



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

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

Document No. 520

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Washington, DC

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

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

This **AGREEMENT** is made as of the _____ day of _____ in the year of 2014, by and between the following parties, for services in connection with the Project identified below.

OWNER:

City of North Royalton
13834 Ridge Road
North Royalton, Ohio 44133

OWNER'S REPRESENTATIVE:

(Name and address)
Thomas J. Jordan
Director of Community Development
City of North Royalton
13834 Ridge Road
North Royalton, OH 44133
Phone: 440-237-5484
Email: tjordan@northroyalton.org

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

DESIGN-BUILDER:

(Name and address)
The Krill Company, Inc.
1275 Main Avenue
Cleveland, Ohio 44113

The Design-Builder was selected by the Owner, following the selection process outlined in Ohio Revised Code Sections 153.65 through 153.73, as the Design-Builder whose pricing proposal the Owner determined to be the best value.

PROJECT:

(Include Project name and location as it will appear in the Contract Documents)
North Royalton Administrative Office Building and Park Design-Build Project.

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

Article 1

General

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

1.2 Definitions. Terms, words and phrases used in this Agreement shall have the meanings given them in DBIA Document No. 535, *Modified Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2010 Edition) ("General Conditions of Contract").

1.3 Background Information. The Owner has provided the Design-Builder with the Project Criteria and, if completed, the Schematic Design, produced by the Owner's Criteria Architect under section 153.692 of the Ohio Revised Code. In addition to the Project Criteria, prior to the execution of this Agreement, Owner provided the Design-Builder with the following information related to the Project: (a) a description of the project and project delivery; (b) the anticipated completion date; (c) a description of the preconstruction services; (d) a description of the proposed design services; and (e) a description of the guaranteed maximum price, including the estimated level of design on which such guaranteed maximum price will be based subject to negotiation at the RFP stage. The Design-Builder warrants that a competent person has carefully and diligently reviewed each part of the information provided and represents and agrees, based upon its careful and diligent review of the information provided, that it is not aware of any conflicts, inconsistencies, errors, or omissions of which it has not notified the Owner.

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

Article 2

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

2.1 Design Services. Design-Builder shall, consistent with applicable state licensing laws and the Standard of Care set forth herein, provide design services, including architectural, engineering and other professional services, required by this Agreement. Such design services shall be provided through qualified, licensed design professionals who are either (i) employed by Design-Builder, or (ii) procured by Design-Builder from independent sources in accordance with Ohio law. Except as provided in Article 9 herein, nothing in this Agreement shall be construed to create any legal or contractual relationship of any kind between Owner and any design professional procured or otherwise engaged by the Design-Builder. The Design-Builder shall be

responsible for the acts and omissions of the design professionals procured or otherwise engaged by the Design-Builder under this Agreement. Any agreement or contract awarded for the Project to any subcontractor, sub-subcontractor, design consultants, or design sub-consultant or material supplier shall name the Owner as an intended third party beneficiary, and shall entitle the Owner to enforce any rights thereunder for its benefit. The standard of care for all design professional services performed to execute the Work shall be the care and skill ordinarily used by members of the design profession for similar projects taking into account any unique requirements of the Owner and the location of the Project ("Standard of Care").

2.2 Preliminary Services.

2.2.1 Project Criteria. Owner has provided Design-Builder with Owner's Project Criteria describing Owner's program requirements and objectives for the Project in accordance with section 153.692 of the Ohio Revised Code. Design-Builder acknowledges that the Owner's Project Criteria includes a sufficient description of the Owner's use, space, price, time, site, performance and expandability requirements. Owner's Project Criteria may include schematic design, conceptual documents, design specifications, design performance specifications and other technical materials and requirements prepared by or for Owner.

2.2.1.1 Design-Builder shall review and prepare a written evaluation of Owner's Project Criteria. Design-Builder shall notify the Owner of any inconsistencies in the Owner's Project Criteria. The written evaluation shall include recommendations to Owner for different and innovative approaches to the design and construction of the Project and the feasibility of incorporating environmentally responsible design and construction approaches. The parties shall meet to discuss Design-Builder's written evaluation of Owner's Project Criteria and agree upon what revisions, if any, should be made to such criteria. Design-Builder shall not revise the Owner's Project Criteria unless the Design-Builder receives a written directive to change the Project Criteria from the Owner that is executed by the Criteria Architect.

2.2.1.2 By providing Design-Builder with Owner's Project Criteria, neither the Owner nor the Owner's Representative assume any responsibility for the design of the Project. Design-Builder acknowledges and agrees that it is responsible for preparing all aspects of the design necessary for the completion of the Project, including the verification of any representations made in the Project Criteria or any assumption made by the Design-Builder based upon the Project Criteria.

2.2.2 Schematic Design. To the extent that the Owner has completed the Schematic Design or a portion thereof, Owner shall provide Design-Builder with Owner's Schematic Design.

2.2.2.1 The Design-Builder shall assist the Owner in considering the value of alternate materials, building systems, and equipment by preparing preliminary estimates of the alternatives.

2.2.2.2 The Design-Builder shall complete the Schematic Design or portion thereof provided by the Owner.

2.2.2.3 The Design-Builder shall attend and participate in a minimum of four coordination and review meetings with the Owner to review the Schematic Design.

2.2.2.4 The Design-Builder may also be asked to attend public meetings regarding the Project.

2.2.2.5 Design-Builder shall review and prepare a written evaluation of the Schematic Design. Design-Builder shall notify the Owner and the Criteria Architect of any inconsistencies in the portion of the Schematic Design completed by the Owner. The written

evaluation shall include recommendations to Owner for major building systems and construction materials.

2.2.2.6 The Design-Builder shall prepare an estimated cost of the Work based upon the Schematic Design.

2.2.2.7 Design-Builder shall not revise the Schematic Design unless the Design-Builder receives a written directive to change the Schematic Design from the Owner that is executed by the Criteria Architect.

2.2.2.8 By providing Design-Builder with the Schematic Design, neither the Owner nor the Owner's Representative assume any responsibility for the design of the Project. Design-Builder acknowledges and agrees that it is responsible for preparing all aspects of the design necessary for the completion of the Project, including the verification of any representations made in the Schematic Design or any assumption made by the Design-Builder based upon the Schematic Design.

2.3 Design Development Services. The Design-Builder shall provide Design Development Services based on Owner's Project Criteria and Schematic Design, as may be revised in accordance with Section 2.2 hereof, and in accordance with all laws, codes, regulations and industry standards which are applicable to the Project.

2.3.1 The Design-Builder shall prepare Design Development Documents for the Owner's approval which shall illustrate and describe the development of the approved Schematic Design.

2.3.2 The Design Development Documents shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems, and describe the size and character of the Project as to architectural, structural, mechanical, and electrical systems, and such other elements as may be appropriate. The Design-Builder shall also perform a building code review and analysis, and a zoning code review and analysis.

2.3.3 The Design Development Documents shall include outline specifications that identify major materials and systems and establish in general their quality levels.

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

2.3.5 The Design-Builder shall consider the value of alternative materials, building systems and equipment in developing the Design Development Documents for the Project.

2.3.6 The Design-Builder shall attend and participate a minimum of four coordination and review meetings with the Owner during the Design Development Phase. As part of its Design Development Services, the Design-Builder may also be required to attend public meetings regarding the Project.

2.3.7 The Design-Builder shall submit the Design Development Documents to the Owner, and request the Owner's approval. The parties shall meet to discuss the Design Development Documents and agree upon what revisions, if any, should be made. Design-Builder shall perform such agreed-upon revisions. Design-Builder shall not revise the Design Development Documents unless the Design-Builder receives a written directive to change the Design Development Documents from the Owner that is executed by the Owner and the Criteria Architect. Neither Owner's Representative's review nor approval of the Design Development Documents shall be deemed to transfer any design liability from Design-Builder to Owner or Owner's Representative.

2.3.8 Before final payment is due to the Design-Builder under this Agreement, the Design-Builder shall submit two sets of record Design Development Documents in paper form and in CAD (.dwg) form.

2.4 GMP Proposal. Based on Owner's Project Criteria, the Schematic Design Documents, and the Design Development Documents, as each may be revised pursuant to this Agreement, and any other Basis of Design Documents upon which the parties may agree, Design-Builder shall submit a Guaranteed Maximum Price Proposal to Owner (the "Proposal"), which shall include the following unless the parties mutually agree otherwise:

2.4.1 a schedule and date of Substantial Completion of the Project upon which the Contract Price for the Project is based;

2.4.2 all other information necessary for the parties to enter into DBIA Document No. 530, *Modified Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee with an Option for a Guaranteed Maximum Price* (2010 Edition), with the accompanying Modified General Conditions of Contract, DBIA Document 535;

2.4.3 a complete list and description of all interim design submissions including the Design Development Services;

2.4.4 a list of key personnel and consultants who will perform work on the Project (the "Project Team");

2.4.5 a completed Proposal Form 6, (see Design-Builder's Proposal Form 5, attached hereto) with the pricing for each of the components of the pricing criteria identified including, but not limited to:

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

2.5 Review of GMP Proposal. Following the submission of the GMP Proposal, the final design build contract will be prepared, incorporating applicable portions of the Design-Builder's Proposal to the extent such portions are consistent with the contract included in the RFP. It is expected that the Design-Builder will be requested to meet with the Evaluation Committee to assist in finalizing the design build contract. If for any reason, the Design-Builder and the Evaluation Committee are unable to conclude these final negotiations and execute the design build contract, the Evaluation Committee may suspend negotiations with the Design-Builder and initiate an RFP process based upon the Design Development Documents prepared by the Design-Builder under this Agreement. The City reserves the right to terminate negotiations of the GMP at any time and implement a different project delivery method. At the conclusion of successful negotiations, the Evaluation Committee will recommend that the City award the design build contract to the Design-Builder. The City reserves the right, in its sole discretion, to reject the recommendation of the Evaluation Committee and to cancel the negotiations of the design build contract in its entirety if the City determines that such cancellation is in the best interest of the City.

2.6 Completion of This Agreement. Design-Builder's services under this Agreement shall be deemed completed upon meeting with Owner to discuss the GMP Proposal and making the revisions to the Proposal requested by the Owner under Article 2.5 of this Agreement.

2.7 Additional Services. Design-Builder may perform the Additional Services set forth in a separate exhibit to this Agreement. The cost for such Additional Services shall be as mutually agreed upon by Owner

and Design-Builder, with the Contract Price for this Agreement, as set forth in Section 6.1 hereof, being adjusted accordingly.

Article 3

Owner's Services and Responsibilities

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

3.2 Owner's Project Criteria. Owner shall provide Design-Builder with Owner's Project Criteria.

3.3 Owner Provided Information. Owner shall provide, at its own cost and expense, for Design-Builder's information and use, the following, all of which Design-Builder is entitled to rely upon in performing its obligations hereunder:

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

3.3.2 Temporary and permanent easements;

3.3.3 A legal description of the Site;

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

3.3.5 To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including, but not limited to, Hazardous Conditions, in existence at the Site.

Article 4

Ownership of Work Product

4.1 Work Product. All drawings, specifications and other documents and electronic data furnished by Design-Builder to Owner under this Agreement ("Instruments of Service") are deemed to be instruments of service and 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 below.

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

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

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

Article 5

Contract Time

5.1 Commencement Date. Design-Builder shall commence performance of the services set forth in this Agreement within five (5) days of Design-Builder's receipt of Owner's Notice to Proceed ("Date of Commencement") unless the parties mutually agree otherwise in writing. Design-Builder's services set forth in this Agreement shall be complete upon acceptance of the GMP by the Owner. The Design-Builder's proposed schedule is attached hereto as Exhibit 1.

5.2 Interim Dates. Interim milestone dates, if any, of identified portions of the services set forth in this Agreement shall be achieved as described in a separate exhibit to this Agreement.

Article 6

Contract Price

6.1 Contract Price. The Contract Price for this Agreement is as set forth below: **\$45,000.00**.

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

Article 7

Procedure for Payment

7.1 Payment. Design-Builder and Owner agree upon the following method for partial and final payment of the Preliminary Services Fee to Design-Builder for the services hereunder:

First Payment	25% of Contract Price	Upon the receipt of the Design-Builder's written evaluation of Owner's Project Criteria and completion of the Schematic Design.
Second Payment	50% of Contract Price	Upon the completion of the Design Development Services and submission of the Design-Builder's GMP Proposal.
Final Payment	25% of Contract Price	Upon the submission of two sets of record Schematic Design Documents in paper form and in CAD (.dwg) form.

7.2 Interest. Payments due and unpaid by Owner to Design-Builder shall bear interest commencing thirty (30) days after payment is due at the rate of a quarter percent (0.25%) per annum.

Article 8

Electronic Data

8.1 Electronic Data.

8.1.1 In addition to the requirements of Article 3.2.7, the parties agree that the Contract Documents, including drawings, specifications and three-dimensional modeling (such as Building Information Models) and other Instruments of Service may be transmitted among Owner, Design-Builder and others in electronic media (collectively "Electronic Data") provided that the same Contract Documents are also provided to the Owner in an electronic .dwg file.

8.2 Transmission of Electronic Data.

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

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

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

8.3 Electronic Data Protocol.

8.3.1 The parties acknowledge that Electronic Data may be altered or corrupted, intentionally or otherwise, due to occurrences beyond their reasonable control or knowledge, including but not limited to compatibility issues with user software, manipulation by the recipient, errors in transcription or transmission, machine error, environmental factors, and operator error. Consequently, the parties understand that there is some level of increased risk in the use of Electronic Data for the communication of design and construction information and, in consideration of this, agree, and shall require their independent contractors, Subcontractors and Design Consultants to agree to the following protocols, terms and conditions set forth in this Section 8.3.

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

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

8.3.4 The transmitting party specifically disclaims all warranties, expressed or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose, with respect to the media transmitting the Electronic Data. However, transmission of the Electronic Data

via electronic means shall not invalidate or negate any duties pursuant to the applicable standard of care with respect to the creation of the Electronic Data, unless such data is materially changed or altered after it is transmitted to the receiving party, and the transmitting party did not participate in such change or alteration.

Article 9

Other Provisions

9.1 Dispute Resolution.

9.1.1 Mediation. The parties agree that any claim, dispute or controversy arising out of or relating to this Agreement or the breach thereof that cannot be resolved through discussions by the parties shall be submitted to non-binding mediation administered by a mutually agreeable impartial mediator. Unless otherwise agreed to by the parties, the mediation shall take place in the county in which the Project is located and all mediation costs shall be split equally between the parties. In the event that a request for mediation is made concurrently with the filing of a complaint, the mediation shall occur within 60 days from the date of filing unless a longer period of time is agreed to by the parties.

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

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

9.3 Assignment. Neither Design-Builder nor Owner shall without the written consent of the other party assign, transfer, or sublet any portion or part of its obligations under this Agreement.

9.4 Governing Law. This Agreement shall be governed by the laws of the State of Ohio.

9.5 Severability. If any provision or any part of a provision of this Agreement shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to applicable laws by any authority having jurisdiction, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provisions or parts of the provision of this Agreement, which shall remain in full force and effect as if the unenforceable provision or part was deleted.

9.6 Amendments. This Agreement may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of both parties.

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

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

9.8.1 Materials purchased for use or consumption in connection with the proposed Work will be

exempt from the State of Ohio Sales Tax, as provided in Section 5739.02 of the Ohio Revised Code, and also from the State of Ohio Use Tax, as provided in Section 5741.01 of the Ohio Revised Code. The Owner will provide the Design-Builder with a Construction Tax Exempt Certificate upon request, made in writing to the Owner.

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

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

9.9 Prevailing Wage Rates. The Design-Builder and its Design Consultants, Subcontractors, Design Sub-Consultants, Sub-Subcontractors, regardless of tier, shall strictly comply with their obligation to pay their employees working on the Project site at the applicable prevailing wage rates for the type of work. The Design-Builder shall adjust and shall require its Design Consultants, Subcontractors, Design Sub-Consultants, Sub-Subcontractors, regardless of tier, to adjust the wage rates to conform to the current rates if the applicable wage rates change prior to completion of the Work, without increase in the Contract Sum. With each Application for Payment, Design-Builder and all Design Consultants, Subcontractors, Design Sub-Consultants, Sub-Subcontractors shall provide a properly completed Affidavit of Design-Builder or Subcontractor Prevailing Wage. The Prevailing Wage Determination Cover Letter is attached as Exhibit 13 of the Agreement and is incorporated by reference herein.

9.10 Other Provisions. Other provisions, if any, are as follows:

9.10.1 Non-Discrimination. The Design-Builder including its consultants and subcontractors, if any, shall not discriminate against any employee or applicant for employment to be employed in the performance of this Agreement, with respect to the hire, tenure, terms, conditions, or privileges of employment or any matter directly or indirectly related to employment, because of sex, race, color religion, national origin, or ancestry. Breach of this covenant may be regarded as a material breach of this Agreement.

9.10.2 Indemnification. The Design-Builder agrees, to the fullest extent permitted by law, to indemnify and hold the Owner harmless from any damage, liability, or cost (including reasonable attorney fees) to the extent caused by negligent acts, errors or omissions in the performance of Design-Builder's services under the Agreement and those of its design professionals, consultants, subcontractors, or anyone for whose performance the Design-Builder is legally liable, regardless of tier.

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

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

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

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

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:

North Royalton, Ohio
(Name of Owner)

(Signature)

(Printed Name)

President of Council,
pursuant to Resolution No. _
(Title)

Date: _____

DESIGN-BUILDER:

The Krill Company, Inc.
(Name of Design-Builder)

(Signature)

(Printed Name)

(Title)

Date: _____

CERTIFICATE

(Section 5705.41, R.C.)

The undersigned, Finance Director of the City of North Royalton, Ohio, hereby certifies that the moneys required to meet the obligations of the City during the current fiscal year, under the attached Agreement for the services indicated herein have been lawfully appropriated for those purposes and are in the appropriate account of the City, or in the process of collection to the credit of the appropriate account or fund, free from any previous encumbrances.

DATED: _____

North Royalton, Ohio

By: _____
Finance Director

PROPOSAL FORM 5

PRELIMINARY SERVICES PRICE PROPOSAL

Provide the lump sum price for providing all labor, materials, equipment, and services necessary to complete the work contained in the Modified Standard Form of Preliminary Agreement between Owner and Design-Builder, DBIA Document No. 520.

Pricing Proposal	Proposed Price
Preliminary Services Fee, including Design Development Services, as specified in the DBIA Document No. 520	\$ <u>45,000.00</u>

Provide the percentage of the Guaranteed Maximum Price attributable to each of the Work Items listed below. The percentage provided below shall not be modified in the GMP Proposal without the written approval of the Owner.

Work Items	Percentage
Design Services Fee (for all design services necessary to complete the Project not included as part of the Preliminary Services Fee)	<u>3.00</u> %
Preconstruction Fee	<u>.05</u> %
Design-Build Services Fee	<u>3.45</u> %
General Conditions	<u>6.50</u> %
Cost of the Work (excluding contingency)	<u>84.00</u> %
Contingency	<u>3.00</u> %
Total	100% of the GMP

Provide the percentage that the Design-Builder shall apply to additions and deletions to the Cost of the Work to account for the Design-Builder's Fee and for the fees, overhead and profit for all design consultants and subcontractors of any tier on the Project. The percentage provided herein shall include all fees, overhead and profit of the Design-Builder and for all design consultants and subcontractors of any tier for any additive and deductive change orders on the Project. The percentage provided below shall not be modified without the written approval of the Owner.

Fee for additive and deductive change orders, including the fees, overhead and profit of the Design-Builder and for all design consultants and subcontractors of any tier	Proposed Percentage Fee
Additive Change Orders	7.5 %
Deductive Change Orders (Reduction)	(3.00 %)

Provide proposed durations for the following major milestones. The durations provided below shall not be modified without written approval of the Owner.

Major Milestone Durations	Proposed Durations in Work Days
Completion of the preliminary services	30
From award of preliminary services to submission of the GMP	30
From acceptance of the GMP to Project completion	100

Provide proposed durations for any interim milestones which the Design-Builder anticipates on the Project.

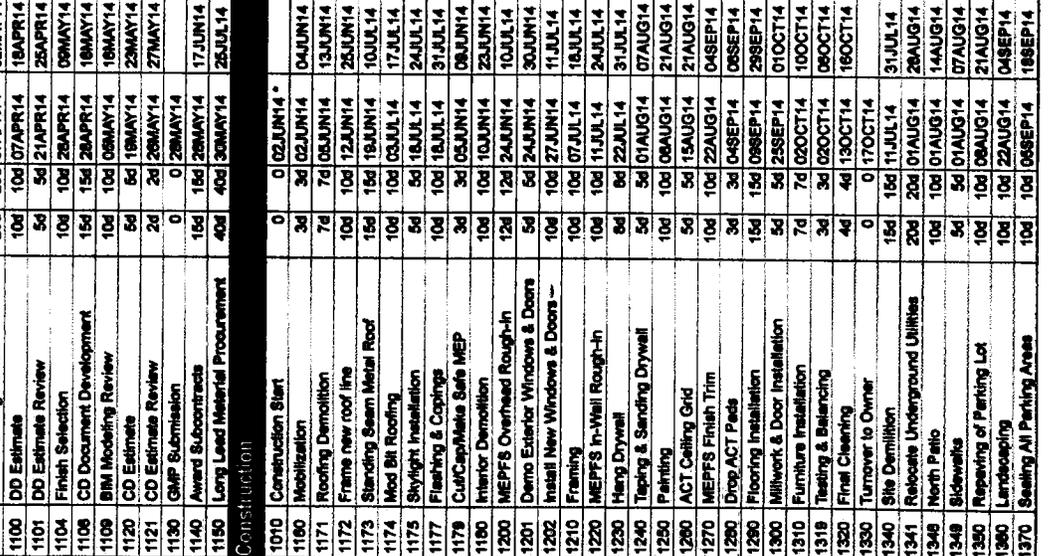
Proposed Interim Milestone Durations	Proposed Durations in Work Days

Design Documents with Permits	60 Days

1000	Notice to Proceed	0	0	20FEB14	05MAR14
1020	Verify Existing Program	10d	10d	20FEB14	05MAR14
1030	Verify Existing Floor Plan	10d	10d	03MAR14	14MAR14
1080	DD Document Development	20d	20d	10MAR14	04APR14
1081	MEP/FS Drawing Coordination	15d	15d	17MAR14	04APR14
1089	Permitting	20d	20d	07APR14	02MAY14
1091	Code & Zoning Review	20d	20d	07APR14	02MAY14
1100	DD Estimate	10d	10d	07APR14	18APR14
1101	DD Estimate Review	5d	5d	21APR14	25APR14
1104	Finish Selection	10d	10d	28APR14	09MAY14
1108	CD Document Development	15d	15d	28APR14	18MAY14
1109	BIM Modeling Review	10d	10d	06MAY14	16MAY14
1120	CD Estimate	5d	5d	18MAY14	23MAY14
1121	CD Estimate Review	2d	2d	26MAY14	27MAY14
1130	GMP Submission	0	0	28MAY14	
1140	Award Subcontracts	10d	10d	28MAY14	17JUN14
1150	Long Lead Material Procurement	40d	40d	30MAY14	25JUL14

Construction

1010	Construction Start	0	0	02JUN14*	
1160	Mobilization	3d	3d	02JUN14	04JUN14
1171	Roofing Demolition	7d	7d	05JUN14	13JUN14
1172	Frame new roof line	10d	10d	12JUN14	25JUN14
1173	Standing Beam Metal Roof	15d	15d	19JUN14	10JUL14
1174	Mod Bit Roofing	10d	10d	05JUL14	17JUL14
1175	Skylight Installation	5d	5d	16JUL14	24JUL14
1177	Flashing & Copings	10d	10d	16JUL14	31JUL14
1179	Cut/Cap/Make Safe MEP	3d	3d	05JUN14	08JUN14
1180	Interior Demolition	10d	10d	10JUN14	23JUN14
1200	MEPFS Overhead Rough-in	12d	12d	24JUN14	10JUL14
1201	Demo Exterior Windows & Doors	5d	5d	24JUN14	30JUN14
1202	Install New Windows & Doors	10d	10d	27JUN14	11JUL14
1210	Framing	10d	10d	07JUL14	18JUL14
1220	MEPFS In-Wall Rough-in	10d	10d	11JUL14	24JUL14
1230	Hang Drywall	8d	8d	22JUL14	31JUL14
1240	Taping & Sanding Drywall	5d	5d	01AUG14	07AUG14
1250	Painting	10d	10d	06AUG14	21AUG14
1260	ACT Ceiling Grid	5d	5d	15AUG14	21AUG14
1270	MEPFS Finish Trim	10d	10d	22AUG14	04SEP14
1290	Drop ACT Peds	3d	3d	04SEP14	08SEP14
1290	Flooring Installation	15d	15d	09SEP14	29SEP14
1300	Milwork & Door Installation	5d	5d	25SEP14	01OCT14
1310	Furniture Installation	7d	7d	02OCT14	10OCT14
1319	Testing & Balancing	3d	3d	02OCT14	06OCT14
1320	Final Cleaning	4d	4d	13OCT14	16OCT14
1330	Turnover to Owner	0	0	17OCT14	
1340	Site Demolition	15d	15d	11JUL14	31JUL14
1341	Relocate Underground Utilities	20d	20d	01AUG14	28AUG14
1348	North Patio	10d	10d	01AUG14	14AUG14
1348	Sidewalks	5d	5d	01AUG14	07AUG14
1350	Repaving of Parking Lot	10d	10d	09AUG14	21AUG14
1360	Landscaping	10d	10d	22AUG14	04SEP14
1370	Sealing All Parking Areas	10d	10d	08SEP14	18SEP14



North Royalton Admin Building
The Krill Co. Inc

Start date	20FEB14
Finish date	16OCT14
Date date	20FEB14
Plan date	24JAN14
Page number	1A
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