractors, or other entity under any employee benefit acts, including workers' compensation or disability acts.

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. Design-Builder is required to provide forty-eight (48) hours advance written notice to the Owner prior to starting any Work on the Project.

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, if a Claim is made therefor as provided in Section 10.1. 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, and Force Majeure Events.

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, where Design-Builder has provided timely notice of a claim pursuant to Article 10 of these General Conditions however, that the Contract Price shall not be adjusted for Force Majeure Events unless otherwise provided in the Agreement.

8.2.3 Weather Delays. Weather delays are excusable but not compensable delays. When the Design-Builder is prevented from completing any part of the Work on the critical path within the Contract Time due to weather conditions, and if a Claim is made therefor as provided in Section 10.1, the Contract Times will be extended by one (1) day for each work day lost due to weather that delays Work on the critical path in excess of those in the following table:

<u>Month</u>	<u>Number of Workdays Lost Due To Weather</u>
<u>January</u>	<u>8</u>
<u>February</u>	<u>8</u>
<u>March</u>	<u>7</u>

<u>April</u>	<u>6</u>
<u>May</u>	<u>5</u>
<u>June</u>	<u>4</u>
<u>July</u>	<u>4</u>
<u>August</u>	<u>4</u>
<u>September</u>	<u>5</u>
<u>October</u>	<u>6</u>
<u>November</u>	<u>6</u>
<u>December</u>	<u>6</u>

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:

9.1.1.1 The scope of the change in the Work;

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

9.1.1.3 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.

9.1.4 The agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order and/or Work Directive Change, including, but not limited to, all direct, indirect and cumulative costs associated with such change and any and all adjustments to the Contract Price and/or Contract Time.

9.1.5 The Design-Builder shall comply with the following process for converting a request from Owner for a cost proposal arising from Owner's change in the Work, a Work Change Directive, or a request for a Change Order from Design-Builder, into a Change Order:

1. All requests for a Change Order from the Design-Builder shall be submitted to the Owner's Representative within 14 days of the event or discovery of the underlying conditions or event giving rise thereto, else Design-Builder irrevocably waives all rights to an increase in the GMP or increase in the Contract Time connected in any way to the event or discovery of the underlying conditions. For purposes of a request from Owner for a proposal for a change in the Work or issuance of a Work Change Directive, the "event giving rise thereto" shall be the date that Design-Builder receives the request for proposal or Work Change Directive.

2. All Change Order requests shall include the following information:

- a. A summary sheet listing all subcontractors and their respective values, insurance,

bonds, and Design-Builder's fee and total value of the proposed Change Order, unless the request is for time only.

- b. Design-Builder must provide from each affected subcontractor a detailed breakdown of its costs for labor, equipment and material along with the appropriate back-up for each item, unless the cost of the Change Order is calculated using pre-agreed unit prices or the request is for time only.
- c. Where the Change Order request arises from something other than a request from Owner for a proposal for a change in the Work or a Work Change Directive, Design-Builder must include a detailed explanation of the facts and provisions of the Contract Documents that entitle Design-Builder to any increase in the GMP or Contract Time, including, if applicable, the date that any delay commenced, the expected duration of the delay, apparent cause of the delay, and the part of the critical path that is affected; the expected impact of the delay and recommendations for minimizing such impact.

Change Order Requests that do not have the above information will be returned to the Design-Builder for additional supporting information.

9.1.6 If the Owner and Design-Builder are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Directive Change within twenty-one (21) calendar days after the Owner issued the Work Directive Change, the Owner may unilaterally issue to Design-Builder a fully executed Change Order that includes an equitable adjustment in the Contract Price and/or Contract Time as determined by the Owner. If Design-Builder disputes the adjustment in the Contract Price and/or Contract Time pursuant to a unilateral Change Order issued by the Owner under this Section, and if Design-Builder gives timely notice pursuant to Section 10.1 of this Agreement of the original event giving rise to the entitlement or adjustment, Design-Builder may pursue a Claim therefor as provided in the Contract Documents.

9.1.7. Incorporation of Subsequent GMP Proposals by Change Order. If requested and approved by Owner, the Design-Builder may submit multiple GMP Proposals for different components or phases of the Project. Following the acceptance of the first GMP Proposal and execution of the Modified Standard Form of Agreement Between Owner and Design-Builder – Cost Plus Fee with a Guaranteed Maximum Price (“Design-Build Agreement”), the Design-Build Agreement shall be modified by Change Order to incorporate subsequent GMP Proposals into the Agreement. A Change Order incorporating a subsequent GMP Proposal into the Design-Build Agreement shall be in a form acceptable to the Owner and the GMP Proposal on which the Change Order is based shall include all the documentation, information, and meet all the requirements provided in Section 2.4 of the Modified Standard Form of Preliminary Agreement Between Owner and Design-Builder (“Preliminary Agreement”), which section is incorporated herein by reference. A GMP Proposal will be incorporated into the Change Order to the extent that it is not inconsistent with the Contract Documents.

9.1.7.1 Review of Subsequent GMP Proposals. The Design-Builder, Owner and the Criteria Architect (along with selected engineers and consultants) may meet to reconcile any questions, discrepancies or disagreements relating to a GMP Proposal, its qualifications and assumptions, and the associated GMP Documents upon which a Change Order prepared pursuant to Section 9.1.7 is based. If approved by the Owner, the reconciliation shall be documented in writing by revisions to the GMP Proposal or an addendum to the GMP. **Submission by the Design-Builder of a GMP Proposal that attempts to modify or alter the Design Fee, Preconstruction Fee, Design-Builder Fee, General Conditions, or Contingency submitted with its original Proposal submitted in response to the Owner's RFP shall be a material breach of this Agreement by the Design-Builder. In addition, any attempt by the Design-Builder to alter the terms of**

DBIA Document No. 530, Modified Standard Form of Agreement Between Owner and Design-Builder – Cost Plus Fee with a Guaranteed Maximum Price and the General Conditions of Contract that were included in the Owner’s RFP as a condition or assumption of the GMP Proposal shall be a material breach of this Agreement by the Design-Builder.

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 GMP and Contract Price Adjustments.

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

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

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

9.4.1.3 Costs and applicable fees set forth in the Agreement; or

9.4.1.4 If an increase or decrease cannot be agreed to as set forth in items 9.4.1.1 through 9.4.1.3 the Design-Builder shall perform the Work shall submit to the Owner, on a daily basis, invoices, daily job logs and work tickets reflecting the labor, material and equipment used to complete the Work.

9.4.2 [Not Used.]

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.

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 All Claims shall be submitted in accordance with Section 10.1 as a condition precedent to any exercise by the Design-Builder of any rights or remedies it may otherwise have under the Contract Documents or by Laws and Regulations with respect to such Claims.

10.1.2 Claim Submittal Procedure

10.1.2.1 Notice of Claim by Design-Builder. As a condition precedent to a change in the Contract Price, Contract Times, the GMP or a recovery of damages against the Owner, the Design-Builder shall give the Owner written notice of a Claim ("Notice of Claim"). The Design-Builder shall be responsible to provide Notice of Claim within a reasonable time, but not exceeding seven (7) calendar days of the start of the event giving rise to the Claim. The Design-Builder shall be responsible for substantiating its Claim. The Notice of Claim must be delivered to the Owner, and shall provide sufficient detail to enable the Owner to investigate the matter and shall conspicuously state that it is a "**NOTICE OF CLAIM.**" Failure to give Notice of Claim within the time period required shall be an irrevocable waiver of the Design-Builder's right to seek a change in the Contract Price, the Contract Times, the GMP, and/or a recovery of damages against the Owner.

10.1.2.2 Notice of Claim. As a condition precedent to a change in the Contract Price, Contract Times, the GMP, or a recovery of damages against the Owner, for each Claim the Design-Builder shall deliver a fully completed Notice of Claim Form, a copy of which form is a Contract Document and provided at **Exhibit 3**. The Notice of Claim Form shall be submitted to the Owner within seven (7) calendar days from the date the Design-Builder submitted the Notice of Claim or within fourteen (14) days of the start of the event giving rise to the Claim, whichever occurs first. The Design-Builder's obligation to deliver a fully completed Notice of Claim Form within such time period is a material term of the Contract Documents and provides the Owner with the opportunity to mitigate its damages. Included in this Notice of Claim is the requirement for the Design-Builder to certify that the Claim is not false or fraudulent, as further discussed in Section 10.1.7. Failure to provide a Notice of Claim Form to the Owner within the time period required shall be an irrevocable waiver of the Design-Builder's right to seek a change in the Contract Price, the Contract Times, the GMP, and/or recovery of damages against the Owner.

10.1.3 The Owner's Action. The Owner will review each Claim and will, within forty-five (45) calendar days after receipt of the Notice

of Claim Form from the Design-Builder, take one of the following actions in writing:

1. deny the Claim in whole or in part,

2. approve the Claim,
3. request additional documentation of the Claim pursuant to Section 10.1.8 of this Agreement.

10.1.4 In the event that the Owner does not take action on a Claim within said forty-five (45) calendar days, the Claim shall be deemed denied.

10.1.5 The Owner's written action under Section 10.1.3 or denial pursuant to Sections 10.1.3 or 10.1.4 will be final and binding upon Design-Builder, unless Design-Builder commences an action in a court of exclusive jurisdiction as set forth in Section 10.2.3 within thirty (30) calendar days of the Date of Substantial Completion.

10.1.6. No Claim for a change in the Contract Price, a change in the Contract Times, a change in the GMP or a recovery of damages against the Owner will be valid if not submitted in accordance with this Section 10.1.

10.1.7. False or Fraudulent Claim. The Design-Builder shall not knowingly present or cause to be presented to the Owner a false or fraudulent Claim. Knowingly shall have the same meaning as in Section 3729(b) USC of the Federal False Claims Act. If the Design-Builder knowingly presents or causes to be presented a false or fraudulent Claim, then the Design-Builder shall be liable to the Owner for the same civil penalty and damages as the United States Government would be entitled to recover under such Section 3729(a) USC and shall also indemnify and hold the Owner harmless from all costs and expenses, including the Owner's attorneys' and consultants' fees and expenses incurred in investigating and defending against such Claim and in pursuing the collection of such penalty, damages and fees and expenses.

10.1.8. Claim Documentation. Within ten (10) calendar days of written request from the Owner, Design-Builder shall make available to the Owner, for review and copying by the Owner, any and all documentation requested by the Owner, including all books, records, or other documents in its possession or to which it has access, including but not limited to Design-Builder's daily logs/reports, original estimates of Work and applicable agreements, correspondence with Design Consultants, Design Subconsultants, Subcontractors and Sub-Subcontractors, internal correspondence (including e-mail), accounting records, and other information from which the Design-Builder's costs may be derived. To the extent permitted by law, the Owner shall keep the Project accounting records and estimate for the Project confidential. As requested by the Owner, the Design-Builder shall provide such documents and information in paper copies and/or computer format (including the format of the Design-Builder's accounting software and/or ASCII format). The Design-Builder's provision of the requested documents and information shall be a condition precedent to any further proceeding under the Contract Documents or to payment of an Application for Payment.

Failure to provide the requested documents shall be a material breach of the Contract, and Design-Builder shall indemnify the Owner for all of the Owner's costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to Design-Builder's failure to comply with this provision. If the Design-Builder fails to provide the requested documents, the Design-Builder shall be precluded from presenting such documents in any subsequent dispute resolution proceedings, if the data was reasonably available at the time of the 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 Any claim, dispute or controversy arising out of or relating to this Agreement or the breach thereof that cannot be resolved through discussions by the parties may be submitted to non-binding mediation administered by a mutually agreeable impartial mediator, if both parties agree to mediation, in writing. Unless otherwise agreed to by the parties, such mediation shall take place in the county in which the Project is located and all mediation costs shall be split equally between the parties.

10.2.3 In the event that Design-Builder files a Claim or files an action against the Owner, the Owner shall be entitled to make an offer of settlement of the Claim to Design-Builder at any time up to the date of trial. Such offer of settlement shall not be admissible into evidence at the litigation except on the issue of entitlement to recovery of attorneys' fees, costs and expenses. If at any stage of the litigation, including any appeals, Design-Builder's claim is dismissed or found to be without merit, or if the damages awarded to Design-Builder on its claim do not exceed the Owner's offer of settlement, Design-Builder shall be liable to the Owner and shall reimburse the Owner for all attorney's fees, costs and expenses incurred by the Owner from the date of the offer of settlement until the date of the final adjudication and resolution of Design-Builder's claim.

10.2.4 If the parties do not resolve a dispute through mediation or do not mutually agree to mediation, the method of binding dispute resolution shall be litigation. Any suit, which may be brought to enforce any provision of this Agreement or any remedy with respect hereto, shall be brought in Common Pleas Court in the county where the Project is located and each party hereby expressly consents to the jurisdiction of such court. Each party waives its right to remove any such suit to federal court.

10.3 [Not Used.]

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. However, the Owner shall be under no obligation to make payments on or against any claim or amounts in dispute during the pendency of any mediation, arbitration or litigation proceeding to resolve those claims or amount in dispute.

10.5 Waiver of Consequential Damages.

10.5.1 Design-Builder and Owner waive Claims against each other for any consequential, indirect, incidental, special, exemplary, punitive, or enhanced damages, and lost profits or revenues, arising out of or relating to this Contract. This mutual waiver includes but is not limited to:

.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the Design-Builder for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

10.5.2 This mutual waiver is applicable, without limitation, to all indirect damages due to either party's termination in accordance with the Contract Documents. The indirect damages limitation set forth in Section 10.5.1 above is not intended to affect the payment of liquidated damages or direct 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.

10.6 Limitation of Liability.

10.6.1 In no event will Design-Builder's aggregate liability arising out of or related to this Agreement or the services performed under this Agreement, whether arising out of or related to breach of contract, tort (including negligence) or otherwise, exceed the combined amount specified for bonding and insurance coverages set forth in this Agreement.

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 ninety (90) consecutive 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 the Work by Owner and Design-Builder makes a Claim therefore as provided in Section 10.1.

11.2 Owner's Right to Perform and Terminate for Cause.

11.2.1 If Design-Builder 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 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 three (3) business days of Design-Builder's receipt of such notice. If Design-Builder fails to cure, or reasonably commence to cure, such problem within such three (3) business day period, 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', engineer, architect, other professional, court or arbitration or other dispute resolution fees and expenses, incurred by Owner in connection with the re-procurement and defense of claims arising from Design-Builder's default, subject to the waiver of consequential damages set forth herein. Such termination shall be effective as of the date stated in the termination notice provided to Design-Builder.

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.

11.2.5 As set forth in this section, the Owner's termination of the Design-Builder is without prejudice to any other rights and remedies of the Owner, including but not limited to the Owner's rights and remedies under the Contract Documents and at law, all of which shall survive termination.

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 the Work upon the Owner's failure to pay amounts properly due under Design-Builder's Application for Payment for thirty (30) days after such amounts were finally determined to be due, subject to the Owner's right to withhold payment pursuant to Section 6.3.

11.3.2 Should the event set forth in Section 11.3.1 above occur, Design-Builder shall provide Owner with written notice that Design-Builder will stop the 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 the 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:

11.4.1.1 The Work has been stopped for ninety (90) consecutive days 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.

11.4.1.2 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 ninety (90) consecutive days, even though Owner has not ordered Design-Builder in writing to stop and suspend the Work pursuant to Section 11.1.1 hereof.

11.4.1.3 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 shall 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 Owner's receipt of such notice. If Owner fails to cure, or reasonably commence to cure, such problem, then Design-Builder shall 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 Design-Builder.

11.5.1 If 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:

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

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

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

Article 12

Electronic Data

12.1 Electronic Data.

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

12.2 Transmission of Electronic Data.

12.2.1 Design-Builder shall provide electronic data in CAD (.dwg) format or other format acceptable to the Owner. Each party shall be responsible for securing the legal rights to access the agreed-upon format, including, if necessary, obtaining appropriately licensed copies of the applicable software or electronic program to display, interpret and/or generate the Electronic Data.

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

12.2.3 By transmitting Work Product in electronic form, the transmitting party does not transfer or assign its rights in the Work Product. The rights in the Electronic Data shall be as set forth in Article

4 of the Agreement. Under no circumstances shall the transfer of ownership of Electronic Data be deemed to be a sale by the transmitting party of tangible goods.

12.3 Electronic Data Protocol.

12.3.1 The parties acknowledge that Electronic Data may be altered or corrupted, intentionally or otherwise, due to occurrences beyond their reasonable control or knowledge, including but not limited to compatibility issues with user software, manipulation by the recipient, errors in transcription or transmission, machine error, environmental factors, and operator error. Consequently, the parties understand that there is some level of increased risk in the use of Electronic Data for the communication of design and construction information and, in consideration of this, agree, and shall require their independent contractors, Subcontractors and Design Consultants to agree, to the following protocols, terms and conditions set forth in this Section 12.3.

12.3.2 Electronic Data will be transmitted in the format agreed upon in Section 12.2.1 above, including file conventions and document properties, unless prior arrangements are made in advance in writing.

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

Article 13

Miscellaneous

13.1 Confidential Information.

The Design-Builder acknowledges that Owner is a public entity subject to Ohio's public records act. If the Design-Builder claims that any information submitted to the Owner is exempt from disclosure under Ohio's public records act, then the Design-Builder shall conspicuous mark on the record "NOT A PUBLIC RECORD" and include in a cover letter or transmittal an explanation, citing legal authority, of the basis of the claim. Owner reserves the right to reject Design-Builder's position and produce said documents. In the event of a dispute with any third party requesting such records, Design Builder shall undertake the defense of Owner at Design-Builder's own expense and hold harmless and indemnify the Owner for any damages, penalties, fees, or costs that the Owner may incur as a result of such a dispute.

13.2 [Not Used.]

13.3 Successorship.

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

13.4 Governing Law and Jurisdiction.

This Agreement shall be governed by the laws of the State of Ohio. All questions regarding the validity, intention, or meaning of this Agreement or any modifications of it relating to the rights and obligation of the parties will be construed and resolved under the laws of the State of Ohio. Any suit, which may be brought to enforce any provision of this Agreement or any remedy with respect hereto, shall be brought in the Common Pleas Court in the County where the Project is located and each party hereby expressly consents to the exclusive jurisdiction of such court. The parties hereby

waive any right that they may have to remove any action related to this agreement to Federal court.

13.5 Severability.

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.

13.6 No Waiver.

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.

13.7 Headings.

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.

13.8 Notice.

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. All written notices required under the Contract Documents from the Design-Builder to the Owner shall be submitted to the Owner.

13.9 Amendments.

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.

13.10 Mutual Cooperation.

Each party hereto agrees to do all acts and things and to make, execute and deliver such written instruments, as shall from time to time be reasonably required to carry out the terms and provisions of the Contract Documents.

13.11 Assignment of Contract

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.

13.12 No Findings for Recovery.

No Findings for Recovery. The Design-Builder represents that the Design-Builder is not subject to a finding for recovery under Section 9.24, Ohio Revised Code, or that the Design-Builder has taken the appropriate remedial steps required under Section 9.24, Ohio Revised Code, or otherwise qualifies under this section.

13.13 Contractor's Covenant of Non-Discrimination

Design-Builder agrees:

- a. That in the hiring of employees for the performance of Work under this Agreement or in any subcontract, neither the Design-Builder, subcontractor, nor any person acting on behalf of either of them, shall by reason of race, creed, sex, handicap, or color, discriminate against any citizen of the state in the employment of labor or workers who are qualified and available to perform the Work to which the employment relates.
- b. That neither the Design-Builder, subcontractor, nor any person acting on behalf of either of them, shall, in any manner, discriminate against or intimidate any employee hired for the performance of Work under this Agreement on account of race, creed, sex, handicap, or color.
- c. That there shall be deducted from the amount payable to the Design-Builder by the Owner under this Agreement a forfeiture of twenty-five dollars (\$25.00) as required by Ohio Revised Code Section 153.60 for each person who is discriminated against or intimidated in violation of this Agreement.
- d. That this Agreement may be canceled or terminated by the Owner and all money to become due hereunder may be forfeited for a second or subsequent violation of the terms of this section of this Agreement.

[Not Used.]

13.14 Publication of Information.

The Design-Builder will not publish information regarding the Project without the Owner's prior written consent and the Owner agrees not to unreasonably withhold such consent. The Design-Builder agrees to keep confidential and not to disclose to any third party (without the advance written consent of the Owner or as otherwise permitted under this Agreement) any confidential, proprietary or privileged information or documentation of financial or strategic planning or operational information or documentation.