

**STATEMENT OF QUALIFICATIONS (SOQ)
SOQ-769**

for

**EXTERIOR ARTWORK
FABRICATION AND INSTALLATION
at
THE ANN ARBOR MUNICIPAL CENTER**

QUINN EVANS ARCHITECTS

Issued: June 2, 2010

**Due Date: JUNE 16, 2010
3 pm EST**

TABLE OF CONTENTS

STATEMENT OF QUALIFICATIONS (SOQ)

APPENDIX A: Illustrations of proposed artwork

APPENDIX B: Legal Status of Respondent

APPENDIX C: Specimen City Contract

APPENDIX D: Specimen Agreement between Design-Builder and Contractor

STATEMENT OF QUALIFICATIONS (SOQ)

GENERAL INFORMATION

The City of Ann Arbor, hereinafter referred to as "the Owner", and QUINN EVANS | ARCHITECTS, hereinafter referred to as "the Architect", invite qualified, organizations (corporations, artisans, craftspeople, etc.) to submit qualifications for the fabrication and installation of a large public sculpture and water feature to be located at the newly renovated Ann Arbor Municipal Center in accordance with the requirements and instructions set forth in this Statement of Qualifications (SOQ).

The sculpture/water feature concept has been developed by renowned international artist Herbert Dreiseitl and is described by documents included in Appendix 1. The selected fabricator will collaborate with the artist and design team to finalize fabrication details, prepare mock-ups, integrate water and lighting systems, fabricate the final sculpture and install the entire artwork, including all necessary controls and necessary testing at the Ann Arbor Municipal Center public plaza and rain garden located at 301 East Huron Street.

The Architect reserves the right to negotiate and accept any proposal, to reject any or all proposals, and to offer to accept any proposal subject to the deletion of any item or group of items of work from the scope of work, subject to acceptance by the proposer.

The anticipated form of agreement between Quinn Evans Architects and the selected Fabricator will be the AIA A142-2004 Standard form of Agreement between Design-Builder and Contractor and by reference the prime agreement between the City of Ann Arbor and Quinn Evans Architects, where Quinn Evans Architects acts as the design-builder and the Fabricator acting as the Contractor will provide a Guaranteed Maximum Price (GMP).

All questions regarding this SOQ should be directed to the Architect in writing (email is acceptable).

PROJECT DESCRIPTION

The project consists of an inclined steel sculpture approximately 5 meters tall with integral water feature system and digitally controlled LED lighting system. Water running down this sculpture will be carried to a filtration system and re-circulating pumps via a water channel/ramp fabricated out of pre-cast concrete. All of this will be supported by cast-in-place concrete slab and foundations.

The Municipal Center project is phased with the first phase (Court-Police Addition) scheduled for completion in November or 2010 and the second phase (Larcom Renovation and site work) to be completed in June of 2011. The installation of the sculpture must be coordinated with the construction manager and installed and operating by June 2011.

Installation of all sub-grade construction will be handled by Clark Construction, the construction manager for the Municipal Center. Design and documentation for foundations, conduit, piping and architectural lighting will be the responsibility of the Architect and/or its consultants.

The fabricator will be responsible for the structural design and fabrication of the steel sculpture, other steel components (including anchorage), the pre-cast water channel/ramp, water circulation and filtration/treatment systems, LED lighting/control systems. The fabricator will also be responsible for providing load information to the Architect for use in final design of foundations, conduit, and piping to support the sculpture.

SCOPE OF WORK

FABRICATOR GENERAL RESPONSIBILITIES

The Fabricator will be responsible for complete fabrication and installation of the exterior water feature sculpture, as designed by Herbert Dreiseitl with the assistance of the Architect. The sculpture consists of an inclined vertical custom-formed steel assembly, a sloped custom pre-cast concrete "water ramp" with pin-mounted cast bronze shapes to direct the water flow and three (3) sealed in ground up-lights, a decorative LED lighting system with approximately 50 individually addressable LED "glass pearls" integrated into the steel assembly, a water filtration and recirculation system integrated into the steel and pre-cast assemblies, including all associated controls, engineering, permits or other necessary approvals and four (4) custom steel and sustainable hardwood benches with one (1) sealed HID light fixture at each bench (power and cabling by others). The general scope of this work is shown in Appendix 1.

SPECIFIC TASKS THE FABRICATOR SHALL BE RESPONSIBLE FOR INCLUDE:

1. Attend Kick-off meeting with Architect, Public Art Commission
2. Attend one (1) City Council meeting to confirm selection.
3. Review design drawings and offer input on constructability issues
4. Participate in design / coordination meetings during the final design and fabrication process. Assume 3 meetings in Ann Arbor will be scheduled based upon the Artist's availability. The artist/architect will also visit the work periodically.
5. Develop a work plan and schedule for fabrication, testing and installation of the sculpture and associated systems.
6. Review shop drawings and submittals of subcontracted work.
7. Prepare Mock-ups:
 - Prepare full scale mock-ups of the steel sculpture, pre-cast water ramp, LED lighting and water circulation systems/components in the fabricator's shop where modifications can be easily effected in conjunction with the artist.
 - A final mock-up of the actual sculpture with working systems must be assembled and tested in the Fabricator's shop for approval by the Artist and Architect prior to disassembly and shipping to the project site for installation.
8. Progress Reports: The Fabricator will prepare and submit monthly progress reports, including updated schedule, progress photos, and list of issues to be resolved.
9. Transport or make provisions to transport artwork from shop(s) to project site. Fabricator is responsible for all transport costs, including insurance. The Architect/Owner will not take possession of the artwork until installed and operational at the project site.
10. Develop an Operations and Maintenance Manual for the project that provides future operating staff the information needed to understand and optimally operate the systems. The manual shall include:
 - Brief description for each system / component
 - Maintenance Plan with recommended schedule of maintenance (requirements and frequency) for each system / component
 - Description of operation for each system / component
 - Final drawings of the sculpture, including any shops or submittals for each system / component
11. Warranty the work for 12 months from time of final acceptance by the Owner.
12. Two months before warranty expiration date review with the Owner the condition of the artwork or outstanding issues related to the original fabrication and installation.

QUALIFICATIONS AND EXPERIENCE

The selected firm and key staff of the Fabricator will possess the following qualifications and experience:

- Acted as the contractor for at least two (2) similar projects. Similar means large scale artwork involving custom steel fabrication with integration of lighting and/or water systems.
- In business and operating under the same name for a minimum of five (5) full years.

- Demonstrated ability to work with Artist/Architect team to devise acceptable methods of fabrication
- Highly organized and able to work with both management and trade contractors.
- Equipment and experienced crafts people able to roll/form large oxidizing steel plate and cut intricate matching patterns (water-jet or similar) at the fabrication shop of the primary fabricator.
- Selected Fabricator must have a licensed structural engineer on staff or contract and provide all engineering for steel sculpture, including loads and reactions to Architect for design of foundation systems.
- Demonstrated ability to meet the project schedule.
- Convenience of the location of the primary fabricator's shop for the Artist/Architect and members of the Ann Arbor Public Art Commission to conduct periodic visits to observe the progress of the work.
- Sustainability of operations and approach to completing the project

EVALUATION CRITERIA

In reaching a decision on short-listing and awarding a contract for the fabrication of the sculpture, the Architect will evaluate each proposal on the following criteria and select up to three (3) as pre-qualified fabricators.

- Experience and Qualifications
- Location – convenience to Ann Arbor for meetings with Artist/Architect
- References from similar custom metal fabrication project clients
- Ability to form and cut large, heavy gauge steel plate to the shapes as designed in the fabricators facility
- Ability to meet project schedule
- Safety Record (EMR)
- Financial Stability of Respondent
- Proposed fee (second stage only)
- Sustainability of respondent operations and approach

SELECTION PROCESS

A two-stage selection process will be used to pre-qualify and then select the Fabricator for the project. This Request for Qualifications is the first stage and will result in up to three (3) fabricators being designated as pre-qualified. These pre-qualified Fabricators will be given more specific information regarding the final design of the sculpture and asked to provide a fixed-price proposal for the fabrication and installation. Based upon the qualifications and price proposal, a single fabricator will be asked to contract to produce the sculpture. The Architect and Owner will award the contract to the Fabricator whose proposal offers the City the best value in our opinion. Best value is the highest quality for a fair price.

SCHEDULE

The successful Fabricator must be prepared to begin within 20 business days of receiving notification from the Architect.

Issue SOQ	June 02, 2010
Receive SOQ	June 16, 2010
Develop shortlist of qualified fabricators	June 17, 2010
Issue final design package for pricing	June 23, 2010
Receive Proposals	July 14, 2010
Interview / tour facilities (if needed)	July 21, 2010
Select Fabricator	July 23, 2010
Artwork Installation	Spring 2011

SUBMISSION REQUIREMENTS

The proposal shall include the following:

- A statement of qualifications and experience.
- Resumes of all key staff to be employed on the project.
- Identification of the following staff to be assigned to this project; Project Manager having overall project management authority, and Field Supervisor having supervisory authority on site during installation.
- An outline of your company's general approach to undertaking this project, demonstrating an understanding of the scope of work and a capability to carry it out successfully.
- Reference for projects similar in nature and scope to this one completed within the last ten (10) years.
- Technical information on key equipment proposed to be used in fabricating the sculpture.
- The proposal shall be signed by an authorized officer, whose name and title shall be printed below the signature along with the date of signing.
- The proposer is responsible for all costs associated the submission.
- Recent financial statements showing the Respondent's financial ability to undertake this project.
- Provide copies of liability and worker's compensation Insurance certificates.
- Provide your EMR Rating
- State any exceptions to the proposed form of agreement.

Submit one original (1) signed copy and one electronic (PDF) copy with signature.

The proposer is solely responsible for delivery of submissions.

All proposals must be received by to the Architect, prior to 3:00 pm on June 16, 2010. Late submissions will be rejected. Prospective Respondents are responsible for the timely receipt of their proposal. Respondents are responsible for all costs associated with the submission of the response.

Key project team members include:

Architect: QUINN EVANS | ARCHITECTS
219 1/2 N. Main Street
Ann Arbor, MI 48104
Attn: Kenneth Clein, AIA LEED AP
kclein@quinnevans.com
734.663.5888

Artist: Herbert Dreiseitl

Owner: City of Ann Arbor
100 N. Fifth Avenue
Ann Arbor, MI 48104

Const. Mgr: Clark Construction Company
3535 Moores River Drive
PO Box 40087
Lansing, MI 48901

Non-Discrimination

All contractors proposing to do business with the City of Ann Arbor, except those specifically exempted by regulations promulgated by the Administrator and approved by City Council, shall receive approval from the Human Resources Director prior to entering into a professional services agreement with the City. Said firms shall take affirmative action to insure that applicants are employed and that employees are treated during employment in a manner which provides equal employment opportunity and tends to eliminate inequality based upon race, national origin or sex.

Each prospective contractor shall submit to the City data showing current total employment by occupational category, sex and minority group. If, after verifying this data, the Human Resources Director concludes that it indicates total minority and female employment commensurate with their availability within the contractor's labor recruitment area, i.e., the area from which the firm can reasonably be expected to recruit, the prospective contractor shall be accepted by the Human Resources Director as having fulfilled affirmative action requirements for a period of six (6) months at which time the Human Resources Director will conduct another review. Other firms shall develop an affirmative action program in conjunction with the Human Resources Director. The program shall include specific goals and timetables for the hiring and promotion of minorities and females. Said goals shall reflect the availability of minorities and females within the firms labor recruitment area.

Living Wage

All contractors proposing to do business with the City of Ann Arbor, except those exempted by City Code, agree to comply with living wage provisions of Chapter 23 of the Ann Arbor City Code and, if the contractor has a "covered employee" as defined therein to pay those employees providing services to the City under this agreement a "living wage" as defined in Chapter 23 of the Ann Arbor City Code; and, if requested by the City, provide documentation to verify compliance.

Reservation of Rights

The Architect reserves the right to accept any proposal in whole or part, to reject any or all proposals in whole or in part and to waive irregularity and/or informalities in any proposal and to make the award in any manner deemed in the best interest of the City.

END OF DOCUMENT

APPENDIX A

APPENDIX B

LEGAL STATUS OF RESPONDENT

(The proposer shall fill out the appropriate form and strike out the other two.)

A corporation organized and doing business under the laws of the state of _____,
for whom _____ bearing the office title
of _____, whose signature is affixed to this proposal, is
authorized to execute contracts.

A partnership, list all members and the street and mailing address of each:

Also identify the County and State where partnership papers are filed:

County of _____, State of _____

An individual, whose signature with address, is affixed to this proposal:

_____ (Initial here)

APPENDIX C

SPECIMEN CITY CONTRACT

The following attachment is a specimen contract agreement for the services identified in the Proposal. The successful respondent will be required to execute a contract containing the terms and conditions of the specimen contract except where indicated. No changes, modifications, alteration or deletions to the terms and conditions of the specimen contract will be accepted.

AGREEMENT BETWEEN

AND CITY OF ANN ARBOR

The City of Ann Arbor, a Michigan municipal corporation, having its offices at 100 North Fifth Avenue, Ann Arbor, Michigan 48104 ("CITY") and, _____, a
having its offices
(State where organized) (Partnership, or Corporation)
at _____ ("CONTRACTOR"), agree as follows:

The Contractor agrees to provide services to the City under the following terms and conditions:

I. DEFINITIONS

Administering Department means Public Services Department.

Contract Administrator means Energy Coordinator or whomever the Energy Coordinator may from time to time designate.

II. DURATION

This agreement shall become effective on _____, and shall remain in effect until satisfactory performance of all services, whichever occurs first, unless terminated for breach or as provided in this agreement.

Note: The specimen contract sets up an annual contract without renewals. Based on the work plans proposed and rate schedules submitted the length of the contract term may be modified.

III. SERVICES

A. General Scope: The Contractor agrees to provide high density files and service as described in Exhibit A incorporated herein.

- B. Quality of Services: The Contractor's standard of service under this agreement shall be of the level of quality performed by experts regularly rendering this type of service. Determination of acceptable quality shall be made solely by the Contract Administrator.
- C. Compliance with Applicable Law: The Contractor shall perform its services under this agreement in compliance with all applicable laws, ordinances and regulations.
- D. Location: The Contractor shall provide services to the City at locations to be determined by the Contract Administrator.

IV. RELATIONSHIP OF PARTIES

- A. The parties to this agreement agree that it is not a contract of employment but is a contract to accomplish a specific result. Contractor is an independent contractor performing services for the City. Nothing contained in this agreement shall be deemed to constitute any other relationship between the City and the Contractor.
- B. The Contractor certifies that it has no personal or financial interest in the project other than the fee it is to receive under this agreement. The Contractor further certifies that it shall not acquire any such interest, direct or indirect, which would conflict in any manner with the performance of services under this agreement. Further Contractor agrees and certifies that it does not and will not employ or engage any person with a personal or financial interest in this agreement.
- C. Contractor does not have any authority to execute any contract or agreement on behalf of the City, and is not granted any authority to assume or create any obligation or liability on the City's behalf, or to bind the City in any way.
- D. Contractor certifies that it is not, and shall not become, overdue or in default to the City for any contract, debt, or any other obligation to the City including real or personal property taxes. City shall have the right to set off any such debt against compensation awarded for services under this agreement.

V. COMPENSATION OF CONTRACTOR

The Contractor shall be paid at the rates and prices specified in Exhibit B. Payment shall be made monthly following receipt of invoices submitted by the Contractor and approved by the Contract Administrator. To be approved for payment invoice format and submission shall conform to requirements specified in Exhibit B. Protest of any invoice submitted for payment shall be in conformance with the procedure identified in Exhibit B. It is understood and agreed between the parties that the compensation stated above is inclusive of any and all remuneration to which the Contractor may be entitled.

Note: actual rates and price information to be contained in Exhibit B will conform to the accepted price proposal and modification of this paragraph to conform to the service as awarded may be required.

VI. INSURANCE/INDEMNIFICATION

A. The Contractor shall procure and maintain during the life of this Contract, such insurance policies, including those set forth below, as will protect itself from all claims for bodily injuries, death or property damage which may arise under this Contract; whether the acts were made by the Contractor or by any subcontractor or anyone employed by them directly or indirectly. The following insurance policies are required:

1. Worker's Compensation Insurance in accordance with all applicable state and federal statutes. Further, Employers Liability Coverage shall be obtained in the following minimum amounts:

Bodily Injury by Accident - \$500,000 each accident
Bodily Injury by Disease - \$500,000 each employee
Bodily Injury by Disease - \$500,000 each policy limit

2. Commercial General Liability Insurance equivalent to, as a minimum, Insurance Services Office form CG 00 01 07 98. The City of Ann Arbor shall be an additional insured.. Further, the following minimum limits of liability are required:

\$500,000	Each occurrence as respect Bodily Injury Liability or Property Damage Liability, or both combined.
\$1,000,000	Per Job General Aggregate
\$1,000,000	Personal and Advertising Injury

4. Motor Vehicle Liability Insurance, including Michigan No-Fault Coverages, equivalent to, as a minimum, Insurance Services Office form CA 00 01 07 97. The City of Ann Arbor shall be an additional insured. There shall be no added exclusions or limiting endorsements. Coverage shall include all owned vehicles, all non-owned vehicles and all hired vehicles. Further, the limits of liability shall be \$500,000 for each occurrence as respects Bodily Injury Liability or Property Damage Liability, or both combined.

5. Umbrella/Excess Liability Insurance shall be provided to apply excess of the Commercial General Liability, Employers Liability and the Motor Vehicle coverage enumerated above, for each occurrence and for aggregate in the amount of \$1,000,000.

B. Insurance required under VI.A.3 and VI.A.4 of this Contract shall be considered primary as respects any other valid or collectible insurance that the City may possess, including any self-insured retentions the City may have; and any other insurance the City does possess shall be considered excess insurance only and shall not be required to contribute with this insurance. Further, the Contractor agrees to waive any right of recovery by its insurer against the City.

- C. In the case of all Contracts involving on-site work, the Contractor shall provide to the City before the commencement of any work under this Contract documentation demonstrating it has obtained the above mentioned policies. Documentation must provide and demonstrate an unconditional 30 day written notice of cancellation in favor of the City of Ann Arbor. Further, the documentation must explicitly state the following: (a) the policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; project name; policy expiration date; and specific coverage amounts; (b) any deductibles or self-insured retentions which shall be approved by the City, in its sole discretion; (c) that the policy conforms to the requirements specified. An original certificate of insurance may be provided as an initial indication of the required insurance, provided that no later than 21 calendar days after commencement of any work the Contractor supplies a copy of the endorsements required on the policies. Upon request, the Contractor shall provide within 30 days a copy of the policy(ies) to the City. If any of the above coverages expire by their terms during the term of this Contract, the Contractor shall deliver proof of renewal and/or new policies to the Administering Department at least ten days prior to the expiration date.
- D. Any insurance provider of Contractor shall be admitted and authorized to do business in the State of Michigan and shall carry and maintain a minimum rating assigned by A.M. Best & Company's Key Rating Guide of AA Overall and a minimum Financial Size Category of AV. Insurance policies and certificates issued by non-admitted insurance companies are not acceptable unless approved in writing by the City.
- E. To the fullest extent permitted by law, for any loss not covered by insurance under this contract, the Contractor shall indemnify, defend and hold the City, its officers, employees and agents harmless from all suits, claims, judgments and expenses including attorney's fees resulting or alleged to result, to its proportionate extent, from any negligent, grossly negligent, reckless and/or intentional wrongful or tortious acts or omissions by the Contractor or its employees and agents occurring in the performance of this agreement.

VII. COMPLIANCE REQUIREMENTS

- A. **Nondiscrimination.** The Contractor agrees to comply with the nondiscrimination provisions of Chapter 112 of the Ann Arbor City Code and to take affirmative action to assure that applicants are employed and that employees are treated during employment in a manner which provides equal employment opportunity and tends to eliminate any inequality based upon race, national origin or sex. The Contractor agrees to comply with the provisions of Section 9:161 of Chapter 112 of the Ann Arbor City Code, Exhibit C
- B. **Living Wage.** The Contractor agrees to comply with living wage provisions of Chapter 23 of the Ann Arbor City Code and, if a A covered employer@ as defined therein to pay those employees providing Services to the City under this agreement a A living wage,@ as defined in Chapter 23 of the Ann Arbor City Code; and, if requested by the City, provide documentation to verify compliance.

The Contractor agrees to comply with the provisions of Section 1:815 of Chapter 23 of the Ann Arbor City Code, Exhibit D.

VIII. WARRANTIES BY CONTRACTOR

- A. The Contractor warrants that the quality of its services under this agreement shall conform to the level of quality performed by experts regularly rendering this type of service.
- B. The Contractor warrants that it has all the skills and experience necessary to perform the services it is to provide pursuant to this agreement. The Contractor may rely upon the accuracy of reports and surveys provided to it by the City except when defects should have been apparent to a reasonably competent Contractor or when it has actual notice of any defects in the reports and surveys.
- C. The Contractor warrants that it has available, or will engage, at its own expense, sufficient trained employees to provide the services specified in this agreement.

IX. TERMINATION OF AGREEMENT; RIGHTS ON TERMINATION

- A. This agreement may be terminated by either party in the case of a breach of this agreement by the other party, if the breaching party has not corrected the breach within 15 days after notice of termination is given in conformance with the terms of this agreement.
- B. The City shall have the privilege, with or without cause, to cancel and annul this agreement at any time on 30 days written notice to the Contractor in accordance with the notice provisions contained in this agreement. If Contractor is terminated for reasons other than the breach of the agreement by the Contractor, the Contractor shall be compensated for reasonable time spent and reasonable quantities of materials used prior to notification of termination.

X. OBLIGATIONS OF THE CITY

- A. The City agrees to give the Contractor access to staff and City owned properties as required to perform the necessary services under the agreement.
- B. The City shall notify the Contractor of any defects in the services of which the City has actual notice.

XI. ASSIGNMENT

- A. The Contractor shall not subcontract or assign any portion of the services without prior written consent from the City. Notwithstanding any consent by the City to any assignment, Contractor shall at all times remain bound to all warranties, certifications, indemnifications, promises and performances, however described, as are required of it under the Agreement unless specifically released from the requirement, in writing, by the City.
- B. The Contractor shall retain the right to pledge payment(s) due and payable under the agreement to third parties.

XII. NOTICE

All notices and submissions required under the agreement shall be by personal delivery or by first-class mail, postage prepaid, to the address stated in this agreement or such other address as either party may designate by prior written notice to the other. Notice shall be considered delivered under this agreement when personally delivered to the Contract Administrator or placed in the U.S. mail, postage prepaid to the Administering Department, care of the Contract Administrator.

XIII. EXTENT OF AGREEMENT

This agreement represents the entire understanding between the City and the Contractor and it supersedes all prior representations or agreements whether written or oral. Neither party has relied on any prior representations in entering into this agreement.

This agreement may be altered, amended or modified only by written amendment signed by the Contractor and the City.

XIV. OWNERSHIP OF DOCUMENTS

All reports prepared by the Contractor as part of its scope of services are owned by the City and when delivered to the City become public record.

XV. SEVERABILITY OF PROVISIONS

Whenever possible, each provision of this agreement will be interpreted in a manner as to be effective and valid under applicable law. However, if any provision of this agreement or the application of any provision to any party or circumstance will be prohibited by or invalid under applicable law, that provision will be ineffective to the extent of the prohibition or invalidity without invalidating the remainder of the provisions of this agreement or the application of the provision to other parties or other circumstances.

XVI. CHOICE OF LAW

This agreement shall be construed, governed, and enforced in accordance with the laws of the State of Michigan. By executing this agreement, the Contractor and the City agree to venue in a court of appropriate jurisdiction sitting within Washtenaw County for purposes of any action arising under this agreement.

FOR CONTRACTOR

FOR THE CITY OF ANN ARBOR

By: _____

By _____

Its: _____

By _____

Roger W. Fraser, City Administrator

Approved as to form and content

By _____

Stephen Postema, City Attorney

APPENDIX D

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

BETWEEN the Design-Builder:
(Name, legal status, address and other information)

« »
« »
« »
« »

and the Contractor:
(Name, legal status, address and other information)

« »
« »
« »
« »

The Design-Builder has made a Design-Build Contract with the Owner dated: « »

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

«Blank»
« »
« »

Owner:
(Name, legal status and address)

« »
« »

The Design-Builder and Contractor agree as follows.

TABLE OF ARTICLES

- 1 THE CONTRACT DOCUMENTS
- 2 WORK OF THIS AGREEMENT
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 4 CONTRACT SUM
- 5 PAYMENTS
- 6 DISPUTE RESOLUTION
- 7 MISCELLANEOUS PROVISIONS
- 8 ENUMERATION OF THE CONTRACT DOCUMENTS

TABLE OF EXHIBITS

- A TERMS AND CONDITIONS
- B PRECONSTRUCTION SERVICES
- C CONTRACTOR'S SCOPE OF WORK
- D DETERMINATION OF THE COST OF THE WORK
- E INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

§ 1.1 The Contract Documents form the Contract for Construction. The Contract Documents consist of this Agreement between Design-Builder and Contractor (hereinafter, the "Agreement") and its attached Exhibits; Supplementary and other Conditions; Drawings, Specifications, Addenda issued prior to execution of the Agreement; other documents listed in the Agreement and Modifications issued after execution of the Agreement. Unless specifically enumerated in the Agreement, the Contract Documents do not include other documents, such as bidding requirements (advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or portions of Addenda relating to bidding requirements). The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and Contractor, (2) between the Owner and a Contractor or Subcontractor, (3) between the Owner and Architect or (4) between any persons or entities other than the Design-Builder and Contractor. An enumeration of the Contract Documents, other than Modifications, appears in Article 8.

§ 1.2 The Contract for Construction represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral.

§ 1.3 The Contract may be amended or modified only by a Modification. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Design-Builder.

ARTICLE 2 THE WORK OF THIS AGREEMENT

§ 2.1 The Contractor shall fully execute the Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others, or as set forth in Exhibit C.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice issued by the Design-Builder.
(Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

« »

§ 3.2 The Contract Time shall be measured from the date of commencement, subject to adjustments of this Contract Time as provided in the Contract Documents.
(Insert provisions, if any, for liquidated damages relating to failure to complete on time or for bonus payments for early completion of the Work.)

« »

§ 3.3 The Contractor shall achieve Substantial Completion of the Work not later than « » days from the date of commencement, or as follows:
(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. Unless stated elsewhere in the Contract Documents, insert any requirements for earlier Substantial Completion of certain portions of the Work.)

« »

Portion of Work	Substantial Completion Date

ARTICLE 4 CONTRACT SUM

§ 4.1 The Design-Builder shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of this Agreement. The Contract Sum shall be one of the following:
(Check the appropriate box.)

- Stipulated Sum in accordance with Section 4.2 below.
- Cost of the Work Plus Contractor's Fee in accordance with Section 4.3 below.
- Cost of the Work Plus Contractor's Fee with a Guaranteed Maximum Price in accordance with Section 4.4 below.

(Based on the selection above, complete either Section 4.2, 4.3, or 4.4 below.)

§ 4.2 STIPULATED SUM

§ 4.2.1 The Stipulated Sum shall be « » (\$ « »), subject to additions and deductions as provided in the Contract Documents.

§ 4.2.2 The Stipulated Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Design-Builder:

« »

§ 4.2.3 Unit prices, if any, are as follows:

Description	Units	Price (\$0.00)

§ 4.2.4 Allowances, if any, are as follows:

(Identify and state the amounts of any allowances, and state whether they include labor, materials, or both)

Allowance	Amount (\$0.00)	Included Items

§ 4.2.5 Assumptions or qualifications, if any, on which the Stipulated Sum is based, are as follows:

<< >>

§ 4.3 COST OF THE WORK PLUS CONTRACTOR'S FEE

§ 4.3.1 The Cost of the Work is as defined in Exhibit D.

§ 4.3.2 The Contractor's Fee is:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee and the method of adjustment to the Fee for changes in the Work.)

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§ 4.4 COST OF THE WORK PLUS CONTRACTOR'S FEE WITH A GUARANTEED MAXIMUM PRICE

§ 4.4.1 The Cost of the Work is as defined in Exhibit D.

§ 4.4.2 The Contractor's Fee is:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee and the method of adjustment to the Fee for changes in the Work.)

<< >>

§ 4.4.3 GUARANTEED MAXIMUM PRICE

§ 4.4.3.1 The sum of the Cost of the Work and the Contractor's Fee is guaranteed by the Contractor not to exceed <> (\$ <>), 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. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Design-Builder. *(Insert specific provisions if the Contractor is to participate in any savings.)*

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§ 4.4.3.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Design-Builder:

<< >>

§ 4.4.3.3 Unit Prices, if any, are as follows:

Description	Units	Price (\$0.00)

§ 4.4.3.4 Allowances, if any, are as follows:

(Identify and state the amounts of any allowances, and state whether they include labor, materials, or both.)

Allowance	Amount (\$0.00)	Included Items

§ 4.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based, are as follows:

<< >>

§ 4.5 CHANGES IN THE WORK

§ 4.5.1 Adjustments of the Contract Sum on account of changes in the Work may be determined by any of the methods listed in Article A.7 of Exhibit A, Terms and Conditions.

§ 4.5.2 Where the Contract Sum is the Cost of the Work, with or without a Guaranteed Maximum Price, and no specific provision is made in Sections 4.3.2 or 4.4.2 for adjustment of the Contractor's Fee in the case of Changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment will cause substantial inequity to the Owner or Design-Builder, the Contractor's Fee shall be equitably adjusted on the basis of the Fee established for the original Work, and the Contract Sum shall be adjusted accordingly.

ARTICLE 5 PAYMENTS

§ 5.1 PROGRESS PAYMENTS

§ 5.1.1 Based upon Applications for Payment submitted to the Design-Builder by the Contractor, the Design-Builder shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

« »

§ 5.1.3 Provided that an Application for Payment is received not later than the « » day of month, the Design-Builder shall make payment to the Contractor not later than the « » day of the « » month. If an Application for Payment is received by the Design-Builder after the application date fixed above, payment shall be made by the Design-Builder not later than « » (« ») days after the Design-Builder receives the Application for Payment.

§ 5.1.4 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Design-Builder to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor, less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ 5.1.5 With each Application for Payment where the Contract Sum is based upon a Stipulated Sum or Cost of the Work with a Guaranteed Maximum Price, the Contractor shall submit the most recent schedule of values in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services, if any, shall be shown separately. Where the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, the Contractor's Fee shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Design-Builder may require. This schedule of values, unless objected to by the Design-Builder, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.6 In taking action on the Contractor's Applications for Payment, the Design-Builder shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections 5.1.4 or 5.1.5, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of this Agreement. Such examinations, audits and verifications, if required by the Design-Builder, will be performed by the Design-Builder's accountants acting in the sole interest of the Design-Builder.

§ 5.1.7 Except with the Design-Builder's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 PROGRESS PAYMENTS - STIPULATED SUM

§ 5.2.1 Applications for Payment where the Contract Sum is based upon a Stipulated Sum shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.2.2 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 Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion

of the Work in the schedule of values, less retainage of « » percent (« » %) on the Work. Pending final determination of cost to the Design-Builder of Changes in the Work, amounts not in dispute shall be included as provided in Section A.7.3.8 of Exhibit A, Terms and Conditions;

- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Design-Builder, suitably stored off the site at a location agreed upon in writing), less retainage of « » percent (« » %);
- .3 Subtract the aggregate of previous payments made by the Design-Builder; and
- .4 Subtract amounts, if any, for which the Design-Builder has withheld payment from or nullified an Application for Payment as provided in Section A.9.5 of Exhibit A, Terms and Conditions.

§ 5.2.3 The progress payment amount determined in accordance with Section 5.2.2 shall be further modified under the following circumstances:

- .1 add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Owner shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and
(Section A.9.8.4 of Exhibit A, Terms and Conditions discusses release of applicable retainage upon Substantial Completion of Work.)
- .2 add, if final completion of the Work is thereafter materially delayed through no fault of the Design-Builder, any additional amounts payable in accordance with Section A. 9.10.3 of Exhibit A, Terms and Conditions.

§ 5.2.4 Reduction or limitation of retainage, if any, shall be as follows:

(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections 5.2.2.1 and 5.2.2.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)

« »

§ 5.3 PROGRESS PAYMENTS - COST OF THE WORK PLUS A FEE

§ 5.3.1 Where the Contract Sum is based upon the Cost of the Work plus a fee without a Guaranteed Maximum Price, Applications for Payment shall show the Cost of the Work actually incurred by the Contractor through the end of the period covered by the Application for Payment and for which Contractor has made or intends to make actual payment prior to the next Application for Payment.

§ 5.3.2 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take the Cost of the Work as described in Exhibit D;
- .2 Add the Contractor's Fee, less retainage of « » percent (« » %). The Contractor's Fee shall be computed upon the Cost of the Work described in the preceding Section 5.3.2.1 at the rate stated in Section 4.3.2; or if the Contractor's Fee is stated as a fixed sum in that section, an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in the preceding section bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Design-Builder;
- .4 Subtract the shortfall, if any, indicated by the Contractor in the documentation required by Section 5.1.4 or resulting from errors subsequently discovered by the Design-Builder's accountants in such documentation; and
- .5 Subtract amounts, if any, for which the Design-Builder has withheld or withdrawn payment as provided in the Section A.9.5 of Exhibit A, Terms and Conditions.

§ 5.3.3 Retainage in addition to the retainage stated at Section 5.3.2.2, if any, shall be as follows:

§ 5.3.4 Except with the Design-Builder's prior approval, payments to Subcontractors shall be subject to retainage of not less than « » percent (« » %). The Design-Builder and Contractor shall agree on a mutually acceptable procedure for review and approval of payments and retention for Subcontractors.

§ 5.4 PROGRESS PAYMENTS - COST OF THE WORK PLUS A FEE WITH A GUARANTEED MAXIMUM PRICE

§ 5.4.1 Applications for Payment where the Contract Sum is based upon the Cost of the Work Plus a Fee with a Guaranteed Maximum Price shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the

Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Design-Builder on account of that portion of the Work for which the Design-Builder has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 5.4.2 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 Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Design-Builder of changes in the Work, amounts not in dispute shall be included as provided in Section A.7.3.8 of Exhibit A, Terms and Conditions;
- .2 Add that portion of the Guaranteed Maximum Price 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 Design-Builder, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Contractor's Fee, less retainage of « » percent (« » %). The Contractor's Fee shall be computed upon the Cost of the Work described in the two preceding sections at the rate stated in Section 4.4.2 or, if the Contractor's Fee is stated as a fixed sum in that section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work in the two preceding sections bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract the aggregate of previous payments made by the Design-Builder;
- .5 Subtract the shortfall, if any, indicated by the Contractor in the documentation required by Section 5.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Design-Builder's accountants in such documentation; and
- .6 Subtract amounts, if any, for which the Design-Builder has withheld or nullified a payment as provided in Section A.9.5 of Exhibit A, Terms and Conditions.

§ 5.4.3 Except with the Design-Builder's prior approval, payments to Subcontractors, shall be subject to retainage of not less than « » percent (« » %). The Design-Builder and Contractor shall agree on a mutually acceptable procedure for review and approval of payments and retention for Subcontractors.

§ 5.5 FINAL PAYMENT

§ 5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Design-Builder to the Contractor not later than 30 days after the Contractor has fully performed this Agreement and the requirements of Section A.9.10 of Exhibit A, Terms and Conditions have been satisfied, except for the Contractor's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment.

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 The parties appoint the following individual to serve as a Neutral pursuant to Section A.4.2.1 of Exhibit A, Terms and Conditions:

(Insert the name, address and other information of the individual to serve as a Neutral. If the parties do not select a Neutral, then the provisions of Section A.4.2.2 or A.4.2.3 of Exhibit A, Terms and Conditions shall apply.)

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« »

§ 6.2 If the parties do not resolve their dispute through mediation pursuant to Section A.4.3 of Exhibit A, Terms and Conditions, the method of binding dispute resolution shall be the following:

(If the parties do not select a method of binding dispute resolution, then the method of binding dispute resolution shall be by litigation in a court of competent jurisdiction.)

(Check one.)

[« »] Arbitration pursuant to Section A.4.4 of Exhibit A, Terms and Conditions

[« »] Litigation in a court of competent jurisdiction

[« »] Other (*Specify*)

« »

§ 6.3 ARBITRATION

§ 6.3.1 If arbitration is selected by the parties as the method of binding dispute resolution, then any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to arbitration as provided in Section A.4.4 of Exhibit A, Terms and Conditions.

ARTICLE 7 MISCELLANEOUS PROVISIONS

§ 7.1 Design professionals and consultants, if any, engaged by the Contractor shall be persons or entities duly licensed to practice their professions as required in the jurisdiction where the Project is located and are listed as follows:
(*Insert name, address, license number, relationship to Contractor and other information.*)

Name and Address	License Number	Relationship to Contractor	Other Information

§ 7.2 The Architect, other design professionals and consultants, if any, engaged directly by the Design-Builder, their professions and responsibilities are listed below:
(*Insert name, address, license number, if applicable, and responsibilities to Design-Builder and other information.*)

Name and Address	License Number	Responsibilities to Design-Builder	Other Information

§ 7.3 The Design-Builder's Designated Representative is:
(*Insert name, address and other information.*)

« »
« »
« »
« »
« »
« »

§ 7.3.1 The Design-Builder's Designated Representative identified above shall be authorized to act on the Design-Builder's behalf with respect to the Project.

§ 7.4 The Contractor's Designated Representative is:
(*Insert name, address and other information.*)

« »
« »
« »
« »
« »
« »

§ 7.4.1 The Contractor's Designated Representative identified above shall be authorized to act on the Contractor's behalf with respect to the Project.

§ 7.5 Neither the Design-Builder's nor the Contractor's Designated Representative shall be changed without ten days written notice to the other party.

§ 7.6 Other provisions:

« »

§ 7.6.1 Where reference is made in this Agreement to a provision of another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 7.6.2 Payments due and unpaid under this Agreement shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. *(Insert rate of interest agreed upon, if any.)*

« » percent (« » %) « »

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Design-Builder's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

ARTICLE 8 ENUMERATION OF THE CONTRACT DOCUMENTS

§ 8.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

§ 8.1.1 The Agreement is this executed edition of AIA Document A142-2004, Standard Form of Agreement Between Design-Builder and Contractor.

§ 8.1.2 The Supplementary and other Conditions of the Contract, if any, are as follows: *(Either list applicable documents or refer to an exhibit attached to this Agreement.)*

« »

Document	Title	Pages

§ 8.1.3 The Specifications are as follows: *(Either list the Specification by number, title and date, or refer to an exhibit attached to this Agreement.)*

« »

Number	Title	Date

§ 8.1.4 The Drawings are as follows: *(Either list the Drawings by number, title and date or refer to an exhibit attached to this Agreement.)*

« »

Number	Title	Date

§ 8.1.5 The Addenda, if any, are as follows: *(Either list applicable documents in the space below or refer to an exhibit attached to this Agreement.)*

« »

Number	Date	Pages

§ 8.1.6 Exhibit A, Terms and Conditions.

(If the parties agree to substitute terms and conditions other than those contained in AIA Document A142, Exhibit A, Terms and Conditions, then identify such terms and conditions and attach to this Agreement as Exhibit A.)

« »

§ 8.1.7 Exhibit B, Preconstruction Services, if applicable.

(Describe in Exhibit B the Preconstruction Services, if any, and the method of compensation for such services. If the Contractor will perform no preconstruction services, write "not applicable" in the space below.)

« »

§ 8.1.8 Exhibit C, Contractor's Scope of Work.

(If the Contractor's Scope of Work includes performance of all work required by the Contract Documents, write "not applicable" below. If the Contractor's Scope of Work does not include performance of all Work required by the Contract Documents, specify the scope of the Contractor's work in Exhibit C.)

« »

§ 8.1.9 Exhibit D, Determination of the Cost of the Work, if applicable.

(If the parties agree to substitute a method to determine the cost of the Work other than that contained in AIA Document A142, Exhibit D, Determination of the Cost of the Work, then identify such other method to determine the cost of the Work and attach to this Agreement as Exhibit D. If the Contract Sum is a Stipulated Sum, then Exhibit D is not applicable.)

§ 8.1.10 Exhibit E, Insurance and Bonds, if applicable.

(Complete AIA Document A142, Exhibit E, Insurance and Bonds or write "not applicable" in the space below.)

« »

§ 8.1.11 Other documents, if any, forming part of the Contract Documents are as follows:

(Either list applicable documents or refer to an exhibit attached to this Agreement in the space below.)

« »

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

DESIGN-BUILDER *(Signature)*

« »« »

(Printed name and title)

CONTRACTOR *(Signature)*

« »« »

(Printed name and title)