

# Agreement Between Owner and Design-Builder – Cost Plus a Fee

This **AGREEMENT** is made as of the **xx** th day of **xxx** in the year of 202**x**, by and between the following parties, for services in connection with the Project identified below:

**OWNER:**

*(Name and address)*

xxx

xxx

xxx

**DESIGN-BUILDER:**

*(Name and address)*

**The Matthews Group, Inc., t/a TMG Construction Corporation**  
7960 Bay Skies Ct.  
Harbor Springs, MI 49740

*With corporate headquarters located at:*

18915 Lincoln Rd.  
Purcellville, VA 20132

**PROJECT:**

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

**Harbor Springs Airpark - Lot #6 Hangar Home**  
7955 Bay Skies Ct.  
Harbor Springs, MI 49740

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

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## **Article 1 – Structure of this Agreement**

**1.1 Preamble.** The Owner and the Design-Builder recognize that the success of the Project requires a relationship of trust, open communication and mutual cooperation. The Parties commit to working collaboratively, in a spirit of teamwork and partnership, to achieve the Project's safety, quality, budget, schedule and all other objectives.

**1.2 Two-Phase Scope of Work.** This Agreement is structured in two distinct, sequential phases:

1.1.1 Phase 1 (Design and Pre-Construction Services): Includes the development of architectural/engineering documents, budgeting, scheduling, and the formulation of a Phase 2 Proposal for Construction Services.

1.1.2 Phase 2 (Construction Services): Includes the physical execution of the work, subject to the Owner's acceptance of the Phase 2 Proposal and the execution of a formal Phase 2 Amendment.

## **Article 2 - Phase 1 Design & Professional Services**

**2.1 Scope of Phase 1 Services.** The Design-Builder shall perform all professional architectural, engineering, and pre-construction services required to develop the project design from Schematic drawings that are referenced by this Agreement to create a definitive cost estimate and to obtain all required permits necessary to construct the project.

### **2.2 Phase 1 Deliverables**

2.2.1 Design Charette – A design Charette that is attended by the Owner, Architect and Design-Builder shall be conducted to review and agree on the scope of project based on the Schematic Drawings that are referenced in Article 5.1 of this Agreement. The discussions will be documented in writing and form the Basis of Design that will be used to develop the final design. The results of this meeting are intended to obtain and provide the Design-Builder and its team with the overall direction needed to create the working drawings and to obtain the building permits.

2.2.2 Based on the Design Charette the Design-Builder and its design team shall deliver to the Owner:

- Schematic Drawings updated to reflect the discussions of the Design-Charette (35%)
- Design Development Drawings and Specifications (65%).
- Permit and Bid Drawings and Specifications (95%)
- "For Construction Drawings" (100%)
- A Building Permit (the Zoning Permit has already been obtained and will be updated if necessary)
- A detailed project schedule
- A Phase 2 Proposal, which shall include a Fixed Lump Sum for construction, a detailed breakdown of costs, and any associated assumptions or clarifications.

**2.3 Phase 2 Proposal.** The Design-Builder shall provide a detailed cost estimate of the final design drawings based on the Construction Specifications Institute (CSI) cost breakdown structure. The estimated shall be predicated on the Design-Builder using its best effort to obtain three prices from pre-qualified subcontractor and material supplies to the extent practical. When necessary the Design-Builder will provide detailed cost estimates to provide labor and material for items of work that are not practical to be subcontracted. The estimate shall provide a subtotal of all direct costs and shall be marked up 11.11% for overhead and fee to establish a final Construction Contract Price.

**2.4 Phase 1 Compensation.** The Owner shall pay the Design-Builder the direct cost of all design, professional services, permit and related costs in the amount that is estimated to be \$300,000.00 to accomplish the Phase 1 deliverables. The final cost of this phase is an estimate only that will be adjusted as necessary to reflect the project's complexity and the degree of Owner involvement that will be better understood once the Design-Charette is finalized. Actual Costs will be calculated based on the direct cost plus a 11.11% markup for overhead and fee.

**2.4.1** Phase 1 costs will be billed monthly based on the percentage of completion of the Phase 1 deliverables.

**2.4.2** If the Design-Builder believes the cost will exceed the amount established in Article 2.3, it will advise the Owner of the nature of the added costs and recommend methods to mitigate and/or minimize cost overruns at the time that it becomes known.

## **Article 3 - Transition to Phase 2 (Construction)**

**3.1 Review of Phase 2 Proposal.** Upon receipt of the Phase 2 Proposal, the Owner shall have 14 business days to review, request modifications, or accept the proposal. The parties agree to negotiate in good faith to finalize the construction cost and schedule.

**3.2 Acceptance and Phase 2 Amendment.** If the Owner accepts the Phase 2 Proposal, the parties shall execute a written Phase 2 Amendment to this Agreement. The Phase 2 Amendment shall establish:

- The final Construction Contract Price.
- The Final Design Documents and Specifications.
- The Date of Substantial Completion for Construction.

**3.3 Rejection and Ownership of Documents.** If the parties cannot come to an agreement on the Phase 2 Proposal within 90 days this Agreement shall terminate (unless a written agreement is made to extend the time period). In the event of termination, the property shall be put back on the market and sold for a cost of no less than 90% of the original purchase price and a reasonable effort shall be made to include the amounts paid to date for Phase 1 (Design and Professional Services).

Title and responsibility for the costs of the lot will remain the Owners until such time as the property is sold, however the Owner conveys control of the sale process to be the Design-Builder and the two parties shall work together in good-faith to sell the property timely.

The Design-Builder shall retain ownership of all design documents, and the Owner shall not utilize the documents to construct the project without a separate licensing agreement and fee paid to the Design-Builder.

## **Article 4 - Phase 2 Construction Services**

**4.1 Scope of Phase 2 Work.** The scope of the Construction Services shall be based on construction documents that were produced incidental to Phase 1, along with any clarification and desired changes that result from the pricing phase, which shall be established in the form of amendment to this Agreement as per Article 3.2.

Upon execution of the Phase 2 Amendment, the Design-Builder shall provide all labor, materials, equipment, and professional construction management services necessary to construct and complete the project in accordance with the finalized Phase 2 Contract Documents.

**4.2 Phase 2 Compensation.** The Owner shall pay the Design-Builder for the performance of Phase 2 Work as established in the Phase 2 Amendment based on monthly progress billings as described in Article 10.

## **Article 5 - Contract Documents**

**5.1** The Contract Documents are comprised of the following (listed in order of precedence):

**5.1.1 This Agreement** and subsequent written modifications, amendments, minor changes and Change Orders to this Agreement.

**5.1.2 Schematic Drawings** - Harbor Springs Airpark Lot 6 Conceptual Drawings as prepared by Michael L Oxman, Architect and supporting consultants as conceptually illustrated in sheet "HSAP6 – Square footage and story calc" Drawing 1.15.26. PDF" and HSAP6 Cover Sheet Rendering" dated 2.17.26.PDF"). Note: The final design drawings are a product of this Agreement and will be formally adopted via the change order process, herein described.

**5.1.3 Project Schedule**

Design and Professional Services (Ph 1) – No greater than 6 months from Phase 1 Notice to Proceed.

Construction Services (Ph 2) – To be established as provided for by Article 2.2.2. (Estimated to be 18 month or less).

**5.1.4 Construction Services Scope and Cost (Ph2)** – To be established as an amendment to this Agreement as established by Article 3.2.

## **Article 6 - Interpretation and Intent**

**6.1** Design-Builder and Owner, prior to execution of the Agreement, have carefully reviewed all the Contract Documents, including the various documents comprising the Basis of Design Documents, for any conflicts or ambiguities. Design-Builder and Owner have discussed and resolved any identified conflicts or ambiguities prior to execution of the Agreement.

**6.2** 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 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, Design-Builder and Owner shall attempt to resolve any ambiguity, conflict or inconsistency informally, recognizing that the Contract Documents shall take precedence in the order in which they are listed in Section 5.1 hereof.

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

## **Article 7 - Ownership of Work Product**

**7.1 Work Product.** All drawings, specifications and other documents and electronic data furnished by Design-Builder to Owner under this Agreement ("Work Product") are deemed to be instruments of service and Design-Builder shall retain the ownership and property interests therein, including but not limited to any intellectual property rights, copyrights and/or patents, subject to the provisions set forth in Sections 7.2 through 7.5 below.

**7.2 Owner's Limited License upon Project Completion and Payment in Full to Design-Builder.**

Upon Owner's payment in full for all Work performed under the Contract Documents, Design-Builder: (a) grants Owner a limited license to use the Work Product in connection with Owner's occupancy of the

Project; and (b) transfers all ownership and property interests, including but not limited to any intellectual property rights, copyrights and/or patents, in that portion of the Work Product that consists of architectural, engineering and other design elements and specifications that are unique to the Project. Such grant and transfer are conditioned on Owner's express understanding that its alteration of the Work Product without the involvement of Design-Builder is at Owner's sole risk and without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier (collectively the "Indemnified Parties"), and on Owner's obligation to provide the indemnity set forth in Section 7.5 below.

**7.3 Owner's Limited License upon Owner's Termination for Convenience or Design-Builder's Election to Terminate.** If Owner terminates this Agreement for its convenience as set forth in Article 11 hereof, or if Design-Builder elects to terminate this Agreement for non-payment or other reasonable matters, Design-Builder shall, upon Owner's payment in full of the amounts due Design-Builder under the Contract Documents, grant Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights as set forth in Section 7.2 above, conditioned on the following:

**7.3.1** Use of the Work Product is at Owner's sole risk without liability or legal exposure to any Indemnified Party, and on Owner's obligation to provide the indemnity set forth in Section 7.5 below, and

**7.3.2** Owner agrees to pay Design-Builder actual costs for any services requested after the Termination for Convenience for additional Architectural / Engineering and or Construction related services that would be required by the Design-Builder to support the Owner's effort to complete the Project and subsequently use the Work Product in accordance with Section 7.2 if Owner resumes the Project through its employees, agents, or third parties.

**7.4 Owner's Limited License upon Design-Builder's Default.** If this Agreement is terminated due to Design-Builder's default, then Design-Builder grants Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights and obligations as set forth in Section 7.2 above. Notwithstanding the preceding sentence, if it is ultimately determined that Design-Builder was not in default, Owner shall be deemed to have terminated the Agreement for convenience, and Design-Builder shall be entitled to the rights and remedies set forth in Section 4.3 above.

**7.5 Owner's Indemnification for Use of Work Product.** Owner shall indemnify and hold harmless all parties that are associated with the Design-Builder that are associated with this Agreement as it relates to the use or alteration of the Work Product under any of the circumstances identified in this Article 7, Owner shall defend, indemnify and hold harmless such Indemnified Parties from and against any and all claims, damages, liabilities, losses and expenses, including attorneys' fees, arising out of or resulting from the use or alteration of the Work Product.

**7.6 Additional Contractors** – The Owner reserves the right to perform work that is in addition to the scope of the work contemplated by this Agreement. Work performed by the Owner shall not interfere with the completion of this Agreement and it shall be done in a manner that is consistent with code standards that are applicable to this project and the requirements of ongoing code inspection.

## **Article 8 - Contract Time**

**8.1 Date of Commencement.** The Work shall commence within five (5) days of this fully signed Agreement in accordance with the time frames established by the Project Schedule as herein referenced in Article 5.1.3.

**8.2 Notice to Proceed** – The latter of the two dates that this Agreement is signed by both parties shall constitute the Notice to Proceed date for Phase 1 – Design and Professional Services. The Phase

2 – Construction Services date shall be established incidental to agreeing on the Phase 2 Amendment.

### **8.3 Substantial Completion and Final Completion.**

**8.2.1** Substantial Completion of Phase 1 – Design and Professional Services shall be achieved no later than ~~xxx, xx, 202x~~,

8.2.2 Substantial Completion of the entire project (including Phase 2 – Construction Services) shall be agreed to incidental to agreeing to the Phase 2 (Construction Services) amendment.

“*Substantial Completion* is the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete in accordance with the Contract Documents so that Owner can use the Project or a portion thereof for its intended purposes”.

**8.2.3** The issuance of a Certificate of Occupancy by the local building authorities may be limited or unachievable to the project is complete. Substantial Completion is not dependent on obtaining building authorities approval.

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

**8.3 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.

**8.4 Owner’s Review Time.** The parties have established the following maximum amount of time for Owner to review Design Submissions, Product Selections and/or other decisions that are required to allow the work to proceed consistent with the Project Schedule or any updates thereto unless the parties agree in writing otherwise.

**8.4.1** Owner shall have a maximum of ten calendar days of receipt by Owner to provide Owner requested decisions that are required;

## **Article 9 - Contract Price**

### **9.1 Contract Price.**

**9.1.1** This Agreement is based on a two-phase approach to establishing the cost of the work in which Owner will pay the Design-Builder a contract price (“Contract Price”) as follows:

Phase 1 (Design and Professional Service) - Refer to Article 2.4  
Phase 3 (Construction Service) - Refer to Article 4.2

### **9.2 Design-Builder’s Fee.**

**9.2.1** For both Phase 1 and Phase 2 the Design-Builder’s Fee will be calculated as follows:

A markup of Eleven & 11/100’s percent (11.11%) of the Direct Cost of the Work will be applied to create a final Total Cost (10.0% of Total Cost).

**9.2.2** Design-Builder’s Fee will be adjusted as follows for any changes in the Work:

**9.2.2.1** For additive Change Orders and deductive Change Orders, including additive Change Orders arising from both additive and deductive items, it is agreed that Design-Builder shall receive a Fee of Eleven & 11/100's percent (11.11 %) of the additional Direct Costs of the Work incurred for that Change Order.

**9.3 Cost of the Work (Direct Cost).** The term Cost of the Work shall mean costs reasonably and actually incurred by Design-Builder in the proper performance of the Work. The Cost of the Work will be established as a subtotal at the bottom of each estimate and is referred to as "Direct Cost". The Cost of the Work (Direct Cost) shall include only the following:

**9.3.1** Wages of direct employees of Design-Builder performing the Work at the Site and at locations off the Site; provided the employee is directly performing work that is directly related to the design of the Project. The costs for those employees of Design-Builder performing design service shall be calculated at the prevailing market rates for design professionals performing such services.

**9.3.2** Wages or salaries of Design-Builder's supervisory and administrative personnel engaged in the performance of the Work and who are located at the Site or working off-Site to assist in the production or transportation of material and equipment necessary for the Work.

**9.3.3** Wages or salaries of Design-Builder's personnel stationed at Design-Builder's principal or branch offices, but only to the extent said personnel are specifically working on design and/or construction administration related to this Project. The reimbursable costs of personnel stationed at Design-Builder's principal or branch offices shall be at the standard established rate(s) that the Design-Builder uses on for job-costing on all its projects.

**9.3.4** Costs incurred by Design-Builder for employee benefits, premiums, taxes, insurance, contributions and assessments required by law, collective bargaining agreements, or which are customarily paid by Design-Builder, to the extent such costs are based on wages and salaries paid to employees of Design-Builder covered under Sections 9.3.1 through 9.3.3 hereof.

**9.3.5** The reasonable portion of the cost of travel, accommodations and meals for Design-Builder's personnel necessarily and directly incurred in connection with the performance of the Work.

**9.3.6** Payments made by Design-Builder to Subcontractors and Design Consultants for performance of portions of the Work, including any insurance and bond premiums incurred by Subcontractors and Design Consultants.

**9.3.7** Costs incurred by Design-Builder in repairing or correcting defective, damaged or nonconforming Work (including any warranty or corrective Work performed after Substantial Completion), provided that such Work was beyond the reasonable control of Design-Builder, or caused by the ordinary mistakes or inadvertence, and not the negligence, of Design-Builder or those working by or through Design-Builder. If the costs associated with such Work are recoverable from insurance, Subcontractors or Design Consultants, Design-Builder shall exercise its best efforts to obtain recovery from the appropriate source and provide a credit to Owner if recovery is obtained.

**9.3.8** Costs, including transportation, inspection, testing, storage and handling, of materials, equipment and supplies incorporated or reasonably used in completing the Work.

**9.3.9** Costs (less salvage value) of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by the workers that are not fully consumed in the performance of the Work and which remain the property of Design-Builder, including the costs of transporting, inspecting, testing, handling, installing, maintaining, dismantling and removing such items.

**9.3.10** Costs of removal of debris and waste from the Site.

**9.3.11** The reasonable costs and expenses incurred in establishing, operating and demobilizing the Site office, including the cost of facsimile transmissions, long-distance telephone calls, postage and express delivery charges, telephone service, photocopying and reasonable petty cash expenses.

**9.3.12** Rental charges and the costs of transportation, installation, minor repairs and replacements, dismantling and removal of temporary facilities, machinery, equipment and hand tools not customarily owned by the workers, which are provided by Design-Builder at the Site, whether rented from Design-Builder or others, and incurred in the performance of the Work.

**9.3.13** Premiums for insurance and bonds required by this Agreement or the performance of the Work.

**9.3.14** All fuel and utility costs incurred in the performance of the Work.

**9.3.15** Real Estate Brokerage fees directly related to this project.

**9.3.16** Sales, use or similar taxes, tariffs or duties incurred in the performance of the Work.

**9.3.17** Legal costs, court costs and costs of mediation and arbitration reasonably arising from Design-Builder's performance of the Work, provided such costs do not arise from disputes between Owner and Design-Builder.

**9.3.18** Costs for permits, royalties, licenses, tests and inspections incurred by Design-Builder as a requirement of the Contract Documents.

**9.3.19** The cost of defending suits or claims for infringement of patent rights arising from the use of a particular design, process or product required by Owner, paying legal judgments against Design-Builder resulting from such suits or claims, and paying settlements made with Owner's consent.

**9.3.20** Deposits which are lost, except to the extent caused by Design-Builder's negligence.

**9.3.21** Costs incurred in preventing damage, injury or loss in case of an emergency affecting the safety of persons and property.

**9.3.22** Accounting and data processing costs directly related to the Work.

**9.3.23** Other costs reasonably and properly incurred in the performance of the Work to the extent approved in writing by Owner.

#### **9.4 Non-Reimbursable Costs.**

**9.4.1** The following shall not be deemed as costs of the Work:

**9.4.1.1** Compensation for Design-Builder's personnel stationed at Design-Builder's principal or branch offices, except as provided for in Sections 9.3.1, 9.3.2 and 9.3.3 hereof.

**9.4.1.2** Overhead and general expenses, except as provided for in Section 9.3 hereof, or which may be recoverable for changes to the Work.

**9.5 Escrow Account** – An escrow account at a mutually agreeable bank shall be set up at the onset of the project in the amount of \$1,000,000.00. Distribution from the account shall be managed by a mutually

agreeable third-party Escrow Agent. Interest earned on this money shall be accrued on behalf of the Owner.

Use of the money that is held in escrow is intended to pay the last \$1,000,000 of contract value and for use in making progress payments to the extent necessary as described in Article 10.1.3.

## **Article 10 - Procedure for Payment**

### **10.1 Progress Payments.**

**10.1.1** Design-Builder shall submit to Owner on or about the last day of each month, beginning with the first month after the Date of Commencement, the Design-Builder's Application for Progress Payment for work properly complete, for stored material, for deposits and for other necessary costs that were incurred to date, less the cost of previous payments received.

**10.1.2** Owner shall make payment to the Design-Builder within ten (10) days after Owner's receipt of each properly submitted and accurate Application for Payment, but in each case less the total of payments previously made.

**10.1.3** In the event that an approved Application for Payment is not received by the Design-Builder within 20 days of the approval or the last day of the billing period, the Owner hereby agrees to the Escrow Agent to fund the Application for Payment if so requested by the Design-Builder and restore the Escrow to its full value as defined in Article 9.3.

**10.2 Retainage on Progress Payments.** At its discretion, the Owner may retain up to two and one-half percent (2.5%) the cost of the Work, exclusive of general conditions costs, and any amounts paid to Design-Builder's Design Consultant, from each Application for Payment provided, however, that when fifty percent (50%) of the Work has been satisfactorily completed by Design-Builder and Design-Builder is otherwise in compliance with its contractual obligations, Owner will not retain any additional amounts from Design-Builder's subsequent Applications for Payment. Owner will also reasonably consider reducing retainage for Work completed early in the Project.

**10.3 Final Payment.** Design-Builder shall submit its Final Application for Payment to Owner when all work is complete. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment within ten (10) days after Owner's receipt of the Final Application for Payment, provided that Design-Builder has completed all work.

**10.4 Interest.** Payments due and unpaid by Owner to Design-Builder, whether progress payments or final payment, shall bear interest commencing five (5) days after payment is due at the rate of one and one-half percent (1.5 %) per month until paid.

**10.5 Record Keeping and Finance Controls.** Design-Builder acknowledges that this Agreement is to be administered on an "open book" arrangement relative to 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 (GAAP). During the performance of the Work and for a period of three (3) years after Final Payment, Owner and Owner's accountants shall be afforded access to, and the right to audit from time to time, upon reasonable notice, Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the Work, all of which Design-Builder shall preserve for a period of three (3) years after Final Payment. Such inspection shall take place at Design-Builder's offices during normal business hours unless another location and time is agreed to by the parties. Any multipliers or markups agreed to by Owner and Design-Builder as part of this Agreement are only

subject to audit to confirm that such multiplier or markup has been charged in accordance with this Agreement, with the composition of such multiplier or markup not being subject to audit.

## **Article 11 - Termination for Convenience**

**11.1** This Agreement does not provide either party the right to Termination for Convenience. It is the intent of this Agreement for the parties to work together in good faith to complete the project to a point that final product is complete, useable and complimentary to the surrounding community. Once Substantial Completion occurs or if agreed to mutually, either party may Terminate for Convenience. If Design-Builder is terminated for convenience the Owner shall pay Design-Builder for all direct costs for the work performed to date and the reasonable costs to closeout open subcontracts and other commitments to subcontractors, vendors, and labor and respective fee.

## **Article 12 - Termination for Cause**

### **12.1 Termination by Owner for Cause**

**12.1.1** The Owner may terminate this Agreement if the Design-Builder materially breaches any provision of this Contract. Material breaches include, but are not limited to, the Design-Builder's:

- Repeated failure to supply enough properly skilled workers or proper materials.
- Repeated failure to make prompt payment to Subcontractors or Consultants.
- Persistent disregard of applicable laws, statutes, ordinances, or codes.
- Substantial failure to adhere to the Project Schedule or progress milestones.
- Bankruptcy or Insolvency

**12.1.2 Owner's Notice and Cure Period.** Prior to terminating, the Owner must provide written notice to the Design-Builder specifying the default. The Design-Builder shall have 21 calendar days from receipt of such notice to cure the default. If the default cannot reasonably be cured within that time, the Design-Builder must commence the cure and diligently pursue it to completion. If the Design-Builder fails to cure, the Owner may terminate the contract after providing a second written notice and 7 additional days for a reasonable response.

**12.1.3 Payment Upon Owner Termination.** If the Owner terminates the Agreement for cause, the Owner may take possession of the site and finish the Work by whatever reasonable method it deems expedient. The Design-Builder shall not be entitled to receive further payment until the Work is finished.

If the unpaid balance of the Contract Price exceeds the costs of finishing the Work, such excess shall be paid to the Design-Builder.

If such costs exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner.

**12.1.4 Wrongful Termination** - In the event that the Termination for Cause is determined to be wrongful, the termination shall be reestablished as a Termination for Convenience as provided by Article 11 and shall include consideration for all reasonable legal and other closeout costs.

**12.1.5** In the event of Termination for Convenience, the project shall be completed consistent with the approved drawing and specification.

## 12.2 Termination by Design-Builder for Cause

**12.2.1** The Design-Builder may terminate this Agreement if the Owner materially breaches any provision of this Contract. Material breaches include, but are not limited to, the Owner's:

- Failure to make timely payments of amounts due under this Agreement.
- Persistent failure to fulfill its formal obligations necessary for the progress of the Work (such as not providing timely answers involving change directives or other matters that materially affect the progress of the work).
- Suspension of the Work by the Owner for a continuous period of more than 30 calendar days through no fault of the Design-Builder.
- Bankruptcy, Insolvency or keeping the Escrow account balance at its established balance

**12.2.2 Design-Builder's Notice and Cure Period.** Prior to terminating, the Design-Builder must provide written notice to the Owner specifying the default. The Owner shall have 21 calendar days from receipt of such notice to cure the default. If the Owner fails to cure the default within this period, the Design-Builder may terminate the contract after providing a second written notice and 7 additional days for a reasonable response.

**12.2.3 Payment Upon Design-Builder Termination.** If the Contract is terminated by the Design-Builder for cause, the Design-Builder shall be entitled to recover from the Owner payment for all Work executed to date, including reasonable overhead and profit on that Work, plus proven losses regarding materials, equipment, and reasonable termination and legal costs. Payment of properly documented closeout cost shall be made initially utilizing funds available via the Escrow Account as established by Article 9.5.

**12.2.4 Wrongful Termination** - In the event that the Termination for Cause is determined to be wrongful, the termination shall be reestablished as a Termination for Convenience as established by Article 11 and shall include consideration for all reasonable legal and other costs.

## Article 13 - Representatives of the Parties

### 12.1 Owner's Representatives.

**9.1.1** Owner designates the individual listed below as its Senior Representative ("Owner Senior Representative"), which individual has the authority and responsibility to administer all aspects of this Agreement: *(Identify individual's name, title, email address and telephone numbers.)*

xxx  
xxx  
phone - xxx  
email - xxx

### 9.2 Design-Builder's Representatives.

**9.2.1** Design-Builder designates the individual listed below as its Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility to administer all aspects of this Agreement: *(Identify individual's name, title, address and telephone numbers.)*

Joseph N. Matthews  
Executive Vice President  
phone – 571-233-3987  
email – jmatthews@tmgworld.net

## **Article 14 - Insurance**

**14.1 Comprehensive Business Insurance.** Design-Builder shall maintain statutory insurance coverages for General Liability, Workman's Compensation and Auto Insurance, plus umbrella coverage in the amount of \$5,000,000.

**14.2 Property Insurance.** The Owner shall maintain standard form property insurance that includes the full replacement value coverage of the property and its improvements for damage caused by fire, lighting, hail, explosion, theft, vandalism and acts of God to includes coverage for the performance period of this Agreement. The policy shall act as a builders-risk policy and shall not exclude the construction phase.

## **Article 15 - Other Provisions**

**15.1 Other provisions are as follows:**

**15.1.1 Dispute Resolution** - Any claims, disputes or controversies between the parties arising out of or related to the Agreement, or the breach thereof, which cannot be resolved through amicable means shall be resolved in a court of competent jurisdiction in the State in of Michigan, County of Emmet.

**15.1.2 Severability and Waiver** - The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision. The failure of either party to insist, in any one or more instances, upon the performance of any of the terms, covenants, or conditions Agreement, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition, or right as respects further performance.

**15.1.3 Notices** - Any notice given under the Agreement shall be sent by first class or overnight mail, electronic mail, or by facsimile to: 1) the address(s) set forth on the face of this Agreement, or 2) a valid email address used by the parties administering this Agreement or 3) other addresses as the parties hereto shall designate in writing. Each notice or demand shall be deemed effective by the date and time delivered as evidenced by an electronic delivery receipt or seventy-two (72) hours after being sent, whichever occurs first.

**15.1.4 Warranty** – The Design-Builder will provide a warranty for one year from the date of Substantial Completion covering all costs associated with repairing and/or replacing defective and/or non-performing work.

**15.1.5 Assignment** – The intent of this Agreement that the parties hereto, work together in trust to complete the project contemplated herewith. As such time as this project is complete, this Agreement is terminated. Until complete no assignment shall be made by either party unless mutually agreed otherwise.

In the event that Assignment is made, it will be only allowed to the extent that the terms of this Agreement be adopted and remain in full force until the project is complete.

**15.1.6 Interpretation of Contract Documents**

**15.1.6.1** It is the intention of the parties that all of the terms of this Agreement are to be considered as complementary. However, in the event that such an interpretation is not possible, the order of precedence of the documents forming this Agreement, (1) any modifications issued thereto; (2) this Agreement (3) the Project Estimate, (4) the Drawings and Specification, unless the provisions of (2) or (3) are greater.

**15.1.6.2** In the event of a conflict between or among modifications, the later in date shall prevail; in the event of a conflict between or among the terms of the Agreement, the higher standard or greater requirement shall prevail.

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:**

**xxx**

*(Name of Owner)*

**xxx**

*(Printed Name)*

*(Signature)*

**xxx**

*(Title)*

Date: \_\_\_\_\_

**DESIGN-BUILDER:**

**The Matthews Group, Inc, t/a TMG  
Construction Corporation**

*(Name of Design-Builder)*

Joseph N Matthews

*(Printed Name)*

*(Signature)*

Executive Vice President

*(Title)*

Date: \_\_\_\_\_