

Resolution

Number 18-0810

Adopted Date May 24, 2018

PROMOTE SAMANTHA HALL FROM EMERGENCY COMMUNICATIONS OPERATOR TO THE POSITION OF EMERGENCY COMMUNICATIONS LEADS/TRAINING COORDINATOR WITHIN THE WARREN COUNTY EMERGENCY SERVICES DEPARTMENT

WHEREAS, the director has recommended promoting Ms. Hall to the position of Emergency Communications LEADS/Training Coordinator after interviewing multiple internal and external candidates: and


NOW THEREFORE BE IT RESOLVED, to promote Samantha Hall to the position of Emergency Communications LEADS/Training Coordinator, non-exempt status (40 hours per week), at \$29.59 bi-weekly, effective pay period beginning May 29, 2018 subject to six month probation period; and

Mrs. Jones moved for adoption of the foregoing resolution being seconded by Mr. Grossmann. Upon call of the roll, the following vote resulted:

Mr. Young- yea
Mr. Grossmann- yea
Mrs. Jones- yea

Resolution adopted this 24th day of May 2018.

BOARD OF COUNTY COMMISSIONERS


Tina Osborne, Clerk

HR

cc: Emergency Services (file)
Samantha Hall's Personnel File
OMB – Sue Spencer
Job Class # 1345

Resolution

Number 18-0811

Adopted Date May 24, 2018

AUTHORIZE THE POSTING OF THE "EMERGENCY COMMUNICATIONS SUPERVISOR" POSITION, WITHIN THE EMERGENCY SERVICES DEPARTMENT, IN ACCORDANCE WITH WARREN COUNTY PERSONNEL POLICY MANUAL, SECTION 2.02(A)

WHEREAS, there exists an opening for the "Emergency Communications Supervisor" position within the Emergency Services Department; and

NOW THEREFORE BE IT RESOLVED, to authorize the posting of the position of "Emergency Communications Supervisor" in accordance with Warren County Personnel Policy Manual, Section 2.02(A); posting to occur for a period of at least seven (7) consecutive calendar days beginning May 25, 2018.

Mrs. Jones moved for adoption of the foregoing resolution being seconded by Mr. Grossmann. Upon call of the roll, the following vote resulted:

Mr. Young- yea
Mr. Grossmann- yea
Mrs. Jones- yea

Resolution adopted this 24th day of May 2018.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: Emergency Services (file)
OMB – Sue Spencer
Job Class #1338

Resolution

Number 18-0812

Adopted Date May 24, 2018

RESCIND RESOLUTION #18-0739 WHICH AUTHORIZED THE HIRING OF ANDREW WEAVER AS TEMPORARY GENERAL LABORER WITHIN THE WARREN COUNTY WATER AND SEWER DEPARTMENT

WHEREAS Mr. Weaver has declined the position as he has accepted a position elsewhere; and

NOW THEREFORE BE IT RESOLVED, to rescind Resolution #18-0739 adopted May 8, 2018, which authorized the hiring of Andrew Weaver as Temporary General Laborer the Warren County Water and Sewer Department.

Mrs. Jones moved for adoption of the foregoing resolution being seconded by Mr. Grossmann. Upon call of the roll, the following vote resulted:

Mr. Young- yea
Mr. Grossmann- yea
Mrs. Jones- yea

Resolution adopted this 24th day of May 2018.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

HR

cc: Water and Sewer (file)
A. Weaver's Personnel File
OMB-Sue Spencer
Job Class #2187
Position Control #580102187

Resolution

Number 18-0813

Adopted Date May 24, 2018

HIRE SAMANTHA BURTON AS PROTECTIVE SERVICES CASEWORKER I, WITHIN THE WARREN COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES, CHILDREN SERVICES DIVISION


BE IT RESOLVED, to hire Samantha Burton as Protective Services Caseworker I within the Warren County Department of Job and Family Services, Children Services Division, classified, full-time permanent, non-exempt status (40 hours per week), Pay Grade #6, \$15.67 per hour, under the Warren County Job and Family Services, Children Services compensation plan, effective June 4, 2018, subject to a negative drug screen and 365 day probationary period.

Mrs. Jones moved for adoption of the foregoing resolution being seconded by Mr. Grossmann. Upon call of the roll, the following vote resulted:

Mr. Young- yea
Mr. Grossmann- yea
Mrs. Jones- yea

Resolution adopted this 24th day of May 2018.

BOARD OF COUNTY COMMISSIONERS


Tina Osborne, Clerk

H/R

cc: Children Services (file)
Samantha Burton's Personnel file
OMB – Sue Spencer
Job Class #1798
Position Control #273101798

Resolution

Number 18-0814

Adopted Date May 24, 2018

APPROVE LEAVE DONATION FOR EDGAR WALKER, HVAC TECHNICIAN I WITHIN THE WARREN COUNTY FACILITIES MANAGEMENT DEPARTMENT

WHEREAS, the director of the Facilities Management Department has requested that, due to the employee's serious health condition, to approve leave donation for Ed Walker; and


NOW THEREFORE BE IT RESOLVED, to approve leave donation for Edgar Walker, HVAC Technician I, within the Facilities Management Department, effective immediately.

Mrs. Jones moved for adoption of the foregoing resolution being seconded by Mr. Grossmann. Upon call of the roll, the following vote resulted:

Mr. Young- yea
Mr. Grossmann- yea
Mrs. Jones- yea

Resolution adopted this 24th day of May 2018.

BOARD OF COUNTY COMMISSIONERS


Tina Osborne, Clerk

cc: Facilities Management (file)
E. Walker's FMLA File
OMB – Sue Spencer
Tammy Whitaker

Resolution

Number 18-0815

Adopted Date May 24, 2018

HIRE DENNIS MCGEORGE AS CUSTODIAL WORKER I WITHIN THE WARREN COUNTY DEPARTMENT OF FACILITIES MANAGEMENT

BE IT RESOLVED, to hire Dennis McGeorge as Custodial Worker I within the Department of Facilities Management, classified, full-time permanent status (40 hours per week), Pay Range #3, \$10.56 per hour, effective June 4, 2018, subject to a negative drug screen and a 365-day probationary period.

Mrs. Jones moved for adoption of the foregoing resolution being seconded by Mr. Grossmann. Upon call of the roll, the following vote resulted:

Mr. Young- yea
Mr. Grossmann- yea
Mrs. Jones- yea

Resolution adopted this 24th day of May 2018.

BOARD OF COUNTY COMMISSIONERS


Tina Osborne, Clerk

H/R

cc: Facilities Management (file)
Dennis McGeorge's Personnel file
OMB-Sue Spencer

Resolution

Number 18-0816

Adopted Date May 24, 2018

ACCEPT WITHDRAWAL OF REZONING APPLICATION OF THE STATE OF OHIO (LEBANON CORRECTIONAL INSTITUTION), RANDAL D. PAGE, BUSINESS ADMINISTRATOR (CASE #2018-01), TO REZONE APPROXIMATELY 8.39 ACRES FROM PUBLIC INSTITUTIONAL ZONE "PI" AND INTERSTATE HIGHWAY OVERLAY "IHO" TO PLANNED UNIT DEVELOPMENT "PUD"

WHEREAS, this Board set a public hearing for the rezoning application o of Randal D. Page, Business Administrator for the State of Ohio (Lebanon Correctional Institution), owner of record, (Case #2018-01), to rezone approximately 8.39 acres located at 3791 SR 63 in Turtlecreek Township from Public Institutional Zone "PI" and Interstate Highway Overlay "IHO" to Planned Unit Development "PUD" to be held May 24, 2018, at 10:45 a.m. in the County Commissioners Meeting Room; and

WHEREAS, this Board is in receipt of a request to withdraw said rezoning application; and

NOW THEREFORE BE IT RESOLVED, to accept the withdrawal of the rezoning application of Randal D. Page, Business Administrator for the State of Ohio (Lebanon Correctional Institution), owner of record, (Case #2018-01), to rezone approximately 8.39 acres from Public Institutional Zone "PI" and Interstate Highway Overlay "IHO" to Planned Unit Development "PUD".

Mrs. Jones moved for adoption of the foregoing resolution being seconded by Mr. Grossmann. Upon call of the roll, the following vote resulted:

Mr. Young- yea
Mr. Grossmann- yea
Mrs. Jones- yea

Resolution adopted this 24th day of May 2018.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: RPC
RZC
Rezoning file
Applicant
Township Trustees

Resolution

Number 18-0817

Adopted Date May 24, 2018

AUTHORIZE PRESIDENT OF THE BOARD TO SIGN PERMIT APPLICATION FROM THE OHIO DEPARTMENT OF COMMERCE, DIVISION OF LIQUOR CONTROL FOR AN EVENT AT THE WARREN COUNTY FAIRGROUNDS

WHEREAS, the Warren County Agricultural Society has authorized the Miami Valley Brewery Collectibles Club of America event to be hosted at the Warren County Fairgrounds on June 1 & 2, 2018; and

NOW THEREFORE BE IT RESOLVED, to authorize the President of the Board to sign an F-2 Permit Application from the Ohio Department of Commerce, Division of Liquor Control, behalf of the Warren County Agricultural Society for the Miami Valley Brewery Collectibles Club of America; copy of said application is attached hereto and made a part hereof.

Mrs. Jones moved for adoption of the foregoing resolution being seconded by Mr. Grossmann. Upon call of the roll, the following vote resulted:

Mr. Young- yea
Mr. Grossmann- yea
Mrs. Jones- yea

Resolution adopted this 24th day of May 2018.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

/tao

cc: Warren County Agricultural Society (file)
C/A—Ohio Department of Commerce, Division of Liquor Control

Resolution

Number 18-0818

Adopted Date May 24, 2018

AUTHORIZE PRESIDENT OF THE BOARD TO SIGN PERMIT APPLICATIONS FROM THE OHIO DEPARTMENT OF COMMERCE, DIVISION OF LIQUOR CONTROL ON BEHALF OF THE WARREN COUNTY AGRICULTURAL SOCIETY

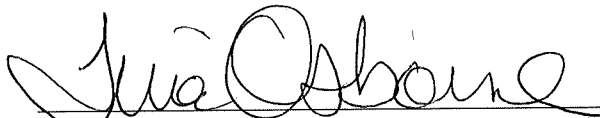
BE IT RESOLVED, to authorize the President of the Board to sign a permit application from the Ohio Department of Commerce, Division of Liquor Control, on behalf of the Warren County Agricultural Society for the purpose of obtaining a liquor license during the Warren County Fair; copy of said application as attached hereto and made a part hereof.

Mrs. Jones moved for adoption of the foregoing resolution being seconded by Mr. Grossmann. Upon call of the roll, the following vote resulted:

Mr. Young- yea
Mr. Grossmann- yea
Mrs. Jones- yea

Resolution adopted this 24th day of May 2018.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

/to

cc: Warren County Agricultural Society (file)
C/A—Ohio Department of Commerce, Division of Liquor Control

Resolution

Number 18-0819

Adopted Date May 24, 2018

AUTHORIZE COUNTY ADMINISTRATOR TO SIGN EMPLOYER'S REPRESENTATIVE AUTHORIZATION FORM ON BEHALF OF THE WARREN COUNTY BOARD OF COMMISSIONERS FOR OHIO DEPARTMENT OF JOB AND FAMILY SERVICES RELATIVE UNEMPLOYMENT COMPENSATION CLAIMS

WHEREAS, the County has a contract with Sedgwick to act as the Third Party Administrator for the County's unemployment claims; and

WHEREAS, it is necessary to complete the Employer's Representative Authorization form to allow Sedgwick to act on the County's behalf for all matters pertaining to the necessary service functions related to processing unemployment claims; and

NOW THEREFORE BE IT RESOLVED, to authorize County Administrator to sign a Employer's Representative Authorization form on behalf of the Warren County Board of Commissioners for the Ohio Department Job and Family Services; as attached hereto and made a part hereof.

Mrs. Jones moved for adoption of the foregoing resolution being seconded by Mr. Grossmann. Upon call of the roll, the following vote resulted:

Mr. Young- yea
Mr. Grossmann- yea
Mrs. Jones- yea

Resolution adopted this 24th day of May 2018.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: C/A – Sedgwick
OMB- Sue Spencer

Resolution

Number 18-0820

Adopted Date May 24, 2018

APPROVE THE DESTRUCTION OF THE FOLLOWING WARREN COUNTY SHERIFF'S OFFICE EQUIPMENT

WHEREAS, the Warren County Sheriff's Office has determined there is no longer any service left in the following;

- Asus Router WC# 26010
- Engenius Router SN 134221389
- Asus Router SN D1AGB013441
- Asus Router SN 305A3AE3D0E0
- Asus Router SN F91ADQ003943
- Engenius Router SN 143242566
- Audio Cable
- Bullet IR Camera SN PC168HR-IR
- Fingerprint Scanner SN 002167F01
- Wireless Spy Camera & Receiver
- RC450A Wireless Receiver & Camera
- Wireless Camera & Receiver SN RC211A
- Nutex Audio & Video Transmitter
- Spy Camera Receiver
- 2 Philips 2-4GHZ Wireless Receivers
- Monitor & Receiver Combo
- Portable Recorder
- Memo Cam DV-COP
- DVR SN 200905102541
- HD Mini DVR
- 4CH DVR SN 90153111
- Wireless Clock Radio Camera
- 18 Misc Spy Cameras
- Media Cart WC# 25837
- Metal Cart WC# 05038
- Pull down Projector Screen
- Elite Screen powered projector screen
- Swingline Electric Stapler WC# 23562
- 4 Asp

WHEREAS, the Warren County Sheriff's Office plans to dispose of the items properly; and

NOW THEREFORE BE IT RESOLVED, to dispose of the above listed property.

Mrs. Jones moved for adoption of the foregoing resolution being seconded by Mr. Grossmann. Upon call of the roll, the following vote resulted:

Mr. Young- yea
Mr. Grossmann- yea
Mrs. Jones- yea

Resolution adopted this 24th day of May 2018.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: Sheriff (file)
B. Quillen – Auditor's Office

**BOARD OF COUNTY COMMISSIONERS
WARREN COUNTY, OHIO**

Resolution

Number 18-0821

Adopted Date May 24, 2018

AUTHORIZE PRESIDENT OF THE BOARD TO SIGN A TERMINAL POINT OF SALE (POS) SETUP FORM WITH MUNICIPAL NATIONWIDE PAYMENT SOLUTIONS TO ORDER A NEW CREDIT CARD SWIPE WITHIN THE BUILDING AND ZONING DEPARTMENT

BE IT RESOLVED, to approve and authorize the President of the Board to sign a Terminal POS Setup Form with Municipay Nationwide Payment Solutions to order a new credit card swipe within the Building and Zoning Department; copy of said document attached hereto and made a part hereof.

Mrs. Jones moved for adoption of the foregoing resolution being seconded by Mr. Grossmann. Upon call of the roll, the following vote resulted:

Mr. Young- yea
Mr. Grossmann- yea
Mrs. Jones- yea

Resolution adopted this 24th day of May 2018.

BOARD OF COUNTY COMMISSIONERS


Tina Osborne, Clerk

cc: C/A—MuniciPay Nationwide Payment Solutions
B/Z (file)

Resolution

Number 18-0822

Adopted Date May 24, 2018

APPROVE AND AUTHORIZE THE PRESIDENT AND/OR VICE-PRESIDENT OF THIS BOARD TO SIGN THE FY 2019 RECLAIM APPLICATION UPDTAE FOR THE YOUTH SERVICES SUBSIDY GRANT THROUGH THE STATE OF OHIO DEPARTMENT OF YOUTH SERVICES ON BEHALF OF THE WARREN COUNTY JUVENILE COURT

BE IT RESOLVED, to approve and authorize the President and/or Vice-President of this Board to sign the FY 2019 Reclaim Application update for the Youth Services Subsidy Grant through the State of Ohio Department of Youth Services, effective July 1, 2018 to June 30, 2019, on behalf of the Warren County Juvenile Court; and

BE IT FURTHER RESOLVED, in the event funding is not available from State of Ohio Department of Youth Services, the Warren County Board of Commissioners has no further obligation to fund this project.

Mrs. Jones moved for adoption of the foregoing resolution being seconded by Mr. Grossmann. Upon call of the roll, the following vote resulted:

Mr. Young- yea
Mr. Grossmann- yea
Mrs. Jones- yea

Resolution adopted this 24th day of May 2018.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: Juvenile Court (file)
Ohio Department of Youth Services
OGA (file)

**Ohio Department of Youth Services Subsidy Grant
JUVENILE COURT FUNDING APPLICATION UPDATE**

Submit electronically in **PDF** format by June 1, 2018 to:

DYSGrantsreporting@DYS.Ohio.gov

Juvenile Court: Warren County Juvenile Court

Fiscal Year 2019 Projections:

- a) Projected number of admissions to DYS in FY 2019: 2
- b) This represents (check one) from the previous year:
 an increase a decrease no change
- c) Projected number of admissions to a CCF in FY 2019: 3
- d) This represents (check one) from the previous year:
 an increase a decrease no change

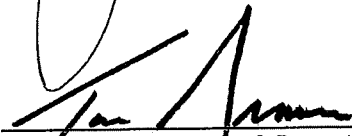
Authorized Signatures:



Administrative Judge

5-9-18

Date



President, Board of County Commissioners
or County Executive

5/24/18

Date

**Fiscal Accountability
Attachment A Page 1**

County: <u>Warren</u>		
Allocations		
FY 2019 Tentative Base Allocation (YSG/510)	(1A)	\$ 287,394.00
FY 2019 Tentative Variable Allocation (RECLAIM/401)	(2A)	\$ 631,696.14
FY 2019 Supplemental RECLAIM Allocation	(3A)	\$ _____
FY 2019 Targeted RECLAIM Allocation	(4A)	\$ _____
FY 2019 Competitive RECLAIM Allocation	(5A)	\$ _____
FY 2019 JDAI Allocation	(6A)	\$ _____
FY 2019 Y/E EVB Program Development Allocation	(7A)	\$ _____
Allocations Subtotal		(A) \$ 919,090.14
Tentative Carryover Balances as of 6/30/18 and Carryover Limit		
Subsidy Grant Carryover (YSG + RECLAIM)*	(1B)	\$ 243,869.00
Targeted RECLAIM Carryover	(2B)	\$ _____
Competitive RECLAIM Carryover	(3B)	\$ _____
JDAI Carryover	(4B)	\$ 59,267.00
Detention Alternatives and Enhancements Carryover	(5B)	\$ _____
Y/E EVB Program Development Carryover (Include any former HB-153 Funds)	(6B)	\$ _____
Tentative Carryover Subtotal		(B) \$ 303,136.00
Carryover Limit		(C) \$ 211,870.17
<i>(25% of Total FY 2017 RECLAIM and Youth Services Grant Allocations)</i>		
Exemptions		
Subsidy Grant Carryover Exemption (YSG + RECLAIM)*	(1D)	\$ 31,816.00
Targeted RECLAIM Exemption	(2D)	\$ _____
Competitive RECLAIM Exemption (max 25% of Line 5A)	(3D)	\$ _____
JDAI Exemption	(4D)	\$ 59,267.00
Detention Alternatives and Enhancements Exemption	(5D)	\$ _____
Y/E EVB Program Development Exemption	(6D)	\$ _____
Total Exemptions		(D) \$ 91,083.00
Withholdings		
Subsidy Grant (YSG + RECLAIM)*	(1E)	\$ _____
Targeted RECLAIM	(2E)	\$ _____
Competitive RECLAIM	(3E)	\$ _____
JDAI	(4E)	\$ _____
Detention Alternatives and Enhancements	(5E)	\$ _____
Y/E EVB Program Development	(6E)	\$ _____
Withholding Estimate (to be withheld from FY 2019 payments)		(E) \$ -
Available Program Funds		
Subsidy Grant (YSG + RECLAIM)*	(1F)	\$ 1,162,959.14
Targeted RECLAIM	(2F)	\$ _____
Competitive RECLAIM	(3F)	\$ _____
JDAI	(4F)	\$ 59,267.00
Detention Alternatives and Enhancements	(5F)	\$ _____
Y/E EVB Program Development	(6F)	\$ _____
Total Available FY 2019 Program Funds		(F) \$ 1,222,226.14
Estimated Program Costs		
Subsidy Grant Estimated Program Costs (YSG & RECLAIM)*	(1G)	\$ 992,326.85
Targeted RECLAIM Estimated Program Costs	(2G)	\$ _____
Competitive RECLAIM Estimated Program Costs	(3G)	\$ _____
JDAI Estimated Program Costs	(4G)	\$ 15,000.00
Detention Alternatives and Enhancements Costs	(5G)	\$ _____
Y/E EVB Program Development Costs	(6G)	\$ _____
Total Estimated Expenditures		(G) \$ 1,007,326.85
Unallocated Funds		
Subsidy Grant Unallocated (YSG & RECLAIM)*	(1H)	\$ 170,632.29
Targeted RECLAIM Unallocated	(2H)	\$ _____
Competitive RECLAIM Unallocated	(3H)	\$ _____
JDAI Unallocated	(4H)	\$ 44,267.00
Detention Alternatives and Enhancements Unallocated	(5H)	\$ _____
Y/E EVB Program Development Unallocated	(6H)	\$ _____
Total Unallocated Funds		(H) \$ 214,899.29
<i>* Supplemental Allocation Included in RECLAIM amount</i>		

ATTACHMENT A
Page 2

County: Warren

Prepared By: Laura Schnecker

FY: 2019

Phone # 513-695-1615

Funding Category	Activity Purpose	Local Program Name	Program Funding
Subsidy Grant	Behavioral Change Hybrid	Residential-Mary Haven Youth Center	\$ 537,616.40
Subsidy Grant	Skill Knowledge	Day School Treatment Program	\$ 156,289.45
Subsidy Grant	Support Activity Tracking	Truancy-Attend Service Coordination	\$50,000
Subsidy Grant	Skill Knowledge	Truancy Education Group	\$ 34,000.00
Subsidy Grant	Support Activity Admission	Clinical Assessments	\$ 10,000.00
Subsidy Grant	Support Activity Admission	Drug Testing	\$ 10,413.00
Subsidy Grant	Support Activity Admission	Detention Services	\$ 9,750.00
Subsidy Grant	Skill Knowledge	Parent Success	\$ 22,000.00
Subsidy Grant	Support Activity Tracking	GPS	\$ 8,004.00
Subsidy Grant	Skill Knowledge	Y.E.S Program	\$ 2,250.00
Subsidy Grant	Behavioral Change	MDFT	\$ 152,004.00
JDAI	Skill Knowledge	JDAI-Detention Utilization Study	\$ 10,000.00
JDAI	Skill Knowledge	JDAI-Training & Travel-Costs	\$ 5,000.00
Total Program Costs			\$ 1,007,326.85

Note: For each program, indicate the Funding Source, Primary Purpose, Local Program Name, and the total budget for the program. Please list programs in order by funding source (Subsidy Grant, Targeted, JDAI, Competitive, DAEI, Y/E EVB Program Development) then by local program name.

Provide the Juvenile Court Budget for the Current Year: \$ 3,147,807.00

- Exclude the following:
1. Any state or federal funding
 2. Operational costs of detention centers, rehabilitation centers, or other facilities

OHIO DEPARTMENT OF YOUTH SERVICES

JUVENILE COURT GRANT AGREEMENT AND FUNDING APPLICATION

(Submit original to the Bureau of Subsidies & Grants by June 1, 2017)

This Grant Agreement and Funding Application is made and entered into by and between the State of Ohio, Department of Youth Services (herein referred to as "Department"), and the WARREN County Board of County Commissioners (herein referred to as "County") on behalf of the WARREN County Juvenile Court (herein referred to as "Juvenile Court"). The Department will provide the base and variable allocations for each fiscal year for the biennial period beginning July 1, 2017, and ending June 30, 2019, subject to the terms and conditions of this agreement.

TERMS AND CONDITIONS

Eligibility

This Grant Agreement and Funding Application must be signed by the Administrative Judge and President of the County Commissioners or County Executive. A copy must be submitted to the local Ohio Family and Children First Council. The program shall include a method of assuring equal access for minority youth to the programs, care, and services provided through this grant.

Program Performance:

- 1) The Juvenile Court agrees to provide prevention, treatment, and rehabilitation programs for alleged or adjudicated unruly and delinquent children or children at risk of becoming unruly and delinquent children, inclusive of alternatives to commitment of youth to the Department.
- 2) The Juvenile Court agrees to provide early intervention, treatment and rehabilitation programs for youth adjudicated delinquent, unruly, or juvenile traffic offenders as outlined in this Agreement.
- 3) The Juvenile Court agrees to develop effective programs for youth, which preserve their rights and dignity. Program activities must be safe, productive, humane, and adequately supervised.
- 4) The Juvenile Court agrees to refer to the Standard Activity Purpose Categories and Primary Intervention instructions included with this Agreement when developing programs. All proposed programs must be approved by the Bureau of Courts and Community Services.
- 5) If funds are used to place youth in a detention facility or community rehabilitation center, the facility must provide programming approved by the Bureau of Courts and Community Services and must meet the Ohio Department of Youth Services Standards for Detention Centers or Standards for Community Residential Centers, or be accredited by the American Correctional Association, or adhere to OJDPA standards
- 6) If funds are used to place youth in a community corrections facility, the facility must meet the Ohio Department of Youth Services Standards for Community Residential Centers.

- 7) If funds are used to provide out of home placement of youth in a facility other than those identified in (5) or (6) above, the facility must be certified by a state agency with certification, licensure, or approval authority, including; but not limited to, the Department of Youth Services, Department of Job and Family Services, Department of Education, Department of Mental Health, or Department of Mental Retardation and Developmental Disabilities, or be accredited by the American Correctional Association.
- 8) The Juvenile Court agrees to participate in any program and fiscal monitoring conducted by or on behalf of the Department.
- 9) The Juvenile Court agrees to monitor and evaluate all programs funded through this grant.
- 10) If the Juvenile Court fails to submit the required data reporting forms or other documentation, the Department shall not make payments to the county until the required information is received.
- 11) If a variable allocation payment is withheld due to failure to submit required reports and those reports are not submitted within 180 days of the due date, then the payment shall not be made to the county.
- 12) The Juvenile Court shall complete and submit with the Funding Application the individual Program Outcomes in Attachment B of this Agreement.
- 13) Describe the methods employed to ensure equal access of minority youth to grant programs:
All children and families seen by our Court are treated fairly
and have equal access to all services and programs.

- 14) First Year (FY 2018) Goals:
 - a) Projected number of admissions to DYS in FY 2018: 2
 - b) Projected number of admissions to a CCF in FY 2018: 3

Fiscal Accountability:

1. The Juvenile Court shall complete Attachment A of this Agreement.
2. Funds shall be used only for the provision of direct services to youth and for administrative costs associated with the direct services provided.
3. Administrative costs charged to a program are limited to those essential to the administration of the program; indirect costs charged by the county are unallowable within the grant.
4. Funds shall be deposited into the county Felony Delinquent Care and Custody Fund.

5. Funds received by the Juvenile Court shall not be commingled with any other funds.
6. All expenditures must be directly related to the approved programs identified in this Agreement.
7. The Juvenile Court shall maintain files on all contracts funded with grant funds, which shall be made available to DYS upon request.
8. Funds shall not be used for capital construction projects in a total amount exceeding 15% of the base allocation for the current fiscal year. No variable funds may be used for capital construction projects.
9. If any cash balance exists at the end of the state fiscal year, it shall be carried over into the next fiscal year within the Felony Delinquent Care and Custody Fund and shall not be reverted to the county's general fund.
10. Funds shall be in addition to, and shall not be used to reduce, any usual annual increase in county funding that the Juvenile Court is eligible to receive, or the current level of county funding of the Juvenile Court, and of any programs or services for delinquent children, unruly children, juvenile traffic offenders, or non-adjudicated youth supported by county moneys.
11. Funds shall be in addition to, and shall not be used to supplant, any existing county funds.
12. Reimbursement for training and travel costs is limited to that which relates to court services to youth. Records for these expenses shall be maintained.
13. Should a county employee be employed and paid by the subsidy grant in addition to his/her full time job, the work must be performed on the employee's own time outside of his/her core hours for the other job and compensation must be reasonable and consistent with fair market value. Hours worked for both jobs must be clearly documented.
14. Overtime premiums paid to court employees must be prorated among the various activities of the employee and may not be charged exclusively to grant funds unless the employee works full time on the grant. Overtime rates can be paid only if, and in proportion to the time, the employee worked on the grant during the relevant time period.
15. At the time of separation from employment, the Department will only recognize accrued vacation/sick leave expense liability in proportion to the percentage of the employment period during which the employee was employed in programs funded by the grant and paid from grant funds, pursuant to statutory and county policy limits.
16. All obligations must be incurred by June 30th of each State Fiscal Year and liquidated by September 30th of the following State Fiscal Year, excepting unemployment and worker's compensation expenses.
17. Expenditures shall not exceed an approved program or approved program line item by twenty percent or five thousand dollars, whichever is less. An amendment must be submitted for the Department's prior approval for any expense which would exceed these limits or which would alter the nature of the program.
18. Up to one thousand dollars may be moved between or within programs into an approved program line item. In such cases, the court shall submit amended budget forms to the

Department. Transfers of more than one thousand dollars require that an amendment be submitted to the Department for approval prior to the transfer of funds.

19. Cost of equipment, property, services or any other budgeted items must be at fair market value, or that which would be paid by a prudent buyer in a given community.
20. All purchases are subject to county purchasing policies and procedures, except that purchases of direct service for youth do not have to be competitively bid. If no county purchasing procedures exist, state purchasing procedures as outlined in the Ohio Revised Code shall be followed.
21. Proper inventory schedules must be maintained for all equipment purchased with grant funds, including the following information for all equipment: number, purchase price, date of acquisition, vendor, condition and location.
22. County-established guidelines will be used for the salvage of unusable, damaged, and/or non-repairable equipment taken out of the juvenile court or programs funded by the grant. If no county guidelines exist, state guidelines shall be followed.
23. The Department shall suspend funding to a Subsidy Grant funded program if it finds failure to comply with the Ohio Revised Code or administrative rules promulgated by the Department.

Audits and Monitoring

1. The Juvenile Court shall submit tracking forms, statistical information and other reports on forms and according to the time frame established by the Department.
2. The Juvenile Court shall maintain records as needed to allow the Department or its designee to conduct program monitoring and evaluation.
3. The Juvenile Court shall, in writing, request the Auditor of State to perform additional procedures as part of the audit performed under Section 117.11 of the Ohio Revised Code, and shall provide a copy of applicable sections of the audit report to the Department upon request. The cost of performing the additional audit procedures shall be paid from the Felony Delinquent Care and Custody Fund. The scope of the additional procedures shall include legal compliance with Sections 5139.34 and 5139.43 of the Ohio Revised Code and Chapter 5139-67 of the Ohio Administrative Code, and examination of revenues and expenditures, cash balance, outstanding obligations and internal controls.
4. The Department may perform an audit of the county Felony Delinquency Care and Custody Fund. When a county is selected for audit, the Department will perform an audit of the fiscal records in accordance with generally accepted auditing standards, including such tests of the funding records and such auditing procedures considered necessary under the circumstances. The scope of the audit will encompass, but may not be limited to, an examination of the financial transactions, funds and reports pertaining to the approved programs and an evaluation of compliance with the established rules and Grant Agreement.
5. Upon completion of the audit examinations, the Department shall issue an audit report which shall include a statement regarding the expenditures of funds and compliance with applicable regulations and the Grant Agreement, and with approved program amendments.

6. Within one hundred twenty (120) days of the date the Department conducts an audit, the Department shall, in writing, notify the Administrative Juvenile Judge of its intention to take exception to any of the actual costs therein reported. The County Fiscal Agent shall be required to refund to the Department from the county general revenue fund the amount of the exception to the reported costs within forty-five (45) days unless an appeal of the exception is filed.
7. If, within forty-five (45) days of the date of the Department's notification to take exception, the Administrative Juvenile Judge or Board of County Commissioners does not file with the Department a request for appeal, the action proposed in the Department's notification shall be final and binding. If an appeal is filed, the Director of the Department shall notify the juvenile court regarding the decision of the appeal within forty-five (45) days from its receipt. The actions proposed in the Department's notifications may be made final and binding before the expiration of the forty-five days within which the county may appeal if the Administrative Juvenile Judge and the Board of County Commissioners waive, in writing, the provisions of this paragraph. If the determination is made that the appeal of the exception is denied, the County Fiscal Agent shall be required to refund to the Department from the county general revenue fund the amount of the exception to the reported costs within thirty (30) days of notification of the appeal decision.
8. If the County Fiscal Agent fails to repay the amount of the exception as provided in numbers (6) and/or (7) above, the amount will be deducted from the Juvenile Court's future base or variable payments.
9. The Juvenile Court shall, with reasonable advance notice, provide the Department or its designee with access to records, including any or all documents related to the Felony Delinquent Care and Custody Fund.
10. The Juvenile Court shall maintain accurate, legible and current fund records which indicate all income and expenditures related to the Felony Delinquent Care and Custody Fund.
11. The Juvenile Court shall support all income and expenditures with documentation to provide a clear audit trail for every transaction.
12. The Juvenile Court shall maintain all records related to this Agreement until the Department has accepted a final closing expenditures report for the last year for which the record documents or supports a cost or expenditure, or for three years, whichever is longer.

Certification of Program Compliance and Non-Supplanting of Funds:

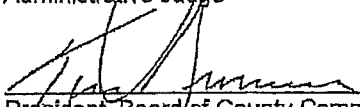
We certify that this program is in compliance with applicable sections of Ohio Revised Code, Sections 5139.34 and 5139.41 - 5139.44, and the Administrative Rules promulgated by the Department and will comply with all laws, including those involving ethics and all executive orders. A copy of this agreement has been submitted to the local Ohio Family and Children First Council.

Authorized Signatures:



Administrative Judge

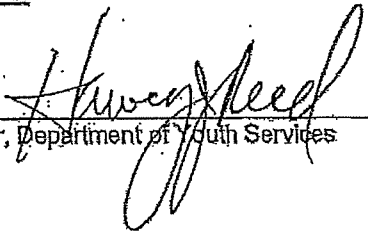
5/24/17
Date



President, Board of County Commissioners
or County Executive

5/30/17
Date

Approval:



Director, Department of Youth Services

10/2/17
Date

Staff Positions Budget Form

COUNTY: Warren

FUNDING SOURCE: Subsidy Grant

Activity Purpose Behavioral Change Hybrid

LOCAL PROGRAM / ACTIVITY NAME: Residential Treatment

Name	Title	New or Existing	Number of Hours	Hourly Rate	Total
Kim Ryan	Youth Care Specialist	Existing	1040	\$21.49	\$ 22,349.60
Kim Ryan	Youth Care Specialist	Existing	1040	\$22.13	\$ 23,020.09
Vicki Shaw-Hoskins	Youth Care Specialist	Existing	1040	\$21.49	\$ 22,349.60
Vicki Shaw-Hoskins	Youth Care Specialist	Existing	1040	\$22.13	\$ 23,015.20
Barbara Montgomery	Administrative Assistant	Existing	1040	\$17.23	\$ 17,919.20
Barbara Montgomery	Administrative Assistant	Existing	1040	\$17.75	\$ 18,456.78
TOTAL STAFF POSITIONS					\$ 127,110.46

Fringe Benefits

Type	<u>OPERS</u>	\$ 17,796.15	
Type	<u>Medicare</u>	\$ 1,843.17	
Type	<u>Worker's Compensation</u>	\$ 2,542.31	
Type	<u>Health/Life Insurance</u>	\$ 44,449.00	
			TOTAL FRINGE BENEFITS
			\$ 66,630.63
			TOTAL STAFF and FRINGE BENEFITS
			\$ 193,741.09

Budget Narrative - Describe the services that the positions will provide.

Youth Care Specialists administer the program offering correction and feedback as appropriate. They are considered "line staff" of the program.
 The Administrative Assistant offers supportive/clerical services for the Superintendent and other various administrative staff.

Staff Positions Budget Form

COUNTY: Warren

FUNDING SOURCE: Subsidy Grant

Activity Purpose Behavioral Change Hybrid

LOCAL PROGRAM / ACTIVITY NAME: Residential Treatment

Name	Title	New or Existing	Number of Hours	Hourly Rate	Total
Russell Dixon	Youth Care Specialist	Existing	1040	\$16.97	\$ 17,648.80
Russell Dixon	Youth Care Specialist	Existing	1040	\$17.48	\$ 18,178.26
Ben Highley	Youth Care Specialist	Existing	1040	\$19.49	\$ 20,269.60
Ben Highley	Youth Care Specialist	Existing	1040	\$20.07	\$ 20,877.69
S. Joel Jacobs	Transition Coordinator	Existing	1040	\$20.24	\$ 21,049.60
S. Joel Jacobs	Transition Coordinator	Existing	1040	\$20.85	\$ 21,681.09
Harry Lyons	Youth Care Specialist	Existing	1040	\$17.67	\$ 18,376.80
Harry Lyons	Youth Care Specialist	Existing	1040	\$18.20	\$ 18,928.10
TOTAL STAFF POSTIONS					\$ 157,009.94

Fringe Benefits

Type	<u>OPERS</u>	\$ 21,981.39	
Type	<u>Medicare</u>	\$ 2,276.64	
Type	<u>Worker's Compensation</u>	\$ 3,140.20	
Type	<u>Health/Life Insurance</u>	\$ 35,214.00	
			TOTAL FRINGE BENEFITS
			\$ 62,612.23
			TOTAL STAFF and FRINGE BENEFITS
			\$ 219,622.17

Budget Narrative - Describe the services that the positions will provide.

Youth Care Specialists administer the program offering correction and feedback as appropriate. They are considered "line staff" of the program.
 The Transition Coordinator helps youth who are exiting residential placement back into the community, and provides intervention and support for youth in the day school program.
 This person also completes various assessments for the Court Clinic as needed.

Staff Positions Budget Form

COUNTY: Warren

FUNDING SOURCE: Subsidy Grant

Activity Purpose Behavioral Change Hybrid

LOCAL PROGRAM / ACTIVITY NAME: Residential Treatment

<u>Name</u>	<u>Title</u>	<u>New or Existing</u>	<u>Number of Hours</u>	<u>Hourly Rate</u>	<u>Total</u>
<u>Overtime</u>					\$ 18,000.00
TOTAL STAFF POSTIONS					\$ 18,000.00

Fringe Benefits

Type	<u>OPERS</u>	<u>\$ 2,520.00</u>		
Type	<u>Medicare</u>	<u>\$ 261.00</u>		
Type	<u> </u>			
Type	<u> </u>			
Type	<u> </u>			
			TOTAL FRINGE BENEFITS	\$ 2,781.00
			TOTAL STAFF and FRINGE BENEFITS	\$ 20,781.00

Budget Narrative - Describe the services that the positions will provide.

Youth Care Specialists admister the program offering correction and feedback as appropriate. They are considered "line staff" of the program.
 The Transition Coordinator helps youth who are exiting residential placement back into the community. This person also completes various assessments for the Court Clinic as needed.

Staff Positions Budget Form

COUNTY: Warren

FUNDING SOURCE: Subsidy Grant

Activity Purpose Skill Knowledge

LOCAL PROGRAM / ACTIVITY NAME: Day School Treatment

<u>Name</u>	<u>Title</u>	<u>New or Existing</u>	<u>Number of Hours</u>	<u>Hourly Rate</u>	<u>Total</u>
Zachary McCormick	Youth Care Specialist	Existing	1040	\$18.86	\$ 19,614.40
Zachary McCormick	Youth Care Specialist	Existing	1040	\$19.43	\$ 20,202.83
Jason Byrge	Youth Care Specialist	Existing	1600	\$15.00	\$ 24,000.00
Jason Byrge	Youth Care Specialist	Existing	480	\$16.00	\$ 7,680.00
S. Gordon Lewis	Youth Care Specialist	Existing	1040	\$17.83	\$ 18,543.20
S. Gordon Lewis	Youth Care Specialist	Existing	1040	\$18.36	\$ 19,099.50
TOTAL STAFF POSTIONS					\$ 109,139.93
Fringe Benefits					
Type	OPERS				\$15,279.59
Type	Medicare				\$1,582.53
Type	Worker's Compensation				\$2,182.80
Type	Health Insurance/Life Insurance				\$28,104.60
TOTAL FRINGE BENEFITS					\$ 47,149.52
TOTAL STAFF and FRINGE BENEFITS					\$ 156,289.45
Budget Narrative - Describe the services that the positions will provide.					
e specialists provide transportation to and from the program as needed. They also provide daily feedback and direction in regards to youth's behaviors in the program, support for school co and facilitate daily programming groups.					

Purchased or Contract Services Budget Form

COUNTY: Warren

FUNDING SOURCE: Subsidy Grant

Activity Purpose Support Activity Tracking

LOCAL PROGRAM / ACTIVITY NAME: Truancy-Attend Service Coordination

<u>Agency Name/Individual (List all Providers by Name)</u>	<u>Public/ Private</u>	<u>Services to be provided</u>	<u>Quantity</u>	<u>Unit Costs</u>	<u>Total</u>
Warren Co. ESC	Public	Attend docket-service coordination	1	\$ 50,000.00	\$ 50,000.00
Total Purchased or Contract Services					\$ 50,000.00

Note: If the services to be provided are out-of-home placement, the facilities must either be approved by the Department of Youth Services per the minimum standards or licensed by the authorized state agency.

Purchased or Contract Services Budget Form

COUNTY: Warren

FUNDING SOURCE: Subsidy Grant

Activity Purpose Support Activity Admissions

LOCAL PROGRAM / ACTIVITY NAME: Drug Testing

<u>Agency Name/Individual (List all Providers by Name)</u>	<u>Public/ Private</u>	<u>Services to be provided</u>	<u>Quantity</u>	<u>Unit Costs</u>	<u>Total</u>
<u>Redwood Laboratory</u>	<u>Private</u>	<u>Instant Drug Screens</u>	<u>2,100</u>	<u>\$ 4.28</u>	<u>\$ 8,988.00</u>
<u>Redwood Laboratory</u>	<u>Private</u>	<u>Laboratory Testing of drug screens</u>	<u>94</u>	<u>\$ 12.50</u>	<u>\$ 1,175.00</u>
<u>Redwood Laboratory</u>	<u>Private</u>	<u>Oral drug screen swabs</u>	<u>50</u>	<u>\$ 5.00</u>	<u>\$ 250.00</u>
Total Purchased or Contract Services					\$ 10,413.00

Note: If the services to be provided are out-of-home placement, the facilities must either be approved by the Department of Youth Services per the minimum standards or licensed by the authorized state agency.

Program Equipment Budget Form

COUNTY: Warren

FUNDING SOURCE: JDAI

Activity Purpose Skill Knowledge

LOCAL PROGRAM / ACTIVITY NAME: JDAI

<u>Item Description</u>	<u>Quantity</u>	<u>Unit Cost</u>	<u>Total</u>	<u>Briefly explain the reason needed.</u>
Travel/training costs	1	\$ 5,000.00	\$ 5,000.00	Travel/training costs relating to JDAI.
Detention utilization study	1	\$ 10,000.00	\$ 10,000.00	Study that is necessary for JDAI.
Total Equipment Costs			\$ 15,000.00	

Note: Equipment is defined as items that cost \$300.00 or more and have a useful life of more than one year.

Resolution

Number 18-0823

Adopted Date May 24, 2018

APPROVE AND AUTHORIZE OHIOMEANSJOBS/BUTLER-CLERMONT-WARREN
EXTENSION OF MEMORANDUM OF UNDERSTANDING

WHEREAS, on May 17, 2017, Butler County DJFS was awarded the Request for Proposal (RFP) on behalf of the OhioMeansJobs – Butler ▪ Clermont ▪ Warren Consortium (hereinafter referred to as “Consortium”) by the Workforce Investment Board – Butler ▪ Clermont ▪ Warren (WIBBCW) to serve as the OhioMeansJobs (OMJ) Center Operator; and

WHEREAS, subsequent to the RFP award, Butler County, as the Lead Agency, executed a Contract with the WIBBCW which outlines the roles and responsibilities of the OMJ Center Operator, as well as, the goals and objectives for the provision of comprehensive Career Services to job seekers and employers in Local Area 12, attached hereto and incorporated herein as Exhibit A; and

WHEREAS, per the RFP, Clermont County is to serve as the Fiscal Lead for OMJ – BCW; and

WHEREAS, a Memorandum of Understanding between Butler County DJFS, and Clermont County DJFS and OMJ Warren County, is needed to delineate roles and responsibilities for Clermont County DJFS to serve as a member of the Consortium and in the capacity as the Fiscal Lead;


NOW THEREFORE BE IT RESOLVED, to approve a Memorandum of Understanding for the OMJ – BCW, copy of said agreement attached hereto and made a part hereof.

Mrs. Jones moved for adoption of the foregoing resolution being seconded by Mr. Grossmann. Upon call of the roll, the following vote resulted:

Mr. Young- yea
Mr. Grossmann- yea
Mrs. Jones- yea

Resolution adopted this 24th day of May 2018.

BOARD OF COUNTY COMMISSIONERS


Tina Osborne, Clerk

cc: c/a – Butler County
c/a – Clermont County
OhioMeansJobs (file)

EXTENSION OF MEMORANDUM OF AGREEMENT

THIS EXTENSION is made and entered by and among Butler County Department of Job and Family Services (hereinafter referred to as “Butler County DJFS”), 315 High Street, 9th Floor, Hamilton, Ohio 45011, Clermont County Department of Job and Family Services, 2400 Clermont Center Drive, Batavia, Ohio 45103 (hereinafter referred to as “Clermont County DJFS”), and Warren County Board of Commissioners, 406 Justice Drive, Lebanon, Ohio 45036 (hereinafter referred to as “OMJ Warren County”).

WHEREAS, the parties have previously entered into a Memorandum of Understanding (MOU) in December of 2017 to delineate the roles and responsibilities for Clermont County DJFS to serve as a member of the Consortium and in the capacity as the Fiscal Lead for OhioMeansJobs | Butler ▪ Clermont ▪ Warren (OMJ | BCW), effective for the period of October 24, 2017 through June 30, 2018; and,

WHEREAS, all parties wish to extend the Memorandum of Agreement for an additional period of one (1) year, pursuant to Article 1 of the Terms and Conditions of said MOU, upon the same terms and conditions set forth therein.

NOW, THEREFORE, in consideration of the mutual covenants and considerations herein contained, the parties hereby agree to extend their December 2017 Memorandum of Understanding as follows:

1. Pursuant to Article 1 of the Terms and Conditions of the Memorandum of Understanding, all parties agree to extend the Memorandum of Understanding, relative to the delineation of roles and responsibilities for Clermont County DJFS to serve as a member of the Consortium and in the capacity as the Fiscal Lead for OhioMeansJobs | Butler ▪ Clermont ▪ Warren (OMJ | BCW), *for an additional period of one (1) year commencing on July 1, 2018 and effective through June 30, 2019*, upon the same terms and conditions as set forth therein.

In all other respects, the terms and conditions of the December 2017 Memorandum of Agreement shall otherwise remain in full force and effect.

The delivery of a signed copy of this Extension of Memorandum of Understanding by Facsimile Transmission (fax) or by e-mail transmission in Portable Digital Format shall constitute effective execution and delivery of this Extension of Memorandum of Understanding as to the parties; and will create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such fax or Portable Digital Format signature page were an original Extension of Memorandum of Understanding. Signatures of the parties to this Extension of Memorandum of Understanding transmitted by facsimile or PDF will be deemed to be their original signatures for all purposes.

IN WITNESS WHEREOF, the parties have executed this Extension of Memorandum of Understanding on the dates indicated below:

CLERMONT COUNTY BOARD OF COMMISSIONERS

Edwin H. Humphrey
Board of Clermont County Commissioners

Date

David L. Painter
Board of Clermont County Commissioners

Date

David H. Uible
Board of Clermont County Commissioners

Date

This Agreement approved as to form by the Office of the Clermont County Prosecuting Attorney,
D. Vincent Faris, Prosecutor.

By: _____
Allan L. Edwards
Assistant Prosecuting Attorney

Date

IN WITNESS WHEREOF, the parties have executed this Extension of Memorandum of Understanding on the dates indicated below:

BUTLER COUNTY BOARD OF COMMISSIONERS

T.C. Rogers Date _____
Board of Butler County Commissioners

Cindy Carpenter Date _____
Board of Butler County Commissioners

Donald L. Dixon Date _____
Board of Butler County Commissioners

Approved as To Form Only:

By: _____ Date _____
Dan Ferguson
Assistant Prosecuting Attorney
Butler County Prosecuting Attorney

IN WITNESS WHEREOF, the parties have executed this Extension of Memorandum of Understanding on the dates indicated below:

WARREN COUNTY BOARD OF COMMISSIONERS



Tom Grossman
Board of Warren County Commissioners

5/24/18

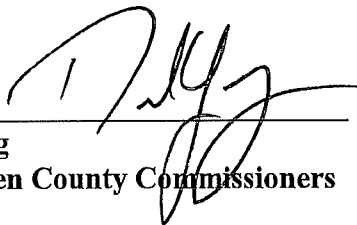
Date



Shannon Jones
Board of Warren County Commissioners

5/24/18

Date

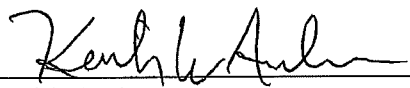


David G. Young
Board of Warren County Commissioners

5/24/18

Date

Approved as To Form Only:

By: 

Keith Anderson
Assistant Prosecuting Attorney
Warren County Prosecuting Attorney

5-18-18

Date

Resolution

Number 18-0824

Adopted Date May 24, 2018

ENTER INTO A CONTRACT AGREEMENT WITH TRANSFORM CONSULTING LLC,
AND THE AREA 12 WORKFORCE DEVELOPMENT BOARD

WHEREAS, the Area 12 Workforce Development Board requests that the Warren County Board of Commissioners enter into a contract agreement with Transform Consulting LLC, ("Transform Consulting"), with its main office located at 4645 Schinkal Rd, Cincinnati, Ohio 45248; and

NOW THEREFORE, BE IT RESOLVED that the Board of Warren County Commissioners does hereby approve and shall execute the contract with Transform Consulting LLC in order to secure the aforesaid services in furtherance of the agreement the Board authorizes expenditures not to exceed \$33,880.00; as attached hereto and made a part hereof.

Mrs. Jones moved for adoption of the foregoing resolution being seconded by Mr. Grossmann. Upon call of the roll, the following vote resulted:

Mr. Young- yea
Mr. Grossmann- yea
Mrs. Jones- yea

Resolution adopted this 24th day of May 2018.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: c/a – Transform Consulting llc
Area 12 WIB (file)

CONTRACT FOR PROFESSIONAL SERVICES
Mitigation Strategy Development
Strategies 1, 2, and 3

The Workforce Investment Board | Butler•Clermont•Warren for Ohio Workforce Area 12 has accepted the proposal submitted by Transform Consulting, LLC, 4645 Schnikal Road, Cincinnati, OH 45248, to provide services that were competitively procured under the WIBBCW'S Request for Proposals (RFP) for Workforce Issues Analysis – Phase II: Mitigation Strategy Development. Specifically, these services include:

- Strategy 1 - Employment Barrier Removal,
- Strategy 2 - Soft Skills Cultivation, and
- Strategy 3 - Bridge Development between Employers and Training Institutions.

*Note – Strategy 4 - Targeted Talent Recruiting and Strategy 5 - Marketing of Local Employment Opportunities described in the Contractor's response to the RFP are **NOT** included as services under this contract.*

1. PARTIES TO THE CONTRACT

This contract is entered into by and between the Workforce Investment Board of Butler|Clermont|Warren for Ohio Workforce Area 12 (hereinafter "WIBBCW"), through the Board of Warren County Commissioners (hereinafter "County") who has been designated as the Administrative Entity and Fiscal Agent; and Transform Consulting, LLC, (hereinafter "Contractor").

2. TERM / CONTRACT AMOUNT

This contract shall be effective from date of contract signature and execution until July 31, 2019. No services provided prior to the commencement date shall be covered under the terms of this contract. As described in **Item 4 BUDGET**, of this contract, the total contract amount is \$33,880.

3. SCOPE OF SERVICES

Subject to terms and conditions set forth in this contract, Contractor agrees to perform the scope of services as described the following Exhibits:

- A. Exhibit I - Strategy 1 - Employment Barrier Removal
- B. Exhibit II - Strategy 2 - Soft Skills Cultivation
- C. Exhibit III - Strategy 3 - Bridge Development between Employers and Training Institutions

Additionally, the following two documents are also incorporated into this contract as points of reference and support for the scope of services:

- A. WIBBCW RFP for Workforce Issues Analysis – Phase II: Mitigation Strategy Development, *excluding Strategy 4 - Targeted Talent Recruiting and Strategy 5 - Marketing of Local Employment Opportunities, and*
- B. Contractor's Response to WIBBCW's RFP for Workforce Issues Analysis – Phase II: Mitigation Strategy Development, *excluding Strategy 4 - Targeted Talent Recruiting*

CONTRACT FOR PROFESSIONAL SERVICES
Mitigation Strategy Development
Strategies 1, 2, and 3

and Strategy 5 - Marketing of Local Employment Opportunities.

4. BUDGET

In accordance with the provisions outlined in **Item 4 PAYMENT/REIMBURSEMENT**, the amounts to be paid to the Contractor are as follows:

A. Strategy 1 - Employment Barrier Removal	
1. Consulting Services (78 hours @ \$100)	\$ 7,800
2. Drug screens (100/month/county @ \$3 each)	10,800
3. Printing/publishing (1,000 pages @ \$0.49)	490
4. Procured personality assessment (annual license)	5,000
Total	\$24,090
B. Strategy 2 - Soft Skills Cultivation	
1. Consulting Services (46 hours @ \$100)	\$ 4,600
2. 3-Ring binders (20@ \$5/each)	100
3. Printing/publishing (1,000 pages @ \$0.49)	490
Total	\$ 5,190
C. Strategy 3 - Bridge Development between Employers and Training Insitutions	
1. Consulting Services (46 hours @ \$100)	\$ 4,600
Total	\$ 4,600

4. PAYMENT / REIMBURSEMENT

Contractor warrants that claims made to WIBBCW for payment/reimbursement of services provided shall be reasonable, customary, and allowable under WIOA and WIBBCW policies and in accordance with the terms of this contract.

Contractor shall submit invoices on a monthly basis to the County and include Contractor's name address, strategy name, invoice number, invoice period, vendor number (federal taxpayer ID), invoice amount, and all supporting documenting, such as timesheet records for consulting services, original expense receipts, travel receipts, and other related items.

With respect to travel expenses, the Contractor agrees to utilize the Internal Revenue Services (IRS) standard mileage rate reimbursement. The Contractor also agrees to utilize the US General Services (GSA) Per Diem Rate for Ohio, to include maximum lodging costs, as well as meals and incidental expenses. The Contractor shall provide verification of all the miles traveled, lodging expesnes and meals, and incidental expenses incurred along with each invoice submitted for payment.

Records of services provided to eligible customers and all expenses incurred in the operation of the contract shall be maintained in accordance with **Item 7 RECORD KEEPING**.

Services and expenses for which there is insufficient documentation will not be paid/reimbursed, or will be recovered throught the audit and monitoring processes.

CONTRACT FOR PROFESSIONAL SERVICES
Mitigation Strategy Development
Strategies 1, 2, and 3

Contractor agrees to keep all financial records in a manner consistent with Generally Accepted Accounting Principles (GAAP), WIBBCW policies, ODJFS requirements, and US Department of Labor regulations.

Contractor agrees that each financial transaction shall be fully supported by appropriate documentation. Contractor further agrees that such documentation shall be readily available for examination by the WIBBCW, ODJFS, Fiscal Agent, or other designee.

Contractor warrants that the invoices submitted to WIBBCW for payment or reimbursement will be reasonable, customary, and allowable services under the WIOA.

8. MODIFICATIONS AND AMENDMENTS

Any modifications to this contract must be in writing and executed by the parties prior to such change actually being effective. There will be no payment or reimbursement for work outside the scope of this contract, or fees and expenses beyond the stated limit in **Item 4 BUDGET** unless there is an approved written change order.

9. TERMINATION

In the event that the Contractor fails to perform to the satisfaction of the County and/or WIBBCW, the County and/or WIBBCW may give, or cause to be given, notices in writing to such Contractor whereupon the Contractor shall have thirty (30) days to remedy said performance. If after thirty (30) days following such notice, the Contractor has failed to remedy the performance to the County and or WIBBCW satisfaction, all rights of the Contractor under this Contract shall thereupon terminate, and services and expenses rendered by the Contractor shall be paid through the date of termination of the contract. The parties further agree, that should the Contractor for any reason breach this contract by failing to complete it, that the Contractor will be paid for services rendered to date, less any costs or damages incurred by the WIBBCW (and/or county), including re-awarding of the contract or necessary duplication of original work. Compensation shall not exceed the maximum amount of this contract. All work shall be turned over to the WIBBCW in the event of termination of this Contract.

10. INDEMNIFICATION

The Contractor agrees to indemnify and hold harmless the County and all its officials, employees and agents as well as the WIBBCW, its officials, employees and agents from any liability arising out of any acts or conduct, whether intentional or negligent, of the Contractor, its officers, employees and agents which may give rise to liability.

11. GOVERNING LAW

This contract shall be construed in accordance with the laws of the State of Ohio and any action on the contract shall be venued in Warren County, Ohio. In the event that any court of competent jurisdiction should determine that any provision of this contract is unenforceable or in any manner illegal, then such provision shall be deemed null and void and this contract shall be interpreted as if such provision had never been included and the

CONTRACT FOR PROFESSIONAL SERVICES
Mitigation Strategy Development
Strategies 1, 2, and 3

Additionally, the WIBBCW may consider untimely invoices and/or invoices which repeatedly contain errors as grounds for contract termination.

When appropriate, the County, on behalf of the WIBBCW, reserves the right to require of the Contractor, contractors, sub-contractors or other persons involved in the provision of the services under this contract, appropriate affidavits in accordance with Title 1311 of the Ohio Revised Code and the parties acknowledge that if any contractor, sub-contractor, laborer or material man remains unpaid that the County may, in lieu of payment directly to the Contractor, pay such contractor, sub-contractor, laborer, material man in accordance with the money owed, any balance then being paid directly to the company.

5. EQUIPMENT

The Contractor agrees that, when using equipment or items provided by the County and/or WIBBCW, the Contractor will operate said equipment or property in a safe and proper manner; that when entering the property or premises owned by the County and/or WIBBCW or using the County's and/or WIBBCW's equipment, it will further hold the County and/or WIBBCW harmless from any injury, liabilities or damages which arise out of the use or misuse of said equipment or which occur while upon said property.

6. COMPLIANCE WITH LAWS, REGULATIONS, AND POLICIES

The Contractor will safeguard confidential information and participants' Personal Identifying Information found within the case files as well as any confidential information obtained when carrying out the scope of services of this contract.

The Contractor agrees to comply with all federal, state and local laws, statutes, regulations, ordinances and resolutions along with WIBBCW policies and procedures during the execution of the contract, including the competitive procurement of services and materials included within the scope of services.

7. RECORD KEEPING

Contractor agrees that all records, documents, writing or other information, including but not limited to, financial records, client records, and documentation of compliance with Ohio Administrative Code rules, produced by Contractor under this contract, and all records, documents, writings or other information, including but not limited to financial, and client records used by Contractor in the performance of this contract are treated according to WIOA regulations, ODJFS requirements, WIBBCW policies, and Contractor's Records Retention policy; whichever is the most stringent.

Contractor agrees that it will not use any information, systems, or records made available to it for any purpose other than to fulfill the contractual duties specified herein, without permission of WIBBCW. Contractor further agrees to maintain the confidentiality of all customers served in accordance with federal and state law, and WIBBCW policy.

CONTRACT FOR PROFESSIONAL SERVICES
Mitigation Strategy Development
Strategies 1, 2, and 3

exclusion of any such provision shall not be deemed a revocation or nullification of the contract in its entirety.

12. FORCE MAJEURE

If by reason of force majeure, the parties are unable in whole or in part to act in accordance with this contract, the parties shall not be deemed in default during the period of such inability provided, however, that Contractor shall only be entitled to the benefit of this paragraph for fourteen (14) days if the event of force majeure does not affect WIBBCW property or employees which are necessary to Contractor's ability to perform.

The term "force majeure" as used herein shall mean without limitation: acts of God; strikes or lockout; acts of public enemies; insurrections; riots; epidemics; lightning; earthquakes; fire; storms; flood; washouts; droughts; arrests; restraint on government and/or people; civil disturbances; and explosions.

Contractor shall, to the extent within its reasonable control, remedy with all reasonable dispatch any such cause which prevents Contractor from carrying out its obligations contained herein.

13. LOBBYING

Contractor certifies that it has not and shall not use Federal funds to pay any person or organization for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, office or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C.1352.

Contractor shall disclose any lobbying with any non-Federal funds that takes place in connection with obtaining any Federal award. Failure to disclose any and all lobbying information shall result in immediate suspension of payment and termination of this contract.

14. TAX LIENS

As a part of the consideration of this contract, the Contractor represents that it has no outstanding tax liens of any type, real or personal, in the names of the company and /or its officers or partners. Further, the Contractor has made no contributions to County Elected Officials in violation of Chapter 35, Ohio Revised Code.

15. INDEPENDENT CONTRACTOR

The Contractor acknowledges that it is an independent contractor, is not an employee of the County and/or the WIBBCW.

16. ENTIRETY OF AGREEMENT

This instrument embodies the entire contract of the parties. There are no promises, terms, conditions or obligations other than those contained herein; and this contract shall

CONTRACT FOR PROFESSIONAL SERVICES
Mitigation Strategy Development
Strategies 1, 2, and 3

supersede all previous communications, representations, or contracts, either written or oral; between the parties to this contract.

The invalidity or unenforceability of any provisions of this agreement shall not affect the validity of the remaining terms and conditions.

CONTRACT FOR PROFESSIONAL SERVICES
 Mitigation Strategy Development
 Strategies 1, 2, and 3
Exhibit I – Employment Barrier Removal

The Contractor shall adhere to the following timeframes and work breakdown structures as well as provide the following outcomes and deliverables for each strategy as described in its response to the RFP and encapsulated below.

1. Timeframe: Completion of Design steps are to be completed at 10 weeks from contract execution. Full- scale Year 1 implementation will be completed by July 31, 2019.

2. Work Breakdown Structure:

Work Breakdown Structure	Consultant	WIBBCW	Design Wks	
	Hours	Cost		Est Hours
1 Employment Barrier Removal	78	\$7,800	59	10
1.1 Review current process	2		2	
1.2 Identify partner service agencies	2		2	
1.3 Identify and establish access to job seeker database	2		4	
1.4 Create job coach position	2		2	
1.5 Secure AcuMax Index, including IT support	2		2	
1.6 Establish drug screen procedure	3		3	
1.7 Establish police record procedure	3		3	
1.8 Establish transportation procedure	2		2	
1.9 Establish childcare procedure	2		2	
1.10 Establish literacy procedure	1		1	
1.11 Establish housing procedure	2		2	
1.12 Establish mental/physical health procedure	1		1	
1.13 Create job survival skills training	8		2	
1.14 Create job coach training	8		4	
1.15 Screen and identify employers for pilot	2		2	
1.16 Document barrier removal process	8		1	
1.17 Develop critical success factors with KPIs	2		2	
1.18 Confirm implementation schedule / milestones	4		4	
1.19 Develop a staffing plan	2		2	
1.20 Develop a risk management plan	2		1	
1.21 Develop an implementation budget	2		2	
1.22 Present process to WIBBCW management	2		2	
1.23 Train job coaches	4		2	
1.24 Establish candidate screening log, including necessary IT	6		8	
1.25 Launch pilot procedure (30 days)	1		1	
1.26 Review pilot, make changes to procedures	2		2	
1.27 Resume procedure for balance of Year 1	1		1	

3. Outcomes and Deliverables:

- a. Screening procedures and related log
- b. Procurement of onsite drug screening process and supplier
- c. Procurement of personality assessment supplier
- d. Job Coach job description
- e. Job Coach training
- f. Job Survival Skills curriculum
- g. Listing of partner agencies for drug abuse, police record, housing, childcare, transportation, literacy, and mental health barriers

CONTRACT FOR PROFESSIONAL SERVICES
 Mitigation Strategy Development
 Strategies 1, 2, and 3
Exhibit II – Soft Skills Cultivation

The Contractor shall adhere to the following timeframes and work breakdown structures as well as provide the following outcomes and deliverables for each strategy as described in its response to the RFP and encapsulated below.

1. Timeframe: Completion of Design steps are to be completed at six weeks from contract execution. Full- scale Year 1 implementation will be completed by July 31, 2019.

2. Work Breakdown Structure:

	Consultant Hours	Cost	WIBBCW Est Hours	Design Wks
2 Soft Skills Cultivation	46	\$4,600	28	6
2.1 Review/assess current job coach capabilities	4		1	
2.2 Design organizational home for job coach role	2		2	
2.3 Design/document job coach skills/responsibilities	4		1	
2.4 Design job coach internal training	12		4	
2.5 Determine/established funding for enhanced job coach team	2		1	
2.6 Design schedule/time table for job coach recruiting, hiring, training	1		1	
2.7 Determine sources for job coach staff additions	2		2	
2.8 Confirm implementation schedule / milestones	1		1	
2.9 Develop a staffing plan	4		1	
2.10 Develop an implementation budget	12		12	
2.11 Present process to WIBBCW management	2		2	
2.12 Launch job coach training	4		16	
2.13 Implement program as part of OMI processes	1		1	

3. Outcomes and Deliverables:

- a. Job Coach training program
- b. Staffing plan
- c. Train-the-trainer curriculum

CONTRACT FOR PROFESSIONAL SERVICES

Mitigation Strategy Development

Strategies 1, 2, and 3

Exhibit III – Bridge Development between Employers and Training Institutions

The Contractor shall adhere to the following timeframes and work breakdown structures as well as provide the following outcomes and deliverables for each strategy as described in its response to the RFP and encapsulated below.

1. Timeframe: Completion of design steps are to be completed at six weeks from contract execution. Full- scale Year 1 implementation will be completed by July 31, 2019.

2. Work Breakdown Structure:

	Consultant Hours	Cost	WIBBCW Est Hours	Design Wks
Bridge Development Between Employers and Training Institutions	46	\$4,600	25	6
3.1 Establish list of training partners	1		1	
3.2 Establish list of candidate employers for pilot	1		1	
3.3 Identify 2-3 individual training needs from individual employers	4		1	
3.4 Match employer needs with pilot training providers	2		2	
3.5 Select and build 1 pilot training solution with a training provider	8		2	
3.6 Identify candidate students to participate in initial training pilot	2		2	
3.7 Launch pilot training with training provider	4		1	
3.8 Track effectiveness	2		1	
3.9 Report on effectiveness of program to WIBBCW	2		1	
3.10 Develop a list of next 3-5 possible training investments with employers	4		2	
3.11 Identify training providers to implement employer requested trainings	4		2	
3.12 Develop an implementation schedule / milestones	2		2	
3.13 Confirm training program readiness with training providers	2		2	
3.14 Identify candidate students for next round of programs	2		2	
3.15 Develop an implementation budget and schedule	4		1	
3.16 Present process to WIBBCW management	2		2	
3.17 Launch training programs	1		0	
3.18 Evaluate program effectiveness with employers and training providers	2		2	
3.19 Modify programs per comments and re-implement	4		2	

3. Outcomes and Deliverables:

- Listing of key individuals from key training institutions who will participate in the pilot
- Listing of candidate employers who will invest time in a pilot
- Listing of key position needs that lend themselves to training institution partnership
- Newly constructed training program for first offering
- Reporting of results of first training program for first offering (Bridge 3.9)

IN WITNESS WHEREOF, the parties have executed this agreement on the 24 day of May, 2018

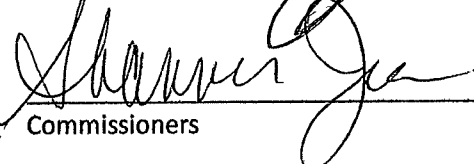
WARREN COUNTY BOARD OF COMMISSIONERS



President

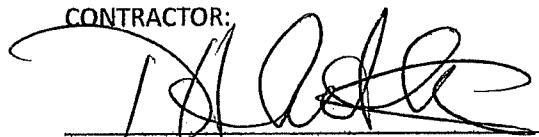


Vice President

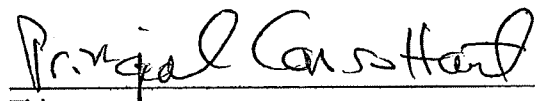


Commissioners

CONTRACTOR:



Signature

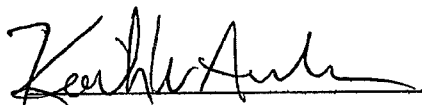


Title

5/11/18

Date

APPROVED AS TO FORM:



Keith Anderson, Assistant Prosecuting Attorney

Resolution

Number 18-0825

Adopted Date May 24, 2018

APPROVE AGREEMENT AND ADDENDUM WITH CHILD FOCUS, INC. AS A CHILD PLACEMENT AND RELATED SERVICE PROVIDER FOR THE WARREN COUNTY BOARD OF COUNTY COMMISSIONERS ON BEHALF OF WARREN COUNTY CHILDREN SERVICES

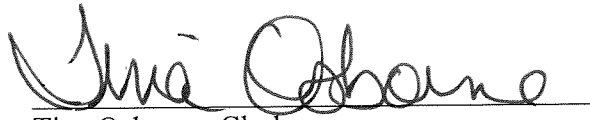
BE IT RESOLVED, to approve and authorize the Warren County Board of Commissioners to enter into an agreement and addendum with Child Focus, Inc., on behalf of Warren County Children Services, for calendar year 2018, for the services of a child placement and related services provider. Copy of agreement attached hereto and made a part hereof.

Mrs. Jones moved for adoption of the foregoing resolution being seconded by Mr. Grossmann. Upon call of the roll, the following vote resulted:

Mr. Young- yea
Mr. Grossmann- yea
Mrs. Jones- yea

Resolution adopted this 24th day of May 2018.

BOARD OF COUNTY COMMISSIONERS


Tina Osborne, Clerk

jc/

cc: c/a – Child Focus, Inc.
Children Services (file)

Ohio Department of Job and Family Services
**AGREEMENT FOR TITLE IV-E AGENCIES AND PROVIDERS FOR THE PROVISION
OF CHILD PLACEMENT**

This Agreement sets forth the terms and conditions between the parties for placement services for children who are in the care and custody of the Agency named below.

This Agreement is between

a Title IV-E Agency, hereinafter "Agency," whose address

hereinafter "Provider," whose address is:

Collectively the "Parties."

IV-E Agency Name Warren County Children Services		
Street/Mailing Address 416 S East St		
City Lebanon	State OH	Zip Code 45036

and

Provider Child Focus, Inc.		
Street/Mailing Address 555 Cincinnati Batavia Pike		
City Cincinnati	State OH	Zip Code 45244

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RECITALS

WHEREAS, the Agency is responsible under Ohio Revised Code (ORC) Title 51, Chapter 5153 for the provision of protective services for dependent, neglected, and abused children; and,

WHEREAS, the Agency is authorized under ORC Title 51, Chapter 5153.16 to provide care and services which it deems to be in the best interest of any child who needs or is likely to need public care and services; and,

WHEREAS, the Provider is an organization duly organized and validly existing and is qualified to do business under the laws of the State of Ohio and has all requisite legal power and authority to execute this Agreement and to carry out its terms, conditions and provisions; and is licensed, certified or approved to provide placement and related services to children in accordance with Ohio law or the state where the placement facility or foster home is located.

NOW, THEREFORE, in consideration of the mutual promises and responsibilities set forth herein, the Agency and Provider agree as follows:

Article I. SCOPE OF PLACEMENT SERVICES

A. In addition, to the services described in Exhibit I-Scope of Work , Provider agrees to provide and shall provide the placement and related services specified in each Individual Child Care Agreement (ICCA) for children in the care and custody of the Title IV-E Agency. The ICCA shall be consistent with current federal, state and local laws, rules and regulations applicable to the Provider's license or certified functions and services.

Section 1.01 FOR CONTRACTS COMPETITIVELY PROCURED

A. Without limiting the services that the Provider will provide pursuant to the Requests for Proposals (RFP) and the Provider's Proposal submitted in response to the RFP, the Provider agrees to provide and shall provide the placement and related services described in Exhibit I-Scope of Work.

Section 1.02 FOR CONTRACTS NOT COMPETITIVELY PROCURED

A. The Provider agrees to provide and shall provide the placement and related services described in the Exhibit I-Scope of Work.

Section 1.03 EXHIBITS

A. The following exhibits are deemed to be a part of this Agreement as if fully set forth herein:

- 1) Exhibit I – Scope of Work;
- 2) Exhibit II – Request for Proposals (if applicable);
- 3) Exhibit III – Provider's Response to the Request for Proposals (if applicable); and
- 4) Exhibit IV – Rate Schedule.

Article II. TERM OF AGREEMENT

This Agreement is in effect from **01/01/2018** through **03/31/2019**, unless this Agreement is suspended or terminated pursuant to Article VIII prior to the termination date.

In addition to the initial term described above, this Agreement may be extended, at the option of the Agency and upon written agreement of the Provider, for _____ 0 additional, _____ 0 year terms not to exceed _____ 0 years. Notice of Agency's intention to extend the Agreement shall be provided in writing to Provider no less than 90 calendar days before the expiration of any Agreement term then in effect. (If a previous Request for Proposal (RFP) allows, the Agreement may be extended for a period of time to ensure adequate completion of the Agency's competitive procurement process at the rates existing for the term then in effect.

Article III. ORDER OF PRECEDENCE

This Agreement and all Exhibits are intended to supplement and complement each other and shall, where possible, be so interpreted. However, if any provision of this Agreement irreconcilably conflicts with an Exhibit, this Agreement takes precedence over the Exhibit(s).

In the event there is an inconsistency between the Exhibit(s), the inconsistency shall be resolved in the following order:

- A. Schedule A: Rate Schedule;
- B. Exhibit I: Scope of Work;
- C. Exhibit II: Request for Proposals (if applicable); then
- D. Exhibit III: Provider's Proposals (if applicable).

Article IV. DEFINITIONS GOVERNING THIS AGREEMENT

The following definitions govern this Agreement:

- A. Agreement means this Agreement and the addenda thereto.
- B. Material Breach shall mean an act or omission that violates or contravenes an obligation required under the Agreement and which, by itself or together with one or more other breaches, has a negative effect on, or thwarts the purpose of the Agreement as stated herein. A Material Breach shall not include an act or omission, which has a trivial or negligible effect on the quality, quantity, or delivery of the goods and services to be provided under the Agreement.
- C. All other definitions to be resolved through Federal Regulations, OAC 5101:2-1-01 and any related cross-references.

Article V. PROVIDER RESPONSIBILITIES

- A. Provider agrees to participate with Agency in the development and implementation of the case plan including participation in case reviews and/or semi-annual administrative reviews, and the completion of reunification assessments for the children in placement with the Provider.
- B. Provider agrees to submit a progress report as negotiated by the parties for each child. The progress report will be based on the agreed upon services to be delivered to the child and/or family and will include documentation of services provided to the child and/or discharge summary. Failure to submit the progress report may result in a delay of payment, until such time as the Provider complies with the reporting requirements.
- C. Provider agrees that children will not be moved to another foster home or other out-of-home care setting within the Provider's network of available placement services without prior approval or in the event of an emergency, simultaneous notification to the Agency. Notification will include such information as name, address, and phone number of the new foster home or other out-of-home care setting
- D. Provider agrees to notify all Agencies whose children are co-located when any child placed is critically injured or dies in that location immediately or at a minimum within 24 hours through the procedure detailed in the Addendum to the Agreement.
- E. Notification to the Agency of critical incidents must occur immediately through the procedure detailed in the Addendum to the Agreement. Critical incidents are those incidents defined in the Ohio Administrative Code that are applicable to the licensed or certified program (ODJFS 5101:2-9-23; ODMH 5122-30-16, 5122-26-13; ODADAS 3793:2-1-04; DODD 5123:2-17-02).
 - 1) Emergency situations include but are not limited to the following:
 - a. Absent Without Leave (AWOL)
 - b. Child Alleging Physical or Sexual Abuse / Neglect
 - c. Death of Child
 - d. Illicit drug / alcohol use; Abuse of medication or toxic substance
 - e. Sudden injury or illness requiring an unplanned medical treatment or visit to the hospital.
 - f. Perpetrator of Delinquent / Criminal Act (Assault, Dangerous Behaviors, Homicidal Behaviors)
 - g. School Expulsion / Suspension (formal action by school)
 - h. Self-Injury (Suicidal Behaviors, Self-Harm Requiring external Medical Treatment, Hospital or ER)
 - i. Victim of assault, neglect, physical or sexual abuse
- F. The Provider also agrees to notify the Agency within Twenty-four (24) hours, of any non-emergency situations. Non-emergency situations include but are not limited to the following:
 - 1) The filing of any law enforcement report involving the child
 - 2) When physical restraint is used/applied.
- G. Written documentation of the emergency and non-emergency situations shall be provided to the Agency within one (1) business day of the initial notification.
- H. The Provider agrees to submit each child's assessment and treatment plans as completed but no later than the 30th day of placement. Provider further agrees to provide treatment planning that will include, but is not limited to, education on or off site, preparation for integration into community based school or vocational/job skills training, community service activities, *independent living skills if age 14 or older*, monitoring and supporting community adjustment.
- I. The Provider agrees to participate in joint planning with the Agency regarding modification to case plan services. Provider agrees that while the Provider may have input into the development of the child's case plan services and the ICCA, any disputes involving services or placement will be resolved through mutual agreement and modification to the ICCA. Provider agrees the Agency is the final authority in the process.
- J. The Provider agrees to provide notice of removal of a child by giving a minimum of 14 calendar days' notice, and to submit a discharge plan summary no later than thirty calendar days after the date of discharge in accordance with the applicable licensed or certified program. (ODJFS 5101:2-5-17; ODMH 5122-30-22 5122-30-04; ODADAS 3793:2-1-04, 3793:2-1-05; DODD 5123:2-7-10, 5123:2-3-05).
- K. The Provider shall work in cooperation and collaboration with the Agency to provide information for each child's Lifebook and will fully comply with the provision of OAC 5101:2-42-67 as applicable to private Providers. Provider's contribution to the Agency Lifebook for a child shall be for the episode of care with the Provider.
- L. The Provider agrees to provide Independent Living Services as set forth in accordance with OAC 5101:2-42-19 for all children age 14 and above.

- M. When applicable, the Provider agrees to visit with the child face-to-face in the foster home, speak privately with the child and to meet with the caregiver at least monthly in accordance with rule 5101:2-42-65 of the Administrative Code.
- N. The Provider agrees to maintain its licenses and certifications from any source in good standing. The Provider agrees to report in writing any change in licensure or certification that negatively impacts such standing immediately if the negative action results in a temporary license, suspension of license or termination of license.
- O. The Provider agrees to notify Agency of any changes in its status, such as intent to merge with another business or to close no later than forty five (45) business days prior to the occurrence.
- P. The Provider agrees that the Agency shall have access to foster parent home studies and re-certifications for foster parents caring for Agency children, subject to confidentiality considerations. The Provider shall submit to Agency a copy of the current foster home license at the time of placement and recertification. Provider also agrees to notify Agency within twenty four (24) hours of any change in the status of the foster home license.
- Q. When there is a rule violation of a caregiver, a copy of the corrective action plan, if applicable, must be submitted to the Agency when the investigation is complete.
- R. The Provider agrees to notify the Agency of scheduling no less than fourteen (14) calendar days prior to of all formal meetings (e.g. FTMs, Treatment Team Meetings, IEPs, etc.).

Article VI. AGENCY RESPONSIBILITIES

- A. Agency certifies that it will comply with the Multiethnic Placement Act, 108 STAT. 3518, as amended by Section 1808 of the Small Business Jobs Protection Act of 1996, 110 STAT. 1755, which prohibits any Agency from denying any person the opportunity to become an adoptive or foster parent on the basis of race, color, national origin, or delaying or denying the placement of a child for adoption or into foster care on the basis of race, color, or national origin of the adoptive or foster parent or of the child involved.
- B. The Agency shall provide a copy of the case plan to the Provider within thirty (30) calendar days of placement or within a reasonable time thereafter as agreed to by the parties. Agency agrees to also provide a copy of each child's social history, medical history, and Medicaid card once obtained by the Agency for new cases or at placement for existing cases.
- C. Agency agrees to participate in the development of the treatment plan of each child placed with the Provider. The Agency acknowledges that clinical treatment decisions must be recommended by licensed clinical professionals. Agency and Provider acknowledge that disagreement with a treatment decision may be taken through the dispute resolution process contained in Article XIII of this Agreement.
- D. Agency agrees to participate in periodic meetings with each child's treatment team for case treatment plan development, review, and revision. The Agency agrees to participate in the development of the treatment plan of each child placed with the Provider by the Agency.
- E. Agency agrees to arrange for the transfer of each child's school records to the child's new school upon placement but not later than ten (10) business days. The Agency agrees to work with the Provider for the timely enrollment of the child in the receiving school district. The Agency has the final responsibility to obtain the child's school records and to enroll the child in the receiving school district.
- F. The Agency shall provide an opportunity for the Provider to give input in the development, substantive amendment or modification of case plans. The Agency agrees to notify the Provider of scheduling no less than fourteen (14) calendar days prior to of all formal meetings (e.g. SARs, court hearings, family team conferences, etc.).
- G. The Agency shall provide a minimum of thirty (30) calendar days' notice for planned removals, to the Provider for each child who is being terminated from placement with the Provider, unless so ordered by a court of competent jurisdiction.
- H. Agency agrees to provide the Provider with an emergency contact on a twenty-four (24) hour, seven (7) day per week basis.
- I. The Agency represents:
 - 1) that it has adequate funds to meet its obligations under this Agreement;
 - 2) that it intends to maintain this Agreement for the full period set forth herein and has no reason to believe that it will not have sufficient funds to enable it to make all payments due hereunder during such period; and
 - 3) that it will make its best effort to obtain the appropriation of any necessary funds during the term of this Agreement.

Article VII. INVOICING FOR PLACEMENT SERVICES

- A. The Provider agrees to submit a monthly invoice following the end of the month in which services were provided. The invoice shall be for services delivered in accordance with Article I of this Agreement
- 1) Provider's name, address, telephone number, fax number, federal tax identification number, Title IV-E Provider number, if applicable and Medicaid Provider number, if applicable.
 - 2) Billing date and the billing period.
 - 3) Name of child, date of birth of child, and the child's Statewide Automated Child Welfare Information System (SACWIS) person I.D. number.
 - 4) Admission date and discharge date, if available.
 - 5) Agreed upon per diem for maintenance and the agreed per diem administration.
 - 6) Invoicing procedures may also include the per diems associated with the following if applicable and agreeable to the Agency and Provider:
 - a. Case Management; allowable administration cost.
 - b. Transportation, allowable maintenance cost.
 - c. Transportation; allowable administration cost.
 - d. Other Direct Services; allowable maintenance cost.
 - e. Behavioral health care; non-reimbursable cost.
 - f. Other costs - (any other cost the Title IV-E Agency has agreed to participate in); non-allowable/ non-reimbursable cost.
- B. Provider warrants and represents claims made for payment for services provided are for actual services rendered and do not duplicate claims made by Provider to other sources of public funds for the same service.

Article VIII. REIMBURSEMENT FOR PLACEMENT SERVICES

- A. The maximum amount payable pursuant to this contract is **\$80,000.00**.
- B. In accordance with Schedule A of this Agreement, the per diem for maintenance and the per diem for administration will be paid for each day the child was in placement. The first day of placement will be paid regardless of the time the child was placed. The last day of placement will not be paid regardless of the time the child left the placement.
- C. In accordance with Schedule A of this Agreement and in addition to Maintenance and Administration, the Agency may agree to pay a per diem for Case Management, Other Direct Services, Transportation Administration, Transportation Maintenance, Behavioral Health Care and Other. All other services and/or fees to be paid for shall be contained in the Addendum of this Agreement.
- D. To the extent that the Provider maintains a foster care network, the agreed upon per diem for maintenance shall be the amount paid directly to the foster parent. Maintenance includes the provision of food, clothing, shelter, daily supervision, graduation expenses, a child's personal incidentals, and liability insurance with respect to the child, reasonable cost of travel to the child's home for visitation and reasonable cost of travel for the child to remain in the school the child was enrolled in at the time of placement. Payment for private Agency staff transporting a child to a home visit or keeping the child in their home school will be paid in accordance with Schedule A (Transportation Maintenance) of this Agreement.
- E. If the plan as determined by the Agency is to return the child to placement with the Provider, the Agency may agree to pay for the days that a child is temporarily absent from the direct care of the Provider, as agreed to by the parties in writing.
- F. The Agency agrees to pay for all physical, optical, dental, and behavioral health care services, not covered by Medicaid or other third party payer. Payment shall not exceed the Medicaid allowable rate.
- G. The Agency agrees to pay the Provider for all services agreed to on Schedule A and in the Addendum to this Agreement, where applicable, that have been provided and documented in the child's case file. Agency shall make best efforts to make payment of undisputed charges within thirty (30) business days of receipt. Failure of the Agency to comply with the prompt payment requirement will be part of the dispute resolution process contained in Article XIII.
- H. Agency reserves the right to withhold payment for any portion of an invoice in which it asserts that a discrepancy exists. In such instances, the Agency shall withhold payment only for that portion of the statement with which it disagrees. The Agency shall notify the Provider in a timely manner when there is a billing discrepancy. Once discrepancies are resolved, Provider may re-submit an invoice for the disputed charges within the specified requirements set in Article VI
- I. This Agreement is conditioned upon the availability of federal, state, or local funds appropriated or allocated for

payment for services provided under the terms and conditions of this Agreement. By sole determination of the Agency, if funds are not sufficiently allocated or available for the provision of the services performed by the Provider hereunder, the Agency reserves the right to exercise one of the following alternatives:

- 1) Reduce the utilization of the services provided under this Agreement, without change to the terms and conditions of the Agreement; or
- 2) Issue a notice of intent to terminate the Agreement.

The Agency will notify the Provider at the earliest possible time of such decision. No penalty shall accrue to the Agency in the event either of these provisions is exercised. The Agency shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section.

The Agency may elect to not make payment of any invoice received 60 business days after the timeframe in accordance with Article VI. Reasonable cause for late submission of an invoice will be considered by the Agency on a case by case basis. Any denial of payment for service(s) rendered may be appealed in writing and will be part of the dispute resolution process contained in Article XIII.

Article IX. TERMINATION; BREACH AND DEFAULT

- A. This Agreement may be terminated for convenience prior to the expiration of the term then in effect by either the Agency or the Provider upon written notification given no less than ninety (90) calendar days in advance by certified mail, return receipt requested, to the last known address of the terminated party shown hereinabove or at such other address as may hereinafter be specified in writing.
- B. If Provider fails to provide the Services as provided in this Agreement for any reason other than Force Majeure, or if Provider otherwise Materially Breaches this Agreement, Agency may consider Provider in default. Agency agrees to give Provider thirty (30) days written notice specifying the nature of the default and its intention to terminate. Provider shall have seven (7) calendar days from receipt of such notice to provide a written plan of action to Agency to cure such default. Agency is required to approve or disapprove such plan within five (5) calendar days of receipt. In the event Provider fails to submit such plan or Agency disapproves such plan, Agency has the option to immediately terminate this Agreement upon written notice to Provider. If Provider fails to cure the default in accordance with an approved plan, then Agency may terminate this Agreement at the end of the thirty (30) day notice period.
- C. Upon the effective date of the termination the Provider agrees that it shall cease work on the terminated activities under this Agreement, take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report as of the date of discharge describing the status of all work under this Agreement, including without limitation, results accomplished, conclusions resulting therefrom, and such other matters as the Agency may require. The Agency agrees to remove all children in placement immediately with the Provider, consistent with the effective termination date. In all instances of termination, the Provider and Agency agree that they shall work in the best interests of children placed with the Provider to secure alternative placements for all children affected by the termination
- D. In the event of termination, the Provider shall be entitled to reimbursement, upon submission of an invoice, for the agreed upon per diem incurred prior to the effective termination date. The reimbursement will be calculated by the Agency based on the per diem set forth in Article VI. The Agency shall receive credit for reimbursement already made when determining the amount owed to the Provider. The Agency is not liable for costs incurred by the Provider after the effective termination date.
- E. Notwithstanding the above, in cases of confirmed allegations of: i) improper or inappropriate activities, ii) loss of required licenses; iii) actions, inactions or behaviors that may result in harm, injury or neglect of a child; iv) unethical business practices or procedures; and v) any other event that Agency deems harmful to the well-being of a child; or vi) loss of funding as set forth in Article V, Agency may immediately terminate this Agreement upon delivery of a written notice of termination to the Provider.
- F. If the Agreement is terminated by Agency due to breach or default of any of the provisions, obligations, or duties embodied therein by the Provider, Agency may exercise any administrative, agreement, equitable, or legal remedies available, without limitation. Any extension of the time periods set forth above shall not be construed as a waiver of any rights or remedies the Agency may have under this Agreement.
- G. In the event of termination under this ARTICLE, both the Provider and the placing Agency shall make good faith efforts to minimize adverse effect on children resulting from the termination of the Agreement.

Article X. RECORDS RETENTION AND CONFIDENTIALITY REQUIREMENTS

- A. The Provider agrees that all records, documents, writings or other information, including, but not limited to, financial records, census records, client records and documentation of legal compliance with Ohio Administrative Code rules, produced by the Provider under this Agreement, and all records, documents, writings or other information, including but not limited to financial, census and client used by the Provider in the performance of this Agreement are treated according to the following terms:
- 1) All records relating to costs, work performed and supporting documentation for invoices submitted to the Agency by the Provider along with copies of all deliverables submitted to the Agency pursuant to this Agreement will be retained for a minimum of three (3) years after reimbursement for services rendered under this Agreement.
 - 2) If an audit, litigation, or other action is initiated during the time period of the Agreement, the Provider shall retain such records until the action is concluded and all issues resolved or three (3) years have expired, whichever is later.
 - 3) All records referred to in Section A 1) of this Article shall be available for inspection and audit by the Agency or other relevant agents of the State of Ohio (including, but not limited to, the County Prosecutor, the Ohio Department of Job and Family Services (ODJFS), the Auditor of the State of Ohio, the Inspector General of Ohio, or any duly authorized law enforcement officials), and the United States Department of Health and Human Services within a reasonable period of time.
- B. The Provider agrees to keep all financial records in a manner consistent with Generally Accepted Accounting Principles.
- C. The Provider agrees to comply with all federal and state laws applicable to the Agency and the confidentiality of the Agency's child and families. Provider understands access to the identities of any Agency's child and families shall only be as necessary for the purpose of performing its responsibilities under this Agreement. No identifying information on child served will be released for research or other publication without the express written consent of the Agency. Provider agrees that the use or disclosure of information concerning the Agency's Child for any purpose not directly related to the administration of this Agreement is prohibited. Provider shall ensure all of the Agency's child and families' documentation is protected and maintained in a secure and safe manner.
- D. The Provider agrees to comply with all applicable state and federal laws related to the confidentiality and transmission of medical records, including, but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA).
- E. Although information about and generated under this Agreement may fall within the public domain, the Provider shall not release information about or related to this Agreement to the general public or media verbally, in writing, or by any electronic means without prior approval from the Agency unless the Provider is required to release requested information by law. Agency reserves the right to announce to the general public and media: award of the Agreement, Agreement terms and conditions, scope of work under the Agreement, deliverables and results obtained under the Agreement, impact of Agreement activities, and assessment of the Provider's performance under the Agreement. Except where Agency approval has been granted in advance, the Provider shall not seek to publicize and will not respond to unsolicited media queries requesting: announcement of Agreement award, Agreement terms and conditions, Agreement scope of work, government-furnished documents the Agency may provide to the Provider to fulfill the Agreement scope of work, deliverables required under the Agreement, results obtained under the Agreement, and impact of Agreement activities.
- F. If contacted by the media about this Agreement, the Provider agrees to notify the Agency in lieu of responding immediately to media queries. Nothing in this section is meant to restrict the Provider from using Agreement information and results to market to specific business prospects.

Article XI. PROVIDER ASSURANCES AND CERTIFICATIONS

- A. As applicable to the Provider's license and/or certification, the Provider certifies compliance with ORC Sections 2151.86, 5103.0328, 5103.0319 and applicable OAC Sections as defined in Article XXI of this Agreement concerning criminal record checks, arrests, convictions and guilty pleas relative to foster caregivers, employees, volunteers who are involved in the care for a child and interns.
- B. To the extent that the Provider maintains a residential center or group home, the Provider agrees to comply with the provisions of their licensing Agency that relates to the operation, safety and maintenance of residential facilities. Specifically, Provider agrees that no firearm or other projectile weapon and no ammunition for such weapons will be kept on the premises.
- C. Provider certifies compliance with Drug Free Work Place Requirements as outlined in 45 C.F.R. Part 76, Subpart F.
- D. Provider certifies compliance with 45 C.F.R. Part 80, Non-Discrimination under programs receiving Federal assistance through the Department of Health and Human Services effectuation of Title VI of the Civil Rights Act of

1964.

- E. Provider certifies compliance with 45 C.F.R. Part 84, Non-Discrimination on the Basis of Handicap in Programs or Activities Receiving Federal Assistance.
- F. Provider certifies compliance 45 C.F.R. Part 90, Non-Discrimination on the Basis of Age in Programs or Activities Receiving Federal Assistance.
- G. Provider certifies compliance with the American with Disabilities Act, Public Law 101-336.
- H. Provider certifies that it will:
 - 1) Provide a copy of its license(s), certification, accreditation or a letter extending an expiring license, certification, or accreditation from the issuer to the Agency prior to the signing of the Agreement.
 - 2) Maintain its license(s), certification, accreditation and that upon receipt of the renewal of its license, certification, and/or accreditation or upon receipt of a letter extending an expiring license, certification, and/or accreditation from the issuer, a copy of the license, certification and/or accreditation will be provided to the Agency within five (5) business days.
 - 3) Provider shall immediately notify the Agency of any action, modification or issue relating to said licensure, accreditation or certification.
- I. Provider certifies that it will not deny or delay services to eligible persons because of the person's race, color, religion, national origin, gender, orientation, disability, or age.
- J. The Provider shall comply with Executive Order 11246, entitled Equal Employment Opportunity, as amended by Executive Order 11375, and as will comply with Executive Order 11246, entitled Equal Employment Opportunity, as amended by Executive Order 11375, and as supplemented in Department of Labor regulation 41 CFR part 60. The parties will comply with Executive Order 11246, entitled Equal Employment Opportunity, as amended by Executive Order 11375, and as supplemented in Department of Labor regulation 41 CFR part 60.
- K. Provider further agrees to comply with OAC 5101:9-2-01 and OAC 5101:9-2-05(4), as applicable, which require that assure that persons with limited English proficiency (LEP) can meaningfully access services. To the extent Provider provides assistance to LEP Childs through the use of an oral or written translator or interpretation services in compliance with this requirement, Childs shall not be required to pay for such assistance.
- L. To the extent applicable, the Provider certifies compliance with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857 (h) Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency Regulations (40 C.F.R. Part 15).
- M. The Provider certifies compliance, where applicable, with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).
- N. The Provider certifies that all approvals, licenses, or other qualifications necessary to conduct business in Ohio have been obtained and are current.
- O. Provider shall comply with the Small Business Job Protection Act (Public Law ("P.L.") 104-188), the Howard M. Metzenbaum Placement Act of 1994 (P.L. 103-382), Titles IV-B (42 U.S.C. 620 et seq.) and IV-E (42 U.S.C. 670 et seq.) of the Social Security Act ("the Act"), the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193), Section 471(a) of Title IV-E of the Act (42 U.S.C. 671(a)), and 45 C.F.R. 1356, including all rules, regulations and guidelines issued by federal and state authorities, OAC 5101:9-4-07 and OAC 5101:2-47-23.1.

Article XII. INDEPENDENT CONTRACTOR

- A. The Provider and the Agency agree that no employment, joint venture, or partnership has been or will be created between the parties hereto pursuant to the terms and conditions of this Agreement.
- B. The Provider and the Agency agree that the Provider is an independent contractor and assumes all responsibility for any federal, state, municipal, or other tax liabilities along with workers' compensation, unemployment compensation, and insurance premiums which may accrue as a result of compensation received for services or deliverables rendered hereunder

Article XIII. AUDITS AND OTHER FINANCIAL MATTERS

- A. Provider agrees to submit to Agency a copy of the independent audit it receives in accordance with Ohio Revised Code section 5103.0323.
- B. Upon request from the Agency, Provider shall submit a copy of the most recent Federal income tax return and related schedules filed with the Internal Revenue Service (IRS).
- C. If Provider participates in the Title IV-E program, Provider agrees to timely file its Title IV-E cost report with all required items as outlined in 5101:2-47-26.2 to ODJFS. Provider agrees that in the event a cost report cannot be timely filed, an extension shall be requested prior to the December 31st filing deadline.
- D. If a Provider participates in the Title IV-E program, an Agreed Upon Procedures engagement must be conducted by a certified public accountant for the Provider's cost report in accordance with OAC rule 5101:2-47-26.2. The procedures are conducted to verify the accuracy of costs used to establish reimbursement ceilings for maintenance and administration costs of child in care. Any overpayments or underpayment of federal funds to the Title IV-E Agency due to adjustments of cost report reimbursement ceiling amounts as a result of an audit, shall be resolved in accordance with ORC sections 5101.11, 5101.14, and OAC 5101:2-47-01.
- E. Upon request from the Agency, the Provider shall submit a copy of the JFS 02911 and Agreed Upon Procedures.
- F. For financial reporting purposes and for Title IV-E cost reporting purposes, Provider agrees to follow the cost principles set forth in the following OAC Sections and publications:
 - 1) Rule 5101:2-47-11 of the OAC: "Reimbursement for foster care maintenance costs for child's residential centers, group homes, maternity homes, residential parenting facilities, and purchased family foster care facilities".
 - 2) Rule 5101:2-47-26.1 of the OAC: "Public child services agencies (PCSA), private child placing agencies (PCPA): Title IV-E cost report filing requirements, record retention requirements, and related party disclosure requirements".
 - 3) Rule 5101:2-47-26.2 of the OAC: "Cost Report Agreed Upon Procedures Engagement".
 - 4) JFS 02911 Single Cost Report Instructions.
 - 5) For Private Agencies: 2 CFR 225, Cost Principles for Non-Profit Organizations.
 - 6) For Public Agencies: 2 CFR 230, Cost Principles for State, Local and Indian Tribal Government.

Article XIV. GRIEVANCE /DISPUTE RESOLUTION PROCESS

- A. In the event that a dispute arises under the provisions of this Agreement, the parties shall follow the procedures set forth below:
 - 1) The party complaining of a dispute shall provide written notice of the nature of the dispute to the other party to this Agreement. A copy of the notice shall be sent to the Director or designee of the Agency and to the Executive Director or designee of the Provider. Within ten (10) business days of receiving the notice of a dispute, the parties involved in the dispute between the Agency and the Provider shall attempt to resolve the dispute.
 - 2) If the parties are unable to resolve the dispute in (1), the highest official or designee of the Agency shall make the final determination within twenty (20) business days, which will be non-binding.
 - 3) Neither party will be deemed to have waived any other rights or remedies available to them by initiating, participating in or completing this process.

Article XV. AMENDMENTS

This Agreement and all Exhibits hereto constitutes the entire agreement and may be amended only with a written amendment signed by both parties; however, it is agreed by the parties that any amendments to laws or regulations cited herein will result in the correlative modification of this Agreement, without the necessity for executing written amendments. The impact of any applicable law, statute, or regulation not cited herein and enacted after the date of execution of this Agreement will be incorporated into this Agreement by written amendment signed by both parties and effective as of the date of enactment of the law, statute, or regulation. Any other written amendment to this Agreement is prospective in nature.

Article XVI. NOTICE

Unless otherwise set forth herein, all notices, requests, demands and other communications pertaining to this Agreement shall be in writing and shall be deemed to have been duly given if delivered or mailed by certified or registered mail, postage pre-paid:

if to Agency, to

Warren County Children Services
416 S East St
Lebanon OH 45036

if to Provider , to

Child Focus, Inc.
555 Cincinnati Batavia Pike
Cincinnati OH 45244

Article XVII. CONSTRUCTION

This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Ohio. Should any portion of this Agreement be found to be unenforceable by operation of statute or by administrative or judicial decision, the operation of the balance of this Agreement is not affected thereby; provided, however, the absence of the illegal provision does not render the performance of the remainder of the Agreement impossible.

Article XVIII. NO ASSURANCES

Provider acknowledges that, by entering into this Agreement, Agency is not making any guarantees or other assurances as to the extent, if any, that Agency shall utilize Provider's services or purchase its goods. In this same regard, this Agreement in no way precludes, prevents, or restricts Provider from obtaining and working under additional arrangement(s) with other parties, assuming the work in no way impedes Provider's ability to perform the services required under this Agreement. Provider warrants that at the time of entering into this Agreement, it has no interest in nor shall it acquire any interest, direct or indirect, in any Agreement that will impede its ability to provide the goods or perform the services under this Agreement.

Article XIX. CONFLICT OF INTEREST

- A. Provider agrees that the Provider, its officers, members and employees, currently have no, nor will they acquire, any interest, whether personal, professional, direct or indirect, which is incompatible, in conflict with or which would compromise the discharge and fulfillment of Provider's functions, duties and responsibilities hereunder. If the Provider, or any of its officers, members or employees acquire any incompatible, conflicting, or compromising personal or professional interest, the Provider shall immediately disclose, in writing, such interest to the Agency. If any such conflict of interest develops, the Provider agrees that the person with the conflicting interest will not participate in any activities related to this Agreement
- B. Provider agrees: (1) to refrain from promising or giving to Agency employees anything of value to manifest improper influence upon the employee; (2) to refrain from conflicts of interest; and, (3) to certify that Provider complies with Ohio Revised Code provisions 102.03, 102.04, 2921.42, 2921.43.

Article XX. INSURANCE

The Provider shall purchase and maintain for the term of this Agreement insurance of the types and amounts identified herein. Maintenance of the proper insurance for the duration of the Agreement is a material element of the Agreement.

Provider agrees to procure and maintain for the term of this Agreement the insurance set forth herein. The cost of all insurance shall be borne by Provider. Insurance shall be purchased from a company licensed to provide insurance in Ohio. Insurance is to be placed with an insurer provided an A.M. Best rating of no less than A-. Provider shall purchase the following coverage and minimum limits:

- A. Commercial general liability insurance policy with coverage contained in the most current Insurance Services Office Occurrence Form CG 00 01 or equivalent with limits of at least One Million Dollars (\$1,000,000.00) per occurrence and One Million Dollars (\$1,000,000.00) in the aggregate and at least One Hundred Thousand Dollars (\$100,000.00) coverage in legal liability fire damage. Coverage will include:

- 1) Additional insured endorsement;
- 2) Product liability;
- 3) Blanket contractual liability;
- 4) Broad form property damage;
- 5) Severability of interests;
- 6) Personal injury; and
- 7) Joint venture as named insured (if applicable).

Endorsements for physical abuse claims and for sexual molestation claims must be a minimum of Three Hundred Thousand Dollars (\$300,000.00) per occurrence and Three Hundred Thousand Dollars (\$300,000.00) in the aggregate.

- B. Business auto liability insurance of at least One Million Dollars (\$1,000,000.00) combined single limit, on all owned, non-owned, leased and hired automobiles. If the Agreement contemplates the transportation of the users of County services (such as but not limited to Agency consumers) "Consumers" and Provider provides this service through the use of its employees' privately owned vehicles "POV", then the Provider's Business Auto Liability insurance shall sit excess to the employees "POV" insurance and provide coverage above its employee's "POV" coverage. Provider agrees the business auto liability policy will be endorsed to provide this coverage.
- C. Professional liability (errors and omission) insurance of at least One Million Dollars (\$1,000,000.00) per claim and in the aggregate.
- D. Umbrella and excess liability insurance policy with limits of at least One Million Dollars (\$1,000,000.00) per occurrence and in the aggregate, above the commercial general and business auto primary policies and containing the following coverage:
- 1) Additional insured endorsement;
 - 2) Pay on behalf of wording;
 - 3) Concurrency of effective dates with primary;
 - 4) Blanket contractual liability;
 - 5) Punitive damages coverage (where not prohibited by law);
 - 6) Aggregates: apply where applicable in primary;
 - 7) Care, custody and control – follow form primary; and
 - 8) Drop down feature.

The amounts of insurance required in this section for General Liability, Business Auto Liability and Umbrella/Excess Liability may be satisfied by Provider purchasing coverage for the limits specified or by any combination of underlying and umbrella limits, so long as the total amount of insurance is not less than the limits specified in General Liability, Business Auto Liability and Umbrella/Excess Liability when added together.

- E. Workers' Compensation insurance at the statutory limits required by Ohio Revised code.

- F. The Provider further agrees with the following provisions:

- 1) All policies, except workers' compensation and professional liability, will endorse as additional insured the Board of County Commissioners, and Agency and their respective officials, employees, agents, and volunteers, including their Board of Trustees if applicable. The additional insured endorsement shall be on an ACORD or ISO form.
- 2) The insurance endorsement forms and the certificate of insurance forms will be sent to the Agency Director or Designee. The forms must state the following: "Board of County Commissioners, and Agency and their respective officials, employees, agents, and volunteers are endorsed as additional insured as required by agreement on the commercial general, business auto and umbrella/excess liability policies."
- 3) Each policy required by this clause shall be endorsed to state that coverage shall not be canceled or materially changed except after thirty (30) calendar days prior written notice given to the Agency Director

- or Designee.
- 4) Provider shall furnish the Agency with original certificates and amendatory endorsements effecting coverage required by this clause. All certificates and endorsements are to be received by the Agency before the Agreement commences. The Agency reserves the right at any time to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.
 - 5) Failure of the Agency to demand such certificate or other evidence of full compliance with these insurance requirements or failure of the Agency to identify a deficiency from evidence provided shall not be construed as a waiver of Provider's obligation to maintain such insurance.
 - 6) Provider shall declare any self-insured retention to the Agency pertaining to liability insurance. Provider shall provide a financial guarantee satisfactory to the Agency guaranteeing payment of losses and related investigations, claims administration and defense expenses for any self-insured retention.
 - 7) If Provider provides insurance coverage under a "claims-made" basis, Provider shall provide evidence of either of the following for each type of insurance which is provided on a claims-made basis: unlimited extended reporting period coverage which allows for an unlimited period of time to report claims from incidents that occurred after the policy's retroactive date and before the end of the policy period (tail coverage), or; continuous coverage from the original retroactive date of coverage. The original retroactive date of coverage means original effective date of the first claim-made policy issued for a similar coverage while Provider was under Agreement with the County on behalf of the Agency.
 - 8) Provider will require all insurance policies in any way related to the work and secured and maintained by Provider to include endorsements stating each underwriter will waive all rights of recovery, under subrogation or otherwise, against the County and the Agency. Provider will require of subcontractors, by appropriate written agreements, similar waivers each in favor of all parties enumerated in this section.
 - 9) Provider, the County, and the Agency agree to fully cooperate, participate, and comply with all reasonable requirements and recommendations of the insurers and insurance brokers issuing or arranging for issuance of the policies required here, in all areas of safety, insurance program administration, claim reporting and investigating and audit procedures.
 - 10) Provider's insurance coverage shall be primary insurance with respect to the County, the Agency, their respective officials, employees, agents, and volunteers. Any insurance maintained by the County or the Agency shall be excess of Provider's insurance and shall not contribute to it.
 - 11) If any of the work or Services contemplated by this Agreement is subcontractors, Provider will ensure that any subcontractors comply with all insurance requirements contained herein.

Article XXI. INDEMNIFICATION & HOLD HARMLESS

To the fullest extent permitted by and in compliance with applicable law, Provider agrees to protect, defend, indemnify and hold harmless the Agency and the Board of County Commissioners, their respective members, officials, employees, agents, and volunteers (the "Indemnified Parties") from and against all damages, liability, losses, claims, suits, actions, administrative proceedings, regulatory proceedings/hearings, judgments and expenses, subrogation (of any party involved in the subject of this Agreement), attorneys' fees, court costs, defense costs or other injury or damage (collectively "Damages"), whether actual, alleged or threatened, resulting from injury or damages of any kind whatsoever to any business, entity or person (including death), or damage to property (including destruction, loss of, loss of use of resulting without injury damage or destruction) of whatsoever nature, arising out of or incident to in any way, the performance of the terms of this Agreement including, without limitation, by Provider, its subcontractor(s), Provider's or its subcontractor(s) employees, agents, assigns, and those designated by Provider to perform the work or services encompassed by the Agreement. Provider agrees to pay all damages, costs and expenses of the Indemnified Parties in defending any action arising out of the aforementioned acts or omissions.

Article XXII. SCREENING AND SELECTION

A. Criminal Record Check

- 1) Provider warrants and represents it will comply with Article X as it relates to criminal record checks. Provider shall insure that every individual subject to a BCII check will sign a release of information to allow inspection and audit of the above criminal records transcripts or reports by the Agency or a private vendor hired by the Agency to conduct compliance reviews on their behalf.
- 2) Provider shall not assign any individual to work with or transport children until a BCII report and a criminal record transcript has been obtained.
- 3) Except as provided in Section C below, Provider shall not utilize any individual who has been convicted or plead guilty to any violations contained in ORC 5153.111(B)(1), ORC 2919.24, and OAC Chapters 5101:2-5, 5101:2-7, 5101:2-48.

B. Transportation of Child

- 1) Any individual transporting Childs shall possess the following qualifications:
 - a. Prior to allowing an individual to transport a Child, an initial satisfactory Bureau of Motor Vehicle ("BMV") abstract from the State of Ohio (or the state the Provider conducts its business) or other mutually agreed upon documentation and, if applicable, from the individual's state of licensure must be obtained;
 - b. Thereafter, an annual satisfactory BMV abstract report must be obtained from the State of Ohio (or the state the Provider conducts its business) or other mutually agreed upon documentation and, if applicable, from the individual's state of licensure; and
 - c. A current valid driver's license and vehicle insurance must be maintained.
- 2) In addition to the requirements set forth above, Provider shall not permit any individual to transport a Child if:
 - a. the individual has a condition which would affect safe operation of a motor vehicle;
 - b. the individual has six (6) or more points on his/her driver's license; or
 - c. the individual has been convicted of, or pleaded guilty to, a violation of section 4511.19 (Operating vehicle under the influence of alcohol or drugs – OVI or OVUAC) of the Revised Code if the individual previously was convicted of or plead guilty to two or more violations within the three years immediately preceding the current violation.

C. Rehabilitation

- 1) Notwithstanding the above, Provider may make a request to the Agency to utilize an individual if Provider believes the individual has met the rehabilitative standards of OAC Section 5101:2-07-02(I) as follows:
 - a. If the Provider is seeking rehabilitation for a foster caregiver, a foster care applicant or other resident of the foster caregiver's household, Provider must provide written verification that the rehabilitation standards of OAC 5101:2-7-02 have been met.
 - b. If the Provider is seeking rehabilitation for any other individual serving Agency children, Provider must provide written verification from the individual that the rehabilitative conditions of in accordance with 5101:2-5-09 have been met.
- 2) The Agency shall review the facts presented and may allow the individual to work with, volunteer with or transport Agency children on a case-by-case basis. It is the Agency's sole discretion to permit a rehabilitated individual to work with, volunteer with or transport children.

D. Verification of Job or Volunteer Application:

Provider shall check and document each applicant's personal and employment references, general work history, relevant experience, and training information. Provider further agrees it will not employ an individual in relation to this Agreement unless it has received satisfactory employment references, work history, relevant experience, and training information.

Article XXIII. PROHIBITION OF CORPORAL & DEGRADING PUNISHMENT

Agency prohibits the use of corporal or degrading punishment against child served by Agency.

Article XXIV. EXCLUDED PARTIES LIST

The Excluded Parties List prohibits public agencies from awarding an Agreement for goods, services, or construction, paid for in whole or in part from federal, state and local funds, to an entity identified on the list. By entering into this Agreement, Provider warrants and represents that they are not currently on the Excluded Parties List. Provider shall notify the Agency within ten (10) business days of its notification should the Provider be placed on this Excluded Parties List during any term of the Agreement.

Article XXV. PUBLIC RECORDS

This Agreement is a matter of public record under the Ohio public records law. By entering into this Agreement, Provider acknowledges and understands that records maintained by Provider pursuant to this Agreement may also be deemed public records and subject to disclosure under Ohio law. Upon request made pursuant to Ohio law, the Agency shall make available the Agreement and all public records generated as a result of this Agreement.

Article XXVI. CHILD SUPPORT ENFORCEMENT

Provider agrees to cooperate with ODJFS and any Ohio Child Support Enforcement Agency ("CSEA") in ensuring Provider and Provider's employees meet child support obligations established under state or federal law. Further, by executing this Agreement, Provider certifies present and future compliance with any court or valid administrative order for the withholding of support which is issued pursuant to the applicable sections in ORC Chapters 3119, 3121, 3123, and 3125.

Article XXVII. DECLARATION OF PROPERTY TAX DELINQUENCY

After award of a contract, and prior to the time a contract is entered into, the successful bidder shall submit a statement in accordance with ORC Section 5719.042. Such statement shall affirm under oath that the person with whom the contract is to be made was not charged at the time the bid was submitted with any delinquent personal property taxes on the general tax list of personal property of any county in which the taxing district has territory or that such person was charged with delinquent personal property taxes on any such tax list, in which case the statement shall also set forth the amount of such due and unpaid delinquent taxes any due and unpaid penalties and interest thereon. If the statement indicates that the taxpayer was charged with any such taxes, a copy of the statement shall be transmitted by the fiscal officer to the county treasurer within thirty days of the date it is submitted.

A copy of the statement shall also be incorporated into the contract, and no payment shall be made with respect to any contract to which this section applies unless such statement has been so incorporated as a part thereof.

Article XXVIII. SUBCONTRACTING AND DELEGATION

The performance of any duty, responsibility or function which is the obligation of the Provider under this Agreement may be delegated or subcontracted to any agent or subcontractor of Provider if Provider has obtained the prior written consent of the Agency for that delegation subcontract. Provider is responsible for ensuring that the duties, responsibilities or functions so delegated or subcontracted are performed in accordance with the provisions and standards of this Agreement, and the actions and omissions of any such agent or subcontractor shall be deemed to be the actions and omissions of Provider for purposes of this Agreement.

Article XXIX. PROPERTY OF AGENCY

The deliverable(s) and any item(s) provided or produced pursuant to this Agreement (collectively called "Deliverables") will be considered "works made for hire" within the meaning of copyright laws of the United States of America and the State of Ohio. The Agency is the sole author of the Deliverables and the sole owner of all rights therein. If any portion of the Deliverables are deemed not to be a "work made for hire," or if there are any rights in the Deliverables not so conveyed to the Agency, then Provider agrees to and by executing this Agreement hereby does assign to the Agency all worldwide rights, title, and interest in and to the Deliverables. The Agency acknowledges that its sole ownership of the Deliverables under this Agreement does not affect Provider's right to use general concepts, algorithms, programming techniques, methodologies, or technology that have been developed by Provider prior to or as a result of this Agreement or that are generally known and available. Any Deliverable provided or produced by Provider under this Agreement or with funds hereunder, including any documents, data, photographs and negatives, electronic reports/records, or other media, are the property of the Agency, which has an unrestricted right to reproduce, distribute, modify, maintain, and use the Deliverables. Provider shall not obtain copyright, patent, or other proprietary protection for the Deliverables. Provider shall not include in any Deliverable any copyrighted material, unless the copyright owner gives prior written approval for the Agency and Provider to use such copyrighted material. Provider agrees that all Deliverables will be made freely available to the general public unless the Agency determines that, pursuant to state or federal law, such materials are confidential or otherwise exempt from disclosure.

Article XXX. WAIVER

Any waiver by either party of any provision or condition of this Agreement shall not be construed or deemed to be a waiver of any other provision or condition of this Agreement, nor a waiver of a subsequent breach of the same provision or condition.

Article XXXI. NO ADDITIONAL WAIVER IMPLIED

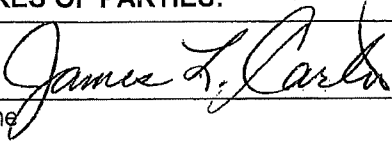
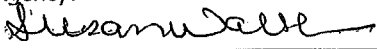
If the Agency or Provider fails to perform any obligations under this Agreement and thereafter such failure is waived by the other party, such waiver shall be limited to the particular matter waived and shall not be deemed to waive any other failure hereunder. Waivers shall not be effective unless in writing.

Article XXXII. APPLICABLE LAW AND VENUE

This Agreement and any modifications, amendments, or alterations, shall be governed, construed, and enforced under the laws of Ohio. Any legal action brought pursuant to the Agreement will be filed in the courts located in Warren County, Ohio.

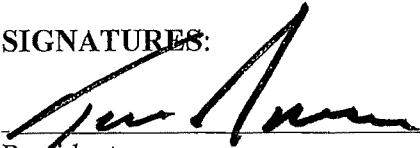
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of the signature of the parties.

SIGNATURES OF PARTIES:

Provider: 	Date 5/1/18
Printed Name Child Focus, Inc.	
Agency: 	
Printed Name Warren County Children Services	Date 5-17-18

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by the President of the Warren County Board of Commissioners, pursuant to Resolution Number 18-0825, dated 5/24/18.

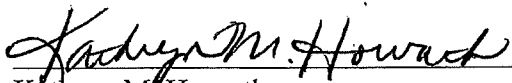
SIGNATURES:



President
Warren County Board of Commissioners
5/24/18

Date

Approved as to Form:



Kathryn M. Horvath
Assistant Prosecuting Attorney

TRANSACTION RECORD INQUIRY

DISPLAY SCREEN

FAOI22-FAS29

ACCOUNT TYPE.. E

FUND. 273 FUNCTION. 5100 OBJECT. 447 SUB-ACCT.

DATE. 1/05/18

PURCHASE ORDER#. 22324

ACTUAL DATE. 1/05/18

ACCRUAL YEAR. 2018

VENDOR..

ADDRESS.

OTHER FUND.

FUNCTION.

OBJECT..

SUB-ACCT.

TRANSACTION TYPE. PO CODE.. 0001

TRANSACTION AMOUNT 3,000,000.00 STATUS.. A

WARRANT NUMBER

WARRANT TYPE..

PROGRAM CODE. CLASSIFICATION.

MEMO. CONTRACT PLACEMENT SVCS

ENTER-REDISPLAY LIST

F3-RETURN TO PROMPT

Ohio Department of Job and Family Services
**AGREEMENT FOR TITLE IV-E AGENCIES AND PROVIDERS FOR THE PROVISION
OF
CHILD PLACEMENT**

ADDENDA TO AGREEMENT

This Addenda sets forth the terms and conditions between the parties for placement services for children who are in the care and custody of the Agency named below.

This Agreement is between

a Title IV-E Agency, hereinafter "Agency," whose address is

hereinafter "Provider," whose address is:

IV-E Agency Name Warren County Children Services		
Street/Mailing Address 416 S East St		
City Lebanon	State OH	Zip Code 45036

and

Provider Child Focus, Inc.		
Street/Mailing Address 555 Cincinnati Batavia Pike		
City Cincinnati	State OH	Zip Code 45244

Contract ID : 14328410

Originally Dated :01/01/2018 to 03/31/2019

Ohio Department of Job and Family Services
**AGREEMENT FOR TITLE IV-E AGENCIES AND PROVIDERS FOR THE PROVISION
OF
CHILD PLACEMENT**

Amendment Number **1** :

Amendment Reason:	OTHER
Amendment Begin Date:	01/01/2018
Amendment End Date :	03/31/2019
Increased Amount:	\$0.00

Article Name:

Amendment Reason Narrative:

Addendum #1 attached. See Addendum #1 for details.

Title IV-E Schedule A Rate Information

Title IV-E Schedule A Rate Information
 Agency : Warren County Children Services
 Run Date: 09/12/2017
 Provider / ID : Child Focus, Inc./ 24404
 Contract Period : 01/01/2018 - 03/31/2019
 Cost/Amendment Period : 01/01/2018 -

Service Description	Service ID	Person ID	Maintenance Per Diem	Administration Per Diem	Case Management Per Diem	Transportation / Administration Per Diem	Transportation / Maintenance Per Diem	Other Direct Services Per Diem	Behavioral Healthcare Per Diem	Other Per Diem Cost	Total Per Diem	Cost Begin Date	Cost End Date
Specialized Foster Care (30364)-Spec Needs	985641		\$48.38	\$35.00							\$83.38	01/01/2018	03/31/2019
Therapeutic Foster Care (30082)-Excpt Need	107706		\$54.09	\$38.00							\$92.09	01/01/2018	03/31/2019
Traditional Foster Care (30320)-FFH	729640		\$40.05	\$28.00							\$68.05	01/01/2018	03/31/2019

Ohio Department of Job and Family Services
**AGREEMENT FOR TITLE IV-E AGENCIES AND PROVIDERS FOR THE PROVISION
OF
CHILD PLACEMENT**

ADDENDA TO AGREEMENT

This Addenda sets forth the terms and conditions between the parties for placement services for children who are in the care and custody of the Agency named below.

This Agreement is between

a Title IV-E Agency, hereinafter "Agency," whose address is

hereinafter "Provider," whose address is:

IV-E Agency Name Warren County Children Services		
Street/Mailing Address 416 S East St		
City Lebanon	State OH	Zip Code 45036

and

Provider Child Focus, Inc.		
Street/Mailing Address 4629 Aicholtz Road		
City Cincinnati	State OH	Zip Code 45245

Contract ID : 14328410

Originally Dated :01/01/2018 to 03/31/2019

Ohio Department of Job and Family Services
**AGREEMENT FOR TITLE IV-E AGENCIES AND PROVIDERS FOR THE PROVISION
OF
CHILD PLACEMENT**

Amendment Number 1 :

Amendment Reason: OTHER
Amendment Begin Date: 01/01/2018
Amendment End Date : 03/31/2019
Increased Amount: \$0.00
Article Name:

Amendment Reason Narrative:

Addendum #1 attached. See Addendum #1 for details.

Amendment Number 2 :

Amendment Reason: ARTICLE
Amendment Begin Date: 01/01/2018
Amendment End Date :
Increased Amount:
Article Name: Article XX. Insurance

Amendment Reason Narrative:

Article XX, Insurance, Letter F, Item 3 is hereby stricken and the following language inserted:
Insurance Provider will endeavor to notify additional insureds of policy cancellation or non-renewal within 30 days prior to the change.

**ADDENDUM 1 TO AGREEMENT FOR TITLE IV-E AGENCIES AND PROVIDERS
FOR THE PROVISION OF CHILD PLACEMENT**

WHEREAS, the parties to the Agreement seek to amend and provide specific terms to certain articles of the Ohio Department of Job and Family Services standard Agreement for Title IV-E Agencies and Providers for the Provision of Child Placement;

NOW, WHEREFORE, the parties agree that the Agreement shall include the following Amendments, additional terms, and conditions that address Provider and Agency responsibilities.

AMENDMENT #1

Article V. PROVIDER RESPONSIBILITIES

The parties do hereby agree that Article V, subsection B of the Agreement shall be deleted in its entirety and replaced with the following language:

“Provider agrees to submit the SORC monthly progress report as negotiated by the parties for each child no later than the fifteenth (15th) day of each month. The SORC progress report will be based on the agreed upon services to be delivered to the child and/or family and will include documentation of services provided to the child and/or discharge summary. Failure to submit the SORC progress report may result in a delay of payment, until such time as the Provider complies with the reporting requirements.”

AMENDMENT #2

Article V. PROVIDER RESPONSIBILITIES

The parties further agree that the following provision shall be added to Article V of the Agreement:

“Provider agrees to provide additional services (e.g. transportation of the child for routine services, including, but not limited to, court hearings, visitations, family visits, medical appointments, school, therapies, and recreational activities).”

AMENDMENT #3

Article V. PROVIDER RESPONSIBILITIES

WHEREAS, the parties have agreed in Article V, subsections (D) and (E) of the Agreement that the Provider will notify the Agency under certain circumstances of death, critical injury, critical incidents, or emergencies involving an Agency child; and

WHEREAS, the parties have agreed in Article V, subsection (F) of the Agreement that the Provider will notify the Agency within 24 hours of certain non-emergency circumstances involving an Agency child; and

WHEREAS, the parties have agreed in Article V, subsection (G) of the Agreement that notification shall contain written documentation; and

WHEREAS, the parties desire to detail the procedure Provider is to follow for notification in such circumstances and for provision of written documentation;

The parties hereby agree to the following procedures:

I. NOTIFICATION OF DEATH, CRITICAL INJURY, CRITICAL INCIDENT, OR EMERGENCY INVOLVING AGENCY CHILD

A. Normal Business Hours

If notification is made during the Agency's normal business hours, Provider shall make notification by calling the main telephone number at (513) 695-1546. Provider shall attempt telephone contact with the following personnel, in the following order, and shall continue to attempt contact until made:

- (1) The Agency Director;
- (2) The Agency Deputy Director;
- (3) The supervisor assigned to the child's case;
- (4) Another supervisor; or
- (5) The caseworker assigned to the child's case.

A voicemail left during normal business hours does not constitute notification.

B. After Normal Business Hours

If notification is made after the Agency's normal business hours, Provider shall make notification by calling the Agency's after-hours hotline telephone number at (513) 695-1600. Provider shall leave a message containing the following information:

1. Name of Provider
2. Name of caller
3. Call-back number
4. Name of child
5. A statement that the caller wishes to make notification of death, critical injury, critical incident, or emergency involving an Agency child.

Notification is not complete after normal business hours until Provider is contacted by return call from an Agency representative.

Following notification, Provider shall remain immediately available for further communications from the Agency.

II. NOTIFICATION OF NON-EMERGENCY INVOLVING AGENCY CHILD

During normal business hours and within 24 hours following the non-emergency situation, Provider shall call the Agency's main telephone number at (513) 695-1546. Provider shall attempt telephone contact with the following personnel, in the following order, and shall continue to attempt contact until made:

- (1) Supervisor assigned to child's case;
- (2) Caseworker assigned to child's case; or
- (3) Another supervisor.

A voicemail left during normal business hours does not constitute notification.

III. WRITTEN DOCUMENTATION

Provider shall provide written documentation of emergency and non-emergency situations pursuant to Article V, subsection (G) by any of the following methods:

A. MAIL – Provider may mail documentation to the attention of the Agency Director in situations of death, critical injury, critical incident, or emergencies, or to the attention of the supervisor assigned to the child's case in non-emergency situations at the following address:

Warren County Children's Services
416 S. East Street
Lebanon, Ohio 45036

B. FASCIMILE/ FAX – Provider may fax documentation to the attention of the Agency Director in situations of death, critical injury, critical incident, or emergencies, or to the attention of the supervisor assigned to the child's case in non-emergency situations at the following fax numbers:

(513) 695-1247; or
(513) 695-1880

C. ELECTRONIC MAIL/ EMAIL –

1. In the event of death, critical injury, critical incident, or emergency involving an Agency child, Provider may email documentation to the Agency Director, copying the Agency Deputy Director, the supervisor assigned to child's case, and the caseworker assigned to child's case.

2. In the event of a non-emergency involving an Agency child, Provider may email documentation to the supervisor assigned to child's case, copying the caseworker assigned to the child's case.

AMENDMENT #4

ARTICLE VI. AGENCY RESPONSIBILITIES

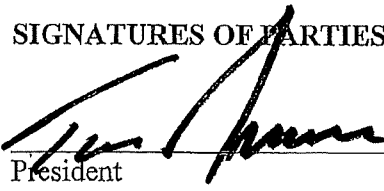
The parties further agree that Article VI, subsection (G) of the Agreement shall be amended as follows:

The language that states "thirty (30) calendar days" shall be replaced with "twenty-four (24) hours, not to exceed thirty (30) calendar days."


ALL TERMS AND CONDITIONS OF THE STANDARD AGREEMENT NOT SPECIFICALLY AMENDED, MODIFIED, ADDED, OR DELETED HEREBY SHALL REMAIN IN FULL FORCE AND EFFECT.

IN WITNESS WHEREOF, the parties hereto have executed this Addendum to the Agreement by the President of the Warren County Board of Commissioners, pursuant to Resolution Number 18-0825, dated 5/24/18, and by the duly authorized _____ of _____ [Provider].

SIGNATURES OF PARTIES:

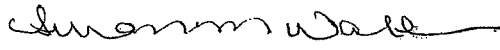


President
Warren County Board of Commissioners
Date 5/24/18



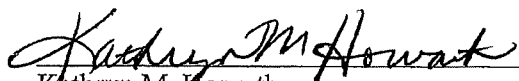
Provider
Date May 4 2018

Reviewed by:



Director
Warren County Children's Services

Approved as to Form:



Kathryn M. Horvath
Assistant Prosecuting Attorney

Client#: 1131053

CHILDFOC3

ACORDTM

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
01/26/2018

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

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

PRODUCER USI Insurance Services LLC 10100 Innovation Drive, Suite 220 Dayton, OH 45342 937 223-8891	CONTACT NAME: Patty Isaacs PHONE (A/C, No, Ext): 937-913-1313	FAX (A/C, No): 866-972-6309
	E-MAIL ADDRESS: patty.isaacs@usi.com	
INSURED Child Focus, Inc. 4633 Aicholtz Rd Cincinnati, OH 45244	INSURER(S) AFFORDING COVERAGE	
	INSURER A : Philadelphia Indemnity Insurance Co.	
	NAIC # 18058	
	INSURER B :	
	INSURER C :	
	INSURER D :	

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


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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			PHPK1769750	01/30/2018	01/30/2019	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 3,000,000 PRODUCTS - COMP/OP AGG \$ 3,000,000 \$
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			PHPK1769750	01/30/2018	01/30/2019	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10000			PHUB615877	01/30/2018	01/30/2019	EACH OCCURRENCE \$ 3,000,000 AGGREGATE \$ 3,000,000 \$ PER STATUTE OTH-ER
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						Y/N <input type="checkbox"/> N/A E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	Professional Liab			PHPK1769750	01/30/2018	01/30/2019	\$ 1,000,000 / \$3,000,000
A	Employers Liab / Ohio Stop Gap			PHPK1769750	01/30/2018	01/30/2019	\$ 1,000,000 / \$1,000,000

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

Pending issuance of endorsements to Philadelphia policies:

Board of County Commissioners and agency and their respective officials, employees, agents and volunteers are endorsed as Additional Insured as required by agreement on Commercial General, Automobile and Umbrella/Excess Liability policies, subject to the terms and conditions. See attached specimen copies of forms that are being endorsed onto the policies effective 11/10/17.

CERTIFICATE HOLDER Warren County Children's Services, Attn: Agency Director 416 East Street Lebanon, OH 45036	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 

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**BOARD OF COUNTY COMMISSIONERS
WARREN COUNTY, OHIO**

Resolution

Number 18-0826

Adopted Date May 24, 2018

ADVERTISE FOR BIDS FOR THE 2018 RESURFACING PROJECT

BE IT RESOLVED, to advertise for bids for the 2018 Resurfacing Project for the County Engineer;
and

BE IT FURTHER RESOLVED, to advertise said bid for one (1) week in a newspaper of general circulation and for two consecutive weeks on the County Internet Web Site, beginning the week of June 3, 2018; bid opening to be June 19, 2018 @ 9:20 a.m.

Mrs. Jones moved for adoption of the foregoing resolution being seconded by Mr. Grossmann.
Upon call of the roll, the following vote resulted:

Mr. Young- yea
Mr. Grossmann- yea
Mrs. Jones- yea

Resolution adopted this 24th day of May 2018.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

EH\

cc: Engineer (file)
OMB Bid file

Resolution

Number 18-0827

Adopted Date May 24, 2018

AUTHORIZE PUBLIC ADVERTISEMENT OF A REQUEST FOR PROPOSALS FOR THE NEXT GENERATION FIREWALL SYSTEM FOR THE WARREN COUNTY TELECOMMUNICATIONS DEPARTMENT

BE IT RESOLVED, to authorize the public advertisement of a Request for Proposals for the Next Generation Firewall System for the Warren County Telecommunications Department; and

BE IT FURTHER RESOLVED, to advertise said request for proposals for one (1) week in a newspaper of general circulation, and two times consecutive weeks on the County Internet Web Site, beginning the week of June 3, 2018; The proposal deadline is July 13, 2018 @ 4:00 p.m.

Mrs. Jones moved for adoption of the foregoing resolution being seconded by Mr. Grossmann. Upon call of the roll, the following vote resulted:

Mr. Young- yea
Mr. Grossmann- yea
Mrs. Jones- yea

Resolution adopted this 24th day of May 2018.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: OMB Bid file
Telecom (file)

**BOARD OF COUNTY COMMISSIONERS
WARREN COUNTY, OHIO**

Resolution

Number 18-0828

Adopted Date May 24, 2018

AUTHORIZE PRESIDENT OF BOARD TO SIGN THE TASK COMPLETION REPORTS 74, 75, AND 76 WITH TRITECH SOFTWARE SYSTEMS ON BEHALF OF WARREN COUNTY TELECOMMUNICATIONS

WHEREAS, Paul Kindell, Director of Telecommunications, has reviewed, verified and recommended that the Board of County Commissioners sign the TriTech Software Systems Task Completion Reports 74, 75, and 76 approving OSD-Armaark-Jail Roster Publisher 1.5, OSD-Correct Care- Inform Jail 5 Publisher 1.2 and OSD Warren ICS Jail Inmate Publisher-Version 2.3 accordingly; and

NOW THEREFORE BE IT RESOLVED, to authorize President of the Board to sign the TriTech Software Systems Task Completion Reports 74, 75, and 76; as attached hereto and made a part hereof.

Mrs. Jones moved for adoption of the foregoing resolution being seconded by Mr. Grossmann. Upon call of the roll, the following vote resulted:

Mr. Young- yea
Mr. Grossmann- yea
Mrs. Jones- yea

Resolution adopted this 24th day of May 2018.

BOARD OF COUNTY COMMISSIONERS


Tina Osborne, Clerk

cc: c/a – TriTech Software Systems
Telecom (file)



48013 14412
21647 51844

Warren County Sales Order 6395 Task Completion Report 74

Effective Date: 04/26/2018

The purpose of the Task Completion Report (this "Document") is to document the mutual agreement between TriTech and the Client on the items listed in this report, in reference to CAD/Mobile/RMS/Jail Implementation Project for the Warren County – Sales Order 6395.

Acknowledgement: Approval OSD-OSD - Aramark - Jail Roster Publisher 1.5

Document: OSD - Aramark - Jail Roster Publisher 1.5

Client has reviewed above document and approves content for development of interface

Approval of this Task Completion Report does not generate an invoice related to this Project.

The Client is responsible to approve this Task Completion Report within 10 business days, or provide a written notification to TriTech detailing the reason that this document cannot be approved. Lack of approval by the Client within this timeframe will not result in default or automatic approval of the document. However, any delays in approval process may have a cascading impact on project timelines.

Please sign, scan and return this document to TriTech via e-mail PDF attachment to Jameson Gartner (jameson.gartner@tritech.com)

Approvals

Client Project Manager Print Name: Tom Grossman
Signature: [Signature] Date: 5/24/18

TriTech Project Manager Print Name: Jameson Gartner
Signature: [Signature] Date: 04/26/2018



Warren County Sales Order 6395 Task Completion Report 75

Effective Date: 04/26/2018

The purpose of the Task Completion Report (this "Document") is to document the mutual agreement between TriTech and the Client on the items listed in this report, in reference to CAD/Mobile/RMS/Jail Implementation Project for the Warren County – Sales Order 6395.

Acknowledgement: Approval OSD-OSD - Correct Care - Inform Jail 5 Publisher 1.2

Document: OSD - Correct Care - Inform Jail 5 Publisher 1.2

Client has reviewed above document and approves content for development of interface

Approval of this Task Completion Report does not generate an invoice related to this Project.

The Client is responsible to approve this Task Completion Report within 10 business days, or provide a written notification to TriTech detailing the reason that this document cannot be approved. Lack of approval by the Client within this timeframe will not result in default or automatic approval of the document. However, any delays in approval process may have a cascading impact on project timelines.

Please sign, scan and return this document to TriTech via e-mail PDF attachment to Jameson Gartner (jameson.gartner@tritech.com)

Approvals

Client Project Manager Print Name: Tom Grossmann
Signature:

Date: 5/24/18

TriTech Project Manager Print Name: Jameson Gartner
Signature:

Date: 04/26/2018



Warren County Sales Order 6395 Task Completion Report 76

Effective Date: 04/26/2018

The purpose of the Task Completion Report (this "Document") is to document the mutual agreement between TriTech and the Client on the items listed in this report, in reference to CAD/Mobile/RMS/Jail Implementation Project for the Warren County – Sales Order 6395.

Acknowledgement: Approval OSD-OSD Warren ICS Jail Inmate Publisher - Version 2.3

Document: OSD - OSD Warren ICS Jail Inmate Publisher - Version 2.3

Client has reviewed above document and approves content for development of interface

Approval of this Task Completion Report does not generate an invoice related to this Project.

The Client is responsible to approve this Task Completion Report within 10 business days, or provide a written notification to TriTech detailing the reason that this document cannot be approved. Lack of approval by the Client within this timeframe will not result in default or automatic approval of the document. However, any delays in approval process may have a cascading impact on project timelines.

Please sign, scan and return this document to TriTech via e-mail PDF attachment to Jameson Gartner (jameson.gartner@tritech.com)

Approvals

Client Project Manager

Print Name: Tom Grossman

Signature: [Signature]

Date: 5/24/18

TriTech Project Manager

Print Name: Jameson Gartner

Signature: [Signature]

Date: 04/26/2018

Resolution

Number 18-0829

Adopted Date May 24, 2018

APPROVE CHANGE ORDER NO. 1 TO THE CONTRACT WITH BOONE WATER SYSTEMS, INC. FOR THE FY13/16 VILLAGE OF MORROW WELL #3 CDBG PROJECT

WHEREAS, this Board on June 13, 2017 entered into a Contract with Boone Water Systems, Inc. for the FY16 Village of Morrow Well #3 Community Development Block Grant Project; and

WHEREAS, an additional pump upgrade will be required to complete said project; and

WHEREAS, a Change Order and Purchase Order are necessary in order to accommodate said change; and

NOW THEREFORE IT IS RESOLVED:

1. Approve Change Order No. 1 to the Contract with Boone Water Systems, Inc, including a Purchase Order No. 25126 for \$10,220.00 and creating a new Contract and Purchase Order.
2. By said Change Order, attached hereto and made part hereof, all costs and work associated with the change shall be added to the Contract.
3. That the Board is approve and sign Change Order No. 1 of the Contract with Boone Systems, Inc. for the FY16 Village of Morrow Well #3 Community Development Block Grant Project.

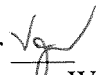
Mrs. Jones moved for adoption of the foregoing resolution being seconded by Mr. Grossmann. Upon call of the roll, the following vote resulted:

Mr. Young- yea
Mr. Grossmann- yea
Mrs. Jones- yea

Resolution adopted this 24th day of May 2018.

BOARD OF COUNTY COMMISSIONERS


Tina Osborne, Clerk

cc: Auditor 
C/A- Boone Water Systems, Inc
OGA (file)



Warren County
 Office of Grants Administration
 406 Justice Drive
 Lebanon, Ohio 45036
 Phone: (513) 695-1377
 FAX (513) 695-2995

CHANGE ORDER

DATE: May 18, 2018

Change Order Number 1

Project Name: FY16 Village of Morrow Well #3 CDBG Project

CONTRACTOR QUOTATION	DESCRIPTION	ADDITIONS	DELETIONS
1	Upgraded 10-horse power, 275-GPM pump	10,220.00	

Sums of the ADDITIONS and DELETIONS

\$10,220.00

\$0

Attachments: n.a.

Original contract price \$49,420.00

Current contract price adjusted by previous change orders \$ 49,420.00

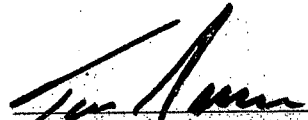
The Contract price due to this change order will be increased/decreased by \$ 10,220.00.


The New contract price including this change order will be \$ 59,640.00.

The date for completion of work will be August 31, 2018.


Acceptance of this Change Order by the contractor constitutes final settlement of all matters relating to the change in Work that is the subject of the Change Order, including but not limited to, all direct, indirect and cumulative costs and schedule impacts associated with such change and any and all adjustments to the Contract Sum or Price and the extension of the Contract completion time.

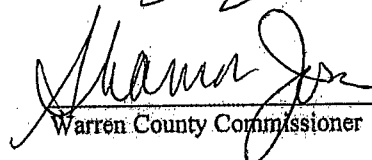
BOONE WATER SYSTEMS, INC
 1001 VAN EATON ROAD
 XENIA, OH 45385


 Warren County Commissioner Date 5/24/18


 Boone Water Systems Date 5/23/18


 Warren County Commissioner Date 5/24/18


 Warren County Grants Administration Date 5-23-18


 Warren County Commissioner Date 5/24/18

Resolution

Number 18-0830

Adopted Date May 24, 2018

ENTER INTO A TEMPORARY ENTRANCE AND WORK AGREEMENT WITH THE NORTHWOOD LAND CORPORATION FOR THE WILMINGTON ROAD EMBANKMENT STABILIZATION PROJECT ON BEHALF OF THE WARREN COUNTY ENGINEERS OFFICE

WHEREAS, in order to improve the public safety of Wilmington Road an Embankment Stabilization Project is to be constructed, and it is necessary to enter onto the property, parcel # 13-24-300-21 at 2346 Wilmington Road, Lebanon, OH 45036 which is owned by The Northwood Land Corporation, Grantor; and

WHEREAS, in order to complete this work; Grantee requests permission from Grantor to enter onto the said real estate for the purpose of completing the following items of work:

1. Remove trees, trim tree limbs, and/or brush as necessary for construction of the project.
2. Excavate, as necessary.
3. Stabilize embankment with soil nails.
4. Install steel mesh and drains.
5. When weather permits, seed and straw any disturbed area.

WHEREAS, in order to accomplish the foregoing, it is necessary to enter into a temporary entrance and work agreement with the property owner; and


NOW THEREFORE BE IT RESOLVED, to enter into a Temporary Entrance and Work Agreement with The Northwood Land Corporation for the Wilmington Road Embankment Stabilization Project, a copy of which is attached hereto and made a part hereof, for the sum of \$1.00 as consideration thereof.

Mrs. Jones moved for adoption of the foregoing resolution being seconded by Mr. Grossmann. Upon call of the roll, the following vote resulted:

Mr. Young- yea
Mr. Grossmann- yea
Mrs. Jones- yea

Resolution adopted this 24th day of May 2018.

BOARD OF COUNTY COMMISSIONERS


Tina Osborne, Clerk

Cc: Engineer (file)
c/a- The Northwood Land Corp.

TEMPORARY ENTRANCE AND WORK AGREEMENT

ARTICLES OF AGREEMENT

This agreement is entered into on the date stated below by The Northwood Land Corporation, an Ohio corporation for profit, whose tax mailing address is 941 Chatham Lane, Suite 100, Columbus, Ohio 43221 (hereinafter the "Grantor"), and the Warren County Board of County Commissioners, whose mailing address is 406 Justice Drive, Lebanon, Ohio 45036 (hereinafter the "Grantee").

Witnesseth:

In order to improve the public safety of Wilmington Road (CR 7), a roadway embankment stabilization project is to be constructed. In order to construct the project it is necessary to enter onto property owned by Grantor. The subject real estate is located at 2346 Wilmington Road, Lebanon, Ohio 45036, identified as Parcel # 1324300021. Grantee requests permission from Grantor to enter onto the said real estate for the purpose of completing the following items of work:

1. Remove trees, trim tree limbs, and/or brush as necessary for construction of the project.
2. Excavate, as necessary.
3. Stabilize embankment with soil nails.
4. Install steel mesh and drains.
5. When weather permits, seed and straw any disturbed area.

Upon completion of the above mentioned items of work, the Grantee agrees to restore any disturbed property, with the exception of any trees, tree limbs and brush that are removed, to its original condition, but not better than any pre-existing condition.

Now, therefore, in consideration of One Dollar (\$1.00), the receipt and sufficiency of which are hereby stipulated, Grantor does hereby grant a *license* to Grantee, its agents and employees, to enter onto the aforesaid real estate to complete the aforementioned items of work.

This Temporary Entrance and Work Agreement shall bind and inure to the benefit of each party hereto and their respective heirs, successors and assigns and shall terminate upon the completion of the Wilmington Road Embankment Stabilization Project or until December 31, 2018, whichever comes first.

[the remainder of this page is blank]

IN EXECUTION WHEREOF, DAVID E. HAID
PRESIDENT (name, title) for The Northwood Land Corporation, an Ohio corporation for profit, pursuant to the authority granted to him by the corporation to execute this Agreement on behalf the Grantor herein, has hereunto set his hands on the date stated below.

Grantor:
The Northwood Land Corporation
Name: David E Haid
Title: President
Date: 5/14/18

STATE OF OHIO, COUNTY OF FRANKLIN.

BE IT REMEMBERED, that on this 14th day of MAY, 2018 before me, the subscriber, a Notary Public in and for said state, personally came DAVID E. HAID, PRESIDENT (name, title) for The Northwood Land Corporation, an Ohio corporation for profit, being the Grantor in the foregoing Agreement, and pursuant to the authority granted to him by the corporation and while acting in his official capacity on behalf of Grantor, he did acknowledge the signing thereof to be his voluntary act and deed.

IN TESTIMONY THEREOF, I have hereunto subscribed my name and affixed my seal on this day and year aforesaid.

Notary Public: [Signature]
My commission expires: _____

LYNDA L. FINNERTY
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES 09-25-20

[the remainder of this page is blank]

IN EXECUTION WHEREOF, the Warren County Board of County Commissioners, the Grantee herein, have caused this agreement to be executed by Tom Grossmann, its President on the date stated below, pursuant to Resolution Number 18-0830, dated 5/24/18

Grantee:

Signature: [Signature]

Printed Name: Tom Grossmann

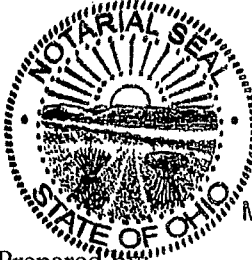
Title: President

Date: 5/24/18

STATE OF OHIO, WARREN COUNTY, ss.

BE IT REMEMBERED, that on this 24 day of May, 2018 before me, the subscriber, a Notary Public in and for said state, personally came a certain individual known or proven to me to be Tom Grossmann, President of the Warren County Board of County Commissioners, being the Grantee in the foregoing Agreement, and acknowledged the signing thereof to be his voluntary act and deed, and pursuant to the Resolution authorizing him to act.

IN TESTIMONY THEREOF, I have hereunto subscribed my name and affixed my seal on this day and year aforesaid.



LAURA K. LANDER
NOTARY PUBLIC
STATE OF OHIO
Recorded in
Warren County
My Comm. Exp. 12/26/2022

Notary Public: [Signature]

My commission expires: 12/26/2022

Prepared by:

DAVID P. FORNSHELL,
PROSECUTING ATTORNEY
WARREN COUNTY, OHIO

By: [Signature]

Adam Nice, Assistant Prosecutor
500 Justice Drive
Lebanon, OH 45036
Ph. (513) 695-1782
Fx. (513) 695-2962
Email: Adam.Nice@co.warren.oh.us

**BOARD OF COUNTY COMMISSIONERS
WARREN COUNTY, OHIO**

Resolution

Number 18-0831

Adopted Date May 24, 2018

ENTER INTO A CONSULTING SERVICES CONTRACT FOR BALL BANK STUDY FOR THE WARREN COUNTY HIGHWAY SYSTEM ON BEHALF OF THE WARREN COUNTY ENGINEERS OFFICE


BE IT RESOLVED, to enter into a Consulting Services Contract with 143Engineers, LLC, 3249 Plateau Place, Cincinnati, OH 45241 for the Ball Bank Study for the Warren County Highway System; as attached hereto and made a part hereof.

Mrs. Jones moved for adoption of the foregoing resolution being seconded by Mr. Grossmann. Upon call of the roll, the following vote resulted:

Mr. Young- yea
Mr. Grossmann- yea
Mrs. Jones- yea

Resolution adopted this 24th day of May 2018.

BOARD OF COUNTY COMMISSIONERS


Tina Osborne, Clerk

Cc: c/a- 143Engineers, LLC.
Engineer (file)

**CONSULTING ENGINEERING SERVICES CONTRACT FOR
BALL BANK STUDY
WARREN COUNTY HIGHWAY SYSTEM**

THIS IS AN AGREEMENT made as of the date stated below, between The Warren County Board of County Commissioners, 406 Justice Drive, Lebanon, Ohio 45036 hereinafter referred to as the "OWNER," on behalf of the Warren County Engineer, hereinafter referred to as the "COUNTY ENGINEER" and 143Engineers, LLC, duly licensed under the laws of the State of Ohio for the practice of engineering, hereinafter referred to as the "ENGINEER."

COUNTY ENGINEER intends to study roadway curves on the county highway system. In order to proceed with the PROJECT, a Ball Bank Study must be completed, which are part of services to be provided by ENGINEER.

OWNER and ENGINEER in consideration of their mutual covenants herein agree in respect of the performance of Ball Bank Study by ENGINEER and the payment for those services by OWNER as set forth below.

ENGINEER shall provide professional Ball Bank Study for COUNTY ENGINEER in all phases of the Project to which this Agreement applies, serve as COUNTY ENGINEER'S professional Ball Bank representative for the Project as set forth below and shall give professional Ball Bank consultation and advice to COUNTY ENGINEER during the performance of services hereunder.

SECTION 1 - BASIC SERVICES OF ENGINEER

- 1.1 ENGINEER shall perform professional services as hereinafter stated, which include customary civil engineering services incidental thereto.
- 1.2 ENGINEER shall perform tasks for the PROJECT in accordance with the scope of services attached and made a part of this contract and identified as Exhibit 1, hereinafter referred to as "Basic Services".
- 1.3 ENGINEER shall furnish to the COUNTY ENGINEER one copy of all electronic files regarding the PROJECT on a compact disk.

SECTION 2 - ADDITIONAL SERVICES OF CONSULTANT

- 2.1 If authorized in writing by OWNER and COUNTY ENGINEER, ENGINEER shall furnish or obtain from others Additional Services, which are not considered normal or customary Basic Services. Such services are set forth in Exhibit 1, and identified as "if authorized" services.

SECTION 3 - COUNTY ENGINEER'S RESPONSIBILITIES

COUNTY ENGINEER shall:

- 3.1 Provide all criteria and full information as to COUNTY ENGINEER'S requirements for the Project.

- 3.2 Assist ENGINEER by placing at their disposal all available information pertinent to the Project.
- 3.3 Furnish ENGINEER, as required for performance of ENGINEER'S Basic Services, data prepared by or services of others, including without limitation laboratory tests and inspections of samples, materials and equipment; appropriate professional interpretations of all of the foregoing; property, boundary, easement, right-of-way, topographic and utility surveys; property descriptions; zoning, deed and other land use restrictions, all of which ENGINEER may rely upon in performing his/her services.
- 3.4 Arrange for access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform his/her services.
- 3.5 Give prompt written notice to ENGINEER whenever COUNTY ENGINEER observes or otherwise becomes aware of any development that affects the scope or timing of ENGINEER'S services, or any defect in the work of the ENGINEER.
- 3.6 Furnish, or direct ENGINEER to provide, upon approval of OWNER, necessary Additional Services as stipulated in Section 2 of this Agreement or other services as required.
- 3.7 Bear all costs incidental to compliance with the requirements of this Section 3.

SECTION 4 - PERIOD OF SERVICE

- 4.1 The provisions of this Section 4 and the various rates of compensation for ENGINEER'S services provided for elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project. ENGINEER'S obligation to render services hereunder will extend for the period of time that may reasonably be required for the Ball Bank Study of the PROJECT, including extra work and required extensions thereto.

SECTION 5 - PAYMENTS TO ENGINEER

5.1 Methods of Payment for Services and Expenses of ENGINEER

- 5.1.1 For Basic Services. OWNER shall pay ENGINEER for Basic Services rendered under Section 1 as follows:

- 5.1.1.1 The ENGINEER agrees to provide the Basic Services set forth in Section 1 hereof to the COUNTY ENGINEER for the PROJECT, for a **lump sum fee of \$ 26,800.00**

5.2 Times of Payments

- 5.2.1 ENGINEER shall submit monthly progress reports for Basic and Additional Services rendered. The progress reports will be based upon ENGINEER'S estimate of the proportion of the total services actually completed at the time of billing. No payment will be processed without a monthly progress report. OWNER shall make prompt monthly payments in response to ENGINEER'S monthly statements.

5.3 Other Provisions Concerning Payments

- 5.3.1 If OWNER fails to make any payment due ENGINEER for services and expenses within sixty (60) days after receipt of ENGINEER'S statement therefore, the amounts due

ENGINEER shall include a charge at the rate of one percent (1%) per month from said 60th day, and in addition, ENGINEER may, after giving seven days written notice to OWNER, suspend services under this Agreement until he has been paid in full all amounts due for services and expenses.

- 5.3.2 Records of ENGINEER'S Salary Costs pertinent to ENGINEER'S compensation under this Agreement will be kept in accordance with generally accepted accounting practices. Copies will be made available to OWNER and COUNTY ENGINEER upon request prior to final payment for ENGINEER'S services.

5.4 Definitions

- 5.4.1 The Payroll Costs used as a basis for payment mean salaries and wages (basic and incentive) paid to all personnel engaged directly on the PROJECT, including, but not limited to the following; engineers, architects, surveyors, designers, draftsmen, specification writers, estimators, all other technical personnel, stenographers, typists and clerks; plus the cost of unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, sick leave, vacation and holiday pay applicable thereto.

SECTION 6 - GENERAL CONSIDERATIONS

6.1 Termination

The obligation to provide services under this Agreement may be terminated by either party upon thirty (30) days' written notice by certified mail, return receipt requested, in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. If this agreement is terminated, ENGINEER shall be paid for services performed to the termination date.

6.2 Reuse of Documents

All documents including reports and maps prepared by ENGINEER pursuant to this Agreement are instruments of service as part of the PROJECT. They are not intended or represented to be suitable for reuse by COUNTY ENGINEER or others on extensions of the PROJECT or any other project. Any reuse without written verification or adaptation by ENGINEER for the specific purpose intended will be at OWNER or COUNTY ENGINEER'S risk and without liability or legal exposure to ENGINEER. Any verification or adaptation requested by OWNER or COUNTY ENGINEER to be performed by ENGINEER will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER, COUNTY ENGINEER and ENGINEER.

6.3 Controlling Law and Venue

This Agreement is to be governed by the law of the State of Ohio. The venue for any disputes hereunder shall be Warren County, Ohio.

6.4 Successors and Assigns

- 6.4.1 OWNER, COUNTY ENGINEER and ENGINEER each bind himself and his partners, successors, executors, administrators, assigns and legal representatives to the other party to this Agreement and to the partners, successors, executors, administrators, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations of this Agreement.

6.4.2 Neither OWNER nor ENGINEER nor COUNTY ENGINEER shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, except as stated in paragraph 6.4.1 and except to the extent that the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent ENGINEER from employing such independent consultants, associates and subcontractors as he may deem appropriate to assist him in the performance of services hereunder.

6.4.3 Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than OWNER, COUNTY ENGINEER and ENGINEER.

6.5 Modification or Amendment

No modification or amendment of any provisions of this Contract shall be effective unless made by a written instrument, duly executed by the party to be bound thereby, which refers specifically to this Contract and states that an amendment or modification is being made in the respects as set forth in such amendment.

6.6 Construction

Should any portion of this Contract be deemed unenforceable by any administrative or judicial officer or tribunal of competent jurisdiction, the balance of this Contract shall remain in full force and effect unless revised or terminated pursuant to any other section of this Contract.

6.7 Waiver

No waiver by either party of any breach of any provision of this Contract shall be deemed to be a further or continuing waiver of any breach of any other provision of this Contract. The failure of either party at any time or times to require performance of any provision of this Contract shall in no manner affect such party's right to enforce the same at a later time.

6.8 Relationship of Parties

The parties shall be independent contractors to each other in connection with the performance of their respective obligations under this Contract.

6.9 Parties

Whenever the terms "OWNER", "COUNTY ENGINEER" AND "ENGINEER" are used herein, these terms shall include without exception the employees, agents, successors, assigns and/or authorized representatives of OWNER, COUNTY ENGINEER and ENGINEER.

6.10 Headings

Paragraph headings in this Contract are for the purposes of convenience and identification and shall not be used to interpret or construe this Contract.

6.11 Notices

All notices required to be given herein shall be in writing and shall be sent certified mail return receipt to the following respective addresses:

TO: Warren County Commissioners Attn. Tiffany Zindel, County Administrator 406 Justice Drive Lebanon, Ohio 45036 Ph. 513-695-1250	Warren County Engineer's Office Attn. Neil F. Tunison, County Engineer 210 W Main Street Lebanon, Ohio 45036 Ph. 513-695-3301
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143Engineers, LLC
Attn. Caroline Duffy, P.E.
3249 Plateau Place
Cincinnati, OH 45241
Ph. 513-476-6271

6.12 Insurance

ENGINEER shall carry comprehensive general insurance providing single limit coverage with limits of \$1,000,000 per occurrence and 2,000,000 aggregate, and professional liability insurance providing limits of \$1,000,000 per claim/aggregate with no interruption of coverage during the entire term of this Contract. ENGINEER further agrees that in the event that its comprehensive general or professional liability policy is maintained on a "claims made" basis, and in the event that this contract is terminated, ENGINEER shall continue such policy in effect for the period of any statute or statutes of limitation applicable to claims thereby insured, notwithstanding the termination of the Contract. ENGINEER shall provide COUNTY ENGINEER with a certificate of insurance evidencing such coverage, and further provide thirty (30) days written notice of cancellation or non-renewal to COUNTY ENGINEER. Cancellation or non-renewal of insurance shall be grounds to terminate this Contract.

ENGINEER shall carry statutory worker's compensation insurance and statutory employer's liability insurance as required by law and shall provide COUNTY ENGINEER with certificates of insurance evidencing such coverage simultaneous with the execution of this Contract.

SECTION 7 - SPECIAL PROVISIONS, EXHIBITS and SCHEDULES

The following Exhibits are attached to and made a part of this Agreement:

Exhibit 1

SECTION 8 - ENTIRE AGREEMENT

This Agreement (consisting of pages 1 to 7, inclusive), together with the Exhibit and schedules identified above constitute the entire agreement between OWNER and ENGINEER and supersede all prior written or oral understandings. This Agreement and said Exhibit and schedules may only be amended, supplemented, modified or canceled by a duly executed written

instrument, signed by all parties.

SECTION 9 – INDEMNIFICATION

A. Professional Liability

With regard to professional liability claims, to the fullest extent permitted by law the Engineer agrees to indemnify and hold the Owner, its officers, officials, and employees (hereinafter “Owner”) harmless from and against losses and damages to the extent arising from a negligent act, error or omission by the Engineer or its employees or anyone for whom the Engineer is legally liable.

B. Non-Professional Liability (General Liability)

With regard to general liability claims, to the fullest extent permitted by law, the Engineer shall indemnify, defend and hold harmless the Owner from and against claims, damages, losses and expenses, including but not limited to reasonable attorneys’ fees, arising out of the acts or omissions of the Engineer, provided that such claim, damage loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of property (other than the work itself) including loss of use resulting therefrom, but only to the extent caused by the acts or omissions of the Engineer, any subconsultant(s) of the Engineer, its agents, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable.

[the balance of this page is intentionally left blank]

SECTION 10 - EXECUTION

ENGINEER:

IN EXECUTION WHEREOF, 143 Engineers, LLC, an Ohio Limited Liability Corporation for profit, has caused this Agreement to be executed on the date stated below by Caroline Duffy, whose title is President & owner, pursuant to a corporate Resolution authorizing such act.

SIGNATURE: Caroline Duffy for 143 Engineers
PRINTED NAME: Caroline Duffy
TITLE: President & owner
DATE: 05/14/18

OWNER:

IN EXECUTION WHEREOF, upon written recommendation of the Warren County Engineer, the Warren County Board of County Commissioners has caused this Agreement to be executed on the date stated below by Tom Grossmann, its President, pursuant to Resolution No. 18-0231 dated 5/24/18.

**WARREN COUNTY
BOARD OF COUNTY COMMISSIONERS**

SIGNATURE: [Signature]
PRINTED NAME: Tom Grossmann
TITLE: President
DATE: 5/24/18

RECOMMENDED BY:

**NEIL F. TUNISON, P.E., P.S.
WARREN COUNTY ENGINEER**

By: [Signature]
Neil F. Tunison, P.E., P.S.

APPROVED AS TO FORM:

**DAVID P. FORNSHELL,
PROSECUTING ATTORNEY
WARREN COUNTY, OHIO**

By: [Signature]
Assistant Prosecuting Attorney

Exhibit 1



April 30, 2018

Mr. Dominic M. Brigano, P.E., S.I.
Assistant Bridge Engineer
Warren County Engineer's Office, Administration and Engineering
210 W Main Street, Lebanon, Ohio 45036
E-mail: Dominic.Brigano@co.warren.oh.us

Re: Consulting Engineering Services Contract for Ball Bank Study - Warren County Highway System

Dear Dominic,

Thank you for selecting 143Engineers, LLC to complete the Ball Bank Study for the Warren County Highway System. We understand that this contract is in conjunction with the Rural Sign Inventory and Sign Compliance Warren County Highway System, but that each of the contracts will be separate contracts. The Scope of Work for the Consulting Engineering Services Contract for Ball Bank Study - Warren County Highway System is as follows:

143Engineers, LLC will enter into a subagreement with Reiker Inc. to utilize their Curve Advisory Reporting Service (CARS). This system will be utilized to drive the 268 miles, which will be provided by the Warren County Engineer's Office. These corridors will be driven with two passes in each direction for quality control. After the corridors are driven, the CARS system will be utilized to process the curve data for each curve. The existing sign data, including posted speed limit signs and existing curve signage, will be provided by the Warren County Engineer's GIS department in excel file format. This data will be imported into the CARS system to determine the curve locations where the posted curve data does not match the properties of each curve, as measured by the CARS method. The deliverables will be a summary report that list the location of these deficient curves along with the correct curve speed, as measured by the CARS system. Once this contract is complete, the data will be archived in the Reiker Inc. cloud; however 143Engineers, LLC will assist the Warren County Engineer's Office on downloading all the data for the County records prior to the Reiker Inc. archive. 143Engineers, LLC will not be responsible for keeping the curve information data. All deliverables will be electronic in nature, and 143Engineers, LLC will not be responsible for providing hard copies to the Warren County Engineer's Office. 143Engineers, LLC may be assisted by subcontractors with years of experience in field collection and processing data with this project.

This contract will be at a lump sum of \$ 26,800.00. Monthly percentage complete invoices will be provided electronically with a status report for payment. This project will be complete by September 30, 2018.

Please do not hesitate to contact me at (513) 476-6271 or via email at 143Engineers@gmail.com with questions regarding this proposal or for further coordination.

Yours Respectfully,

Caroline F. Duffy, PE
President

Resolution

Number 18-0832

Adopted Date May 24, 2018

ENTER INTO A CONSULTING SERVICES CONTRACT FOR RURAL SIGN INVENTORY AND SIGN COMPLIANCE FOR THE WARREN COUNTY HIGHWAY SYSTEM ON BEHALF OF THE WARREN COUNTY ENGINEERS OFFICE


BE IT RESOLVED, to enter into a Consulting Services Contract with 143Engineers, LLC, 3249 Plateau Place, Cincinnati, OH 45241 for the rural sign inventory and sign compliance for the Warren County Highway System; as attached hereto and made a part hereof.

Mrs. Jones moved for adoption of the foregoing resolution being seconded by Mr. Grossmann. Upon call of the roll, the following vote resulted:

Mr. Young- yea
Mr. Grossmann- yea
Mrs. Jones- yea

Resolution adopted this 24th day of May 2018.

BOARD OF COUNTY COMMISSIONERS


Tina Osborne, Clerk

cc: c/a – 143Engineers, LLC.
Engineer (file)

**CONSULTING ENGINEERING SERVICES CONTRACT FOR
RURAL SIGN INVENTORY AND SIGN COMPLIANCE
WARREN COUNTY HIGHWAY SYSTEM**

THIS IS AN AGREEMENT made as of the date stated below, between The Warren County Board of County Commissioners, 406 Justice Drive, Lebanon, Ohio 45036 hereinafter referred to as the "OWNER," on behalf of the Warren County Engineer, hereinafter referred to as the "COUNTY ENGINEER" and 143Engineers, LLC, duly licensed under the laws of the State of Ohio for the practice of engineering, hereinafter referred to as the "ENGINEER."

COUNTY ENGINEER intends to review our Rural Sign Inventory to confirm our Sign Compliance with the Ball Bank Study on county maintained highways. In order to proceed with the PROJECT, Rural Sign Inventory and Sign Compliance must be completed, which are part of services to be provided by ENGINEER.

OWNER and ENGINEER in consideration of their mutual covenants herein agree in respect of the performance of Rural Sign Inventory and Sign Compliance by ENGINEER and the payment for those services by OWNER as set forth below.

ENGINEER shall provide professional Rural Sign Inventory and Sign Compliance Services for COUNTY ENGINEER in all phases of the Project to which this Agreement applies, serve as COUNTY ENGINEER'S professional Rural Sign Inventory and Sign Compliance representative for the Project as set forth below and shall give professional Rural Sign Inventory and Sign Compliance consultation and advice to COUNTY ENGINEER during the performance of services hereunder.

SECTION 1 - BASIC SERVICES OF ENGINEER

- 1.1 ENGINEER shall perform professional services as hereinafter stated, which include customary civil engineering services incidental thereto.
- 1.2 ENGINEER shall perform tasks for the PROJECT in accordance with the scope of services attached and made a part of this contract and identified as Exhibit 1, hereinafter referred to as "Basic Services".
- 1.3 ENGINEER shall furnish to the COUNTY ENGINEER one copy of all electronic files regarding the PROJECT on a compact disk.

SECTION 2 - ADDITIONAL SERVICES OF CONSULTANT

- 2.1 If authorized in writing by OWNER and COUNTY ENGINEER, ENGINEER shall furnish or obtain from others Additional Services, which are not considered normal or customary Basic Services. Such services are set forth in Exhibit 1, and identified as "if authorized" services.

SECTION 3 - COUNTY ENGINEER'S RESPONSIBILITIES

COUNTY ENGINEER shall:

- 3.1 Provide all criteria and full information as to COUNTY ENGINEER'S requirements for the Project.

- 3.2 Assist ENGINEER by placing at his disposal all available information pertinent to the Project.
- 3.3 Furnish ENGINEER, as required for performance of ENGINEER'S Basic Services, data prepared by or services of others, including without limitation laboratory tests and inspections of samples, materials and equipment; appropriate professional interpretations of all of the foregoing; property, boundary, easement, right-of-way, topographic and utility surveys; property descriptions; zoning, deed and other land use restrictions, all of which ENGINEER may rely upon in performing his/her services.
- 3.4 Arrange for access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform his/her services.
- 3.5 Give prompt written notice to ENGINEER whenever COUNTY ENGINEER observes or otherwise becomes aware of any development that affects the scope or timing of ENGINEER'S services, or any defect in the work of the ENGINEER.
- 3.6 Furnish, or direct ENGINEER to provide, upon approval of OWNER, necessary Additional Services as stipulated in Section 2 of this Agreement or other services as required.
- 3.7 Bear all costs incidental to compliance with the requirements of this Section 3.

SECTION 4 - PERIOD OF SERVICE

- 4.1 The provisions of this Section 4 and the various rates of compensation for ENGINEER'S services provided for elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project. ENGINEER'S obligation to render services hereunder will extend for the period of time that may reasonably be required for the Rural Sign Inventory and Sign Compliance Services of the PROJECT, including extra work and required extensions thereto.

SECTION 5 - PAYMENTS TO ENGINEER

5.1 Methods of Payment for Services and Expenses of ENGINEER

- 5.1.1 For Basic Services. OWNER shall pay ENGINEER for Basic Services rendered under Section 1 as follows:
 - 5.1.1.1 The ENGINEER agrees to provide the Basic Services set forth in Section 1 hereof to the COUNTY ENGINEER for the PROJECT, for a lump sum fee of **\$ 42,880.00**

5.2 Times of Payments

- 5.2.1 ENGINEER shall submit monthly progress reports for Basic and Additional Services rendered. The progress reports will be based upon ENGINEER'S estimate of the proportion of the total services actually completed at the time of billing. No payment will be processed without a monthly progress report. OWNER shall make prompt monthly payments in response to ENGINEER'S monthly statements.

5.3 Other Provisions Concerning Payments

- 5.3.1 If OWNER fails to make any payment due ENGINEER for services and expenses within sixty (60) days after receipt of ENGINEER'S statement therefore, the amounts due ENGINEER shall include a charge at the rate of one percent (1%) per month from said 60th day, and in addition, ENGINEER may, after giving seven days written notice to OWNER, suspend services under this Agreement until he has been paid in full all amounts due for services and expenses.
- 5.3.2 Records of ENGINEER'S Salary Costs pertinent to ENGINEER'S compensation under this Agreement will be kept in accordance with generally accepted accounting practices. Copies will be made available to OWNER and COUNTY ENGINEER upon request prior to final payment for ENGINEER'S services.

5.4 Definitions

- 5.4.1 The Payroll Costs used as a basis for payment mean salaries and wages (basic and incentive) paid to all personnel engaged directly on the PROJECT, including, but not limited to the following; engineers, architects, surveyors, designers, draftsmen, specification writers, estimators, all other technical personnel, stenographers, typists and clerks; plus the cost of unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, sick leave, vacation and holiday pay applicable thereto.

SECTION 6 - GENERAL CONSIDERATIONS

6.1 Termination

The obligation to provide services under this Agreement may be terminated by either party upon thirty (30) days' written notice by certified mail, return receipt requested, in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. If this agreement is terminated, ENGINEER shall be paid for services performed to the termination date.

6.2 Reuse of Documents

All documents including reports and maps prepared by ENGINEER pursuant to this Agreement are instruments of service as part of the PROJECT. They are not intended or represented to be suitable for reuse by COUNTY ENGINEER or others on extensions of the PROJECT or any other project. Any reuse without written verification or adaptation by ENGINEER for the specific purpose intended will be at OWNER or COUNTY ENGINEER'S risk and without liability or legal exposure to ENGINEER. Any verification or adaptation requested by OWNER or COUNTY ENGINEER to be performed by ENGINEER will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER, COUNTY ENGINEER and ENGINEER.

6.3 Controlling Law and Venue

This Agreement is to be governed by the law of the State of Ohio. The venue for any disputes hereunder shall be Warren County, Ohio.

6.4 Successors and Assigns

- 6.4.1 OWNER, COUNTY ENGINEER and ENGINEER each bind himself and his partners, successors, executors, administrators, assigns and legal representatives to the other party to this Agreement and to the partners, successors, executors, administrators, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations of this Agreement.
- 6.4.2 Neither OWNER nor ENGINEER nor COUNTY ENGINEER shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, except as stated in paragraph 6.4.1 and except to the extent that the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent ENGINEER from employing such independent consultants, associates and subcontractors as he may deem appropriate to assist him in the performance of services hereunder.
- 6.4.3 Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than OWNER, COUNTY ENGINEER and ENGINEER.

6.5 Modification or Amendment

No modification or amendment of any provisions of this Contract shall be effective unless made by a written instrument, duly executed by the party to be bound thereby, which refers specifically to this Contract and states that an amendment or modification is being made in the respects as set forth in such amendment.

6.6 Construction

Should any portion of this Contract be deemed unenforceable by any administrative or judicial officer or tribunal of competent jurisdiction, the balance of this Contract shall remain in full force and effect unless revised or terminated pursuant to any other section of this Contract.

6.7 Waiver

No waiver by either party of any breach of any provision of this Contract shall be deemed to be a further or continuing waiver of any breach of any other provision of this Contract. The failure of either party at any time or times to require performance of any provision of this Contract shall in no manner affect such party's right to enforce the same at a later time.

6.8 Relationship of Parties

The parties shall be independent contractors to each other in connection with the performance of their respective obligations under this Contract.

6.9 Parties

Whenever the terms "OWNER", "COUNTY ENGINEER" AND "ENGINEER" are used herein, these terms shall include without exception the employees, agents, successors, assigns and/or authorized representatives of OWNER, COUNTY ENGINEER and ENGINEER.

6.10 Headings

Paragraph headings in this Contract are for the purposes of convenience and identification and shall not be used to interpret or construe this Contract.

6.11 Notices

All notices required to be given herein shall be in writing and shall be sent certified mail return receipt to the following respective addresses:

TO: Warren County Commissioners Attn. Tiffany Zindel, County Administrator 406 Justice Drive Lebanon, Ohio 45036 Ph. 513-695-1250	Warren County Engineer's Office Attn. Neil F. Tunison, County Engineer 210 W Main Street Lebanon, Ohio 45036 Ph. 513-695-3301
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143Engineers, LLC
Attn. Caroline Duffy, P.E.
3249 Plateau Place
Cincinnati, OH 45241
Ph. 513-476-6271

6.12 Insurance

ENGINEER shall carry comprehensive general insurance providing single limit coverage with limits of \$1,000,000 per occurrence and 2,000,000 aggregate, and professional liability insurance providing limits of \$1,000,000 per claim/aggregate with no interruption of coverage during the entire term of this Contract. ENGINEER further agrees that in the event that its comprehensive general or professional liability policy is maintained on a "claims made" basis, and in the event that this contract is terminated, ENGINEER shall continue such policy in effect for the period of any statute or statutes of limitation applicable to claims thereby insured, notwithstanding the termination of the Contract. ENGINEER shall provide COUNTY ENGINEER with a certificate of insurance evidencing such coverage, and further provide thirty (30) days written notice of cancellation or non-renewal to COUNTY ENGINEER. Cancellation or non-renewal of insurance shall be grounds to terminate this Contract.

ENGINEER shall carry statutory worker's compensation insurance and statutory employer's liability insurance as required by law and shall provide COUNTY ENGINEER with certificates of insurance evidencing such coverage simultaneous with the execution of this Contract.

SECTION 7 - SPECIAL PROVISIONS, EXHIBITS and SCHEDULES

The following Exhibits are attached to and made a part of this Agreement:

Exhibit 1

SECTION 8 – ENTIRE AGREEMENT

This Agreement (consisting of pages 1 to 7, inclusive), together with the Exhibit and schedules identified above constitute the entire agreement between OWNER and ENGINEER and supersede all prior written or oral understandings. This Agreement and said Exhibit and schedules may only be amended, supplemented, modified or canceled by a duly executed written instrument, signed by all parties.

SECTION 9 – INDEMNIFICATION

A. Professional Liability

With regard to professional liability claims, to the fullest extent permitted by law the Engineer agrees to indemnify and hold the Owner, its officers, officials, and employees (hereinafter "Owner") harmless from and against losses and damages to the extent arising from a negligent act, error or omission by the Engineer or its employees or anyone for whom the Engineer is legally liable.

B. Non-Professional Liability (General Liability)

With regard to general liability claims, to the fullest extent permitted by law, the Engineer shall indemnify, defend and hold harmless the Owner from and against claims, damages, losses and expenses, including but not limited to reasonable attorneys' fees, arising out of the acts or omissions of the Engineer, provided that such claim, damage loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of property (other than the work itself) including loss of use resulting therefrom, but only to the extent caused by the acts or omissions of the Engineer, any subconsultant(s) of the Engineer, its agents, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable.

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SECTION 10 - EXECUTION

ENGINEER :

IN EXECUTION WHEREOF, 143 Engineers, LLC, an Ohio Limited Liability Corporation for profit, has caused this Agreement to be executed on the date stated below by Caroline Duffy, whose title is Owner & President, pursuant to a corporate Resolution authorizing such act.

SIGNATURE: Caroline Duffy for 143 Engineers, LLC
PRINTED NAME: Caroline Duffy
TITLE: Owner & President
DATE: 5/14/18

OWNER:

IN EXECUTION WHEREOF, upon written recommendation of the Warren County Engineer, the Warren County Board of County Commissioners has caused this Agreement to be executed on the date stated below by Tom Grossmann, its President, pursuant to Resolution No. 18-0832 dated 5/24/18.

**WARREN COUNTY
BOARD OF COUNTY COMMISSIONERS**

SIGNATURE: Tom Grossmann
PRINTED NAME: Tom Grossmann
TITLE: President
DATE: 5/24/18

RECOMMENDED BY:

**NEIL F. TUNISON, P.E., P.S.
WARREN COUNTY ENGINEER**

By: Neil F. Tunison
Neil F. Tunison, P.E., P.S.

APPROVED AS TO FORM:

**DAVID P. FORNSHELL,
PROSECUTING ATTORNEY
WARREN COUNTY, OHIO**

By: David P. Fornshell
Assistant Prosecuting Attorney

Exhibit 1



April 30, 2018

Mr. Dominic M. Brigano, P.E., S.I.
Assistant Bridge Engineer
Warren County Engineer's Office, Administration and Engineering
210 W Main Street, Lebanon, Ohio 45036
E-mail: Dominic.Brigano@co.warren.oh.us

Re: Consulting Engineering Services Contract for Rural Sign Inventory and Sign Compliance

Dear Dominic,

Thank you for selecting 143Engineers, LLC to complete the Rural Sign Inventory and Sign Compliance for the Warren County Highway System. We understand that this contract is in conjunction with the Ball Bank Study - Warren County Highway System contract, but that each of the contracts will be separate contracts. The Scope of Work for the Consulting Engineering Services Contract for the Rural Sign Inventory and Sign Compliance - Warren County Highway System is as follows:

143Engineers, LLC will enter into a subagreement with Reiker Inc. to utilize their Curve Advisory Reporting Service (CARS). As part of the Ball Bank Study contract with the Warren County Engineer's Office, the deficient curves, where the curve warning signs are not posted accordance with the 2012 MUTCD standards, along the 268 mile county system will be determined. This project will determine for each curve the placement of the proposed curve signage to meet the 2012 MUTCD standards. This placement will be shown in report for with the latitude and longitude and distance along the corridor for each sign placement along the 268 mile county system. The beginning of the report will review the installation process for each type of sign, including offset, sign facing, and sign height. Quantities for signs and posts will be provided for each corridor. It is the responsibility of Warren County Engineer's Office to call the Ohio Utilities Protection Service and request utility markings prior to any sign installation. The Warren County Engineer's Office is responsible for making field adjustments to the sign locations to not interfere with an existing utility. The final report will be electronic in nature, and 143Engineers, LLC will not be responsible for providing hard copies to the Warren County Engineer's Office. 143Engineers, LLC may be assisted by subcontractors with years of experience in field collection and processing data with this project.

This contract will be at a lump sum of \$ 42,880.00. Monthly percentage complete invoices will be provided electronically with a status report for payment. This project will be complete by September 30, 2018.

Please do not hesitate to contact me at (513) 476-6271 or via email at 143Engineers@gmail.com with questions regarding this proposal or for further coordination.

Yours Respectfully,

A handwritten signature in cursive script that reads "Caroline Duffy".

Caroline F. Duffy, PE
President

**BOARD OF COUNTY COMMISSIONERS
WARREN COUNTY, OHIO**

Resolution

Number 18-0833

Adopted Date May 24, 2018

APPROVE VARIOUS REFUNDS

BE IT RESOLVED, to approve various refunds, as attached hereto and made a part hereof.

Mrs. Jones moved for adoption of the foregoing resolution being seconded by Mr. Grossmann.
Upon call of the roll, the following vote resulted:

Mr. Young- yea
Mr. Grossmann- yea
Mrs. Jones- yea

Resolution adopted this 24th day of May 2018.

BOARD OF COUNTY COMMISSIONERS


Tina Osborne, Clerk

cc:

Auditor 
Refunds file

**BOARD OF COUNTY COMMISSIONERS
WARREN COUNTY, OHIO**

Resolution

Number 18-0834

Adopted Date May 24, 2018

ACKNOWLEDGE PAYMENT OF BILLS

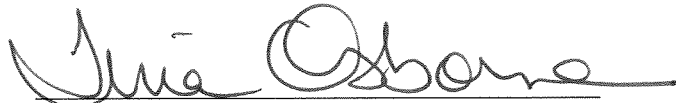
BE IT RESOLVED, to acknowledge payment of bills as submitted on batches #05/17/2018 #001, #05/17/2018 #002, #05/17/2018 003, #05/17/2018 004, #05/17/2018 005, #05/22/2018 001, #05/22/2018 002, #05/22/2018 003, #05/22/2018 004 and #05/22/2018 005; said batches are attached hereto and made a part hereof.

Mrs. Jones moved for adoption of the foregoing resolution being seconded by Mr. Grossmann. Upon call of the roll, the following vote resulted:

Mr. Young- yea
Mr. Grossmann- yea
Mrs. Jones- yea


Resolution adopted this 24th day of May 2018.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

kh

cc: Auditor 

Resolution

Number 18-0835

Adopted Date May 24, 2018

APPROVE A STREET AND APPURTENANCES (INCLUDING SIDEWALKS) BOND RELEASE FOR SORAYA FARMS, LLC, FOR COMPLETION OF IMPROVEMENTS IN SORAYA FARMS LIFESTYLE COMMUNITY, SECTION 3 SITUATED IN CLEARCREEK TOWNSHIP

BE IT RESOLVED, upon recommendation of the Warren County Engineer, to approve the following street and appurtenances bond release:

BOND RELEASE

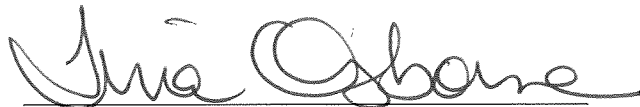
Bond Number	:	15-017 (P/S)
Development	:	Soraya Farms Lifestyle Community, Section 3
Developer	:	Soraya Farms, LLC
Township	:	Clearcreek
Amount	:	\$86,150.80
Surety Company	:	First Financial Bank, N.A. (LOC820110336)

Mrs. Jones moved for adoption of the foregoing resolution being seconded by Mr. Grossmann. Upon call of the roll, the following vote resulted:

Mr. Young- yea
Mr. Grossmann- yea
Mrs. Jones- yea

Resolution adopted this 24th day of May 2018.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: Soraya Farms, LLC Attn: Shery Oakes 8534 Yankee Street, Ste 2B, Dayton, Ohio 45458
First Financial Bank, N.A. Attn: Brad Cummings 300 High Street, Hamilton, Ohio 45011
Engineer (file)
Bond Agreement file

Resolution

Number 18-0836

Adopted Date May 24, 2018

APPROVE A SIDEWALK BOND REDUCTION FOR CLASSICWAY DEVELOPMENT COMPANY, LLC FOR COMPLETION OF PERFORMANCE OF CONSTRUCTION OF IMPROVEMENTS AND ENTER INTO THE MAINTENANCE SECURITY FOR THE VILLAGES OF CLASSICWAY, SECTION 5 SITUATED IN HAMILTON TOWNSHIP

WHEREAS, the Developer has completed the performance of the construction of improvements subject of the Bond referenced below, and upon recommendation of the County Engineer the bond amount for performance may be reduced to zero, but the bond shall remain in effect for maintenance security to secure the performance of all maintenance upon the completed Improvements; and

NOW THEREFORE BE IT RESOLVED, upon recommendation of the Warren County Engineer, to approve the following sidewalk performance bond reduction and the two year maintenance period:

BOND REDUCTION

Bond Number	:	08-018 (S-M)
Development	:	The Villages of Classicway, Section 5
Developer	:	Classicway Development Company, LLC
Township	:	Hamilton
Reduction Amount	:	\$14,135.00
Surety Company	:	Ohio Farmers Insurance Company

BE IT FURTHER RESOLVED: the original amount of bond was \$16,705.00 and after the above reduction, the remaining bond amount is \$2,570.00.

Mrs. Jones moved for adoption of the foregoing resolution being seconded by Mr. Grossmann. Upon call of the roll, the following vote resulted:

Mr. Young- yea
Mr. Grossmann- yea
Mrs. Jones- yea

Resolution adopted this 24th day of May 2018.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: Classicway Dev. Co. LLC 6700 Ruwes Oak Cincinnati, Ohio 45248
Ohio Farmers Ins. Co., Attn: Eric Schmidt, One Park Circle Westfield Center, OH 45251
Engineer (file)
Bond Agreement file

Resolution

Number 18-0837

Adopted Date May 24, 2018

APPROVE A STREET AND APPURTENANCES (INCLUDING SIDEWALKS) BOND REDUCTION FOR VWC HOLDINGS, LTD, FOR COMPLETION OF PERFORMANCE OF CONSTRUCTION OF IMPROVEMENTS AND ENTER INTO THE MAINTENANCE SECURITY FOR VILLAGES OF WINDING CREEK, THE BOULEVARDS AT WINDING CREEK, SECTION 5 SITUATED IN CLEARCREEK TOWNSHIP

WHEREAS, the Developer has completed the performance of the construction of improvements subject of the Bond referenced below, and upon recommendation of the County Engineer the bond amount for performance may be reduced to zero, but the bond shall remain in effect for maintenance security to secure the performance of all maintenance upon the completed Improvements; and

NOW THEREFORE BE IT RESOLVED, upon recommendation of the Warren County Engineer, to approve the following street and appurtenances performance bond reduction and the two year maintenance period:

BOND REDUCTION

Bond Number	:	16-005 (P/S-M)
Development	:	Villages of Winding Creek The Boulevards at Winding Creek, Section 5
Developer	:	VWC Holdings, LTD
Township	:	Clearcreek
Reduction Amount	:	\$13,761.34
Surety Company	:	Old Fort Banking Company (LOC #10132339-3)

BE IT FURTHER RESOLVED, that the original amount of bond was \$68,023.02 and after the above reduction, the remaining bond amount is \$54,261.68.

Mrs. Jones moved for adoption of the foregoing resolution being seconded by Mr. Grossmann. Upon call of the roll, the following vote resulted:

Mr. Young- yea
Mr. Grossmann- yea
Mrs. Jones- yea

Resolution adopted this 24th day of May 2018.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: VWC Holding, LTD, Attn: Lance Oakes, 3601 Rigby Rd, Ste 300 Miamisburg, OH 45342
Old Fort Banking Co., Attn: Richard Demko, 6430 Wilmington Pike Dayton, OH 45459
Engineer (file)
Bond Agreement file

Resolution

Number 18-0838

Adopted Date May 24, 2018

APPROVE A SIDEWALK BOND REDUCTION FOR CLASSICWAY DEVELOPMENT COMPANY, LLC FOR COMPLETION OF PERFORMANCE OF CONSTRUCTION OF IMPROVEMENTS AND ENTER INTO THE MAINTENANCE SECURITY FOR THE VILLAGES OF CLASSICWAY, SECTION 4 SITUATED IN HAMILTON TOWNSHIP

WHEREAS, the Developer has completed the performance of the construction of improvements subject of the Bond referenced below, and upon recommendation of the County Engineer the bond amount for performance may be reduced to zero, but the bond shall remain in effect for maintenance security to secure the performance of all maintenance upon the completed Improvements; and

NOW THEREFORE BE IT RESOLVED, upon recommendation of the Warren County Engineer, to approve the following sidewalk performance bond reduction and the two year maintenance period:

BOND REDUCTION

Bond Number	:	08-017 (S-M)
Development	:	The Villages of Classicway, Section 4
Developer	:	Classicway Development Company, LLC
Township	:	Hamilton
Reduction Amount	:	\$45,412.40
Surety Company	:	Ohio Farmers Insurance Company

BE IT FURTHER RESOLVED: the original amount of bond was \$53,669.20 and after the above reduction, the remaining bond amount is \$8,256.80.

Mrs. Jones moved for adoption of the foregoing resolution being seconded by Mr. Grossmann. Upon call of the roll, the following vote resulted:

Mr. Young- yea
Mr. Grossmann- yea
Mrs. Jones- yea

Resolution adopted this 24th day of May 2018.

BOARD OF COUNTY COMMISSIONERS


Tina Osborne, Clerk

cc: Classicway Dev. Co. LLC 6700 Ruwes Oak Cincinnati, Ohio 45248
Ohio Farmers Ins. Co., Attn: Eric Schmidt, One Park Circle Westfield Center, OH45251
Engineer (file)
Bond Agreement file

Resolution

Number 18-0839

Adopted Date May 24, 2018

ENTER INTO A SUBDIVISION PUBLIC IMPROVEMENT PERFORMANCE AND MAINTENANCE SECURITY AGREEMENT WITH ERBECK DEVELOPMENT COMPANY, LTD FOR INSTALLATION OF CERTAIN IMPROVEMENTS IN KENSINGTON, PHASE 1, BLOCK "A", SITUATED IN DEERFIELD TOWNSHIP

BE IT RESOLVED, upon recommendation of the Warren County Sanitary Engineer, to enter into the following security agreement:

SECURITY AGREEMENT


Bond Number	:	18-008 (W/S)
Development	:	Kensington, Phase 1, Block "A"
Developer	:	Erbeck Development Company, LTD.
Township	:	Deerfield
Amount	:	\$37,273.85
Surety Company	:	RLI Insurance Company (CMS0330477)

Mrs. Jones moved for adoption of the foregoing resolution being seconded by Mr. Grossmann. Upon call of the roll, the following vote resulted:

Mr. Young- yea
Mr. Grossmann- yea
Mrs. Jones- yea

Resolution adopted this 24th day of May 2018.

BOARD OF COUNTY COMMISSIONERS


Tina Osborne, Clerk

cgb

cc: Erbeck Development Company LTD., 3940 Olympic Blvd., Suite 100, Erlanger, KY 41018
RLI Insurance Company, 525 W. Van Buren, Suite 350, Chicago, IL 60607
Water/Sewer (file)
Bond Agreement file

**SUBDIVISION PUBLIC IMPROVEMENT PERFORMANCE AND MAINTENANCE
SECURITY AGREEMENT**

WATER AND/OR SANITARY SEWER

Security Agreement No.

18-008 (w/s)

This Agreement made and concluded at Lebanon, Ohio, by and between Erbeck Development Company, Ltd. (1) (hereinafter the "Developer") and the Warren County Board of County Commissioners, (hereinafter the "County Commissioners"), and RLI Insurance Company (2) (hereinafter the "Surety").

WITNESSETH:

WHEREAS, the Developer is required to install certain improvements in Kensington Subdivision, Phase 1 Block A (3) (hereinafter the "Subdivision") situated in Deerfield (4) Township, Warren County, Ohio, in accordance with the Warren County Subdivision regulations (hereinafter called the "Improvements"); and,

WHEREAS, it is estimated that the total cost of the Improvements is \$372,738.50, and that the Improvements that have yet to be completed and approved may be constructed in the sum of \$0.00; and,

WHEREAS, the County Commissioners have determined to require all developers to post security in the sum of one hundred thirty percent (130%) of the estimated cost of uncompleted or unapproved Improvements to secure the performance of the construction of uncompleted or unapproved Improvements in accordance with Warren County subdivision regulations and to require all Developers to post security in the sum of ten percent (10%) of the estimated total cost of the Improvements after the completion of the Improvements and their tentative acceptance by the County Commissioners to secure the performance of all maintenance upon the Improvements as may be required between the completion and tentative acceptance of the Improvements and their final acceptance by the County Commissioners.

NOW, THEREFORE, be it agreed:

1. The Developer will provide **performance security** to the County Commissioners in the sum of \$0.00 to secure the performance of the construction of the uncompleted or unapproved Improvements in accordance with Warren County subdivision regulations (hereinafter the Performance Obligation). If any sum greater than zero (0) is inserted herein, the **minimum performance security** shall be ten percent (10%) of the total cost of the Improvements.

2. The County Commissioners will, upon approval of the County Sanitary Engineer of all Improvements in the Subdivision, tentatively accept all Improvements.
3. The Developer shall be in default of the Performance Obligation if the construction or installation of any Improvement by the Developer is not completed within 2 years from the date of the execution of this agreement, as determined by the County Sanitary Engineer. The same shall apply whenever construction of the Improvements is not performed in accordance with the Warren County subdivision regulations.
4. The condition of the Performance Obligation shall be that whenever the Developer shall be declared by the County Commissioners to be in default, the Surety and the Developer shall, upon written notification of default by the County Commissioners to the Surety promptly make sufficient funds available to the County Commissioners to pay the cost of the completion of the construction of the uncompleted or unapproved Improvements in accordance with Warren County subdivision regulations, including any costs incurred by the County Commissioners which are incidental to the completion of the construction of the uncompleted or unapproved Improvements, including, but not limited to costs associated with publication of legal notices, preparation of such additional plans, specifications and drawings as may, in the judgment of the County Commissioners, be necessary, preparation of bid documents, etc., but not exceeding the amount set forth in Item 1 hereof. The Developer shall have the opportunity to respond in writing within two (2) weeks of receipt of notice of intent to find the Developer in default. In the case that the performance security given is in the form of a cashier's check or certified check provided directly to the County Commissioners, the County Commissioners may apply such funds as set forth herein upon notification of default to the Surety. The determination of the amount of funds to be disbursed by Surety to the County Commissioners as set forth in the aforesaid notification is final and binding upon the parties hereto. However, the foregoing shall not release Developer from any liability for any deficiency between the amount of funds disbursed and the actual costs incurred by the County Commissioners in the completion of the construction or installation of the uncompleted or unapproved Improvements and Developer expressly agrees to be liable to the County Commissioners for any such deficiency.
5. The County Commissioners, the Developer and Surety mutually agree that the Performance Obligation created herein shall continue until the completion of the installation of the Improvements in accordance with Warren County subdivision regulations and that upon the Improvements having been inspected and approved for one year maintenance, the Performance Obligation shall become null and void.
6. The Developer will provide **maintenance security** to the County Commissioners in the sum of \$37,273.85 to secure the performance of all maintenance upon the Improvements as determined to be necessary by the County Sanitary Engineer (hereinafter the Maintenance Obligation). In no event shall the sum provided for herein be less than ten percent (10%) of the estimated total cost of the Improvements as set forth above.

7. The Developer, upon being notified by the County Sanitary Engineer of the maintenance required upon the Improvements to bring the same into compliance with Warren County Subdivision regulations shall immediately undertake to perform and complete such required maintenance within the time set forth in the notice from the County Sanitary Engineer.
8. The Developer shall be in default of the Maintenance Obligation should the Developer fail to complete or cause to be undertaken and completed required maintenance upon the Improvements as set forth in Item 7 hereof.
9. The condition of the Maintenance Obligation shall be that whenever the Developer shall be declared by the County Commissioners to be in default, the Surety and the Developer shall, upon written notification of default by the County Commissioners to the Surety promptly make sufficient funds available to the County Commissioners to pay the cost of the required maintenance upon the Improvements, including any costs incurred by the County Commissioners which are incidental to the performance of such maintenance, including, but not limited to costs associated with the publication of legal notices, preparation of additional plans, specifications and drawings, as may, in the judgment of the County Commissioners, be necessary, preparation of bid documents, etc. but not exceeding the amount set forth in Item 6 hereof. The Developer shall have the opportunity to respond in writing within two (2) weeks of receipt of notice of intent to find the Developer in default. In the case that the maintenance security given is in the form of a cashier's check or certified check provided directly to the County Commissioners, the County Commissioners may apply such funds to the completion of the required maintenance upon the Improvements upon notification of default to the Surety. The determination of the amount of funds to be disbursed by Surety to the County Commissioners as set forth in the aforesaid notification is final and binding upon the parties hereto. However, the foregoing shall not release Developer from any liability for any deficiency between the amount of funds disbursed and the actual costs incurred by the County Commissioners in the performance of maintenance upon the Improvements and Developer expressly agrees to be liable to the County Commissioners for any such deficiency.
10. That upon expiration of the one year from the date of the tentative acceptance of the Improvements by the County Commissioners and upon satisfactory completion of any required maintenance upon the Improvements to bring the Improvements into compliance with Warren County subdivision regulations, the County Commissioners hereby agree to release the maintenance security and give final acceptance to the Improvements. The Developer shall request, in writing directed to the County Sanitary Engineer, a final inspection of the Improvements and the Developer shall be responsible for all maintenance as may be necessary and as may accrue from the commencement of the one year maintenance period and until such written request for inspection is delivered.
11. In the case of default pursuant to Items 3 and 4 or 8 and 9 hereof, Developer shall make available to the County Commissioners all plans, specifications and drawing relating to the Improvements and hereby directs all third parties, including engineers and consultants, who may possess such plans, specifications and drawings, or copies thereof, to provide the same

to the County Commissioners upon request and presentation of this security agreement or a copy thereof and agrees to hold such third parties harmless from the provision of such plan specifications and drawings pursuant to this item. Developer does hereby consent to the use of such plans, specifications and drawings by the County Commissioners to complete the construction of the uncompleted or unapproved Improvements or the performance of maintenance upon the same in the case of default pursuant to Items 3 and 4 or 8 and 9 hereof.

12. In the case of conflict between the provisions of this agreement and any other security agreement relating to the same Improvements, the provisions of this agreement shall take precedence.
13. Any notice, correspondence, inquiry or request for inspection permitted or required under this security agreement shall be given as follows:

A. To the County Commissioners:

Warren County Commissioners
Attn: County Administrator
406 Justice Drive
Lebanon, OH 45036
Ph. (513) 695-1250

B. To the County Sanitary Engineer:

Warren County Water & Sewer Department
Attn: Sanitary Engineer
406 Justice Drive
Lebanon, OH 45036
Ph. (513) 695-1380

C. To the Developer:

Erbeck Development Company, Ltd.

Attn: Dave Stroup

3940 Olympic Blve. Suite 100

Erlanger, KY 41018

Ph. (859) 344 - 3131

D. To the Surety:

RLI Insurance Company

525 W. Van Buren, Suite 350

Chicago, IL 60607

Ph. (312) 675 - 4143

All notices and requests for inspection, unless otherwise specifically provided herein, shall be by certified mail, return receipt requested and shall be complete upon mailing. **All parties are obligated to give notice of any change of address.**

14. The security to be provided herein shall be by:

_____ **Certified check or cashier's check** (attached) (**CHECK #** _____)

_____ **Original Letter of Credit** (attached) (**LETTER OF CREDIT #** _____)

_____ **Original Escrow Letter** (attached)

Surety Bond (this security agreement shall serve as the bond when signed by an authorized representative of a surety company authorized to do business within the State of Ohio with a **power of attorney attached** evidencing such authorized signature).

_____ **Surety obligation of national bank** (by signing this security agreement the authorized representative of the national bank undertaking this surety obligation does certify, for and on behalf of the undersigned national bank, that the bank has a segregated deposit sufficient in amount to the bank's total potential liability).

15. **The term "Surety" as used herein includes a bank, savings and loan or other financial institution where the security provided is a letter of credit, escrow letter or surety obligation of a national bank. The term "Surety" when referring to a bank, savings and loan or other financial institution is not intended to create obligations beyond those provided by Paragraphs 4 and/or 9 of this security agreement.**

16. **In the event that Surety shall fail to make funds available to the County Commissioners in accordance with Paragraphs 4 or 9, as applicable, within thirty (30) days after notification of default, then amounts due shall bear interest at eight per cent (8%) per annum.**

17. This Agreement shall not be assignable or transferrable by the Developer or Surety to any third party or parties without the express written consent of the County Commissioners. Developer and Surety waive any successor developer or successor surety claim or defense unless the County Commissioners have executed a written consent of assignment.
18. This Agreement shall be construed under the laws of the State of Ohio. The Developer and Surety hereby stipulate to the venue for any and all claims, disputes, interpretations and litigation of any kind arising out of this Agreement, being exclusively in the Warren County, Ohio Court of Common Pleas (unless both parties mutually agree in writing to attempt to resolve by alternate dispute resolution prior to litigation), and do further waive any right to bring or remove such claims, disputes, interpretation and litigation of any kind arising out of this Agreement, in or to any other state or a federal court.

IN EXECUTION WHEREOF, the Developer and the Surety have caused this security agreement to be executed on the date stated below.

DEVELOPER:

SURETY:

Pursuant to a resolution authorizing the undersigned to execute this agreement.

Pursuant to an instrument authorizing the undersigned to execute this agreement.

ERBECK DEVELOPMENT COMPANY, LTD.
 By: Kensington Development Co. of Ohio, LLC
 Its: Sole Member

RLI Insurance Company

SIGNATURE: *Susana Yeazell*

By: *Todd E. Huss*
 Todd E. Huss, Vice President

PRINTED NAME: Susan A. Yeazell

TITLE: Attorney-in-Fact

Date: 5/11/18

DATE: May 9, 2018

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IN EXECUTION WHEREOF, the Warren County Board of County Commissioners have caused this security agreement to be executed by the President of the Board, on the date stated below, pursuant to Board Resolution Number 18-0839, dated 5/24/18.

WARREN COUNTY
BOARD OF COUNTY COMMISSIONERS


SIGNATURE: 

PRINTED NAME: Tom Grossmann


TITLE: President

DATE: 5/24/18

RECOMMENDED BY:

By: 
SANITARY ENGINEER

APPROVED AS TO FORM:

By: 
COUNTY PROSECUTOR

Key:

1. Name of Developer
2. Name of Person, Firm, Entity, etc. who is providing the security whether that be a bank or other financial institution (in the case of a letter of credit or escrow letter) (Surety Company in the case of a bond) or the Developer itself (in the case of a certified check or cashier's check)
3. Name of subdivision with section number and phase number where applicable
4. Name of Township

Bond No. CMS0330477

MAINTENANCE BOND

Know All Men By These Presents, That we, Erbeck Development Company, LTD.
3940 Olympic Blvd, Suite 100, Erlanger, KY 41018
as Principal, and RLI Insurance Company, a corporation
organized under the laws of the State of Illinois with principal place at
525 W. Van Buren, Suite 350, Chicago, IL 60607, as Surety, are held and
firmly bound unto Warren County Board of Commissioners, 406 Justice Drive,
Lebanon, OH 45036 (hereinafter called Obligee) in the penal sum of Thirty-Seven
Thousand Two Hundred Seventy-Three and 85/100 (\$37,273.85)
payment of which, well and truly to be made, we do hereby bind ourselves, our heirs,
executors, administrators, successors and assigns, jointly and severally, firmly by these
presents.

DATED this 9th day of May, 20 18.

WHEREAS, the said Principal has heretofore entered into a Subdividers
Contract with the Obligee above named for certain physical improvements for

Water and Sanitary Sewer in Kensington, Section 1A Subdivision

In Deerfield Township, Warren County, OH

and

WHEREAS, the Principal submits that all work called for under the said
Subdividers Contract has now been completed according to the approved plans and as
a condition of acceptance of the physical improvements offers this bond to said
Obligee;

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, That is
said Principal shall, for a period of One (1) years from and after the 9th
day of May, 20 18, indemnify the Obligee against any loss or
damage directly arising by reason of any defect in the material or workmanship which
may be discovered within the period aforesaid, then this obligation shall be void;
otherwise to be and remain in full force and virtue in law.

PROVIDED, HOWEVER, that in the event of any default on the part of said
Principal, written statement of the particular facts showing such default and the date
hereof shall be delivered facts showing such default and the date thereof shall be
delivered to the Surety by certified mail, at its Home Office in 525 W. Van Buren,
Ste350,Chicago,IL 60607 promptly and in any event within thirty (30) days after the
Obligee or his representative shall learn of such default; and that no claim suit, or action
by or reason of any default of the Principal shall be brought hereunder after the
expiration of thirty (30) days from the end of the maintenance period as herein set forth.

POWER OF ATTORNEY

RLI Insurance Company Contractors Bonding and Insurance Company

9025 N. Lindbergh Dr. Peoria, IL 61615
Phone: 800-645-2402

Know All Men by These Presents:

That this Power of Attorney is not valid or in effect unless attached to the bond which it authorizes executed, but may be detached by the approving officer if desired.

That **RLI Insurance Company** and/or **Contractors Bonding and Insurance Company**, each an Illinois corporation, (separately and together, the "Company") do hereby make, constitute and appoint:

Dan E. Ries, Susan A. Yeazell, jointly or severally

in the City of Cincinnati, State of Ohio its true and lawful Agent(s) and Attorney(s) in Fact, with full power and authority hereby conferred, to sign, execute, acknowledge and deliver for and on its behalf as Surety, in general, any and all bonds and undertakings in an amount not to exceed Twenty Five Million Dollars (\$25,000,000.00) for any single obligation.

The acknowledgment and execution of such bond by the said Attorney in Fact shall be as binding upon the Company as if such bond had been executed and acknowledged by the regularly elected officers of the Company.

RLI Insurance Company and/or **Contractors Bonding and Insurance Company**, as applicable, have each further certified that the following is a true and exact copy of a Resolution adopted by the Board of Directors of each such corporation, and is now in force, to-wit:

"All bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, any Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or Agents who shall have authority to issue bonds, policies or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile."

IN WITNESS WHEREOF, the **RLI Insurance Company** and/or **Contractors Bonding and Insurance Company**, as applicable, have caused these presents to be executed by its respective Vice President with its corporate seal affixed this 22nd day of November, 2017.



RLI Insurance Company
Contractors Bonding and Insurance Company

By: B. W. Davis
Barton W. Davis Vice President

State of Illinois }
County of Peoria } SS

CERTIFICATE

On this 22nd day of November, 2017, before me, a Notary Public, personally appeared Barton W. Davis, who being by me duly sworn, acknowledged that he signed the above Power of Attorney as the aforesaid officer of the **RLI Insurance Company** and/or **Contractors Bonding and Insurance Company** and acknowledged said instrument to be the voluntary act and deed of said corporation.

I, the undersigned officer of **RLI Insurance Company** and/or **Contractors Bonding and Insurance Company**, do hereby certify that the attached Power of Attorney is in full force and effect and is irrevocable; and furthermore, that the Resolution of the Company as set forth in the Power of Attorney, is now in force. In testimony whereof, I have hereunto set my hand and the seal of the **RLI Insurance Company** and/or **Contractors Bonding and Insurance Company** this 21st day of May, 2018.

By: Gretchen L. Johnigk
Gretchen L. Johnigk Notary Public

RLI Insurance Company
Contractors Bonding and Insurance Company

By: Jean M. Stephenson
Jean M. Stephenson Corporate Secretary



Erbeck Development Company, LTD.
By: Kensington Development Co. of Ohio,
LLC Its: Sole Member

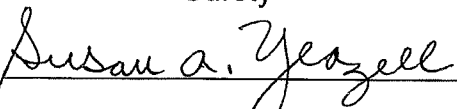
Principal

By: 

Its: Todd E. Huss, Vice President

RLI Insurance Company

Surety

By: 

Its: Susan A. Yeazell, Attorney-in-Fact

Resolution

Number 18-0840

Adopted Date May 24, 2018

ENTER INTO STREET AND APPURTENANCES (INCLUDING SIDEWALKS) SECURITY AGREEMENT WITH ERBECK DEVELOPMENT COMPANY, LTD. FOR INSTALLATION OF CERTAIN IMPROVEMENTS IN KENSINGTON, PHASE 1, BLOCK "A" SITUATED IN DEERFIELD TOWNSHIP

BE IT RESOLVED, upon recommendation of the Warren County Engineer, to enter into the following Street and Appurtenances (including sidewalks) Security Agreement:

SECURITY AGREEMENT

Bond Number	:	18-007 (P/S)
Development	:	Kensington, Phase 1, Block "A"
Developer	:	Erbeck Development Company, Ltd.
Township	:	Deerfield
Amount	:	\$587,779.66
Surety Company	:	RLI Insurance Company (CMS0330475)

Mrs. Jones moved for adoption of the foregoing resolution being seconded by Mr. Grossmann. Upon call of the roll, the following vote resulted:

Mr. Young- yea
Mr. Grossmann- yea
Mrs. Jones- yea

Resolution adopted this 24th day of May 2018.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: Developer
Surety Company
Engineer (file)
Bond Agreement file

**SUBDIVISION PUBLIC IMPROVEMENT PERFORMANCE AND MAINTENANCE
SECURITY AGREEMENT**

**STREETS AND APPURTENANCES
(including Sidewalks)**

Security Agreement No.

18-007 (P/S)

This Agreement made and concluded at Lebanon, Ohio, by and between _____
Erbeck Development Company, Ltd. (1) (hereinafter the "Developer") and the
Warren County Board of County Commissioners, (hereinafter the "County Commissioners"), and
RLI Insurance Company (2) (hereinafter the "Surety").

WITNESSETH:

WHEREAS, the Developer is required to install certain improvements in Kensington
Subdivision, Section/Phase ^{Phase 1,} Block A (3) (hereinafter the "Subdivision") situated in
Deerfield (4) Township, Warren County, Ohio, in accordance with the Warren County
Subdivision regulations (hereinafter called the "Improvements"); and,

WHEREAS, it is estimated that the total cost of the Improvements is \$697,227.45,
and that the Improvements that have yet to be completed and approved may be constructed in the sum of
\$452,138.20; and,

WHEREAS, the County Commissioners require all developers to post security in the sum of one
hundred thirty percent (130%) of the estimated cost of uncompleted or unapproved Improvements to secure
the performance of the construction of uncompleted or unapproved Improvements in accordance with
Warren County subdivision regulations and to require all Developers to post security in the sum of twenty
percent (20%) of the estimated total cost of the Improvements after the completion of the Improvements
and their tentative acceptance by the County Commissioners to secure the performance of all maintenance
upon the Improvements as may be required between the completion and tentative acceptance of the
Improvements and their final acceptance by the County Commissioners.

NOW, THEREFORE, be it agreed:

1. The Developer will provide **performance security** to the County Commissioners in the sum
of \$587,779.66 to secure the performance of the construction of the
uncompleted or unapproved Improvements in accordance with Warren County subdivision
regulations (hereinafter the Performance Obligation). If any sum greater than zero (0) is
inserted herein, the **minimum performance security** shall be twenty percent (20%) of the
total cost of the Improvements.

2. The County Commissioners will, upon approval of the County Engineer of all Improvements in the Subdivision, tentatively accept all Improvements.
3. The Developer shall be in default of the Performance Obligation if the construction or installation of any Improvement by the Developer is not completed within 1 years from the date of the execution of this agreement, as determined by the County Engineer. The same shall apply whenever construction of the Improvements is not performed in accordance with the Warren County subdivision regulations.
4. The condition of the Performance Obligation shall be that whenever the Developer shall be declared by the County Commissioners to be in default, the Surety and the Developer shall, upon written notification of default by the County Commissioners to the Surety promptly make sufficient funds available to the County Commissioners to pay the cost of the completion of the construction of the uncompleted or unapproved Improvements in accordance with Warren County subdivision regulations, including any costs incurred by the County Commissioners which are incidental to the completion of the construction of the uncompleted or unapproved Improvements, including, but not limited to costs associated with publication of legal notices, preparation of such additional plans, specifications and drawings as may, in the judgment of the County Commissioners, be necessary, preparation of bid documents, etc., but not exceeding the amount set forth in Item 1 hereof. The Developer shall have the opportunity to respond in writing within two (2) weeks of receipt of notice of intent to find the Developer in default. In the case that the performance security given is in the form of a cashier's check or certified check provided directly to the County Commissioners, the County Commissioners may apply such funds as set forth herein upon notification of default to the Surety. The determination of the amount of funds to be disbursed by Surety to the County Commissioners as set forth in the aforesaid notification is final and binding upon the parties hereto. However, the foregoing shall not release Developer from any liability for any deficiency between the amount of funds disbursed and the actual costs incurred by the County Commissioners in the completion of the construction or installation of the uncompleted or unapproved Improvements and Developer expressly agrees to be liable to the County Commissioners for any such deficiency.
5. **The County Commissioners, the Developer and Surety mutually agree that the Performance Obligation created herein shall continue until the completion of the installation of the Improvements in accordance with Warren County subdivision regulations and that upon the Improvements having been inspected and approved for two years maintenance, the Performance Obligation shall become null and void after the Developer posts the maintenance security provided for herein.**
6. The Developer will provide **maintenance security** to the County Commissioners in the sum of \$139,445.49 to secure the performance of all maintenance upon the Improvements as determined to be necessary by the County Engineer (hereinafter the Maintenance Obligation). In no event shall the sum provided for herein be less than twenty percent (20%) of the estimated total cost of the Improvements as set forth above.

7. The Developer, upon being notified by the County Engineer of the maintenance required upon the Improvements to bring the same into compliance with Warren County Subdivision regulations shall immediately undertake to perform and complete such required maintenance within the time set forth in the notice from the County Engineer.
8. The Developer shall be in default of the Maintenance Obligation should the Developer fail to complete or cause to be undertaken and completed required maintenance upon the Improvements as set forth in Item 7 hereof.
9. The condition of the Maintenance Obligation shall be that whenever the Developer shall be declared by the County Commissioners to be in default, the Surety and the Developer shall, upon written notification of default by the County Commissioners to the Surety promptly make sufficient funds available to the County Commissioners to pay the cost of the required maintenance upon the Improvements, including any costs incurred by the County Commissioners which are incidental to the performance of such maintenance, including, but not limited to costs associated with the publication of legal notices, preparation of additional plans, specifications and drawings, as may, in the judgment of the County Commissioners, be necessary, preparation of bid documents, etc. but not exceeding the amount set forth in Item 6 hereof. The Developer shall have the opportunity to respond in writing within two (2) weeks of receipt of notice of intent to find the Developer in default. In the case that the maintenance security given is in the form of a cashier's check or certified check provided directly to the County Commissioners, the County Commissioners may apply such funds to the completion of the required maintenance upon the Improvements upon notification of default to the Surety. The determination of the amount of funds to be disbursed by Surety to the County Commissioners as set forth in the aforesaid notification is final and binding upon the parties hereto. However, the foregoing shall not release Developer from any liability for any deficiency between the amount of funds disbursed and the actual costs incurred by the County Commissioners in the performance of maintenance upon the Improvements and Developer expressly agrees to be liable to the County Commissioners for any such deficiency.
10. That upon expiration of the two years from the date of the tentative acceptance of the Improvements by the County Commissioners and upon satisfactory completion of any required maintenance upon the Improvements to bring the Improvements into compliance with Warren County subdivision regulations, the County Commissioners hereby agree to release the maintenance security and give final acceptance to the Improvements. The Developer shall request, in writing directed to the County Engineer, a final inspection of the Improvements and the Developer shall be responsible for all maintenance as may be necessary and as may accrue from the commencement of the **two year maintenance period** and until such written request for inspection is delivered.
11. In the case of default pursuant to Items 3 and 4 or 8 and 9 hereof, Developer shall make available to the County Commissioners all plans, specifications and drawing relating to the Improvements and hereby directs all third parties, including engineers and consultants, who may possess such plans, specifications and drawings, or copies thereof, to provide the same

to the County Commissioners upon request and presentation of this security agreement or a copy thereof and agrees to hold such third parties harmless from the provision of such plan specifications and drawings pursuant to this item. Developer does hereby consent to the use of such plans, specifications and drawings by the County Commissioners to complete the construction of the uncompleted or unapproved Improvements or the performance of maintenance upon the same in the case of default pursuant to Items 3 and 4 or 8 and 9 hereof.

12. In the case of conflict between the provisions of this agreement and any other security agreement relating to the same Improvements, the provisions of this agreement shall take precedence.
13. Any notice, correspondence, inquiry or request for inspection permitted or required under this security agreement shall be given as follows:

A. To the County Commissioners:

Warren County Board of County Commissioners
Attn: County Administrator
406 Justice Drive
Lebanon, OH 45036
Ph. (513) 695-1250

B. To the County Engineer:

Warren County Engineer
105 Markey Road
Lebanon, OH 45036
Ph. (513) 695-3336

C. To the Developer:

Erbeck Development Company, Ltd.

Attn: Dave Stroup

3940 Olympic Boulevard Suite 100

Erlanger, KY 41018

Ph. (859) 344 - 3131

D. To the Surety:

RLI Insurance Company

525 W. Van Buren, Suite 350

Chicago, IL 60607

Ph. (312) 675 - 4136

All notices and requests for inspection, unless otherwise specifically provided herein, shall be by certified mail, return receipt requested, and shall be complete upon mailing. **All parties are obligated to give notice of any change of address.**

14. The security to be provided herein shall be by:

___ Certified check or cashier's check (attached) (CHECK # _____)

___ Original Letter of Credit (attached) (LETTER OF CREDIT # _____)

___ Original Escrow Letter (attached)

X **Surety Bond** (this security agreement shall serve as the bond when signed by an authorized representative of a surety company authorized to do business within the State of Ohio with a **power of attorney attached** evidencing such authorized signature).

___ **Surety obligation of national bank** (by signing this security agreement the authorized representative of the national bank undertaking this surety obligation does certify, for and on behalf of the undersigned national bank, that the bank has a segregated deposit sufficient in amount to the bank's total potential liability).

15. **The term "Surety" as used herein includes a bank, savings and loan or other financial institution where the security provided is a letter of credit, escrow letter or surety obligation of a national bank. The term "Surety" when referring to a bank, savings and loan or other financial institution is not intended to create obligations beyond those provided by Paragraphs 4 and/or 9 of this security agreement.**

16. **In the event that Surety shall fail to make funds available to the County Commissioners in accordance with Paragraphs 4 or 9, as applicable, within thirty (30) days after notification of default, then amounts due shall bear interest at eight per cent (8%) per annum.**

17. This Agreement shall not be assignable or transferrable by the Developer or Surety to any third party or parties without the express written consent of the County Commissioners. Developer and Surety waive any successor developer or successor surety claim or defense unless the County Commissioners have executed a written consent of assignment.

18. This Agreement shall be construed under the laws of the State of Ohio. The Developer and Surety hereby stipulate to the venue for any and all claims, disputes, interpretations and litigation of any kind arising out of this Agreement, being exclusively in the Warren County, Ohio Court of Common Pleas (unless both parties mutually agree in writing to attempt to resolve by alternate dispute resolution prior to litigation), and do further waive any right to bring or remove such claims, disputes, interpretation and litigation of any kind arising out of this Agreement, in or to any other state or a federal court.

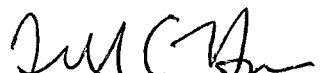
IN EXECUTION WHEREOF, the Developer and the Surety have caused this security agreement to be executed on the date stated below.

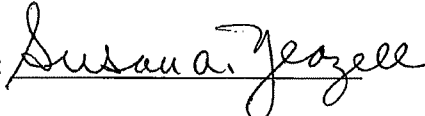
DEVELOPER: Erbeck Development Company, Ltd.
By: Kensington Development Co. of Ohio, LLC
Its: Sole Member

SURETY: RLI Insurance Company

Pursuant to a resolution authorizing the undersigned to execute this agreement.

Pursuant to an instrument authorizing the undersigned to execute this agreement.

SIGNATURE: 

SIGNATURE: 

PRINTED NAME: Todd E. Huss

PRINTED NAME: Susan A. Yeazell

TITLE: Vice President

TITLE: Attorney-in-Fact

DATE: 5/11/18

DATE: May 3, 2018

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IN EXECUTION WHEREOF, the Warren County Board of County Commissioners have caused this security agreement to be executed by the President of the Board, on the date stated below, pursuant to Board Resolution Number 18-0840, dated 5/24/18.

WARREN COUNTY
BOARD OF COUNTY COMMISSIONERS

SIGNATURE:  _____

PRINTED NAME: Tom Grossmann

TITLE: President

DATE: 5/24/18

RECOMMENDED BY:

By:  _____
COUNTY ENGINEER

APPROVED AS TO FORM:

By:  _____
COUNTY PROSECUTOR

Key:

1. Name of Developer
2. Name of Person, Firm, Entity, etc. who is providing the security whether that be a bank or other financial institution (in the case of a letter of credit or escrow letter) (Surety Company in the case of a bond) or the Developer itself (in the case of a certified check or cashier's check)
3. Name of subdivision with section number and phase number where applicable
4. Name of Township

PERFORMANCE BOND


KNOW ALL MEN BY THESE PRESENTS that, Erbeck Development Company, LTD, as Principal, and RLI Insurance Company, as Surety, are held and firmly bound unto Warren County Commissioners, 406 Justice Drive, Lebanon, OH 45036, as Obligee, in the sum of Five Hundred Eighty-Seven Thousand Seven Hundred Seventy-Nine and 66/100 Dollars (\$587,779.66) lawful money of the United States for the payment of which, well and truly be made, we bind ourselves, our heirs, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has agreed to construct and dedicate for public purpose and maintenance Streets and Appurtenances & Sidewalks in Kensington Phase 1, Block A Subdivision in Deerfield Township, Warren County, OH.

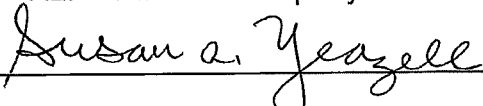
NOW THEREFORE, if the said Principal hereinbefore set forth, shall fully and faithfully perform all the work specified to be done in accordance with plans for Streets and Appurtenances & Sidewalks in Kensington Phase 1, Block A Subdivision in Deerfield Township, Warren County, OH, on record at Warren County Commissioners, then this obligation shall be void and of no further legal effect; otherwise, this bond shall remain in full force and effect in law; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder, shall in no event exceed the penal amount of this obligation, as herein stated to be the sum of Five Hundred Eighty-Seven Thousand Seven Hundred Seventy-Nine and 66/100 Dollars (\$587,779.66) and no more.

SIGNED AND DATED THIS 3rd day of May, 2018

Principal: Erbeck Development Company, LTD.
By: Kensington Development Co. of Ohio, LLC
Its: Sole Member

By: 
Todd E. Huss, Vice President

Surety: RLI Insurance Company

By: 
Susan A. Yeazell, Attorney-in-Fact

POWER OF ATTORNEY

RLI Insurance Company Contractors Bonding and Insurance Company

9025 N. Lindbergh Dr. Peoria, IL 61615
Phone: 800-645-2402

Know All Men by These Presents:

That this Power of Attorney is not valid or in effect unless attached to the bond which it authorizes executed, but may be detached by the approving officer if desired.

That **RLI Insurance Company** and/or **Contractors Bonding and Insurance Company**, each an Illinois corporation, (separately and together, the "Company") do hereby make, constitute and appoint:

Dan E. Ries, Susan A. Yeazell, jointly or severally

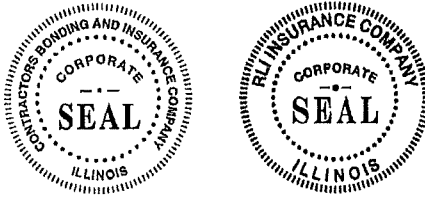
in the City of Cincinnati, State of Ohio its true and lawful Agent(s) and Attorney(s) in Fact, with full power and authority hereby conferred, to sign, execute, acknowledge and deliver for and on its behalf as Surety, in general, any and all bonds and undertakings in an amount not to exceed Twenty Five Million Dollars (\$25,000,000.00) for any single obligation.

The acknowledgment and execution of such bond by the said Attorney in Fact shall be as binding upon the Company as if such bond had been executed and acknowledged by the regularly elected officers of the Company.

RLI Insurance Company and/or **Contractors Bonding and Insurance Company**, as applicable, have each further certified that the following is a true and exact copy of a Resolution adopted by the Board of Directors of each such corporation, and is now in force, to-wit:

"All bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, any Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or Agents who shall have authority to issue bonds, policies or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile."

IN WITNESS WHEREOF, the **RLI Insurance Company** and/or **Contractors Bonding and Insurance Company**, as applicable, have caused these presents to be executed by its respective Vice President with its corporate seal affixed this 22nd day of November, 2017.



RLI Insurance Company
Contractors Bonding and Insurance Company
By: B. W. Davis
Barton W. Davis Vice President

State of Illinois }
County of Peoria } SS

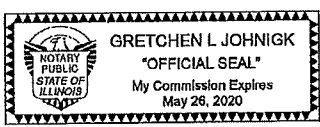
CERTIFICATE

On this 22nd day of November, 2017, before me, a Notary Public, personally appeared Barton W. Davis, who being by me duly sworn, acknowledged that he signed the above Power of Attorney as the aforesaid officer of the **RLI Insurance Company** and/or **Contractors Bonding and Insurance Company** and acknowledged said instrument to be the voluntary act and deed of said corporation.

I, the undersigned officer of **RLI Insurance Company** and/or **Contractors Bonding and Insurance Company**, do hereby certify that the attached Power of Attorney is in full force and effect and is irrevocable; and furthermore, that the Resolution of the Company as set forth in the Power of Attorney, is now in force. In testimony whereof, I have hereunto set my hand and the seal of the **RLI Insurance Company** and/or **Contractors Bonding and Insurance Company** this 3rd day of May, 2018.

By: Gretchen L. Johnnigk
Gretchen L. Johnnigk Notary Public

RLI Insurance Company
Contractors Bonding and Insurance Company
By: Jean M. Stephenson
Jean M. Stephenson Corporate Secretary



Resolution

Number 18-0841

Adopted Date May 24, 2018

APPROVE VARIOUS RECORD PLATS

BE IT RESOLVED, upon recommendation of the Warren County Regional Planning Commission, to approve the following Record Plats:

- Kensington Phase 1 Block "A" – Deerfield Township
- Kensington Phase 1 Block "A" Easement Plat – Deerfield Township

Mrs. Jones moved for adoption of the foregoing resolution being seconded by Mr. Grossmann. Upon call of the roll, the following vote resulted:

Mr. Young- yea
Mr. Grossmann- yea
Mrs. Jones- yea

Resolution adopted this 24th day of May 2018.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: Plat File
RPC

Resolution

Number 18-0842

Adopted Date May 24, 2018

APPROVE APPROPRIATION DECREASES WITHIN VARIOUS FUNDS

WHEREAS, various Departments have cancelled purchase orders that were encumbered and carried over from previous years; and

WHEREAS, the Auditor's Office has advised this Board that any time prior year purchase orders are cancelled an appropriation decrease is necessary; and

NOW THEREFORE BE IT RESOLVED, to approve the following appropriation decreases within various Department Funds:

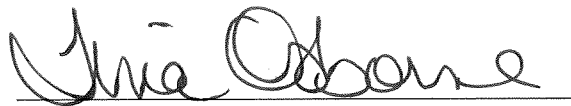
\$ 2,291.05 from #101-1600-400 (Facilities Management - Purchased Services)
\$ 60,854.75 from #583-3200-320 (Water/Sewer – Capital Purchases \$10,000 & over)

Mrs. Jones moved for adoption of the foregoing resolution being seconded by Mr. Grossmann. Upon call of the roll, the following vote resulted:


Mr. Young- yea
Mr. Grossmann- yea
Mrs. Jones- yea

Resolution adopted this 24th day of May 2018.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: Auditor 
Appropriation Decrease file
Facilities Management (file)
Water/Sewer (file)
OMB

Resolution

Number 18-0843

Adopted Date May 24, 2018

APPROVE SUPPLEMENTAL APPROPRIATION INTO JUVENILE COURT CLERK
COMPUTER FUND #278

BE IT RESOLVED, to approve the following supplemental appropriation adjustment within
Juvenile Court Clerk Computer Fund #278

\$35,640.00 into #278-1410-320 (Capital Purchases under 10,000)


Mrs. Jones moved for adoption of the foregoing resolution being seconded by Mr. Grossmann.
Upon call of the roll, the following vote resulted:

Mr. Young- yea
Mr. Grossmann- yea
Mrs. Jones- yea

Resolution adopted this 24th day of May 2018.

BOARD OF COUNTY COMMISSIONERS


Tina Osborne, Clerk

cc: Auditor 
Juvenile Court (file)
Supplemental Appropriation file
OMB

**BOARD OF COUNTY COMMISSIONERS
WARREN COUNTY, OHIO**

Resolution

Number 18-0844

Adopted Date May 24, 2018

APPROVE APPROPRIATION ADJUSTMENT FROM COMMISSIONERS' GENERAL FUND #101-1110 INTO BOARD OF ELECTIONS FUND #101-1300

BE IT RESOLVED, to approve the following appropriation adjustment from Commissioners' Fund #101-1110 into Board of Elections Fund #101-1300 in order to process vacation leave payout for Jennifer Montgomery former employee of Board of Elections:

\$ 238.23	from	#101-1110-882	(Commissioners - Vacation Leave Payout)
	into	#101-1300-882	(Board of Elections - Vacation Leave Payout)

Mrs. Jones moved for adoption of the foregoing resolution being seconded by Mr. Grossmann. Upon call of the roll, the following vote resulted:

Mr. Young- yea
Mr. Grossmann- yea
Mrs. Jones- yea

Resolution adopted this 24th day of May 2018.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: Auditor rg
Appropriation Adjustment file
Board of Elections (file)
OMB

**BOARD OF COUNTY COMMISSIONERS
WARREN COUNTY, OHIO**

Resolution

Number 18-0845

Adopted Date May 24, 2018

APPROVE APPROPRIATION ADJUSTMENTS FROM COMMISSIONERS GENERAL FUND #101-1110 INTO ECONOMIC DEVELOPMENT FUND #101-1116

BE IT RESOLVED, to approve the following appropriation adjustments from Commissioners Fund #101-1110 into Economic Development Fund #101-1116 in order to process a sick and vacation leave payout for Angie Steffen former employee of the Economic Development:

\$ 3,863.83	from #101-1110-881	(Commissioner – Sick Leave Payout)
	into #101-1116-881	(Economic Development - Sick Leave Payout)
\$ 673.46	from #101-1110-882	(Commissioner - Vacation Leave Payout)
	into #101-1116-882	(Economic Development – Vacation Leave Payout)


Mrs. Jones moved for adoption of the foregoing resolution being seconded by Mr. Grossmann. Upon call of the roll, the following vote resulted:

Mr. Young- yea
Mr. Grossmann- yea
Mrs. Jones- yea

Resolution adopted this 24th day of May 2018.

BOARD OF COUNTY COMMISSIONERS


Tina Osborne, Clerk

cc: Auditor 
Appropriation Adjustment file
Economic Development (file)
OMB

**BOARD OF COUNTY COMMISSIONERS
WARREN COUNTY, OHIO**

Resolution

Number 18-0846

Adopted Date May 24, 2018

APPROVE APPROPRIATION ADJUSTMENTS WITHIN CORONER'S FUND #101-2100

BE IT RESOLVED, to approve the following appropriation adjustment:

\$1,499.00 from #101-2100-210 (Office Supplies)
 into #101-2100-102 (Regular Salaries)

\$3,010.00 from #101-2100-210 (Office Supplies)
 into #101-2100-811 (PERS)


Mrs. Jones moved for adoption of the foregoing resolution being seconded by Mr. Grossmann.
Upon call of the roll, the following vote resulted:

Mr. Young- yea
Mr. Grossmann- yea
Mrs. Jones- yea

Resolution adopted this 24th day of May 2018.

BOARD OF COUNTY COMMISSIONERS


Tina Osborne, Clerk

cc: Auditor 
Appropriation Adjustment file
Coroner (file)
OMB

**BOARD OF COUNTY COMMISSIONERS
WARREN COUNTY, OHIO**

Resolution

Number 18-0847

Adopted Date May 24, 2018

APPROVE APPROPRIATION ADJUSTMENT WITHIN JUVENILE DETENTION FUND
#101-2600

BE IT RESOLVED, to approve the following appropriation adjustment:

\$10,000.00 from #101-2600-820 (Health Insurance)
into #101-2600-114 (Overtime)

Mrs. Jones moved for adoption of the foregoing resolution being seconded by Mr. Grossmann.
Upon call of the roll, the following vote resulted:


Mr. Young- yea
Mr. Grossmann- yea
Mrs. Jones- yea

Resolution adopted this 24th day of May 2018.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: Auditor 
Appropriation Adj. file
Juvenile (file)
OMB

Resolution

Number 18-0848

Adopted Date May 24, 2018

APPROVE APPROPRIATION ADJUSTMENT FROM JUVENILE DETENTION FUND
#101-2600 INTO JUVENILE COURT FUND #101-1240

BE IT RESOLVED, to approve the following appropriation adjustment:

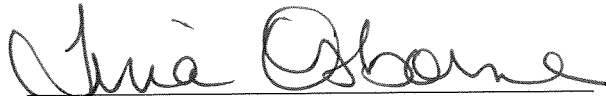
\$13,000.00 from #101-2600-820 (Health Insurance)
into #101-1240-102 (Regular Salaries)

Mrs. Jones moved for adoption of the foregoing resolution being seconded by Mr. Grossmann.
Upon call of the roll, the following vote resulted:


Mr. Young- yea
Mr. Grossmann- yea
Mrs. Jones- yea

Resolution adopted this 24th day of May 2018.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: Auditor 
Appropriation Adj. file
Juvenile (file)
OMB

Resolution

Number 18-0849

Adopted Date May 24, 2018

APPROVE AN APPROPRIATION ADJUSTMENT WITHIN WORKFORCE INVESTMENT BOARD FUND #238

BE IT RESOLVED, to approve the following appropriation adjustment:

\$10,000.00 from #238-5800-910 (Other Expenses)
into #238-5800-400 (Purchased Services)

Mrs. Jones moved for adoption of the foregoing resolution being seconded by Mr. Grossmann. Upon call of the roll, the following vote resulted:


Mr. Young- yea
Mr. Grossmann- yea
Mrs. Jones- yea

Resolution adopted this 24th day of May 2018.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: Auditor 
Appropriation Adjustment file
Workforce Investment Board (file)
OMB

**BOARD OF COUNTY COMMISSIONERS
WARREN COUNTY, OHIO**

Resolution

Number 18-0850

Adopted Date May 24, 2018

APPROVE APPROPRIATION ADJUSTMENT WITHIN EMERGENCY SERVICES / EMA
FUND #264

BE IT RESOLVED, to approve the following appropriation adjustment:

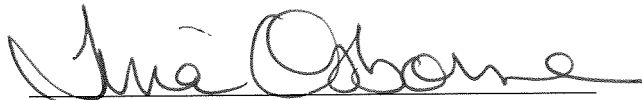
\$159.99	from	#264-2800-210	(Office Supplies General)
	into	#264-2800-317	(Capital Purchases under 10,000)

Mrs. Jones moved for adoption of the foregoing resolution being seconded by Mr. Grossmann.
Upon call of the roll, the following vote resulted:


Mr. Young- yea
Mr. Grossmann- yea
Mrs. Jones- yea

Resolution adopted this 24th day of May 2018.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: Auditor 
Appropriation Adjustment file
Emergency Services (file)
OMB

Resolution

Number 18-0851

Adopted Date May 24, 2018

APPROVE APPROPRIATION ADJUSTMENT WITHIN CHILDREN SERVICES FUND #273

BE IT RESOLVED, to approve the following appropriation adjustment:

\$711.17 from #273-5100-460 (Insurance)
 into #273-5100-447 (Child Placement Specialized)

Mrs. Jones moved for adoption of the foregoing resolution being seconded by Mr. Grossmann.
Upon call of the roll, the following vote resulted:

Mr. Young- yea
Mr. Grossmann- yea
Mrs. Jones- yea


Resolution adopted this 24th day of May 2018.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

jc/

cc: Auditor 
Appropriation Adj. file
Children Services (file)
OMB

Resolution

Number 18-0852

Adopted Date May 24, 2018

APPROVE APPROPRIATION ADJUSTMENT WITHIN COUNTY COURT FUND #283

BE IT RESOLVED, to approve the following appropriation adjustment:


\$3,450.00	from	#283-1280-400	(Purchased Services)
	into	#283-1280-910	(Other Expenses)

Mrs. Jones moved for adoption of the foregoing resolution being seconded by Mr. Grossmann.
Upon call of the roll, the following vote resulted:


Mr. Young- yea
Mr. Grossmann- yea
Mrs. Jones- yea

Resolution adopted this 24th day of May 2018.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: Auditor 
Appropriation Adjustment file
County Court (file)
OMB

Resolution

Number 18-0853

Adopted Date May 24, 2018

APPROVE APPROPRIATION ADJUSTMENT WITHIN THE WATER REVENUE FUND
NO. 510

WHEREAS, the Water and Sewer Department incurs costs for Other Expenses; and

WHEREAS, an appropriation adjustment is necessary to accommodate said costs; and

NOW THEREFORE BE IT RESOLVED, to approve the following appropriation adjustment:

\$10,000.00 from #510-3200-3200-317 (Capital Purch Under 10,000)
 into #510-3200-3200-910 (Other Expenses)

Mrs. Jones moved for adoption of the foregoing resolution being seconded by Mr. Grossmann.
Upon call of the roll, the following vote resulted:

Mr. Young- yea
Mr. Grossmann- yea
Mrs. Jones- yea


Resolution adopted this 24th day of May 2018.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

las

cc: Auditor 
Appropriation Adj. file
Water/Sewer (file)
OMB

**BOARD OF COUNTY COMMISSIONERS
WARREN COUNTY, OHIO**

Resolution

Number 18-0854

Adopted Date May 24, 2018

APPROVE APPROPRIATION ADJUSTMENTS WITHIN RECORDS CENTER FUND #101-1500 AND BUILDING AND ZONING FUND #101-2300

BE IT RESOLVED, to approve the following appropriation adjustments:

RECORDS CENTER FUND #101-1500

\$750.00 from #101-1500-210 (Office Supplies)
 into #101-1500-317 (Capital Purchases under \$10,000)

BUILDING AND ZONING FUND #101-2300

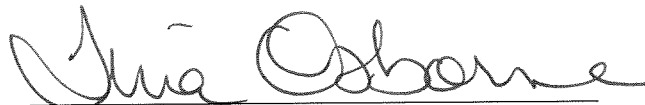
\$999.96 from #101-2300-830 (Workers Comp)
 into #101-2300-317 (Capital Purchases under \$10,000)

Mrs. Jones moved for adoption of the foregoing resolution being seconded by Mr. Grossmann.
Upon call of the roll, the following vote resulted:

Mr. Young- yea
Mr. Grossmann- yea
Mrs. Jones- yea

Resolution adopted this 24th day of May 2018.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: Auditor WJL
Appropriation Adj. file
Records (file)
Building & Zoning (file)
OMB

**BOARD OF COUNTY COMMISSIONERS
WARREN COUNTY, OHIO**

Resolution

Number 18-0855

Adopted Date May 24, 2018

AUTHORIZE PAYMENT OF BILLS


BE IT RESOLVED, to authorize payment of bills as submitted on Batches #05/24/2018 001, #05/24/2018 002, #05/24/2018 003, #05/24/2018 004, #05/24/2018 005, #05/24/2018 006, and #05/24/2018 007; said batches attached hereto and made a part hereof.

Mrs. Jones moved for adoption of the foregoing resolution being seconded by Mr. Young. Upon call of the roll, the following vote resulted:

Mr. Grossmann – yea
Mr. Young – yea
Mrs. Jones – yea

Resolution adopted this 24th day of May 2018.

BOARD OF COUNTY COMMISSIONERS


Tina Osborne, Clerk

cc: Auditor 

Resolution

Number 18-0856

Adopted Date May 24, 2018

AUTHORIZE THE EXECUTION OF THE CONSTRUCTION MANAGER AT RISK SERVICES CONTRACT WITH GRANGER CONSTRUCTION COMPANY FOR THE NEW JAIL AND SHERIFF'S ADMINISTRATION OFFICE PROJECT

WHEREAS, this Board of County Commissioners (the "Board") recognizing the need for a Construction Manager at Risk ("CMR") firm for the purpose of construction services for the New Jail and Sheriff's Administration Office Project (the "Project") issued a Request for Qualifications relative thereto per Resolution Number 17-1525; and

WHEREAS, Section 9.334 of the Ohio Revised Code, and Section 153:1-6-01 of the Ohio Administrative Code identifies the requirements and procedures for procuring CMR construction services for the aforementioned Project; and

WHEREAS, the Board on May 8, 2018, by Resolution 18-0772, authorized the negotiation of a contract with Granger Construction Company, and negotiations are now complete to the satisfaction of both parties, with satisfactory cost of preconstruction services, professional fees and rates; and

WHEREAS, after execution of the contract, Granger Construction Company will proceed with preconstruction services as the parties work towards an agreed upon Guaranteed Maximum Price Amendment for the Project to be executed at a later date;

NOW THEREFORE BE IT RESOLVED, to authorize the President or Vice-President of the Board of County Commissioners to execute the Construction Manager at Risk Service Contract with Granger Construction Company for the construction of the New Jail and Sheriff's Administration Offices Project; as attached hereto and made a part hereof

Mr. Young moved for adoption of the foregoing resolution being seconded by Mrs. Jones. Upon call of the roll, the following vote resulted:

Mr. Grossmann – yea
Mrs. Jones – yea
Mr. Young – yea

Resolution adopted this 24th day of May 2018.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: c/a—Granger Construction Co.
Sheriff (file)
M. Russell
T. Zindel



AIA[®] Document A133[™] – 2009

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the date of execution by the Owner
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status and address)

Board of County Commissioners
Warren County, Ohio
Administration Building
406 Justice Drive, First Floor
Lebanon, Ohio 45036

and the Construction Manager:
(Name, legal status and address)

Granger Construction Company
175 S. Third Street, Ste 200
Columbus, Ohio 43215

for the following Project:
(Name and address or location)

New Jail and Sheriff's Administration Office Project

The Construction Manager has been selected by the Owner following the qualification-based selection guidelines contained in Ohio Revised Code Sections 9.33, et seq., to provide construction management at risk services for the Project described above and elsewhere in this Agreement.

Services provided under this Agreement shall begin immediately and continue through design and construction of the improvements described herein.

The Architect:
(Name, legal status and address)

Wachtel & McAnally
Architects/Planners Inc. 35 South Park Place
Newark, Ohio 43055

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

AIA Document A201[™]-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.

The Architect may also be referred to as the "Design Professional" in this Agreement and other Contract Documents.

The Owner's Representative:
(Name, address and other information)

The Owner's Representative is:
Trevor Hearn, Director – Department of Facilities Management Trevor.Hearn@co.warren.oh.us

The Construction Manager's Designated Representative:
(Name, address and other information)
Jason Woehrle

The Architect's Designated Representative:
(Name, address and other information)

Garry McAnally

The Owner and Construction Manager agree as follows.

TABLE OF ARTICLES

1	GENERAL PROVISIONS
2	CONSTRUCTION MANAGER'S RESPONSIBILITIES
3	OWNER'S RESPONSIBILITIES
4	COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
5	COMPENSATION FOR CONSTRUCTION PHASE SERVICES
6	COST OF THE WORK FOR CONSTRUCTION PHASE
7	PAYMENTS FOR CONSTRUCTION PHASE SERVICES
8	INSURANCE AND BONDS
9	DISPUTE RESOLUTION
10	TERMINATION OR SUSPENSION
11	MISCELLANEOUS PROVISIONS
12	SCOPE OF THE AGREEMENT

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Agreement represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. In the event inconsistencies, conflicts, or ambiguities between or among the Contract Documents are discovered after execution of the Agreement, Construction Manager shall provide the better quality or greater quantity of Work or comply with the more stringent requirements.

§ 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

Init.

§ 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™–2007, General Conditions of the Contract for Construction, as modified, (hereafter, "A201-2007") shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2007, which document is incorporated herein by reference. The term "Contractor" as used in A201–2007 and all other Contract Documents, shall mean the Construction Manager.

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

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager shall provide all construction management services necessary for the proper management and construction of the Project. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project. The team assigned by the Construction Manager during the Construction Phase to work cooperatively with the Owner and Design Professional shall be the same team identified in Construction Manager's proposal and assigned to the Project during the Preconstruction Phase.

§ 2.1 Preconstruction Phase

§ 2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other. As set forth in this Agreement, the Construction Manager will be responsible for performing the following duties including, but not limited to, cost estimating, budgeting, value engineering, constructability review, scheduling, identifying inconsistencies or omissions that might affect the GMP, and preconstruction planning throughout the Preconstruction Phase. The Owner's total budget for the Project including design fees, the Cost of the Work, all other construction costs, and Construction Manager fees is **\$50 million**. The Construction Manager will perform its duties, including but not limited to budgeting, value engineering, and scheduling, consistent with the Owner's program, schedule, and current budget. If, at any time, the Construction Manager's estimates of the Cost of the Work exceed the latest approved Project budget, the Construction Manager shall inform the Owner and Architect in writing and make recommendations for corrective action.

§ 2.1.2 Consultation

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 2.1.2.1 **BIM Process.** It is anticipated that the Architect will prepare the Schematic Design, Design, Development, and Construction Documents using Autocad 2017. However, during the Construction Documents phase, it is anticipated that an architectural and structural model in Revit format will be prepared. The Construction Manager and subcontractors shall identify constructability issues, potential conflicts, clearances, and any other issues. The Construction Manager will act as BIM coordinator and pursuant to Paragraph 2.3.2.5, shall organize and lead in person or video conference meetings with the Architect and key subcontractors to discuss such issues and to ensure the design can be constructed as planned. The Construction Manager will record meeting minutes during the BIM process and distribute such meeting minutes to the Owner and Architect. The Construction Manager and subcontractors will cooperate with the Architect during this process and will review revised designs.

§ 2.1.3 At the conclusion of the schematic design, design development and construction document phases, the Construction Manager shall prepare and periodically update a Project schedule in a format acceptable to the Owner for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

§ 2.1.4 Phased Construction

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

§ 2.1.5 Preliminary Cost Estimates

§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements, at the conclusion of the schematic design, design development and construction document phases, using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval.

The Construction Manager's cost estimates of the Cost of the Work shall be provided in a format acceptable to the Owner. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at each design phase and all other appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement in a format acceptable to the Owner and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

§ 2.1.6 Subcontractors and Suppliers

The Construction Manager shall develop bidders' interest in the Project. In accordance with the Ohio Revised Code and Ohio Administrative Code, all subcontracts shall comply with Section 153:1-3-02 of the Ohio Administrative Code.

§ 2.1.6.1 The Construction Manager acknowledges the requirement imposed by Ohio Revised Code and Ohio Administrative Code sections that the Construction Manager establish criteria for the prequalification of prospective bidders on subcontracts and that such criteria will follow the administrative code requirements and will also include any specific criteria required by the Owner that are consistent with the scope and needs of the Project. The proposed criteria developed by the Construction Manager will be submitted to the Owner, which the Owner will approve or reject, in whole or in part. The approved prequalification criteria will be used by the Owner for any future analysis it may conduct concerning a prospective bidder's responsibility to perform a subcontract.

§ 2.1.6.2 The Construction Manager will complete the bidder prequalification process for each subcontract not later than 30 days before the Construction Manager intends to solicit bids for the subcontract, unless the Owner agrees otherwise upon request from the Construction Manager.

§ 2.1.6.3 To develop prospective bidder interest in the Project, including specifically those prospective bidders (if any) the Owner asks the Construction Manager to consider, the Construction Manager may place a notice on (1) the State Public Notice Website created under ORC 125.182, (2) the official website of the Owner, (3) other websites such as appropriate trade association websites, news media, or other public media websites, or (4) any combination of the foregoing.

§ 2.1.6.4 Construction Manager will evaluate the qualifications of each prospective Bidder that timely submits its qualifications and shall notify each of them whether they are qualified. The Construction Manager will submit the names and qualifications of all of the qualified prospective Bidders to the Owner. The Construction Manager may submit the names of fewer than three (3) qualified prospective Bidders if the Construction Manager submits satisfactory documentation to the Owner that fewer than three qualified prospective Bidders are available.

§ 2.1.6.4.1 The Owner will review the list of prospective Bidders submitted by the Construction Manager and may rely on the Construction Manager's representations to verify that the prospective Bidders meet the pre-qualifications criteria. The Owner may eliminate any prospective Bidder it determines is not qualified and will notify the Construction Manager of its decision. The Construction Manager will promptly notify the prospective Bidder in writing of the Owner's decision to eliminate the prospective Bidder.

§ 2.1.6.4.2 If the Construction Manager receives a written objection from the eliminated prospective Bidder within 5 days after the eliminated Bidder receives notice of the Owner's decision, the Construction Manager will promptly deliver the eliminated prospective Bidder's written objection to the Owner. The Owner may respond to the objection through the Construction Manager.

§ 2.1.6.5 The solicitation and selection of the Subcontractors shall be conducted under an open-book pricing method consistent with Paragraph 11.5.13 of the Agreement. Subject to the consent of the Owner, the Construction Manager is not required to award a Subcontract to the low bidder.

§ 2.1.6.6 Construction Manager shall obtain bids from and employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Owner may reasonably object to Construction Manager's selection of any Subcontractor, Supplier, or other individual or entity. The objection or failure to object to any Subcontractor by the Owner shall not relieve the Construction Manager of its responsibility for performance of the Work, nor shall the approval of any particular Subcontractor be construed as approval of any particular process, equipment, or material. If the Construction Manager is in default because of the Subcontractor's performance, then the Construction Manager shall not be entitled to any adjustment in the Contract Sum, Contract Time and/or GMP and shall remain liable to the Owner for any actual and direct damages or losses caused by such default.

§ 2.1.6.7 Immediately upon execution of each subcontract with a subcontractor or supplier, the Construction Manager shall provide the Owner an executed copy of such subcontract. All subcontracts shall comply with Section 153:1-3-02 of the Ohio Administrative Code. In accordance with Ohio law, all Subcontracts on the Project shall include the following terms and conditions:

- § 2.1.6.7.1** Mutual rights and responsibilities: The subcontract form shall contain a provision requiring:
- a. the Construction Manager and the Subcontractor to be mutually bound to the terms of the Contract Documents;
 - b. the Construction Manager to assume toward the Subcontractor the rights, remedies, obligations, and responsibilities that the Owner has and assumes toward the Construction Manager;
 - c. the Subcontractor to assume toward the Construction Manager the rights, remedies, obligations, and responsibilities that the Construction Manager assumes towards the Owner; and,
 - d. the Subcontractor to perform its portion of the work on the Project in accordance with the Contract Documents.

§ 2.1.6.7.2 Contingent assignment: The subcontract form shall contain a provision providing for the assignment of the subcontract to the Owner, at the Owner's option, upon the termination of the Construction Manager's contract and written notice to the Subcontractor.

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

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

§ 2.1.6.7.5 Right to audit: The subcontract form shall contain a provision entitling the Owner and any agents designated by the Owner to have access to and the right to audit and copy, at the Owner's reasonable cost, all of the Subcontractor's and Sub-Subcontractor's books, records, contracts, correspondence, instructions, drawings, receipts, vouchers, purchase orders and memorandum relating to the Work for ten (10) years following completion of the Work.

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

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

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

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

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

§ 2.1.6.7.11 Dispute resolution: The subcontract form shall require the contract between the Construction Manager and Subcontractor to contain a dispute resolution provision that is comparable to the dispute resolution provision in the contract between the Construction Manager and the Owner.

§ 2.1.6.8 The Construction Manager shall be responsible to the Owner for acts and omissions of the Construction Manager's employees, Consultants, Sub-Consultants, Subcontractors, Sub-Subcontractors and their agents and employees, and other persons or entities performing any portion of the Construction Manager's obligations under the Contract Documents.

§ 2.1.6.9 Construction Manager has a duty to inspect the Work of its Subcontractors, Sub-Subcontractors, Consultants and Sub-Consultants for conformance with the Contract Documents and assumes responsibility to Owner for the proper performance of the Work of Subcontractors, Sub-Subcontractors, Consultants, and Sub-Consultants and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights except that the Owner is an intended third-party beneficiary of Construction Manager's agreements with its Consultants, Sub-Consultants, Subcontractors, Sub-Subcontractors and suppliers.

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

§ 2.1.6.11 For any Work that the Construction Manager proposes to self-perform, the Construction Manager will receive prior written approval from the Owner and will submit a sealed bid for the work before the time when bids for the work are to be received from other prospective Bidders, as required by Ohio law.

§ 2.1.6.12 The Construction Manager and its Subcontractors and 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 Construction Manager shall adjust and shall require its Subcontractors and 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, Construction Manager and all Subcontractors and Sub-Subcontractors shall provide a properly completed Affidavit of Construction Manager or Subcontractor Prevailing Wage. The Prevailing Wage Determination Cover Letter is attached as **Exhibit M**.

§ 2.1.7 Procurement Schedule

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. The Construction Manager will not unreasonably withhold its consent. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 2.1.8 Extent of Responsibility

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 2.1.9 Notices and Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities for inclusion in the Contract Documents.

§ 2.1.10 Communications with Local and Government Officials. The Construction Manager shall assist the Owner and Architect in communications with and addressing local and government officials with jurisdiction over the Project. Because of the sensitive nature of these communications, the Construction Manager agrees and acknowledges that all communications will be at the direction of and in the discretion of the Owner.

§ 2.2 Guaranteed Maximum Price Proposal and Contract Time

§ 2.2.1 Upon execution of this Agreement, Construction Manager shall begin the Preconstruction Phase services on the Project, as provided in the Contract Documents, including Paragraph 2.1 and 2.2 herein. Within 15 calendar days of the Architect issuing 100% complete drawings for construction, the Construction Manager shall submit its Guaranteed Maximum Price (GMP) Proposal to the Owner, based upon the approved Construction Documents, in accordance with the Contract Documents and using the GMP Proposal form included in the Owner's RFP. Submission by the Construction Manager of a GMP Proposal that attempts to modify or alter the Construction Fee, At-Risk Fee, General Conditions, or Contingency submitted with its Original Proposal submitted in response to the Owner's RFP shall be a material breach of this Agreement by the Construction Manager. In addition, any attempt by

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the Construction Manager to alter the terms of the modified A133 or modified A201 that was included in the Owner's RFP as a condition or assumption of the GMP Proposal shall be a material breach of this Agreement by the Construction Manager.

At the Owner's request, the Construction Manager, Owner and the Design Professional (along with selected engineers and consultants) will meet to reconcile any questions, discrepancies or disagreements relating to the GMP qualifications and assumptions, and the GMP. Any qualifications and assumptions shall be documented in writing and approved in writing by Owner.

§ 2.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 2.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, in accordance with the Owner's RFP and in the form attached to the Owner's RFP or other form acceptable to the Owner, including the Cost of the Work, Construction Fee, At-Risk Fee, General Conditions, and Contingency. Construction Manager shall also provide a breakdown of the estimated Cost of the Work organized by trade categories or systems and list of any allowances included in the Cost of the Work;
- .4 The Construction Schedule, including the Date of Substantial Completion and Date of Final Completion, upon which the proposed Guaranteed Maximum Price is based;
- .5 [Not Used.] and
- .6 A list of subcontractors proposed to be used on the Project and to the extent available, a copy of each proposed subcontractor's proposal for its respective work on the Project.

§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use as defined herein.

§ 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 2.2.6 Following Owner's acceptance of a Guaranteed Maximum Price proposal, in Owner's sole discretion, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which is attached hereto as **Exhibit A**. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based. Subject to termination for cause under Section 2.2.1 of this Agreement, if the parties cannot agree on a GMP for the Project, the Owner may terminate the Contract for convenience or the Owner may elect to change the project delivery method to construction manager agency.

§ 2.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

§ 2.2.9 The Construction Manager agrees that it will not be reimbursed for any sales, consumer, commercial activity, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed. The Owner is exempt from payment of Ohio sales and use tax and will provide the Contractor with a completed Construction Contract Tax Exemption Certificate for the purchase of materials and equipment to be incorporated into the Project.

§ 2.2.10 Substantial Completion of the entire Work shall be achieved no later than the date identified in the GMP Amendment accepted by the Owner. The Date for Substantial Completion shall only be changed or modified by Change Order or Modification, regardless of any dates in the Construction Schedule, created by any person, including the Construction Manager. The Date for Final Completion of the Construction Manager's Work shall be the date identified in the GMP Amendment accepted by the Owner ("Date for Final Completion"). The Date for Final Completion shall only be modified by Change Order or Modification regardless of any dates in Construction Schedule, including the Construction Schedule, created by any person, including the Construction Manager. Owner and Construction Manager mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

§ 2.3 Construction Phase

§ 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201-2007, the date of commencement of the Work shall mean the date of execution of the Guaranteed Maximum Price Amendment by the Owner.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's execution of the Guaranteed Maximum Price Amendment.

§ 2.3.2 Administration

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Owner. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection. Notwithstanding the foregoing, the Construction Manager acknowledges and agrees that Ohio law imposes certain requirements upon the Construction Manager for establishing criteria for subcontractors, for obtaining the Owner's approval of the criteria, for prequalifying prospective Bidders for the work to be performed, for soliciting bids from prequalified prospective Bidders, for obtaining the Owner's approval of Subcontractors, and for the terms in Construction Manager's subcontract agreements.

§ 2.3.2.2 When a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 Subcontracts or other agreements shall conform to the requirements of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

§ 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

§ 2.3.2.5 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute meeting minutes to the Owner and Architect for their review.

§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201–2007.

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, in a format acceptable to the Owner, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in a format acceptable to the Owner, in accordance with Section 2.3.2.7 above.

§ 2.4 Professional Services

Section 3.12.10 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 2.5 Hazardous Materials

Section 10.3 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems sustainability and site requirements.

§ 3.1.2 Not Used.

§ 3.1.3 Not Used.

§ 3.1.4 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, Construction Manager shall furnish through consultants the following information or services with reasonable promptness, which shall be reimbursable expenses to the Construction Manager. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work and shall be responsible for its own interpretations or conclusions drawn from such information.

§ 3.1.4.1 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 3.1.4.2 The Construction Manager shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other

improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark. Construction Manager shall be responsible for independently confirming the location of utility lines and exercising reasonable care related thereto. Notwithstanding the foregoing, the Owner may, at its option, require Construction Manager to obtain such surveys and same shall be included in the Cost of the Work.

§ 3.1.4.3 The Construction Manager will furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations. **The Construction Manager and Architect shall collaborate on the number and locations of such tests and borings.** The documents produced by the geotechnical engineers are not Contract Documents. Construction Manager may not rely upon or make any Claim against the Owner or Design Professional, or any of their agents or employees, with respect to any of the following:

- (a) the completeness of such reports or tests for Construction Manager's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed and safety precautions and programs incident thereto; or
- (b) any interpretation by the Construction Manager of or conclusion drawn from any technical data or any such other data, interpretations, opinions, or information. For example, all interpolations and extrapolations of data performed by the Construction Manager to estimate locations or quantities of subsurface strata are independent factual assumptions, which Owner does not warrant.

§ 3.1.4.4 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 3.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 3.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in the contract between Owner and Architect, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager upon written request, with a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

§ 4.1.1 For the Construction Manager's Preconstruction Phase services described in the Contract Documents including Sections 2.1 and 2.2, the Owner shall compensate the Construction Manager as follows:

§ 4.1.2 Preconstruction Fee. The Preconstruction Fee is the combination of compensation for all services, labor, direct personnel expenses, equipment, material, home office overhead and profit for such services provided during the Preconstruction Phase of the Project as defined in the Contract Documents. The Construction Manager's Preconstruction Fee for the Project is:

(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

\$132,240.00 The Preconstruction Fee shall not be included in the GMP to be provided by the Construction Manager in the GMP Amendment.

§ 4.1.3 [Not Used.

§ 4.1.4 Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions. The Preconstruction Fee includes all Direct Personnel Expenses incurred by the Construction Manager to provide the services during the preconstruction phase of the Project as defined in the Contract Documents.

§ 4.1.5 Additional Services. Any Additional Services outside of the scope of preconstruction services set forth in this Agreement, will be compensated based upon written, signed Amendment between the Owner and Construction Manager authorizing such additional services and setting forth the agreed-upon price. Before the Construction Manager incurs any time or expenses on any activity that may be an additional service the Construction Manager shall provide verbal notice to the Owner's Representative followed immediately by written communication to the Owner's Representative. No additional services shall be performed without written, signed agreement between the Owner and Construction Manager, prior to the performance of such services.

§ 4.2 Payments

§ 4.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 4.2.2 Payments are due and payable as set forth in the Contract Documents. Amounts due and unpaid in accordance with this Agreement shall bear interest at the rate entered below.

(Insert rate of monthly or annual interest agreed upon.)

Simple interest at prime plus 0.5 per annum % Construction Manager shall give the Owner seven days written notice of late payment before interest shall begin to accrue.

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract. The Contract Sum is the sum of the Cost of the Work (as defined in Article 6 of this Agreement), the Construction Manager's Fee, (the sum of the Construction Fee, the At-Risk Fee, and General Conditions) and the amount of Contingency used, as each is defined in the Contract Documents, exclusive of the Preconstruction Fee.

§ 5.1.1 The Construction Manager's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

shall be set forth in the Guaranteed Maximum Price Amendment.

§ 5.1.2 The method of adjustment of the Construction Manager's Fee for changes in the Work:

Shall be in accordance with Article 7 of Document A201-2007 as modified

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

Shall be in accordance with Article 7 of Document A201-2007 as modified

§ 5.1.4 Rental costs of machinery and equipment, exclusive of hand tools, minor equipment, simple scaffolds, etc, whether rented from the Construction Manager or others; charges for certain non-owned heavy or specialized equipment may be invoiced at up to 100% of the documented rental cost. Downtime due to repairs, maintenance and weather delays shall not be allowed. The Construction Manager shall submit copies of actual paid invoices to substantiate rental costs; Charges for certain Construction Manager-owned, heavy or specialized equipment may be invoiced at up to 100% of the cost listed by the current edition of the Associated Equipment Dealers Green Book rental rates and specifications for construction equipment. No recovery will be allowed for hand tools, minor equipment,

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simple scaffolds, etc. The longest period of time that the equipment is to be required for the Work shall be the basis for the pricing. Downtime due to repairs, maintenance and weather delays shall not be allowed. For Construction manager owned equipment, the aggregate equipment rental charges for any single piece of equipment used in all change order work shall not exceed fifty percent (50%) of the fair market value of the piece of equipment.

§ 5.1.5 Unit prices, if any:

(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
None identified prior to construction.		

§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The GMP shall be established upon execution of the Guaranteed Maximum Price Amendment (**Exhibit A**). Construction Manager guarantees that it shall not exceed the GMP identified in the Guaranteed Maximum Price Amendment subject to additions and deductions by changes in the Work as provided in the Contract Documents. The only exception to the Guaranteed Maximum Price will be for changes with Owner's prior approval, in writing. The Construction Manager guarantees that the Contract Sum shall not exceed the GMP set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time pursuant to the terms of the Contract Documents. To the extent the Contract Sum exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.
(Paragraphs deleted)

§ 5.2.1.1 The GMP includes the Construction Fee, the At-Risk Fee, the General Conditions, the Contingency, and the Maximum Cost of the Work, as defined herein. The use of the Contingency by the Construction Manager and all other costs incurred by the Construction Manager are subject to open book pricing in accordance with Section § 11.5.13 of this Agreement.

- a. **Construction Fee.** The Construction Fee is the combination of overhead, including but not limited to, home office overhead, and profit for services provided during the construction phase of the Project as defined in the Contract Documents. The amount of the Construction Manager Fee for the Project is identified in the GMP Amendment (**Exhibit A**).
- b. **At-Risk Fee.** The At-Risk Fee is defined as the fee amount attributable to the risk the Construction Manager assumes by agreeing to be responsible for the performance of the work. The amount of the Construction Manager's At-Risk Fee for the Project is identified in the GMP Amendment (**Exhibit A**). Construction Manager shall not be entitled to any additional At-Risk Fee beyond the At-Risk Fee included in the Guaranteed Maximum Price Amendment during the Project.
- c. **General Conditions.** The General Conditions are the Construction Manager's costs for materials, services and equipment necessary to perform the work on the Project but that are not incorporated into the Project. The amount of the Construction Manager's General Conditions costs for the Project is identified in the GMP Amendment (**Exhibit A**). The Construction Manager's General Conditions costs, to the extent applicable to the Project, will include:
 - Construction Manager's home office management personnel, (e.g., President, General Manager, Operations Manager, Business Development Manager, Corporate Counsel, Health and Safety Director, Procurement Manager, Finance and Accounting Manager, Quality Assurance Manager, Estimators);
 - Project Management personnel (e.g., Project Executive, Project Manager, Deputy Project Manager, Construction Manager, Deputy Construction Manager, Resident Engineer, Safety Officer, Project Controls staff, superintendents, Quality Manager, contract administration staff, procurement staff, general clerical and administrative support staff, legal staff, estimators, finance and accounting staff);
 - progress scheduling;
 - compliance notices;
 - contract and subcontract administration;

- trash removal for construction office;
- project record keeping, documentation, document control, and status reporting;
- Ohio Utilities Protection Services/Dig Safe program notice and coordination;
- Project health and safety program including but not limited to equipment, supplies, training, record keeping, plan development, incentives, audits and drills;
- taxes, subject to paragraph 2.2.9 of this Agreement;
- staff expense allowances;
- personnel and site vehicle rental/mileage, fuel and maintenance;
- relocation and temporary lodging and per diem expense;
- ice and water;
- drug testing;
- communications equipment;
- field/project offices including furnishings, office equipment, utilities, heat, office supplies, telephones, facsimile machines, internet connections, computers/networks/Cadd machinery, janitorial, mail and shipping, security systems, temporary fencing and barricades, office mobilization and demobilization;
- badging and site security;
- photography/progress photos;
- tool trailer and hand tools;
- project signage;
- portable toilets, lockers and washrooms;
- temporary power;
- business licenses;
- patent fees and royalties;
- training and recruiting;
- premiums for that portion of insurance and bonds required by the Contract Documents that can be attributed to this Agreement, (self-insurance for either full or partial amounts of the coverages required by the Contract Documents may be included, with the Owner's prior approval) – the premium charges will be set forth as a line item in the Itemized General Conditions attached hereto as **Exhibit C**.

The General Conditions costs shall not include costs for any of the items listed above that are included in subcontract agreements. Notwithstanding any other provisions to the contrary, Construction Manager has represented that the Itemized General Conditions attached hereto as **Exhibit C** identifies all of the costs that will be reimbursable as General Conditions, and that each item identified in the General Conditions will be billed on a not-to-exceed basis.

- d. **Contingency.** The "Contingency" is an amount set aside by the Construction Manager to pay for unexpected events, as set forth in this paragraph. Unless agreed by the Construction Manager or otherwise provided in the Contract Documents, Construction Manager's Contingency is not for use by the Owner for scope increases, unforeseen or concealed conditions, agency changes, or design changes, errors or omissions. Construction Manager's Contingency shall not be used to cover items resulting from the Construction Manager's breach, negligence, or to cover Construction Manager's General Condition items. It is further understood and agreed that such Contingency shall be the maximum amount available, and may only be used for the following: (i) additional costs incurred as a result of a failure of a bidder to whom a portion of the Work is awarded in accordance with the Contract Documents to enter into a subcontract with the Construction Manager; (ii) casualty losses and related expenses uncompensated by insurance sustained by the Construction Manager in connection with the Work, except to the extent such losses or expenses are attributable, in whole or in part, to the Construction Manager's breach, error, or omission or that of a subcontractor or supplier; (iii) deductibles for losses covered by Owner's property insurance but only to the extent that such deductibles are not recoverable from a subcontractor, supplier, bond, or insurance; and (iv) changes to sequencing or scheduling (e.g. trade acceleration to avoid an oncoming storm). The Construction Manager shall first submit to the Owner for approval a written request for a specific amount and justification for its use, Construction Manager shall also report use of such Contingency on the Construction Manager's monthly report and shall submit Contingency cost item(s), clearly described, with the corresponding Application for Payment. Construction Manager shall forfeit the Contingency amount committed

or used if it failed to report and to submit such item(s) for payment after two subsequent monthly Applications for Payment.

- i. Construction Manager agrees that with respect to any expenditure from the Contingency for which insurance or a bond may provide reimbursement, Construction Manager will in good faith exercise all efforts to obtain recovery from any surety or insurance company. Construction Manager agrees that if contingency funds are advanced to Construction Manager and Construction Manager subsequently recovers said costs from a collateral source, then said recovery will be credited back to the Contingency.

Notwithstanding any other provisions of this Agreement, contingency funds shall not be available to the Construction Manager to cover any loss to the extent that insurance coverage or reimbursement is adversely affected by the failure of the Construction Manager to give timely notice pursuant to the policy terms, including any endorsement.

- ii. The Construction Manager shall use the Contingency before using any amounts from the Savings.
- iii. Any unused portion of the Contingency upon Final Payment shall be reallocated to the Savings and added to the remaining balance of the Savings.
- iv. The use of the Contingency by the Construction Manager is subject to open book pricing in accordance with Section § 11.5.13 of this Agreement.

§ 5.2.1.2 Buyout Savings. Notwithstanding any other provision in the Contract Documents to the contrary, if the Maximum Cost of the Work in the GMP is greater than the actual Cost of the Work following the bidding of subcontracts on the Project, such "Buyout Savings" shall be retained **100%** by the Owner.

§ 5.2.1.3 Savings. If the Contract Sum is less than the GMP, as such GMP may have been adjusted over the course of the Project, the difference shall be retained **100%** by the Owner.

§ 5.3 Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in the Contract Documents, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

(Paragraph deleted)

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201-2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201-2007 shall have the meanings assigned to them in AIA Document A201-2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201-2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in this Agreement.

(Paragraph deleted)

§ 5.3.5 Allowances.

§ 5.3.5.1 The Cost of the Work may include the Allowances identified in the GMP Amendment.

§ 5.3.5.2 All Allowances include the cost to the Construction Manager (less any applicable trade discounts) of materials and equipment required by the Allowances to be delivered at the Site, and all applicable taxes.

§ 5.3.5.3 The Construction Manager's Fee and costs for unloading and handling on the Site, labor, installation costs, and other expenses contemplated for the Allowances are not in the stated Allowance amounts but are otherwise included in the Contract Sum.

§ 5.3.5.4 Before final payment, an appropriate Change Order will be issued to reconcile the Contract Sum so that it reflects actual amounts due to the Construction Manager on account of Work covered by Allowances including an associated adjustment on account of the Construction Manager's Fee. Remaining Allowances amounts not due to the Construction Manager on account of Work covered by the Allowances shall be retained by the Owner and shall not be included in any Savings.

§ 5.3.6 Unit Prices.

§ 5.3.6.1 The Contract Sum may include the Unit Price Work identified in the GMP Amendment.

§ 5.3.6.2 Where the Contract provides that all or part of the Work is to be Unit Price Work, initially the Contract Sum will include for all Unit Price Work (1) an amount equal to the sum of the established Unit Prices for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Contract plus (2) the Construction Manager's Fee on that Unit Price Work. Notwithstanding any other provision in the Contract Documents to the contrary, Construction Manager shall not be paid for any Unit Price Work that represents an actual quantity greater than 110% of the estimated quantity, without a Change Order. Construction Manager shall maintain such records as required to track the quantities of Unit Price Work in anticipation of exceeding the 110% threshold, and act promptly in submitting a Claim.

§ 5.3.6.3 The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of determining an initial Contract Sum. The Owner will determine the actual quantities and classifications of Unit Price Work performed by Construction Manager.

§ 5.3.6.4 Each unit price will be deemed to include an amount considered by Construction Manager to be adequate to cover Contractor's overhead and profit for each separately identified item.

§ 5.3.6.5 Owner will determine the actual quantities and classifications of Unit Price Work performed by Construction Manager. Owner will review with Construction Manager the Owner's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Owner's written decision thereon will be final and binding upon the Construction Manager unless Construction Manager pursues a Claim in accordance with Contract Documents.

§ 5.3.6.6 Before final payment, an appropriate Change Order will be issued per the Contract Documents, to reconcile the Contract Sum so that it reflects actual amounts due to the Construction Manager on account of Unit Price Work actually performed including an associated adjustment on account of the Construction Manager's Fee.

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed Under the GMP

§ 6.1.1 Subject to the GMP, the term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work for the Construction Phase. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost.

§ 6.1.3 The amounts included in Article 6 are subject to open book pricing in accordance with Section § 11.5.13 of this Agreement.

§ 6.2 Labor Costs incurred by Construction Manager in Self-Performing Work on the Project.

§ 6.2.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 6.2.2 [Not Used.]

§ 6.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.

§ 6.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner's prior approval.

§ 6.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

§ 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 6.4.1 Actual costs, without mark-up, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ 6.4.2 Actual costs, without mark-up of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 6.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the value of the item at the time it is first used on the Project site, less the value of the item when it is no longer used at the Project site. Value for items not fully consumed by the Construction Manager shall mean fair market value.

§ 6.5.2 Subject to 5.1.4, actual rental charges without mark-up, for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

§ 6.5.3 Actual costs, without mark-up of removal of debris from the site of the Work and its proper and legal disposal.

§ 6.5.4 Actual costs, without mark-up of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

§ 6.5.5 [Not Used.]

§ 6.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 6.6 Miscellaneous Costs

§ 6.6.1 [Not Used.]

§ 6.6.2 [Not Used.]

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§ 6.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections which the Construction Manager is required by the Contract Documents to obtain and pay for. **In the Cost of the Work in the GMP, the Construction Manager shall include an allowance for all such permits and inspections, including but not limited to, special inspections for soil compaction, concrete, and structural steel.**

§ 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201–2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

§ 6.6.5 [Not Used.]

§ 6.6.6 Not Used.

§ 6.6.7 Not Used.

§ 6.6.8 Not Used.

§ 6.6.9 Not Used.

§ 6.7 Other Costs and Emergencies

§ 6.7.1 Other actual costs, without markup incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201–2007.

§ 6.7.3 Actual costs, without markup of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recoverable by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

§ 6.8 Costs Not To Be Reimbursed as Cost of the Work

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

- .1 Construction Manager Fee, which includes salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .8 Costs for Preconstruction Fee incurred during the Preconstruction Phase.
- .9 Costs which are included in the Construction Manager's General Conditions and At-Risk Fee;
- .10 Computers (desktop, laptop, tablet, etc.) and software unless such are acquired solely, not partially or substantially, for the beneficial use of the Project, and computers may not contain other unrelated Project or personal data unless otherwise specifically approved by Owner in writing;

- .11 Corporate accounting, data and check processing, and similar business transaction related costs related to the Work are part of Construction Manager's overhead business expenses and should have been included in Construction Manager's Fee;
- .12 All taxes, including those identified in paragraph 2.2.9 of this Agreement;
- .13 Consultants to the Construction Manager not previously approved in writing by the Owner; and
- .14 Unless otherwise provided in the Agreement, Owner shall not reimburse the Construction Manager for rental charges more than two weeks prior to and one week after such temporary facilities, machinery and equipment that are needed to be used directly in the Work.
- .15 Relocation and temporary living allowances of personnel required for the Work unless such relocation meets the "distance test" under the United States Internal Revenue Publication 521.

§ 6.9 Discounts, Rebates and Refunds

§ 6.9.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, equipment rental discounts, insurance and surety bonding discounts and credits, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

§ 6.11 Accounting Records

The Construction Manager shall keep full and detailed records and accounts related to the GMP, including but not limited to, the Cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's accountants shall be afforded access to review and audit the Construction Manager's records as set forth in the AIA Document A201-2007, General Conditions of the Contract for Construction, as modified.

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

§ 7.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager and Certificates for Payment issued by the Architect, the Owner shall make progress payments to the Construction Manager as provided below and elsewhere in the Contract Documents.

§ 7.1.2 The period covered by each Application for Payment shall be as follows:

The Construction Manager shall submit its Application for Payment to the Owner and Architect in the form the Owner specifies and Certification on or before the **twenty-fifth (25th)** day of each month for Work completed through the twenty-second day of the month. The Owner will issue payment to the Construction Manager within **thirty (30)** days from the date of its receipt of the complete Application for Payment, certified by the Architect and in compliance with all of Owner's policies, procedures, and documentation requirements in the Contract Documents.

§ 7.1.3 Provided that an Application for Payment is received as required by the Contract Documents, the Owner shall make payment as set forth above.
(Federal, state or local laws may require payment within a certain period of time.)

§ 7.1.4 With each Application for Payment, the Construction Manager shall maintain payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment. Invoices in excess of \$1,000.00 shall be submitted with the Application for Payment. Invoices of \$1,000.00 or less shall be retained by the Construction Manager and produced to the Owner upon request.

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee, At-Risk Fee, Contingency accounting, and General Conditions shall each be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect or Owner may require. This schedule, unless objected to by the Architect or Owner, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 7.1.6 Applications for Payment 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 Construction Manager on account of that portion of the Work for which the Construction Manager 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.

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

- .1 Take that portion of the Cost of the Work properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Cost of the Work allocated to that portion of the Work in the schedule of values;
- .2 Add that portion of the Cost of the Work properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Subtract retainage of ~~eight~~ percent (~~8~~ %) of the Cost of the Work (including the Work of Subcontractors and that portion of the construction Work that the Construction Manager self-performs) and subtract retainage of 8% for the materials and equipment set forth in paragraph .2 above, for the first 50% of the Work, in accordance with the Ohio Revised Code;
- .4 Add the Construction Manager's Fee. The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager'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 bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .5 Add General Conditions earned since previous Application for Payment;
- .6 Subtract the aggregate of previous payments made by the Owner;
- .7 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and

- .8 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201–2007.

§ 7.1.8 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 7.1.9 Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 7.1.11 Construction Manager's first Application for Payment is considered incomplete unless in addition to the requirements described in Sections 7.1.1 through 7.1.8 and AIA® A201™ - 2007 Article 9.3.3, all of the following completed items are also included with the Application for Payment: (1) Performance and Payment Bonds, if required; (2) Certificates of Insurance, as required; (3) Affidavits that the surety and insurance company or companies meets the requirements in AIA® A201™ - 2007 Article 11.4; (4) Construction Schedule for the Project; (5) Completed Schedule of Values for the Project.

§ 7.1.12 Notwithstanding Section 7.1.3 above, the Owner shall have the right to withhold sufficient amount from the Application for Payment for unacceptable, defective, deficient, or non-conforming Work ("Disputed Work") after notifying the Construction Manager. The Construction Manager shall promptly remedy the Disputed Work. Owner shall promptly render payment for such Disputed Work after the Construction Manager has cured and the Owner has accepted the remedied Disputed Work.

§ 7.2 Final Payment

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201–2007, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect.

The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

§ 7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Owner by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201–2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201–2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

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§ 7.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201-2007. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 7.2.4 [Not Used.]

§ 7.2.5 Amounts withheld from the final payment to cover any incomplete work are not considered retainage and shall not be paid to the Construction Manager until the work is actually completed and accepted by the Owner. Such withholdings shall not be less than 150% of the estimated cost to complete the Work.

§ 7.2.6 The Owner shall have the right to deduct from the Final Payment due the Construction Manager all costs, including additional fees paid to Owner's consultants, which the Owner incurred as a result of and attributed to Construction Manager's failure to fully complete and/or closeout the Project in accordance with the Contract Documents.

ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds before construction begins, as set forth in Article 11 of AIA Document A201-2007.

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)

Type of Insurance or Bond	Limit of Liability or Bond Amount
Payment Bond and Performance Bond in the forms attached hereto as Exhibit B, as required by Ohio law.	Upon execution of the GMP Amendment, or any Modification to the GMP Amendment, Construction Manager shall provide replacement payment and performance bonds in the full amount of the GMP and deliver written consent from its surety in accordance with OAC 153:1-4-02(B). The penal sum of the bond is at all times, subject to ORC § 153.11

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

ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201-2007. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201-2007, the method of binding dispute resolution shall be as follows:

(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

Arbitration pursuant to Section 15.4 of AIA Document A201-2007

Litigation in a court of competent jurisdiction in the county in which the Owner's principal office is located. The parties expressly waive the right to remove any litigation to federal court.

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[] Other: *(Specify)*

§ 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007 for Claims arising from or relating to the Construction Manager’s Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination for Convenience by Owner

§ 10.1.1 The Owner may terminate this Agreement upon not less than seven days’ written notice to the Construction Manager for the Owner’s convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days’ written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201–2007.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, prior to the commencement of the Construction Phase, the Construction Manager shall be equitably compensated for the portion of any Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager’s compensation under this Section exceed the compensation set forth in Section 4.1.

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

- .1 Take the Cost of the Work actually incurred by the Construction Manager to the date of termination;
- .2 Add the portion of the Construction Manager’s Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager’s Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work completed at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination, but only for work actually

performed under said subcontract or purchase order on the Project or for restocking fees or other non-refundable costs incurred by Construction Manager to its subcontractors or suppliers in reliance on Owner approval.

(Paragraphs deleted)

§ 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in A201–2007.

§ 11.2 Ownership and Use of Documents

Section 1.5 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.3 Governing Law

Section 13.1 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a developer providing financing and oversight for the Project if the developer agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201–2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 11.5 Other provisions:

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

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

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

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

11.5.5 ENTIRE AGREEMENT. This Agreement and the other Contract Documents constitute the entire agreement among the parties with respect to their subject matter and will supersede all prior and contemporaneous, oral or written, agreements, negotiations, communications, representations, and understandings with respect to such subject

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matter, and no person is justified in relying on such agreements, negotiations, communications, representations, or understandings.

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

11.5.7 [Not Used].

11.5.8 LIQUIDATED DAMAGES. If the Construction Manager does not have its Work on the Project substantially complete by the Date for Substantial Completion, the Construction Manager shall pay the Owner (and the Owner may set off from sums coming due the Construction Manager) liquidated damages in the per diem amount of \$5,000 per day for each day beyond the Date for Substantial Completion that the Work fails to be substantially complete. The Construction Manager acknowledges that such amount of liquidated damages represents a reasonable estimate of the actual damages that the Owner will incur if the Work is not substantially complete by the Date for Substantial Completion. The Liquidated Damages are intended to compensate the Owner for any damages the Owner incurs on account of (1) any claims attributable to the Construction Manager that are brought by others including separate consultants and separate contractors or (2) any failure of the Construction Manager to timely, properly, and completely perform the Contract other than the failure to achieve the Milestones within their associated Contract Times.

If the Construction Manager does not have its Work on the Project finally complete by the Date of Final Completion, the Construction Manager shall pay the Owner liquidated damages in the per diem amount of \$2,000 per day:

§ 11.5.9 Conflict of Interest. Except with the Owner's prior knowledge and written consent, the Construction Manager shall not engage in any activity or accept any employment, interest, or contribution that would reasonably appear to compromise the Construction Manager's professional judgment with respect to this Project.

§ 11.5.10 Privileged Communications. To the extent not inconsistent with applicable Ohio law, all communications between Owner's legal counsel and Construction Manager, while Construction Manager is acting as the consultant for Owner under the terms of this Agreement and which relate in any way to the administration of the construction of the Project or to the work of any Contractor, Subcontractor, material supplier, or any other person rendering services in connection with the Project, shall be subject to the attorney-client privilege that can be waived only by Owner. Any such communications and copies thereof that are written, including without limitation correspondence, notes, memoranda, notes of meetings and conversations that are reduced to writing, and the like, upon notice from Owner's legal counsel, shall be placed by Construction Manager in a separate file folder marked "Privileged and Confidential" and shall not be disclosed to any person other than Construction Manager's own legal counsel without the express written permission of the Owner. This Section 11.5.10 is intended to protect the confidentiality of Owner's communications with its counsel when Construction Manager comes into possession of such information in its capacity as agent of Owner in the performance of its duties under this Agreement in the event of a dispute between Owner and a third party. This section is not intended to impede communications between Construction Manager and Construction Manager's legal counsel.

§ 11.5.11 Non-Discrimination. Construction Manager agrees:

1. That in the hiring of employees for the performance of Work under this Agreement or in any subcontract, neither the Construction Manager, subcontractor, nor any person acting on behalf of either of them, shall by reason of race, creed, sex, handicap, or color, discriminate against any citizen of the state in the employment of labor or workers who are qualified and available to perform the Work to which the employment relates.
2. That neither the Construction Manager, subcontractor, nor any person acting on behalf of either of them, shall, in any manner, discriminate against or intimidate any employee hired for the performance of Work under this Agreement on account of race, creed, sex, handicap, or color.

3. That there shall be deducted from the amount payable to the Construction Manager by the Owner under this Agreement a forfeiture of twenty-five dollars (\$25.00) as required by Ohio Revised Code Section 153.60 for each person who is discriminated against or intimidated in violation of this Agreement.
4. That this Agreement may be canceled or terminated by the Owner and all money to become due hereunder may be forfeited for a second or subsequent violation of the terms of this section of this Agreement.

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

§ 11.5.13 Open Book Pricing. Construction Manager acknowledges that this Agreement is to be administered on an "open book" arrangement relative to Costs of the Work. Construction Manager shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. The Owner and the Owner's accountants shall be afforded access to review and audit the Construction Manager's records as set forth in the AIA Document A201-2007, General Conditions of the Contract for Construction, as modified.

§ 11.5.14 The Construction Manager shall have the right to include exterior photographic or artistic representations of the Project among the Construction Manager promotional and professional materials. However, the Construction Manager will not publish other information regarding the Project without the Owner's prior written consent. **The Construction Manager acknowledges that the Project is subject to unique security concerns.** The Construction Manager agrees to keep confidential and not to disclose to any third party (without the advance written consent of the Owner) any confidential, proprietary or privileged information or documentation of the Owner.

ARTICLE 12 SCOPE OF THE AGREEMENT

§ 12.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager 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 Construction Manager.

§ 12.2 The following documents comprise the Agreement:


- .1 AIA Document A133-2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as modified
- .2 AIA Document A201-2007, General Conditions of the Contract for Construction, as modified
- .3
- .4
- .5 Other documents:

(List other documents, if any, forming part of the Agreement.)

Exhibit A GMP Amendment
 Exhibit B Payment and Performance Bond Form as prescribed by OAC 153:1-4-02
 Exhibit C Itemized General Conditions
 Exhibit D [Not Used.]
 Exhibit E Notice of Claim Form
 Exhibit F CMAR Affidavit with List of Subcontractors and Suppliers with Amounts Withheld
 Exhibit G CMAR Progress Payment Waiver and Release Affidavit
 Exhibit H Subcontractors & Suppliers Progress Payment Waiver and Release Affidavit
 Exhibit I [Not Used.]
 Exhibit J CMAR's PPTA
 Exhibit K Construction Tax Exemption Certificate
 Exhibit L Final Lien Waiver and Release Agreement
 Exhibit M Prevailing Wage Rates

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


OWNER (Signature)

Tom Grossmann, President
(Printed name and title)

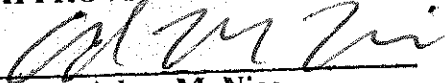
5/24/18
(Date)


CONSTRUCTION MANAGER (Signature)

Glenn D. Granger, President/CEO
(Printed name and title)

5-21-18
(Date)

APPROVED AS TO FORM


Adam M. Nice
Asst. Prosecuting Attorney

CERTIFICATE OF FUNDS
(ORC Section 5705.41)

The undersigned, Fiscal Officer of Warren County, Ohio, hereby certifies that the moneys required to meet the obligations of the County 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 County, or in the process of collection to the credit of the appropriate account or fund, free from any previous encumbrances.

DATED: _____

Warren County

By: _____
Fiscal Officer

Additions and Deletions Report for AIA® Document A133™ – 2009

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 11:50:04 on 05/21/2018.

PAGE 1

AGREEMENT made as of the day of ~~in the year~~ date of execution by the Owner

...

Board of County Commissioners
Warren County, Ohio
Administration Building
406 Justice Drive, First Floor
Lebanon, Ohio 45036

...

Granger Construction Company
175 S. Third Street, Ste 200
Columbus, Ohio 43215

(Name and address or location)

New Jail and Sheriff's Administration Office Project

...

The Construction Manager has been selected by the Owner following the qualification-based selection guidelines contained in Ohio Revised Code Sections 9.33, et seq., to provide construction management at risk services for the Project described above and elsewhere in this Agreement.

Services provided under this Agreement shall begin immediately and continue through design and construction of the improvements described herein.

...

Wachtel & McAnally
Architects/Planners Inc. 35 South Park Place
Newark, Ohio 43055

The Owner's Designated Architect may also be referred to as the "Design Professional" in this Agreement and other Contract Documents.

The Owner's Representative:
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The Owner's Representative is:
Trevor Hearn, Director – Department of Facilities Management Trevor.Hearn@co.warren.oh.us

...

Jason Woehrle

...

Garry McAnally

...

TABLE OF ARTICLES

12 SCOPE OF THE AGREEMENT

EXHIBIT A – GUARANTEED MAXIMUM PRICE AMENDMENT

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract Agreement represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. In the event inconsistencies, conflicts, or ambiguities between or among the Contract Documents are discovered after execution of the Agreement, Construction Manager shall provide the better quality or greater quantity of Work or comply with the more stringent requirements.

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For the Preconstruction Phase, AIA Document A201™–2007, General Conditions of the Contract for Construction, as modified, (hereafter, "A201-2007") shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2007, which document is incorporated herein by reference. The term "Contractor" as used in A201–2007 and all other Contract Documents, shall mean the Construction Manager.

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

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager shall provide all construction management services necessary for the proper management and construction of the Project. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project. The team assigned by the Construction Manager during the Construction Phase to work cooperatively with the Owner and Design Professional shall be the same team identified in Construction Manager's proposal and assigned to the Project during the Preconstruction Phase.

§ 2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other. As set forth in this Agreement, the Construction Manager will be responsible for performing the following duties including, but not limited to, cost estimating, budgeting, value engineering, constructability review, scheduling, identifying inconsistencies or omissions that might affect the GMP, and preconstruction planning throughout the Preconstruction Phase. The Owner's total budget for the Project including design fees, the Cost of the Work, all other construction costs, and Construction Manager fees is \$50

million. The Construction Manager will perform its duties, including but not limited to budgeting, value engineering, and scheduling, consistent with the Owner's program, schedule, and current budget. If, at any time, the Construction Manager's estimates of the Cost of the Work exceed the latest approved Project budget, the Construction Manager shall inform the Owner and Architect in writing and make recommendations for corrective action.

...

§ 2.1.2.1 BIM Process. It is anticipated that the Architect will prepare the Schematic Design, Design, Development, and Construction Documents using Autocad 2017. However, during the Construction Documents phase, it is anticipated that an architectural and structural model in Revit format will be prepared. The Construction Manager and subcontractors shall identify constructability issues, potential conflicts, clearances, and any other issues. The Construction Manager will act as BIM coordinator and pursuant to Paragraph 2.3.2.5, shall organize and lead in person or video conference meetings with the Architect and key subcontractors to discuss such issues and to ensure the design can be constructed as planned. The Construction Manager will record meeting minutes during the BIM process and distribute such meeting minutes to the Owner and Architect. The Construction Manager and subcontractors will cooperate with the Architect during this process and will review revised designs.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, At the conclusion of the schematic design, design development and construction document phases, the Construction Manager shall prepare and periodically update a Project schedule in a format acceptable to the Owner for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

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§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements requirements, at the conclusion of the schematic design, design development and construction document phases, using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval.

The Construction Manager's cost estimates of the Cost of the Work shall be provided in a format acceptable to the Owner. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at each design phase and all other appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement in a format acceptable to the Owner and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

...

The Construction Manager shall develop bidders' interest in the Project. In accordance with the Ohio Revised Code and Ohio Administrative Code, all subcontracts shall comply with Section 153:1-3-02 of the Ohio Administrative Code.

§ 2.1.6.1 The Construction Manager acknowledges the requirement imposed by Ohio Revised Code and Ohio Administrative Code sections that the Construction Manager establish criteria for the prequalification of prospective bidders on subcontracts and that such criteria will follow the administrative code requirements and will also include any specific criteria required by the Owner that are consistent with the scope and needs of the Project. The proposed

criteria developed by the Construction Manager will be submitted to the Owner, which the Owner will approve or reject, in whole or in part. The approved prequalification criteria will be used by the Owner for any future analysis it may conduct concerning a prospective bidder's responsibility to perform a subcontract.

§ 2.1.6.2 The Construction Manager will complete the bidder prequalification process for each subcontract not later than 30 days before the Construction Manager intends to solicit bids for the subcontract, unless the Owner agrees otherwise upon request from the Construction Manager.

§ 2.1.6.3 To develop prospective bidder interest in the Project, including specifically those prospective bidders (if any) the Owner asks the Construction Manager to consider, the Construction Manager may place a notice on (1) the State Public Notice Website created under ORC 125.182, (2) the official website of the Owner, (3) other websites such as appropriate trade association websites, news media, or other public media websites, or (4) any combination of the foregoing.

§ 2.1.6.4 Construction Manager will evaluate the qualifications of each prospective Bidder that timely submits its qualifications and shall notify each of them whether they are qualified. The Construction Manager will submit the names and qualifications of all of the qualified prospective Bidders to the Owner. The Construction Manager may submit the names of fewer than three (3) qualified prospective Bidders if the Construction Manager submits satisfactory documentation to the Owner that fewer than three qualified prospective Bidders are available.

§ 2.1.6.4.1 The Owner will review the list of prospective Bidders submitted by the Construction Manager and may rely on the Construction Manager's representations to verify that the prospective Bidders meet the pre-qualifications criteria. The Owner may eliminate any prospective Bidder it determines is not qualified and will notify the Construction Manager of its decision. The Construction Manager will promptly notify the prospective Bidder in writing of the Owner's decision to eliminate the prospective Bidder.

§ 2.1.6.4.2 If the Construction Manager receives a written objection from the eliminated prospective Bidder within 5 days after the eliminated Bidder receives notice of the Owner's decision, the Construction Manager will promptly deliver the eliminated prospective Bidder's written objection to the Owner. The Owner may respond to the objection through the Construction Manager.

§ 2.1.6.5 The solicitation and selection of the Subcontractors shall be conducted under an open-book pricing method consistent with Paragraph 11.5.13 of the Agreement. Subject to the consent of the Owner, the Construction Manager is not required to award a Subcontract to the low bidder.

§ 2.1.6.6 Construction Manager shall obtain bids from and employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Owner may reasonably object to Construction Manager's selection of any Subcontractor, Supplier, or other individual or entity. The objection or failure to object to any Subcontractor by the Owner shall not relieve the Construction Manager of its responsibility for performance of the Work, nor shall the approval of any particular Subcontractor be construed as approval of any particular process, equipment, or material. If the Construction Manager is in default because of the Subcontractor's performance, then the Construction Manager shall not be entitled to any adjustment in the Contract Sum, Contract Time and/or GMP and shall remain liable to the Owner for any actual and direct damages or losses caused by such default.

§ 2.1.6.7 Immediately upon execution of each subcontract with a subcontractor or supplier, the Construction Manager shall provide the Owner an executed copy of such subcontract. All subcontracts shall comply with Section 153:1-3-02 of the Ohio Administrative Code. In accordance with Ohio law, all Subcontracts on the Project shall include the following terms and conditions:

- § 2.1.6.7.1 Mutual rights and responsibilities: The subcontract form shall contain a provision requiring:
- a. the Construction Manager and the Subcontractor to be mutually bound to the terms of the Contract Documents;
 - b. the Construction Manager to assume toward the Subcontractor the rights, remedies, obligations, and responsibilities that the Owner has and assumes toward the Construction Manager;

- c. the Subcontractor to assume toward the Construction Manager the rights, remedies, obligations, and responsibilities that the Construction Manager assumes towards the Owner; and,
- d. the Subcontractor to perform its portion of the work on the Project in accordance with the Contract Documents.

§ 2.1.6.7.2 Contingent assignment: The subcontract form shall contain a provision providing for the assignment of the subcontract to the Owner, at the Owner's option, upon the termination of the Construction Manager's contract and written notice to the Subcontractor.

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

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

§ 2.1.6.7.5 Right to audit: The subcontract form shall contain a provision entitling the Owner and any agents designated by the Owner to have access to and the right to audit and copy, at the Owner's reasonable cost, all of the Subcontractor's and Sub-Subcontractor's books, records, contracts, correspondence, instructions, drawings, receipts, vouchers, purchase orders and memorandum relating to the Work for ten (10) years following completion of the Work.

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

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

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

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

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

§ 2.1.6.7.11 Dispute resolution: The subcontract form shall require the contract between the Construction Manager and Subcontractor to contain a dispute resolution provision that is comparable to the dispute resolution provision in the contract between the Construction Manager and the Owner.

§ 2.1.6.8 The Construction Manager shall be responsible to the Owner for acts and omissions of the Construction Manager's employees, Consultants, Sub-Consultants, Subcontractors, Sub-Subcontractors and their agents and employees, and other persons or entities performing any portion of the Construction Manager's obligations under the Contract Documents.

§ 2.1.6.9 Construction Manager has a duty to inspect the Work of its Subcontractors, Sub-Subcontractors, Consultants and Sub-Consultants for conformance with the Contract Documents and assumes responsibility to Owner for the proper performance of the Work of Subcontractors, Sub-Subcontractors, Consultants, and Sub-Consultants and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights except that the Owner is an intended third-party beneficiary of Construction Manager's agreements with its Consultants, Sub-Consultants, Subcontractors, Sub-Subcontractors and suppliers.

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

§ 2.1.6.11 For any Work that the Construction Manager proposes to self-perform, the Construction Manager will receive prior written approval from the Owner and will submit a sealed bid for the work before the time when bids for the work are to be received from other prospective Bidders, as required by Ohio law.

§ 2.1.6.12 The Construction Manager and its Subcontractors and 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 Construction Manager shall adjust and shall require its Subcontractors and 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, Construction Manager and all Subcontractors and Sub-Subcontractors shall provide a properly completed Affidavit of Construction Manager or Subcontractor Prevailing Wage. The Prevailing Wage Determination Cover Letter is attached as Exhibit M.

§ 2.1.7 Procurement Schedule

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. The Construction Manager will not unreasonably withhold its consent. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

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§ 2.1.10 Communications with Local and Government Officials. The Construction Manager shall assist the Owner and Architect in communications with and addressing local and government officials with jurisdiction over the Project. Because of the sensitive nature of these communications, the Construction Manager agrees and acknowledges that all communications will be at the direction of and in the discretion of the Owner.

§ 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee. Upon execution of this Agreement, Construction Manager shall begin the Preconstruction Phase services on the Project, as provided in the Contract Documents, including Paragraph 2.1 and 2.2 herein. Within 15 calendar days of the Architect issuing 100% complete drawings for construction, the Construction Manager shall submit its Guaranteed Maximum Price (GMP) Proposal to the Owner, based upon the approved Construction Documents, in accordance with the Contract Documents and using the GMP Proposal form included in the Owner's RFP.

Submission by the Construction Manager of a GMP Proposal that attempts to modify or alter the Construction Fee, At-Risk Fee, General Conditions, or Contingency submitted with its Original Proposal submitted in response to the Owner's RFP shall be a material breach of this Agreement by the Construction Manager. In addition, any attempt by the Construction Manager to alter the terms of the modified A133 or modified A201 that was included in the Owner's RFP as a condition or assumption of the GMP Proposal shall be a material breach of this Agreement by the Construction Manager.

At the Owner's request, the Construction Manager, Owner and the Design Professional (along with selected engineers and consultants) will meet to reconcile any questions, discrepancies or disagreements relating to the GMP qualifications and assumptions, and the GMP. Any qualifications and assumptions shall be documented in writing and approved in writing by Owner.

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- ~~.3~~ A statement of the proposed Guaranteed Maximum Price, including a statement in accordance with the Owner's RFP and in the form attached to the Owner's RFP or other form acceptable to the Owner, including the Cost of the Work, Construction Fee, At-Risk Fee, General Conditions, and Contingency. Construction Manager shall also provide a breakdown of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee; systems and list of any allowances included in the Cost of the Work;
- ~~.4~~ The anticipated date of Substantial Completion Construction Schedule, including the Date of Substantial Completion and Date of Final Completion, upon which the proposed Guaranteed Maximum Price is based;
- ~~.5~~ [Not Used.] and
- ~~.5~~ A date by which the Owner must accept the Guaranteed Maximum Price. ~~.6~~ A list of subcontractors proposed to be used on the Project and to the extent available, a copy of each proposed subcontractor's proposal for its respective work on the Project.

~~§ 2.2.4~~ In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order, as defined herein.

...

~~§ 2.2.6~~ If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, Following Owner's acceptance of a Guaranteed Maximum Price proposal, in Owner's sole discretion, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect is attached hereto as Exhibit A. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based. Subject to termination for cause under Section 2.2.1 of this Agreement, if the parties cannot agree on a GMP for the Project, the Owner may terminate the Contract for convenience or the Owner may elect to change the project delivery method to construction manager agency.

...

~~§ 2.2.8~~ The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the ~~agreed upon~~ agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

~~§ 2.2.9~~ The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, ~~agrees that it will not be reimbursed for any sales, consumer, commercial activity,~~ use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed. The Owner is exempt from payment of Ohio sales and use tax and will provide the

Contractor with a completed Construction Contract Tax Exemption Certificate for the purchase of materials and equipment to be incorporated into the Project.

§ 2.2.10 Substantial Completion of the entire Work shall be achieved no later than the date identified in the GMP Amendment accepted by the Owner. The Date for Substantial Completion shall only be changed or modified by Change Order or Modification, regardless of any dates in the Construction Schedule, created by any person, including the Construction Manager. The Date for Final Completion of the Construction Manager's Work shall be the date identified in the GMP Amendment accepted by the Owner ("Date for Final Completion"). The Date for Final Completion shall only be modified by Change Order or Modification regardless of any dates in Construction Schedule, including the Construction Schedule, created by any person, including the Construction Manager. Owner and Construction Manager mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

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§ 2.3.1.1 For purposes of Section 8.1.2 of A201-2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase execution of the Guaranteed Maximum Price Amendment by the Owner.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal or the Owner's issuance of a Notice to Proceed, whichever occurs earlier execution of the Guaranteed Maximum Price Amendment.

...

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. Owner. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection. Notwithstanding the foregoing, the Construction Manager acknowledges and agrees that Ohio law imposes certain requirements upon the Construction Manager for establishing criteria for subcontractors, for obtaining the Owner's approval of the criteria, for prequalifying prospective Bidders for the work to be performed, for soliciting bids from prequalified prospective Bidders, for obtaining the Owner's approval of Subcontractors, and for the terms in Construction Manager's subcontract agreements.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when When a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions requirements of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost plus cost plus a fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

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§ 2.3.2.5 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute meeting minutes to the Owner and Architect-Architect for their review.

...

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, in a format acceptable to the Owner, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in a format acceptable to the Owner, in accordance with Section 2.3.2.7 above.

...

§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, systems sustainability and site requirements.

~~§ 3.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect. Not Used.~~

~~§ 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality. Not Used.~~

§ 3.1.4 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, ~~the Owner shall furnish~~ Construction Manager shall furnish through consultants the following information or services with reasonable ~~promptness~~ promptness, which shall be reimbursable expenses to the Construction Manager. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the ~~Work. Work and shall be responsible for its own interpretations or conclusions drawn from such information.~~

...

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

referenced to a Project benchmark. Construction Manager shall be responsible for independently confirming the location of utility lines and exercising reasonable care related thereto. Notwithstanding the foregoing, the Owner may, at its option, require Construction Manager to obtain such surveys and same shall be included in the Cost of the Work.

§ 3.1.4.3 The Owner, when such services are requested, shall Construction Manager will furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations. The Construction Manager and Architect shall collaborate on the number and locations of such tests and borings. The documents produced by the geotechnical engineers are not Contract Documents. Construction Manager may not rely upon or make any Claim against the Owner or Design Professional, or any of their agents or employees, with respect to any of the following:

(a) the completeness of such reports or tests for Construction Manager's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed and safety precautions and programs incident thereto; or

(b) any interpretation by the Construction Manager of or conclusion drawn from any technical data or any such other data, interpretations, opinions, or information. For example, all interpolations and extrapolations of data performed by the Construction Manager to estimate locations or quantities of subsurface strata are independent factual assumptions, which Owner does not warrant.

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The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™ 2014, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, the contract between Owner and Architect, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager upon written request, with a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

...

§ 4.1.1 For the Construction Manager's Preconstruction Phase services, services described in the Contract Documents including Sections 2.1 and 2.2, the Owner shall compensate the Construction Manager as follows:

§ 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2: **Preconstruction Fee.** The Preconstruction Fee is the combination of compensation for all services, labor, direct personnel expenses, equipment, material, home office overhead and profit for such services provided during the Preconstruction Phase of the Project as defined in the Contract Documents. The Construction Manager's Preconstruction Fee for the Project is:

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\$132,240.00 The Preconstruction Fee shall not be included in the GMP to be provided by the Construction Manager in the GMP Amendment.

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within () months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted. [Not Used.]

§ 4.1.4 Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions. The Preconstruction Fee includes all Direct Personnel Expenses incurred by the Construction Manager to provide the services during the preconstruction phase of the Project as defined in the Contract Documents.

§ 4.1.5 Additional Services. Any Additional Services outside of the scope of preconstruction services set forth in this Agreement, will be compensated based upon written, signed Amendment between the Owner and Construction Manager authorizing such additional services and setting forth the agreed-upon price. Before the Construction

Manager incurs any time or expenses on any activity that may be an additional service the Construction Manager shall provide verbal notice to the Owner's Representative followed immediately by written communication to the Owner's Representative. No additional services shall be performed without written, signed agreement between the Owner and Construction Manager, prior to the performance of such services.

...

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid () days after the invoice date as set forth in the Contract Documents. Amounts due and unpaid in accordance with this Agreement shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager below.

...

—%

Simple interest at prime plus 0.5 per annum % Construction Manager shall give the Owner seven days written notice of late payment before interest shall begin to accrue.

...

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's funds for the Construction Manager's performance of the Contract. The Contract Sum is the sum of the Cost of the Work (as defined in Article 6 of this Agreement), the Construction Manager's Fee, (the sum of the Construction Fee, the At-Risk Fee, and General Conditions) and the amount of Contingency used, as each is defined in the Contract Documents, exclusive of the Preconstruction Fee.

...

shall be set forth in the Guaranteed Maximum Price Amendment.

...

Shall be in accordance with Article 7 of Document A201-2007 as modified

...

Shall be in accordance with Article 7 of Document A201-2007 as modified

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed percent (—%) of the standard rate paid at the place of the Project costs of machinery and equipment, exclusive of hand tools, minor equipment, simple scaffolds, etc, whether rented from the Construction Manager or others; charges for certain non-owned heavy or specialized equipment may be invoiced at up to 100% of the documented rental cost. Downtime due to repairs, maintenance and weather delays shall not be allowed. The Construction Manager shall submit copies of actual paid invoices to substantiate rental costs; Charges for certain Construction Manager-owned, heavy or specialized equipment may be invoiced at up to 100% of the cost listed by the current edition of the Associated Equipment Dealers Green Book rental rates and specifications for construction equipment. No recovery will be allowed for hand tools, minor equipment, simple scaffolds, etc. The longest period of time that the equipment is to be required for the Work shall be the basis for the pricing. Downtime due to repairs, maintenance and weather delays shall not be allowed. For Construction manager owned equipment, the aggregate equipment rental charges for any single piece of equipment used in all change order work shall not exceed fifty percent (50%) of the fair market value of the piece of equipment.

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None identified prior to construction.

...

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price GMP shall be established upon execution of the Guaranteed Maximum Price Amendment (Exhibit A).

Construction Manager guarantees that it shall not exceed the GMP identified in the Guaranteed Maximum Price Amendment subject to additions and deductions by changes in the Work as provided in the Contract Documents. The only exception to the Guaranteed Maximum Price will be for changes with Owner's prior approval, in writing. The Construction Manager guarantees that the Contract Sum shall not exceed the GMP set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work-time pursuant to the terms of the Contract Documents. To the extent the Contract Sum exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.

(Insert specific provisions if the Construction Manager is to participate in any savings.)

§ 5.2.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

§ 5.2.1.1 The GMP includes the Construction Fee, the At-Risk Fee, the General Conditions, the Contingency, and the Maximum Cost of the Work, as defined herein. The use of the Contingency by the Construction Manager and all other costs incurred by the Construction Manager are subject to open book pricing in accordance with Section § 11.5.13 of this Agreement.

- a. Construction Fee. The Construction Fee is the combination of overhead, including but not limited to, home office overhead, and profit for services provided during the construction phase of the Project as defined in the Contract Documents. The amount of the Construction Manager Fee for the Project is identified in the GMP Amendment (Exhibit A).
- b. At-Risk Fee. The At-Risk Fee is defined as the fee amount attributable to the risk the Construction Manager assumes by agreeing to be responsible for the performance of the work. The amount of the Construction Manager's At-Risk Fee for the Project is identified in the GMP Amendment (Exhibit A). Construction Manager shall not be entitled to any additional At-Risk Fee beyond the At-Risk Fee included in the Guaranteed Maximum Price Amendment during the Project.
- c. General Conditions. The General Conditions are the Construction Manager's costs for materials, services and equipment necessary to perform the work on the Project but that are not incorporated into the Project. The amount of the Construction Manager's General Conditions costs for the Project is identified in the GMP Amendment (Exhibit A). The Construction Manager's General Conditions costs, to the extent applicable to the Project, will include:
 - Construction Manager's home office management personnel, (e.g., President, General Manager, Operations Manager, Business Development Manager, Corporate Counsel, Health and Safety Director, Procurement Manager, Finance and Accounting Manager, Quality Assurance Manager, Estimators);
 - Project Management personnel (e.g., Project Executive, Project Manager, Deputy Project Manager, Construction Manager, Deputy Construction Manager, Resident Engineer, Safety Officer, Project Controls staff, superintendents, Quality Manager, contract administration staff, procurement staff, general clerical and administrative support staff, legal staff, estimators, finance and accounting staff);
 - progress scheduling;
 - compliance notices;
 - contract and subcontract administration;
 - trash removal for construction office;
 - project record keeping, documentation, document control, and status reporting;
 - Ohio Utilities Protection Services/Dig Safe program notice and coordination;

- Project health and safety program including but not limited to equipment, supplies, training, record keeping, plan development, incentives, audits and drills;
- taxes, subject to paragraph 2.2.9 of this Agreement;
- staff expense allowances;
- personnel and site vehicle rental/mileage, fuel and maintenance;
- relocation and temporary lodging and per diem expense;
- ice and water;
- drug testing;
- communications equipment;
- field/project offices including furnishings, office equipment, utilities, heat, office supplies, telephones, facsimile machines, internet connections, computers/networks/Cadd machinery, janitorial, mail and shipping, security systems, temporary fencing and barricades, office mobilization and demobilization;
- badging and site security;
- photography/progress photos;
- tool trailer and hand tools;
- project signage;
- portable toilets, lockers and washrooms;
- temporary power;
- business licenses;
- patent fees and royalties;
- training and recruiting;
- premiums for that portion of insurance and bonds required by the Contract Documents that can be attributed to this Agreement, (self-insurance for either full or partial amounts of the coverages required by the Contract Documents may be included, with the Owner's prior approval) – the premium charges will be set forth as a line item in the Itemized General Conditions attached hereto as **Exhibit C**.

The General Conditions costs shall not include costs for any of the items listed above that are included in subcontract agreements. Notwithstanding any other provisions to the contrary, Construction Manager has represented that the Itemized General Conditions attached hereto as **Exhibit C** identifies all of the costs that will be reimbursable as General Conditions, and that each item identified in the General Conditions will be billed on a not-to-exceed basis.

d. Contingency. The "Contingency" is an amount set aside by the Construction Manager to pay for unexpected events, as set forth in this paragraph. Unless agreed by the Construction Manager or otherwise provided in the Contract Documents, Construction Manager's Contingency is not for use by the Owner for scope increases, unforeseen or concealed conditions, agency changes, or design changes, errors or omissions. Construction Manager's Contingency shall not be used to cover items resulting from the Construction Manager's breach, negligence, or to cover Construction Manager's General Condition items. It is further understood and agreed that such Contingency shall be the maximum amount available, and may only be used for the following: (i) additional costs incurred as a result of a failure of a bidder to whom a portion of the Work is awarded in accordance with the Contract Documents to enter into a subcontract with the Construction Manager; (ii) casualty losses and related expenses uncompensated by insurance sustained by the Construction Manager in connection with the Work, except to the extent such losses or expenses are attributable, in whole or in part, to the Construction Manager's breach, error, or omission or that of a subcontractor or supplier; (iii) deductibles for losses covered by Owner's property insurance but only to the extent that such deductibles are not recoverable from a subcontractor, supplier, bond, or insurance; and (iv) changes to sequencing or scheduling (e.g. trade acceleration to avoid an oncoming storm). The Construction Manager shall first submit to the Owner for approval a written request for a specific amount and justification for its use, Construction Manager shall also report use of such Contingency on the Construction Manager's monthly report and shall submit Contingency cost item(s), clearly described, with the corresponding Application for Payment. Construction Manager shall forfeit the Contingency amount committed or used if it failed to report and to submit such item(s) for payment after two subsequent monthly Applications for Payment.

- i. Construction Manager agrees that with respect to any expenditure from the Contingency for which insurance or a bond may provide reimbursement, Construction Manager will in good faith exercise all efforts to obtain recovery from any surety or insurance company. Construction Manager agrees that if contingency funds are advanced to Construction Manager and Construction Manager subsequently recovers said costs from a collateral source, then said recovery will be credited back to the Contingency.

Notwithstanding any other provisions of this Agreement, contingency funds shall not be available to the Construction Manager to cover any loss to the extent that insurance coverage or reimbursement is adversely affected by the failure of the Construction Manager to give timely notice pursuant to the policy terms, including any endorsement.

- ii. The Construction Manager shall use the Contingency before using any amounts from the Savings.

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

- iv. The use of the Contingency by the Construction Manager is subject to open book pricing in accordance with Section § 11.5.13 of this Agreement.

§ 5.2.1.2 Buyout Savings. Notwithstanding any other provision in the Contract Documents to the contrary, if the Maximum Cost of the Work in the GMP is greater than the actual Cost of the Work following the bidding of subcontracts on the Project, such "Buyout Savings" shall be retained 100% by the Owner.

§ 5.2.1.3 Savings. If the Contract Sum is less than the GMP, as such GMP may have been adjusted over the course of the Project, the difference shall be retained 100% by the Owner.

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2007, the Contract Documents, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201-2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.

§ 5.3.5 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager'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 provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

§ 5.3.5. Allowances.

§ 5.3.5.1 The Cost of the Work may include the Allowances identified in the GMP Amendment.

§ 5.3.5.2 All Allowances include the cost to the Construction Manager (less any applicable trade discounts) of materials and equipment required by the Allowances to be delivered at the Site, and all applicable taxes.

§ 5.3.5.3 The Construction Manager's Fee and costs for unloading and handling on the Site, labor, installation costs, and other expenses contemplated for the Allowances are not in the stated Allowance amounts but are otherwise included in the Contract Sum.

§ 5.3.5.4 Before final payment, an appropriate Change Order will be issued to reconcile the Contract Sum so that it reflects actual amounts due to the Construction Manager on account of Work covered by Allowances including an associated adjustment on account of the Construction Manager's Fee. Remaining Allowances amounts not due to the Construction Manager on account of Work covered by the Allowances shall be retained by the Owner and shall not be included in any Savings.

§ 5.3.6 Unit Prices.

§ 5.3.6.1 The Contract Sum may include the Unit Price Work identified in the GMP Amendment.

§ 5.3.6.2 Where the Contract provides that all or part of the Work is to be Unit Price Work, initially the Contract Sum will include for all Unit Price Work (1) an amount equal to the sum of the established Unit Prices for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Contract plus (2) the Construction Manager's Fee on that Unit Price Work. Notwithstanding any other provision in the Contract Documents to the contrary, Construction Manager shall not be paid for any Unit Price Work that represents an actual quantity greater than 110% of the estimated quantity, without a Change Order. Construction Manager shall maintain such records as required to track the quantities of Unit Price Work in anticipation of exceeding the 110% threshold, and act promptly in submitting a Claim.

§ 5.3.6.3 The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of determining an initial Contract Sum. The Owner will determine the actual quantities and classifications of Unit Price Work performed by Construction Manager.

§ 5.3.6.4 Each unit price will be deemed to include an amount considered by Construction Manager to be adequate to cover Contractor's overhead and profit for each separately identified item.

§ 5.3.6.5 Owner will determine the actual quantities and classifications of Unit Price Work performed by Construction Manager. Owner will review with Construction Manager the Owner's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Owner's written decision thereon will be final and binding upon the Construction Manager unless Construction Manager pursues a Claim in accordance with Contract Documents.

§ 5.3.6.6 Before final payment, an appropriate Change Order will be issued per the Contract Documents, to reconcile the Contract Sum so that it reflects actual amounts due to the Construction Manager on account of Unit Price Work actually performed including an associated adjustment on account of the Construction Manager's Fee.

§ 6.1 Costs to Be Reimbursed Under the GMP

§ 6.1.1 The Subject to the GMP, the term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work—Work for the Construction Phase. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. ~~The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.~~

§ 6.1.3 The amounts included in Article 6 are subject to open book pricing in accordance with Section § 11.5.13 of this Agreement.

§ 6.2 Labor Costs incurred by Construction Manager in Self-Performing Work on the Project.

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§ 6.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's prior approval.

(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)[Not Used.]

...

§ 6.4.1 ~~Costs~~ Actual costs, without mark-up, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ 6.4.2 ~~Costs~~ Actual costs, without mark-up of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

...

§ 6.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the ~~cost~~ or value of the item at the time it is first used on the Project ~~site~~ site, less the value of the item when it is no longer used at the Project site. ~~Costs~~ Value for items not fully consumed by the Construction Manager shall mean fair market value.

§ 6.5.2 ~~Rental charges~~ Subject to 5.1.4, actual rental charges without mark-up, for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

§ 6.5.3 ~~Costs~~ Actual costs, without mark-up of removal of debris from the site of the Work and its proper and legal disposal.

§ 6.5.4 ~~Costs~~ Actual costs, without mark-up of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

§ 6.5.5 ~~That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.~~ [Not Used.]

...

§ 6.6.1 ~~Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.~~ [Not Used.]

§ 6.6.2 ~~Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable.~~ [Not Used.]

§ 6.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections ~~for which the Construction Manager is required by the Contract Documents to pay, obtain and pay for.~~ **In the Cost of the Work in the GMP, the Construction Manager shall include an allowance for all such permits and inspections, including but not limited to, special inspections for soil compaction, concrete, and structural steel.**

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§ 6.6.5 ~~Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's~~

~~Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201-2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.~~[Not Used.]

~~§ 6.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.~~
~~Not Used.~~

~~§ 6.6.7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.~~Not Used.

~~§ 6.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.~~Not Used.

~~§ 6.6.9 Subject to the Owner's prior approval, expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work.~~Not Used.

...

~~§ 6.7.1 Other costs, without markup incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.~~

...

~~§ 6.7.3 Costs Actual costs, without markup of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered recoverable by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.~~

...

§ 6.8 Costs Not To Be Reimbursed as Cost of the Work

...

~~.1 Salaries Construction Manager Fee, which includes salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;~~

...

~~.8 Costs for services incurred during the Preconstruction Phase. Preconstruction Fee incurred during the Preconstruction Phase.~~

~~.9 Costs which are included in the Construction Manager's General Conditions and At-Risk Fee;~~

~~.10 Computers (desktop, laptop, tablet, etc.) and software unless such are acquired solely, not partially or substantially, for the beneficial use of the Project, and computers may not contain other unrelated Project or personal data unless otherwise specifically approved by Owner in writing;~~

~~.11 Corporate accounting, data and check processing, and similar business transaction related costs related to the Work are part of Construction Manager's overhead business expenses and should have been included in Construction Manager's Fee;~~

~~.12 All taxes, including those identified in paragraph 2.2.9 of this Agreement;~~

~~.13 Consultants to the Construction Manager not previously approved in writing by the Owner; and~~

- .14 Unless otherwise provided in the Agreement, Owner shall not reimburse the Construction Manager for rental charges more than two weeks prior to and one week after such temporary facilities, machinery and equipment that are needed to be used directly in the Work.
- .15 Relocation and temporary living allowances of personnel required for the Work unless such relocation meets the "distance test" under the United States Internal Revenue Publication 521.

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§ 6.9.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, equipment rental discounts, insurance and surety bonding discounts and credits, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

...

The Construction Manager shall keep full and detailed records and accounts related to the ~~cost~~ GMP, including but not limited to, the Cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, ~~during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.~~ accountants shall be afforded access to review and audit the Construction Manager's records as set forth in the AIA Document A201-2007, General Conditions of the Contract for Construction, as modified.

...

§ 7.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager and Certificates for Payment issued by the Architect, the Owner shall make progress payments ~~on account of the Contract Sum~~ to the Construction Manager as provided below and elsewhere in the Contract Documents.

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

as follows:

The Construction Manager shall submit its Application for Payment to the Owner and Architect in the form the Owner specifies and Certification on or before the ~~twenty-fifth (25th)~~ twenty-second (22nd) day of each month for Work completed through the ~~twenty-second~~ twenty-second day of the month. The Owner will issue payment to the Construction Manager within ~~thirty (30)~~ thirty (30) days from the date of its receipt of the complete Application for Payment, certified by the Architect and in compliance with all of Owner's policies, procedures, and documentation requirements in the Contract Documents.

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the ~~day~~ day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the ~~day~~ day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than ~~()~~ () days after the Architect receives the Application for Payment as required by the Contract Documents, the Owner shall make payment as set forth above.

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§ 7.1.4 With each Application for Payment, the Construction Manager shall ~~submit~~ maintain payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of

those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment. Invoices in excess of \$1,000.00 shall be submitted with the Application for Payment. Invoices of \$1,000.00 or less shall be retained by the Construction Manager and produced to the Owner upon request.

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. Fee, At-Risk Fee, Contingency accounting, and General Conditions shall each be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect or Owner may require. This schedule, unless objected to by the Architect, Architect or Owner, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

...

- .1 Take that portion of the ~~Guaranteed Maximum Price~~ Cost of the Work properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Cost of the ~~Guaranteed Maximum Price~~ Work allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007; values;
- .2 Add that portion of the ~~Guaranteed Maximum Price~~ Cost of the Work properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 ~~Add the Construction Manager's Fee, less retainage of — percent (— %). Subtract retainage of eight percent (8 %) of the Cost of the Work (including the Work of Subcontractors and that portion of the construction Work that the Construction Manager self-performs) and subtract retainage of 8% for the materials and equipment set forth in paragraph .2 above, for the first 50% of the Work, in accordance with the Ohio Revised Code;~~
- .4 Add the Construction Manager's Fee. The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager'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 bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- ~~.4 Subtract retainage of — percent (— %) from that portion of the Work that the Construction Manager self-performs;~~ .5 Add General Conditions earned since previous Application for Payment;
- ~~.5~~ .6 Subtract the aggregate of previous payments made by the Owner;
- ~~.6~~ .7 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- ~~.7~~ .8 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

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§ 7.1.11 Construction Manager's first Application for Payment is considered incomplete unless in addition to the requirements described in Sections 7.1.1 through 7.1.8 and AIA® A201™ - 2007 Article 9.3.3, all of the following completed items are also included with the Application for Payment: (1) Performance and Payment Bonds, if required; (2) Certificates of Insurance, as required; (3) Affidavits that the surety and insurance company or companies meets the requirements in AIA® A201™ - 2007 Article 11.4; (4) Construction Schedule for the Project; (5) Completed Schedule of Values for the Project.

§ 7.1.12 Notwithstanding Section 7.1.3 above, the Owner shall have the right to withhold sufficient amount from the Application for Payment for unacceptable, defective, deficient, or non-conforming Work ("Disputed Work") after notifying the Construction Manager. The Construction Manager shall promptly remedy the Disputed Work. Owner shall promptly render payment for such Disputed Work after the Construction Manager has cured and the Owner has accepted the remedied Disputed Work.

...

§ 7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect-Owner by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201-2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

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§ 7.2.4 ~~If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.~~[Not Used.]

§ 7.2.5 Amounts withheld from the final payment to cover any incomplete work are not considered retainage and shall not be paid to the Construction Manager until the work is actually completed and accepted by the Owner. Such withholdings shall not be less than 150% of the estimated cost to complete the Work.

§ 7.2.6 The Owner shall have the right to deduct from the Final Payment due the Construction Manager all costs, including additional fees paid to Owner's consultants, which the Owner incurred as a result of and attributed to Construction Manager's failure to fully complete and/or closeout the Project in accordance with the Contract Documents.

...

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds before construction begins, as set forth in Article 11 of AIA Document A201-2007.

...

Type of Insurance or Bond

Payment Bond and Performance Bond in the forms attached hereto as Exhibit B, as required by Ohio law.

Limit of Liability or Bond Amount (\$0.00)

Upon execution of the GMP Amendment, or any Modification to the GMP Amendment, Construction Manager shall provide replacement payment and performance bonds in the full amount of the GMP and deliver written consent from its surety in accordance with OAC 153:1-4-02(B). The penal sum of the bond is at all times, subject to ORC § 153.11

...

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

...

Litigation in a court of competent jurisdiction in the county in which the Owner's principal office is located. The parties expressly waive the right to remove any litigation to federal court.

§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price~~Termination for Convenience by Owner~~

~~§ 10.1.1~~ Prior to the execution of the Guaranteed Maximum Price Amendment, ~~the~~ The Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201-2007.

~~§ 10.1.2~~ In the event of termination of this Agreement pursuant to Section 10.1.1, prior to the commencement of the Construction Phase, the Construction Manager shall be equitably compensated for the portion of any Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 4.1.

~~§ 10.1.3~~ If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but ~~prior to the execution of the Guaranteed Maximum Price Amendment, the~~ Phase, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

- .1 Take the Cost of the Work actually incurred by the Construction Manager to the date of termination;
- .2 Add the portion of the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work completed at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and

...

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such ~~termination-termination~~, but only for work actually performed under said subcontract or purchase order on the Project or for restocking fees or other non-refundable costs incurred by Construction Manager to its subcontractors or suppliers in reliance on Owner approval.

§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

~~Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201-2007.~~

~~§ 10.2.1~~ If the Owner terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201-2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

~~§ 10.2.2~~ If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201-2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement

without the written consent of the other, except that the Owner may assign this Agreement to a lender-developer providing financing and oversight for the Project if the lender-developer agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201-2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

...

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

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

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

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

11.5.5 ENTIRE AGREEMENT. This Agreement and the other Contract Documents constitute the entire agreement among the parties with respect to their subject matter and will supersede all prior and contemporaneous, oral or written, agreements, negotiations, communications, representations, and understandings with respect to such subject matter, and no person is justified in relying on such agreements, negotiations, communications, representations, or understandings.

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

11.5.7 [Not Used].

11.5.8 LIQUIDATED DAMAGES. If the Construction Manager does not have its Work on the Project substantially complete by the Date for Substantial Completion, the Construction Manager shall pay the Owner (and the Owner may set off from sums coming due the Construction Manager) liquidated damages in the per diem amount of \$5,000 per day for each day beyond the Date for Substantial Completion that the Work fails to be substantially complete. The Construction Manager acknowledges that such amount of liquidated damages represents a reasonable estimate of the actual damages that the Owner will incur if the Work is not substantially complete by the Date for Substantial Completion. The Liquidated Damages are intended to compensate the Owner for any damages the Owner incurs on account of (1) any claims attributable to the Construction Manager that are brought by others including separate consultants and separate contractors or (2) any failure of the Construction Manager to timely, properly, and completely perform the Contract other than the failure to achieve the Milestones within their associated Contract Times.

If the Construction Manager does not have its Work on the Project finally complete by the Date of Final Completion, the Construction Manager shall pay the Owner liquidated damages in the per diem amount of \$2,000 per day;

§ 11.5.9 Conflict of Interest. Except with the Owner's prior knowledge and written consent, the Construction Manager shall not engage in any activity or accept any employment, interest, or contribution that would reasonably appear to compromise the Construction Manager's professional judgment with respect to this Project.

§ 11.5.10 Privileged Communications. To the extent not inconsistent with applicable Ohio law, all communications between Owner's legal counsel and Construction Manager, while Construction Manager is acting as the consultant for Owner under the terms of this Agreement and which relate in any way to the administration of the construction of the Project or to the work of any Contractor, Subcontractor, material supplier, or any other person rendering services in connection with the Project, shall be subject to the attorney-client privilege that can be waived only by Owner. Any such communications and copies thereof that are written, including without limitation correspondence, notes, memoranda, notes of meetings and conversations that are reduced to writing, and the like, upon notice from Owner's legal counsel, shall be placed by Construction Manager in a separate file folder marked "Privileged and Confidential" and shall not be disclosed to any person other than Construction Manager's own legal counsel without the express written permission of the Owner. This Section 11.5.10 is intended to protect the confidentiality of Owner's communications with its counsel when Construction Manager comes into possession of such information in its capacity as agent of Owner in the performance of its duties under this Agreement in the event of a dispute between Owner and a third party. This section is not intended to impede communications between Construction Manager and Construction Manager's legal counsel.

§ 11.5.11 Non-Discrimination. Construction Manager agrees:

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

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

§ 11.5.13 Open Book Pricing. Construction Manager acknowledges that this Agreement is to be administered on an "open book" arrangement relative to Costs of the Work. Construction Manager shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. The Owner and the Owner's accountants shall be afforded access to review and audit the Construction Manager's records as set forth in the AIA Document A201-2007, General Conditions of the Contract for Construction, as modified.

§ 11.5.14 The Construction Manager shall have the right to include exterior photographic or artistic representations of the Project among the Construction Manager promotional and professional materials. However, the Construction Manager will not publish other information regarding the Project without the Owner's prior written consent. **The Construction Manager acknowledges that the Project is subject to unique security concerns.** The Construction

Manager agrees to keep confidential and not to disclose to any third party (without the advance written consent of the Owner) any confidential, proprietary or privileged information or documentation of the Owner.

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- .1 AIA Document A133-2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum PricePrice, as modified
- .2 AIA Document A201-2007, General Conditions of the Contract for ConstructionConstruction, as modified
- .3 AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed, or the following:

- .4 AIA Document E202™-2008, Building Information Modeling Protocol Exhibit, if completed, or the following:

...

(List other documents, if any, forming part of the Agreement.)

Exhibit A GMP Amendment

Exhibit B Payment and Performance Bond Form as prescribed by OAC 153:1-4-02

Exhibit C Itemized General Conditions

Exhibit D [Not Used.]

Exhibit E Notice of Claim Form

Exhibit F CMAR Affidavit with List of Subcontractors and Suppliers with Amounts Withheld

Exhibit G CMAR Progress Payment Waiver and Release Affidavit

Exhibit H Subcontractors & Suppliers Progress Payment Waiver and Release Affidavit

Exhibit I [Not Used.]

Exhibit J CMAR's PPTA

Exhibit K Construction Tax Exemption Certificate

Exhibit L Final Lien Waiver and Release Agreement

Exhibit M Prevailing Wage Rates

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(Date)

(Date)

CERTIFICATE OF FUNDS

(ORC Section 5705.41)

The undersigned, Fiscal Officer of Warren County, Ohio, hereby certifies that the moneys required to meet the obligations of the County 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 County, or in the process of collection to the credit of the appropriate account or fund, free from any previous encumbrances.

DATED: _____

Warren County

By: _____
Fiscal Officer



AIA[®] Document A201[™] – 2007

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

New Jail and Sheriff's Administration Office Project

THE OWNER:

(Name, legal status and address)

Board of County Commissioners
Warren County, Ohio
Administration Building
406 Justice Drive, First Floor
Lebanon, Ohio 45036

THE ARCHITECT:

(Name, legal status and address)

Wachtel & McAnally
Architects/Planners Inc. 35 South Park Place
Newark, Ohio 43055

The Architect may also be referred to as the "Design Professional" in this Agreement and other Contract Documents.

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ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS The definitions in this Section 1.1 shall apply throughout the Contract Documents.

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are the Contract Documents identified in the Owner-Contractor Agreement (“Agreement”). 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 Architect.

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect’s consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect’s consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect’s duties.

§ 1.1.3 THE WORK

The term “Work” means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor’s obligations. The Work may constitute the whole or a part of the Project. The Work of the Contractor shall include the Work of all of its Subcontractors.

§ 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

§ 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§ 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect’s consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the Architect.

§ 1.1.9 SUBSTANTIAL COMPLETION

Substantial Completion is the stage in the progress of the Work when the Work is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy and utilize the Work for its intended use. Notwithstanding anything in the Contract Documents to the contrary, this shall include, but is not limited to, start up and successful testing of all systems and equipment.

§ 1.1.10 DATE FOR SUBSTANTIAL COMPLETION

The Date for Substantial Completion is the Date for Substantial Completion as set forth in the Owner-Contractor Agreement or in the Guaranteed Maximum Price Amendment, as applicable. The Date for Substantial Completion

shall only be changed or modified by Change Order, other Modification or a Claim that is Finally Resolved, regardless of any dates in the Construction Schedule.

§ 1.1.11 FINALLY RESOLVED

Finally Resolved means that the Initial Decision Maker has made a decision on a Claim under Section 15.2.6.1 of the General Conditions and that any litigation regarding the Claim has been concluded.

§ 1.1.12 CLAIM

Claim is defined in Section 15.1.1 of these General Conditions.

§ 1.1.13 NOTICE OF CLAIM FORM

Notice of Claim Form means the Notice of Claim Form included as **Exhibit E** to the Agreement.

§ 1.1.14 FINAL COMPLETION

Final Completion shall mean that the Work is complete in all respects in accordance with the Contract Documents and the Contractor has submitted to the Architect all documents required to be submitted to the Architect for final payment.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor whether or not expressly shown or described. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all and performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 Ownership of the respective Instruments of Service, including the Drawings and Specifications, shall be as provided in the Owner-Architect Agreement. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the ownership of the Instruments of Service.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative. The Owner's representative shall only have such authority as is expressly authorized by the Owner's Board and as is permitted under the laws of the State of Ohio. The Contractor is responsible for determining the limits of that authority.

§ 2.1.2 The Owner shall prepare a Notice of Commencement for the Project, as required by the Ohio Revised Code, and furnish to the Contractor a copy of the Notice of Commencement for the Project within fifteen days after receipt of a written request.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 The Owner shall attach to the Agreement with the Contractor the certificates of available resources required by the Ohio Revised Code as evidence of available funds, to fulfill the Owner's obligations under the Contract.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 Unless otherwise provided in the Contract Documents, to the extent necessary for the Work and as requested by the Contractor, the Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a two (2) business days after receipt of written notice from the Owner to commence or thereafter proceed without interruption to correct such default or neglect within fifteen (15) days of such notice, the Owner, without prejudice to its other remedies, may correct such deficiencies. If such default or neglect results in a threat to the safety of any person or property, the Contractor shall immediately commence to correct such default or neglect upon receipt of written or oral notice thereof. In all such cases of default or neglect, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the costs arising out of or related to the investigation and correction of such deficiencies, including the Owner's attorneys' and consultants' fees and expenses and other expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior

approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents and shall comply with all rules, regulations and policies of the Owner and all applicable federal, State, and local codes, statutes, ordinances, and regulations in the performance of the Work on the Project.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Agreement by the Contractor is a representation that the Contractor has visited the site, carefully and diligently investigated the entire site and the surrounding area, including location, condition and layout of the site and utility locations, become thoroughly familiar with local conditions under which the Work is to be performed, including the generally occurring climatic conditions and carefully correlated personal observations and other information with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work and in addition to the reviews required by the Instructions to Bidders and by these General Conditions, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3. In addition, prior to performing each portion of its Work, the Contractor shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it, including the Work of any other Contractors. These obligations of this Section 3.2 are for the purposes of facilitating construction by the Contractor, for determining that the Work is constructible, for determining if the work of the Contractor is coordinated in the Contract Documents with the work of any other Contractors, and for verifying that field conditions, including the Work of any other Contractors, are consistent with the information in the Contract Documents and ready for the Work. The Contractor shall promptly report to the Architect and the Owner any errors or omissions in the sizing, load bearing capacity or other similar design information in the Contract Documents discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a Construction Manager at Risk and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention and consistent with the skill of a competent contractor familiar with jail construction. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for

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coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. The Contractor shall immediately upon entering the project for the purpose of beginning work, locate all general reference points and take such action as necessary to prevent their destruction. Contractor shall lay out his own work and be responsible for all lines, elevations and measurements of the building, demolition work, utilities, and any other work to be executed by him under the contract. The Contractor shall verify grades, lines, levels, and dimensions indicated on the drawings and shall notify the Architect of errors or inconsistencies before commencing work. The Contractor shall establish and maintain a permanent bench mark, batter boards, level and grades and shall layout the exact location of all walls, partitions, openings, etc. Contractor shall employ experienced and competent engineers and exercise proper precautions to verify the figures shown on the drawings for laying out work, and will be held responsible for any error resulting from his failure to exercise such precautions.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.3.4 The Contractor shall maintain readily accessible to the Architect and the Owner at the Project site, the following documents all of which shall be "public records" within the meaning of the Ohio Public Records Act:

1. A set of Drawings and Specifications as approved by the Authority Having Jurisdiction.
 2. A copy of the Drawings and Specifications upon which the Contractor shall record changes made during the course of its Work. The Contractor shall keep an accurate record of all changes made to the Drawings to show actual installation where installation varies from Work as originally shown, including the location and depth of underground utility lines. Any such changes shall be noted by Change Order Number, if a Change Order was issued, and drawn neatly in a contrasting color on the drawings. The Contractor shall also keep record of all changes to the Specifications. When Shop Drawings are used, the Contractor shall cross-reference the drawings and sections of the specifications.
1. A daily log at the Project site in which it has recorded Project-related information, including, but not limited to, the weather, number of workers on site, identification of equipment, Work accomplished, problems encountered, and other similar relevant Project data;
 1. As applicable to its Work, all Bulletins, Addenda, approved Shop Drawings, Product Data, Samples, manufacturers' installation, operating and/or maintenance instructions or requirements, certificates, warranties, Change Orders, Change Directives, other Modifications and complete back up data for all Change Orders, Change Directives and other Modifications; and
 1. All the Contractor's communications, including but not limited to letters, memoranda, e-mail, invoices and bills of lading, arising out of or related to the Project with the Architect, Owner, other Contractors, and/or its subcontractors, materialmen and/or employees, shall be provided upon Owner's request.

Claims for the Contractor's failure to comply with the Ohio Public Records Act, if applicable, shall be claims under Section 3.18.1.

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, which the Owner may withhold in its sole discretion, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall only assign competent supervisors and workers to the Project, each of whom is fully qualified to perform the tasks assigned. If the Owner or Architect deems any employee of the Contractor or a Subcontractor unsatisfactory, the Contractor will transfer or require its Subcontractor to transfer such employee from the Project immediately and replace or require the prompt replacement of such employee with a competent employee. The Owner, however, shall be under no obligation to do so.

§ 3.5 WARRANTY

§3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects. Work, materials, or equipment not conforming to these requirements may be considered defective.

§ 3.5.2 If the Contractor breaches any of its obligations under Section 3.5.1, the Contractor will pay the Owner for its damages and expenses, including but not limited to attorneys' and consultants' fees and expenses, arising out of or related to such breach.

§ 3.6 TAXES

The Contractor shall pay sales, consumer, use, commercial activity, and similar taxes for the Work provided by the Contractor that are legally enacted at the time the Agreement is executed, whether or not yet effective or merely scheduled to go into effect. The Contractor acknowledges that the Owner is a political subdivision of the State of Ohio or tax exempt organization and is exempt from state sales and use taxes. Upon written request, the Owner will provide the Contractor with any applicable certificates of exemption.

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time the Agreement is executed.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders and all other requirements of public authorities applicable to performance of the Work.

§ 3.7.3 In addition to its other obligations under the Contract Documents, if the Contractor or any of its Subcontractors or Sub-subcontractors performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders and all other requirements of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions. Except as provided herein, if the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum, GMP and/or Contract Time. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in

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writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum, GMP and/or Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum and GMP all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the base Contract Sum and shall not be chargeable against the allowance; and
- .3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted in accordance with Paragraph 5.3.5.4 of the Agreement. However the Contractor shall timely seek and obtain a final Change Order before incurring any costs in excess of an allowance.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not replace the assigned Superintendent without the consent of the Owner, except with another Superintendent who is satisfactory to the Owner. If the Contractor proposes to change the Superintendent, the Contractor shall submit to the Architect a written request for the change, including the justification for the change, the name and qualifications for the proposed replacement, and the time frame within which the change is proposed to take place. The Contractor shall provide promptly any related additional information the Architect or Owner requests.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 Throughout the design phases, the Contractor shall prepare and submit a Construction Schedule with each cost estimate or at regular intervals agreed upon by the Owner. The Contractor shall submit the current Construction Schedule upon which the GMP is based, with its GMP Proposal, in accordance with the Agreement.

The Construction Schedule shall include and be consistent with any applicable Milestone Dates provided by the Owner. The Contractor shall prepare all Construction Schedules in CPM format unless provided otherwise in the Contract Document or otherwise agreed in writing by the Owner. Each major category of work shall be shown

separately in the Construction Schedule with all the significant activities involved, showing durations of time, manpower requirements, and restraints. The Construction Schedule is for the purpose of coordinating the timing, phasing and sequence of the Work of the Contractor and to provide an instant evaluation of progress of the Work and manpower requirements. The Construction Schedule shall not change or modify the Date for Substantial Completion. The Date for Substantial Completion shall only be changed or modified by Change Order, other Modification or a Claim that is Finally Resolved, regardless of the dates in the Construction Schedule.

- .1 The Contractor shall submit a Weekly Progress Report to the Owner during Weekly Job Meetings (or other frequency agreed upon by the Owner in writing). This report shall consist of a simple checklist on which the Contractor shall indicate start and finish dates for all activities, as well as its percentage completion. The Contractor shall also report which activities it plans to start the following week. Included shall be shop drawings, procurement of material, other pertinent items as well as actual on-site construction activities. If requested, Contractor shall submit to the Owner a daily count of manpower and that of its subcontractors. This information shall then be compared with the Construction Schedule for an evaluation of the status of the job. The manpower count shall be discussed at the Weekly Job Meeting and documented in the minutes of the meeting;
- .2 The Construction Schedule shall be manpower loaded and shall include a schedule of the submission of Shop Drawings, Product Data and Samples;
- .3 The float in the Construction Schedule and any updates to it shall belong to the Owner. Float shall mean the amount of time by which activities may be delayed without affecting the Contract Date for Substantial Completion; and
- .4 The Contractor's obligation to furnish requested scheduling information is a material term of its Contract. If the Contractor fails to furnish requested scheduling information in writing within five (5) days of a request for such information from the Architect or Owner, the Contractor shall pay and the Owner may withhold from the Contractor Liquidated Damages at the rate of Fifty Dollars (\$50.00) a day for each calendar day thereafter that the Contractor fails to furnish the requested information.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum, GMP, and/or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in accordance with the most recent Construction Schedule prepared by the Contractor, provided that the Contractor shall comply with any orders under Section 3.10.4. However, preparation of such schedule shall not constitute a waiver of Owner's rights under the Contract to have the Work completed by the contractual dates of Substantial and Final Completion.

§ 3.10.4 If the Architect or the Owner determines that the performance of the Work has not progressed so that it is likely that the Contractor will not Substantially Complete its Work by its Date for Substantial Completion, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the Work, including, without limitation: (i) working additional shifts or overtime; (ii) supplying additional manpower, equipment, and facilities; and (iii) other similar measures (collectively referred to as "Corrective Measures"). If the Owner orders the Contractor to take such corrective measures, the Contractor shall take and continue such Corrective Measures until the Owner is satisfied that the Contractor is likely to Substantially Complete its Work by its Date for Substantial Completion.

- .1 The Contractor shall not be entitled to adjustment in the Contract Sum or the GMP in connection with the Corrective Measures required by the Owner pursuant to this Section 3.10.4, unless the Contractor is able to establish that it is entitled to additional compensation under the terms of the Contract Documents.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner and the Architect the documents required by Section 3.3.4.

These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work or earlier when required by the Contract Documents.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work. Shop Drawings shall also include fabrication, erection and setting Drawings, scheduled Drawings, manufacturer's scale Drawings, wiring and control diagrams, cuts or entire catalogs, pamphlets, descriptive literature, performance and technical data.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

- .1 If the Shop Drawings or other submittals show variations from the requirements of the Contract Documents, the Contractor shall specify such variations in the Contractor's letter of submittal to the Architect accompanying the submittal. Variations must be approved by Change Order.
- .2 If the Contractor's Shop Drawings or its submittals do not contain sufficient information, and the Architect must perform more than two reviews with respect to any submittal, the Contractor shall pay the additional costs and expenses incurred by the Owner as a result of such additional reviews by the Architect, and the Owner may withhold from sums due or coming due the Contractor amounts to cover such additional costs and

(Paragraph Deleted)

expenses.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional who shall comply with reasonable requirements of the Owner regarding qualifications and insurance and whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.12.11 INSTRUCTIONS. Unless otherwise expressly provided in the Contract Documents, the Contractor shall provide typed or printed instructions covering the operation and maintenance of each item of equipment furnished in a notebook submitted to the Architect for review and transmittal to the Owner. The instructions, as applicable, shall include the following:

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

The Contractor shall provide two (2) copies of the above instruction books on or before the Substantial Completion of its Work. The books shall describe the information to be covered clearly and in detail and shall be in form and content satisfactory to the Architect and the Owner.

§ 3.12.12 TESTING FOLLOWING FINAL COMPLETION. The Contractor will participate in training sessions for the Owner's maintenance personnel. During the first twelve (12) months following Final Completion of each part of the Project, the Contractor (without additional compensation) will participate in tests scheduled by the Owner, which test the following building systems to the extent applicable to the Contractor's Work: air conditioning system (which shall be conducted during the first full summer following the completion of the Project or at such earlier time as scheduled by the Owner), heating system (which shall be conducted during the first full winter following the

completion of the Project or at such earlier time as scheduled by the Owner), and such other systems, including the electrical system, plumbing system, fire protection system, communications systems, as reasonably requested by the Owner. The Owner will be advised when the testing will be conducted and may observe the testing. It is intended that the testing be a comprehensive series of operation tests designed to determine whether the systems are fully operational in accordance with the requirements of the Contract Documents. If it appears that any of the systems, including equipment and software, do not conform to the requirements of the Contract Documents, the Contractor will remedy the defective and/or non-conforming work as provided in Section 12.2.2.1 of these General Conditions.

§ 3.12.13 MANUFACTURER'S INSTRUCTIONS OR REQUIREMENTS. Without waiving, modifying or relieving the Contractor from its other obligations under the Contract Documents, including its warranties and any performance specifications, the Contractor shall furnish and install its Work in accordance with any applicable manufacturer's instructions or requirements. Prior to installation, the Contractor shall review carefully the manufacturer's instructions and requirements, and if there is a conflict between such instructions or requirements and the Drawings and/or Specifications, the Contractor shall request clarification from the Architect prior to commencing the Work.

§3.12.14 The Contractor shall furnish for each submission of Shop Drawings, one (1) transparency reproduction and sufficient number of prints so the Architect can retain four (4) copies. Where the nature of the material being submitted is such that letter size sheets are a convenient method of presentation, such sheets shall be assembled in the form of booklets with covers showing the name of the job, the names of the Contractor and subcontractor or vendor, the location on the job and a list of the sheets contained. Such booklets need not be in the form of transparencies. Do not submit complete catalogues with items checked for use as shop drawings.

§3.12.15 After review of the submittal, the Architect will return the transparency to the Contractor marked "approved" or "not approved" and shall furnish promptly one copy in either case to the Owner for information and reference purposes on the job. If marked "not approved", Contractor shall resubmit showing corrections made. After the transparency has been stamped "approved", the Contractor shall distribute all necessary prints to trades involved. No Shop Drawings shall be used if not stamped "approved" by the Architect. All work shall be done in accordance with approved Shop Drawings.

§3.12.16 Schedules, diagrams, cuts, catalogs, data, etc., as mentioned in this Section 3.12, shall be furnished in sufficient numbers so the Architect can retain four (4) copies and the Contractor will have the necessary number for its distribution. One copy of each of these shall be furnished the Owner by the Architect for reference on the job and for his permanent records.

§3.12.17 All Contractors furnishing material or equipment where shop or setting drawings are required shall obtain measurements and observe conditions at the job and indicate on their drawings that such dimensions have been field measured. The Contractor shall affix its stamp of approval on the drawings as evidence they have been checked before submitting them to the Architect for approval. Where information from one Contractor is required by another before drawings can be made, that information shall be given in sufficient time to cause no delay on the part of either party.

§3.12.18 The Contractor shall maintain a separate complete clean set of all shop drawings, data and correspondence pertinent to maintenance requirement. This complete file shall be submitted to the Owner upon substantial completion. Drawings shall contain all changes made during construction.

§3.12.19 The Contractor shall keep a complete record of all drawings including dates of issuance, receipt and approval. A second set shall be maintained at the Project job site.

§3.12.20 When a Contractor requests a change in any item which will involve a change in related items or supports, the Contractor requesting the change shall be responsible for, and pay all costs in connection with such changes. Changes shall be recorded on shop drawings.

§ 3.13 USE OF SITE

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

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

§ 3.13.3 RESTRICTED ACTIVITIES. Unless expressly permitted by the Contract Documents or by the Owner in writing, the Contractor shall not interfere with the Owner's ongoing operations, shall not permit any of its employees or its Subcontractor's or materialmen's employees to use any existing facilities on the Project site, including, without limitation, lavatories, toilets, entrances, and parking areas, and shall not permit its employees or its Subcontractor's or materialmen's employees to bring any tobacco products, alcoholic beverages, controlled substances, or firearms onto the Project site or any other property owned or controlled by the Owner. Additionally, the Contractor shall not permit its employees or its Subcontractor's or materialmen's employees to use any radios, tape or compact disc players, or sound amplification equipment at or near the Project site.

§ 3.13.4 The Contractor shall conspicuously post notice of the prohibitions listed in the preceding subparagraphs at the Project site in the same locations as OSHA notices are required to be posted, and shall verbally inform all of the Contractor's employees, and the employees of the Contractor's Subcontractors and materialmen, regardless of tier, of such prohibitions.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.14.3 Patching resulting from operations of any Contractor shall be performed by workers skilled in the trade being patched, and paid for by Contractor causing such patching.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project. At weekly intervals and as directed by the Owner, the Contractor shall clean up the job. Contractor shall remove all discarded materials, rubbish and debris from the premises, taking care to avoid scattering debris along the path of travel. The Contractor shall have a dumpster on the site so as to maintain clean and safe conditions throughout the duration of the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor. The Architect's determination of the costs to be charged to the Contractor shall be final and binding.

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a

patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against any and all claims, demands, costs, losses and/or damages, including but not limited to all fees and charges of architects, attorneys and other professionals and all court, arbitration or other dispute resolution costs, arising out of or related to Contractor's negligence or any breach of Contractor's obligations under the Contract Documents, including but not limited to the breach of any warranty provided in the Contract Documents.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.19 COMPLIANCE WITH DEMOLITION LAWS. The Contractor will, at the Contractor's expense, fully comply with all statutes and regulations regarding notification and disposal of construction and demolition debris, including, without limitation, Ohio Revised Code Chapter 3714 and the regulations enacted thereunder.

§ 3.20 UNDERGROUND UTILITY FACILITIES.

§ 3.20.1 The Contractor, at least two (2) working days prior to commencing construction in an area that may involve underground utility facilities, shall give notice to the Architect and the Owner and to the registered underground utility protection services and the owners of underground utility facilities shown on the Drawings and Specifications.

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

§ 3.21 WAIVERS OF CLAIMS.

§ 3.21.1 Beginning with the second Application for Payment, the Contractor will submit a) a release and/or waiver of claims, including a waiver of all lien rights, in the form attached to the Agreement for itself and each of its Subcontractors and Suppliers, regardless of tier, and b) a complete list of its Subcontractors and Suppliers using the form included in the Contract Documents or as required by the Architect.

§ 3.22 RECORDS AND AUDITS. The Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control systems shall be satisfactory to the Owner. **The Owner and the Owner's accountants shall be afforded access to review and audit the Contractor's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda, timesheets, payroll, and other data relating to this Project, records of time spent by each person performing work on the Project and time spent on all other projects; such time and payroll records shall include the location of services, detailed description of time and work on this Project and any other projects (redacting the client name or description to the extent necessary) and the Contractor shall preserve these for a period of four years after final payment, or for such longer period as may be required by law.** Contractor shall make all such records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda, timesheets, payroll, and other data relating to this Project, available to the Owner and the Owner's accountants in a location designated by Owner at the time of Owner's request. In the event that the Contractor's records are not available at the agreed upon time or place, or in the event that the Owner finds incomplete records or inaccurate accounting of paid expenses, the Contractor shall reimburse the Owner for its time, travel, related expenses and Contractor shall reimburse Owner the full amount of any discrepancies or overages.

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

(Paragraph Deleted)

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative (1) during construction, (2) until the date the Architect issues the final Certificate For Payment, and (3) with the Owner's concurrence, from time to time during the one-year period for correction of Work described in Section 12.2 and for such additional periods as the Owner and Architect may agree. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents and as authorized by the Owner's Board.

§ 4.2.2 The Architect will visit the site as agreed upon with the Owner (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. Except as required by its duty of care owed to the Owner, the Architect (a) will not be responsible to the Owner for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents, and (b) will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors under contract directly with the Owner, if any, shall be through the Architect.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Bulletins, Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and execute and distribute a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be consistent with these General Conditions.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. Copies of all Requests for Information shall be copied to the Owner by the Contractor at the time they are submitted to the Architect.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing **within 72 hours unless otherwise agreed upon by the Construction Manager, in writing**. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information, **within 7 calendar days**.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Construction Manager shall bid the Subcontracts in accordance with Ohio law.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has an objection to a person or entity proposed by the Contractor, the Contractor shall propose within 10 days another to whom the Owner or Architect has no objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

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

§ 5.3 SUBCONTRACTUAL RELATIONS

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and

- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

(Paragraph Deleted)

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in direct costs incurred by the Subcontractor resulting from the suspension.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and/or award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Contractor shall coordinate the activities of the Owner's own forces and of each separate contractor, if any, with the Work of the Contractor, who shall cooperate with them.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

(Paragraph Deleted)

§ 6.2.3 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner, separate contractors as provided in Section 10.2.5.

§ 6.2.4 The Owner and each separate contractor, if any, shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible. The Architect's decision allocating the cost shall be final and binding on the Contractor and the Owner.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents. To be valid, all Changes involving an increase in the Contract Sum or GMP must have any required funding certificates attached to them.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Contractor and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum and/or GMP; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 Methods used in determining adjustments to the Contract Sum or GMP may include those listed in Section 7.3.3.

§ 7.2.3 The agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including but not limited to, all direct, indirect and cumulative costs associated with such change and any and all adjustments to the Contract Sum, GMP, and the Contract Time. The Contractor shall not proceed with any change in the Work without a signed Change Order, Construction Change Directive or Minor Change in the Work notice. The Contractor's failure to timely seek and obtain such authorization as specified herein, shall constitute an irrevocable waiver by the Contractor of an adjustment to the Contract Sum GMP, or Contract Time for the related

(Paragraph Deleted)

work.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum, GMP and/or Contract Time. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum, GMP, and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum and/or GMP, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Subject to a not-to-exceed amount, a Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee;
- .4 As provided in Section 7.3.7; or
- .5 Except where unit prices are applicable, that Contractor agrees and represents to the Owner for the Owner's reliance that all Change Order or Change Directive pricing submitted by the Contractor shall be based on the Contractor's actual costs or the Contractor's reasonable estimate of what would be its actual costs plus permitted overhead and profit.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted in accordance with Paragraph 7.3.7.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum, GMP or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum, GMP, and/or Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum or GMP, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum or GMP, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present a true and accurate itemized accounting of all labor and material with appropriate supporting data. If the Architect prescribes a format for such accounting, the Contractor shall provide the accounting in such format.

Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work;
- .5 Additional reasonable costs of supervision and field office personnel directly attributable to the change;
- .6 Any self-performed Work in an add Change Order shall be treated as a Cost of the Work based on the total cost of labor and material; and
- .7 Total cumulative overhead and profit for all Subcontractors on any add or deduct Change Order shall not exceed 15% of the total cost of labor and material.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum or GMP shall be actual net cost as confirmed by the Architect plus the credit for overhead and profit. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, or decrease if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum or GMP on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum, GMP, and/or Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.3.11 The Contractor shall not assign any portion of the Work to another contractor whereby the Contract or would benefit directly or indirectly from the double application of charges for overhead and profit.

§ 7.3.12 The Contractor shall not be reimbursed for the following costs:

1. Employee Profit Sharing Plans - regardless of how defined or described, the Contractor will pay these charges from Contractor profit and will not be reimbursed
2. Voluntary Employee Deductions (e.g. United Way contributions, U.S. Savings Bonds, etc).

§ 7.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum, GMP and/or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order conspicuously marked at the top of the order as a "MINOR CHANGE IN THE WORK" and signed by the Architect and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an Excusable Delay as provided in Section 15.1.5.3, then subject to the agreement of the Owner the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.2 SCHEDULE OF VALUES

Promptly after the award of the Contract, the Contractor shall submit to the Architect, for the Architect's review and approval, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. By submitting such schedule of values, the Contractor represents for the reliance of the Architect and the Owner that the allocation of the values to the portions of the Work is a fair and reasonable estimate of such allocation. Once approved, the Contractor will not change the allocations in the Schedule of Values without the Architect's further approval. The Architect may from time to time require the Contractor to adjust such schedule if the Architect determines it to be in any way unreasonable or inaccurate. The Contractor then shall adjust the schedule of values as required by the Architect within ten (10) days. This schedule, with any adjustments approved by the Architect shall be used as a basis for reviewing the Contractor's Applications for Payment. The Contractor shall include a separate line item in its schedule of values for its Project Superintendent.

§ 9.2.1 Unless specifically approved in writing by the Owner, retained funds will not be released until As-Built Drawings and Record Documents are received, reviewed, and deemed complete by the Architect.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least three days before the date established in Section 9.3.1.3 for each progress payment, the Contractor shall submit to the Owner and Architect a draft Application for Payment prepared in accordance with the schedule of values for completed portions of the Work. The draft Application for Payment shall be reviewed and adjusted, if necessary, by the Architect and returned to the Contractor. The application, as reviewed and / adjusted by the Architect, shall be notarized, if required, and be re-submitted with a properly completed Contractor's Payment Application Checklist (if required), all the documentation required to be submitted with such Checklist, and any other supporting documentation required by the Contract Documents or by the Architect. The percentage completion of each portion of the Work shall be consistent with the then current Construction Schedule for the Project. The Application for Payment will be in the form and submitted with the number of copies and all related documents as required by the Contract Documents. The Contractor also shall submit with its Application for Payment such other data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents. The Contractor shall also provide its monthly report detailing the Project's progress to date, projected progress for the next 30 days and current project financial summary including but not limited to:

- .1 The balance of the GMP, contingency, and a summary list of how the contingency has been expended on the Project to date.
- .2 The balance of any construction allowances and summary list of how the allowances have been expended to date.
- .3 A change order log showing any proposed, pending, and approved change order expenses to date.
- .4 Complete breakout showing the total completed and/or stored materials, labor, and equipment on the Project as of the date of the payment application, and anticipated schedule of payment applications detailing projections for the value of completed and/or stored materials, labor, and equipment, month by month, through the end of the Project.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.1.3 Contractor shall provide lien waivers from itself and all subcontractors, material suppliers and any other party that performed work or supplied materials for the project. Each application for payment shall include, in the form attached to the Agreement, partial and conditional lien waivers from each of the aforementioned parties for the work performed to date on the Project and for the value of the work performed during the current billing period. A final waiver of lien in the form attached to the Agreement, for the total value of each subcontract shall be included with the final application for payment for each subcontract and with the Contractor's final pay application for the project. The total of the lien waivers shall match the total amount paid to the Contractor, inclusive of all approved change orders.

§ 9.3.1.4 The Owner will withhold retainage from the amount set forth in the Application for Payment approved by the Architect, as provided in the Contract Documents.

§ 9.3.1.5 **DOCUMENTATION.** Upon request, the Contractor immediately will supply the Owner and the Architect with such information as may be requested so as to verify the amounts due to the Contractor, including but not limited to original invoices for materials and equipment and documents showing that the Contractor has paid for such materials and equipment, and so as to verify that amounts due laborers, Subcontractors, and Material Suppliers have been paid to them. The failure to provide such information shall be justification for withholding payment to the Contractor.

§ 9.3.1.6 **Retainage or other Escrow Account.** The Owner and the Contractor agree that any retainage or other escrow account required in connection with this Agreement for retained funds from the construction contract or for deposit of amounts claimed due under the Ohio Mechanic's Lien law will be established at a bank or savings and loan association in the State of Ohio used by the Owner, and that the expenses to establish and maintain the account will be paid in accordance with the schedule approved by the Owner from income from the account. If the income from the account is anticipated not to be sufficient to pay the compensation due to establish and maintain the account, the Contractor agrees that the Owner may keep the amounts in its construction fund or another fund used by Owner to avoid the extra costs to establish and maintain a separate account.

§ 9.3.1.7 The amount of each progress payment shall be computed as set forth in paragraph 7.1.7 of the Agreement.

§ 9.3.1.8 Except with the Owner'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.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. The Contractor agrees to bond off any lien filed on the Project by providing a bond meeting the requirements of the Ohio Revised Code. The Contractor shall do so within sixty (60) days of the filing of the lien.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's properly completed Application for Payment and Contractor's Payment Application Checklist (if required) and Certification, the documentation

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described in the Contractor's Payment Application Checklist and Certification and such other data substantiating the Contractor's right to payment as the Owner or Architect may require, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied or the Contractor is in default of the performance of any of its obligations under the Contract Documents including but not limited to: failure to provide sufficient skilled workers, failure to provide scheduling information as provided in Section 3.10.1, failure to prepare the Construction Schedule as provided in Section 3.10.1, failure to conform to the Project Construction Schedule and/or failure to coordinate its Work with the work of other contractors, if any;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 failure to carry out the Work in accordance with the Contract Documents; or
- .8 the Contractor is in default of the performance of any of its obligations under another contract it has with the Owner.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall issue payment to the Contractor as set forth herein and shall so notify the Architect.

§ 9.6.2 The Contractor shall promptly, within the time period required by Ohio law, pay each Subcontractor upon receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. Neither the Contractor nor its Subcontractors shall withhold retainage from its Subcontractors or their sub-subcontractors beyond the retainage withheld by the Owner from the Contractor.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.7 FAILURE OF PAYMENT

If the Owner does not pay the Contractor the amount certified by the Architect within the time period set forth herein and Owner has no other basis to withhold payment under Article 9 of this Agreement, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum and/or GMP shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. Notwithstanding anything in the Contract Documents to the contrary, this shall include, but is not limited to, start up and successful testing of all systems and equipment.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment together with all required documents neatly bound and indexed. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. When a specific manufacturer's warranty is required by the Specifications, the Contractor shall state in writing to the Architect that all the manufacturer's requirements for the issuance of the warranty has been completed and that the Work is ready for the Architect's and Owner's inspection.

All manufacturer's warranties required for the Work shall commence as of the Date of Substantial Completion stated on the certificate issued by the Architect.

§ 9.8.3 Upon receipt of the Contractor's list and the documents required by Section 3.12.11 neatly bound and indexed,, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Work is Substantially Complete, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.3.1 Time for Completion of Items on List and Remedies. The Contractor shall complete all items on the list accompanying the Architect's Certificate of Substantial Completion by the Date of Final Completion. If the Contractor fails to do so, the Owner in its discretion may perform the Work by itself or others and the cost thereof shall be charged against the Contractor. If the balance of the Contract Sum is insufficient, the Contractor will pay the Owner the balance on demand. The Contractor's warranties under the Contract Documents shall remain in full force and effect and cover any remedial work even if performed by others. If more than one inspection by the Architect for purposes of evaluating corrected Work is required, the Contractor shall pay the additional costs and expenses incurred by the Owner as a result of more than one inspection by the Architect, and the Owner may withhold from sums due or coming due the Contractor amounts to cover such additional costs and

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expenses.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and consistent with Section 9.8.3.1 shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 Upon receipt of the Certificate of Substantial Completion from the Architect and consent of the Contractor's surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor and/or with the Architect's approval, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. In the event of a disagreement about such responsibilities, correction period, or commencement of warranties, the Architect will resolve the disagreement, and the Architect's decision will be final and binding. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect, which shall be final and binding.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment and a properly completed Contractor's Payment Application Checklist (if required), all the documentation required to be submitted with such Checklist, and any other supporting documentation required by the Contract Documents or by the Architect, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, including all required documents submitted, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. Final Completion is defined in Paragraph 1.1.14 above.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

1. Unless otherwise provided in the Contract Documents, the final Application for Payment shall be itemized, and the Contractor shall ensure that the final Application for Payment transmitted to the Architect also is accompanied by the following additional documents, if not previously delivered to the Architect:
 1. Evidence that all Completion/Punch List items have been completed;
 2. Where applicable, keys and keying schedule;
 3. The documents, including as-built set of Drawings and Specifications, referred to in Section 3.3.4 both hard copy and electronic (in the format requested by Owner) copies, not otherwise required by the Contract Documents to be delivered earlier; and,
 4. Other documents required by the Contract Documents.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

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§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from or related to:

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 any claims, damages, losses or expenses for indemnification under Section 3.18.1.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract, including compliance with OSHA and other state and federal regulations applicable to the Work. The Contractor's safety program shall be written and a copy maintained at the Project site for inspection, upon request. Neither the Owner nor the Architect accept any responsibility or liability for the safety of the Contractor's employees or for enforcing the Contractor's safety program. Additionally, Contractor shall comply with the Owner's rules, regulations, and policies.

§ 10.2 SAFETY AND HEALTH OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take all reasonable precautions for safety and health of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby, including the Owner's employees, employees of other contractors, their subcontractors, material suppliers, and persons on the site or adjoining property;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors and/or the Work of any other contractor and the materials and equipment to be incorporated in such Work; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities. The Contractor shall be responsible, at the Contractor's sole cost and expense, for all Measures necessary to protect any property adjacent to the Project and improvements therein.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. The Contractor shall not bring any hazardous materials onto the Project site unless expressly required by the Contract Documents.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable,

and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18. In the event of a dispute about who is responsible for damage and loss to such property, the issue shall be submitted to the Architect and the Architect's decision shall be final and binding on the respective parties.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If the Contractor suffers injury or damage to person or property because of an act or omission of the Owner, or of others for whose acts the Owner is legally responsible, the Contractor shall submit a Notice of Claim Form for such injury or damage as required by Section 15.1.2.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents upon written request, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. Work in the affected area shall be resumed immediately following the occurrence of any one of the following events: (i) the Owner causes remedial work to be performed that results in the hazardous substance being rendered harmless; or (ii) the Owner and the Contractor, by written agreement, decide to resume performance of the Work; or (iii) the Work may safely and lawfully proceed using appropriate protective measures, as determined by a competent person employed by the Owner. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum and/or GMP shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up. The term "rendered harmless" shall be interpreted to mean that exposure levels of asbestos and polychlorinated biphenyl (PCB) are less than any applicable exposure standards set forth in OSHA regulations.

§ 10.3.3 [Not Used.]

§ 10.3.4 The Owner shall not be responsible for materials or substances the Contractor brings to the site unless such materials or substances are expressly required by the Contract Documents. Hazardous materials shall be identified by a Material Safety Data Sheet (MSDS). These MSDS's shall be submitted by the Contractor to the Owner prior to that material being used on the Project. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 In addition to the Contractor's obligations in Section 3.18 and elsewhere in the Contract Documents, the Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

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§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, without special instructions or authorization, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies approved by the Owner and licensed to do business in the State of Ohio such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations, which coverage shall be maintained for no less than five (5) years following final payment; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.2.1 The minimum limits of liability for the required policies shall be not less than the following, unless a greater amount is required by law:

- .1 **Commercial General Liability ("CGL"): Bodily injury (including death and emotional distress) and property damage with limits of \$2,000,000 each occurrence and \$2,000,000 aggregate. CGL shall include: (i) Premises-Operations, (ii) Explosion and Collapse Hazard, (iii) Underground Hazard, (iv) Independent Contractors' Protective, (v) Broad Form Property Damage, including Completed Operations, (vi) Contractual Liability, (vii) Products and Completed Operations, (viii) Personal Injury with Employment Exclusion deleted, (ix) Stopgap liability with Ohio Intentional Tort endorsement for \$100,000 limit; and (x) per project aggregate endorsement.**
- .2 **Automobile Liability, covering all owned, non-owned, and hired vehicles used in connection with the Work: Bodily injury (including death and emotional distress) and property damage with a combined single limit of \$1,000,000 each accident.**
- .3 **Workers' compensation with policy limits as established by Ohio law.**

§ 11.1.2.2 Such policies shall be supplemented by an umbrella policy in the amount of \$1,000,000 each occurrence and aggregate for contracts with a Contract Sum of \$250,000 or less, \$2,000,000 each occurrence and aggregate for contracts with a Contract Sum greater than \$250,000 but less than or equal to \$500,000, \$3,000,000 each occurrence and aggregate for contracts with a Contract Sum greater than \$500,000 but less than or equal to \$1,000,000; and \$5,000,000 each occurrence and aggregate for contracts with a Contract Sum greater than \$1,000,000.

§ 11.1.2.3 The Contractor shall also maintain Professional Liability coverage for claims arising out of the performance of the construction management services provided pursuant to this Agreement and caused by any error, omission or negligent act for which the Construction Manager is liable with a per claim limit of \$2,000,000 Each Occurrence.

§ 11.1.2.4 Contractors Pollution Liability and/or Asbestos Pollution Liability and/or Errors & Omissions applicable to the work being performed, with a limit no less than \$2,000,000 per claim or occurrence and \$2,000,000 aggregate per policy period of one year.

§ 11.1.2.5 Insurance policies shall be written on an occurrence basis.

§ 11.1.2.6 Products and completed operations coverage shall commence with the certification of the final Certificate for Payment to the Contractor and extend for not less than five years beyond that date.

§ 11.1.2.7 The Contractor shall require all Subcontractors to provide Workers' Compensation, CGL, and Automobile Liability insurance with the same minimum limits specified herein, unless the Owner agrees to a lesser amount.

§ 11.1.2.8 All liability policies required in Section 11.1, except Professional Liability, shall include an additional insured endorsement naming the Owner, the Owner's Board members and employees, and the Architect and its employees. The CGL additional insured endorsement shall be ISO 20 10 11 85 or its equivalent so that Completed Operations liability extends to the additional insureds.

§ 11.1.2.9 All liability policies required in Section 11.1 shall be primary and non-contributory.

§ 11.1.2.10 **Other Insurance Provisions** All insurance policies are to contain, or be endorsed to contain, the following provisions:

1. The Owner, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired, or borrowed by or on behalf of the Contractor. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10, CG 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).
2. For any claims related to this project, the Contractor's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the Owner, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Owner, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall provide that coverage shall not be canceled, except with notice to the Owner.
4. Self-insured retentions must be declared to and approved by the Owner. At the option of the Owner, either: the contractor shall cause the insurer to reduce or eliminate such self-insured retentions as respects the Owner, its officers, officials, employees, and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the Owner guaranteeing payment of losses and related investigations, claim administration, and defense expenses. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Owner.

5. Acceptability of Insurers Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best rating of no less than A: VII, unless otherwise acceptable to the Owner. Waiver of Subrogation Contractor hereby agrees to waive rights of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the Owner for all work performed by the Contractor, its employees, agents and subcontractors. Verification of Coverage Contractor shall furnish the Owner with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to Owner before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The Owner reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time. Subcontractors Contractor shall require and verify that all subcontractors maintain insurance meeting all requirements stated herein, and Contractor shall ensure that Owner is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a form at least as broad as CG 20 38 04 13.

§ 11.1.3 Contractor shall provide Owner with certificates of insurance acceptable to the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.3.1 The Contractor shall furnish to the Owner, through the Architect, one copy of each of the Certificates of Insurance required herein. The Certificate of Insurance shall specifically set forth evidence of all coverage required by Section 11.1.2. The form of certificate shall be the form prescribed by the Architect, which shall be the ACORD Form 25-S (7/90) with AIA Document G-715 "Supplemental Attachment" attached thereto. The Contractor shall furnish to the Owner copies of any endorsement that is subsequently issued amending coverage or limits.

§ 11.1.4 In no event shall any failure of the Owner to receive certified copies or certificates of policies required under Section 11.1 or to demand receipt of such certified copies or certificates prior to the Contractor's commencing the Work be construed as a waiver by the Owner or the Architect of the Contractor's obligations to obtain insurance pursuant to this Article 11. The obligation to procure and maintain any insurance required by this Article 11 is a separate responsibility of the Contractor and independent of the duty to furnish a certified copy or certificate of such insurance policies.

§ 11.1.5 If the Contractor fails to purchase and maintain, or require to be purchased and maintained, any insurance required under Section 11.1, the Owner may but shall not be obligated to, upon five (5) days written notice to the Contractor, purchase such insurance on behalf of the Contractor and shall be entitled to be reimbursed by the Contractor upon demand.

§ 11.1.6 When any required insurance, due to the attainment of a normal expiration date or renewal date, shall expire, the Contractor shall supply the Owner with Certificates of Insurance and amendatory riders or endorsements that clearly evidence the continuation of all coverage in the same manner, limits of protection, and scope of coverage as was provided by the previous policy. In the event any renewal or replacement policy, for whatever reason obtained or required, is written by a carrier other than that with whom the coverage was previously placed, or the subsequent policy differs in any way from the previous policy, the Contractor shall also furnish the Owner with a certified copy of the renewal or replacement policy unless the Owner provides the Contractor with prior written consent to submit only a Certificate of Insurance for such policy. All renewal and replacement policies shall be in form and substance satisfactory to the Owner and written by carriers acceptable to the Owner.

§ 11.1.7 Any aggregate limit under the Contractor's liability insurance shall, by endorsement, apply to the Project separately.

§ 11.1.8 The Contractor shall cause each of its Subcontractors to (i) procure insurance reasonably satisfactory to the Owner and (ii) name the Owner and Architect, and any of their employees and agents, as additional insureds under the Subcontractor's CGL policy. The additional insured endorsement included on the Subcontractor's CGL policy shall state that coverage is afforded the additional insureds with respect to claims arising out of operations performed by or on behalf of the Contractor. If the additional insureds have other insurance that is applicable to the loss, such other insurance shall be on an excess or contingent basis. The amount of the insurer's liability under this insurance policy shall not be reduced by the existence of such other insurance.

§ 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy for the project in the amount of the initial GMP, plus value of subsequent contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such builder's risk insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 The builder's risk insurance obtained by the Owner shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

Property insurance provided by the Owner shall not cover any tools, apparatus, machinery, scaffolding, hoists, forms, staging, shoring, and other similar items commonly referred to as construction equipment that may be on the site and the capital value of which is not included in the Work, nor shall such insurance cover any materials or equipment before these materials and equipment are physically incorporated into the Work. The Contractor shall make its own arrangements for any insurance it may require on such construction equipment and materials and equipment. Any policy obtained by the Contractor under this Section 11.3 and related sections shall include a waiver of subrogation in accordance with the requirements of Section 11.3.7. If the Work is located in a Special Flood Hazard Area, as defined by the Federal Emergency Management Agency, the Owner shall provide an endorsement to the property insurance policy that provides coverage for physical loss or damage caused by flood.

§ 11.3.1.2 When it is available, Owner shall provide Contractor with written proof of the builder's risk insurance, upon Contractor's written request.

§ 11.3.1.3 If the cause of any loss payment under such insurance is the fault of the Contractor or any of its subcontractors, then the Contractor shall pay such deductible in accordance with A133, Section 5.2.1.1(d).

§ 11.3.1.4 The builder's risk insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

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§ 11.3.1.6 Damages to Other Property. The maintaining of such insurance as outlined in Section 11.1 shall in no way constitute a waiver of the Contractor's legal liability for damage to any adjoining buildings or existing buildings or their contents or the Work and property of others on the site beyond the limits of insurance thus maintained. The Contractor shall hold the Owner free and harmless from any injury and damage resulting from the negligent or faulty performance of the Contract by the Contractor or its Subcontractors or others under its control or direction.

§ 11.3.2 BOILER AND MACHINERY INSURANCE

The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 11.3.3 LOSS OF USE INSURANCE

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 The Owner shall maintain copies of the policies of insurance it is required to purchase and maintain hereunder at its offices and shall permit the Architect or the Contractor to inspect the policies during normal business hours and upon reasonable advance written notice.

§ 11.3.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent of actual recovery of any insurance proceeds under any property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner in good faith. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner in good faith and made payable to the Owner in good faith for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 If required in writing by a party in interest, the Owner in good faith shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against

proceeds received in good faith. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Owner in good faith shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved as provided in Sections 15.3 and 15.4. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner in good faith shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Contractor shall provide a contract bond to guaranty payment and performance of the Work, as required by Ohio law.

§ 11.4.1.1 If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of the Agreement or Ohio law, Contractor shall promptly notify Owner and Architect and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of the Contract Documents.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.4.3 MATERIAL DEFAULT OR TERMINATION. If the Owner notifies the Contractor's surety that the Contractor is in material default or terminates the Contract, the surety will promptly and in not more than 21 days investigate the claimed material default or termination. If the Owner gives a notice of material default and then terminates the Contract, the surety shall complete its investigation within 21 days of the notice of material default. As part of such investigation, the surety shall visit the offices of the Contractor, Architect and Owner to review the available project records. If the surety proposes to take over the Work, the surety shall do so no later than the expiration of such 21 day period or 10 days after the date the Owner terminates the Contract, whichever is later. If the Owner terminates the Work, and the surety proposes to provide a replacement contractor, the replacement contractor shall be fully capable of performing the Work in accordance with the Contract Documents, including meeting all the requirements of the Contract Documents. If the Contractor is terminated, the replacement contractor shall not be the Contractor. The surety will provide the Owner with the results of its investigation, including any written report or documents. This Section 11.4.3 is in addition to the Owner's rights under Section 14.2.2 and is not intended to create any rights of the surety, including but not limited to the right to takeover the Contractor's obligations.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

In addition to the rights and remedies under Section 2.4, the Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly and in not more than 30 days after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. If the Contractor fails to correct nonconforming Work within 30 days after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work and does not limit any warranty period under these Contract Documents, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made. Any such acceptance shall be in writing and executed by a representative of the Owner who has been expressly authorized to do so.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered mail, over night delivery, or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 Except as otherwise provided in the Contract Documents, no action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. Contractor shall provide proper facilities at all times for inspections and tests of work by the Owner and other authorities having jurisdiction over the Project. Contractor shall remove any water used in conducting such tests and inspections in a manner so as not to discharge the water on any portions of the Work or damage any portion of the Work. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after the GMP Amendment is executed, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense. Neither the observations by the Owner or its designated representative, nor inspections, tests, or approvals by persons other than the Contractor, shall relieve the Contractor from its obligations to perform the Work in accordance with the Contract Documents.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered in duplicate to the Owner and Architect.

§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

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§ 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

§ 13.7 TIME LIMITS ON CLAIMS

As between the Owner and Contractor the statute of limitations shall commence as provided in current Ohio law.

§ 13.8 ATTORNEY-CLIENT CONFIDENTIAL AND PRIVILEGED COMMUNICATIONS

§ 13.8.1 The Contractor 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 Architect. The Contractor agrees that such communications will be privileged communications and, if there is a Claim contemplated or pending, any written communications will be confidential work product.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped; or
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents.

(Paragraph Deleted)

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;

- .3 disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents, including but not limited to failure to maintain the Construction Schedule or failure to correct defective and/or non-conforming Work.

§ 14.2.2 When any of the above reasons exist, the Owner, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety as expressly stated in the applicable surety bond:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

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

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other costs or damages incurred by the Owner and not expressly waived, including but not limited to the Owners' attorneys' and consultants' fees and expenses, arising out of or related to the termination, such excess shall be paid to the Contractor. If such costs, other costs, and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum, GMP and/or Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment in accordance with Article 10 of the Agreement.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The Contractor's Claims must be initiated by submitting the Notice of Claim Form ("Form") included with the Contract Documents to the Architect and the Owner, properly completed in accordance with the instructions accompanying the Form and submitted within the 21 day period under Section 15.1.2. The responsibility to substantiate Claims shall rest with the party making the Claim. The Contractor shall not knowingly present or cause to be presented to the Owner a false or fraudulent Claim. Knowingly shall have the same meaning as in Section 3729(b) USC of the Federal False Claims Act. If the Contractor knowingly presents or causes to be presented a false or fraudulent Claim, then the Contractor shall be liable to the Owner for the same civil penalty and damages as the United States Government would be entitled to recover under such Section 3729(a) USC and shall also indemnify and hold the Owner harmless from all costs and expenses, including Owner's attorneys' and consultants' fees and expenses incurred in investigating and defending against such Claim and in pursuing the collection of such penalty, damages and fees and expenses.

The Contractor acknowledges and agrees that the Owner and/or parties in privity of contract with the Owner may delay, interfere with and/or disrupt the Work of the Contractor, and such actions shall not constitute a breach of contract by the Owner, since the Contractor is entitled to additional compensation by properly submitting and pursuing a Claim as permitted by these General Conditions. Pending final resolution of the Claim, the Contractor shall continue performance of the Work as provided in Section 15.1.3.

§ 15.1.2 NOTICE OF CLAIMS

As a condition precedent to a change in the Contract Price or the Contract Times, for each Claim the Contractor shall deliver a fully completed Notice of Claim Form, a copy of which form is a Contract Document, to the Initial Decision Maker with a copy sent to the Owner and the Architect, if the Architect is not serving as the Initial Decision Maker, within 21 days of the start of the event giving rise to the Claim. The Contractor shall be responsible for substantiating its Claim. The Contractor's failure to deliver a fully completed Notice of Claim form shall be an irrevocable waiver of Contractor's right to any form of additional compensation, be it in time or money, arising out of the Claim or the circumstances underlying the Claim. Further, the Contractor's obligation to deliver a fully completed Notice of Claim form within such 21 day period is a material term of the Contract Documents and provides the Owner with the opportunity to mitigate its damages.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum and/or GMP, the Contractor shall submit the Notice of Claim Form as required by Section 15.1.2. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, the Contractor shall submit a Notice of Claim Form as required by Section 15.1.2.

§ 15.1.5.2 If the Contractor is prevented from completing any part of the Work within the Contract Time due to weather conditions and the Contractor wants additional time to complete the Work, the Contractor shall initiate a Claim by submission of the Notice of Claim Form in accordance with Section 15.1.2. The Contractor's entitlement to additional time shall be evaluated and substantiated as provided in Section 15.1.5.2.1.

Init.

§15.1.5.2.1 Weather Delays. When the Contractor is prevented from completing any part of the Work on the critical path within the Contract Time due to weather conditions, provided the Contractor properly initiates a Claim, the Contract Time will be extended by one (1) day for each work day lost due to weather that delays Work on the critical path in excess of those in the following table:

Month	Number of Workdays Lost Due To Weather
January	8
February	8
March	7
April	6
May	5
June	4
July	4
August	4
September	5
October	6
November	6
December	6

§ 15.1.5.3 Excusable and Compensable Delays. The delays for which the Contractor is entitled to additional time are "Excusable Delays." The only Excusable Delays are delays which the Contractor establishes were: (a) caused by the Owner or those in privity of contract with the Owner, (b) physical damage to the Project over which the Contractor has no control, (c) labor disputes beyond the control of the Contractor, (d) work days lost due to weather conditions as provided under Section 15.1.5.2 , and (e) concealed or unknown conditions under Section 3.7.4.

The delays for which the Contractor is entitled to additional time and money are "Compensable Delays." The only Compensable Delays are the Excusable Delays which the Contractor establishes were proximately caused by an improper action or failure to act by Owner.

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.1.7 Settlement Offers. If the Contractor initiates a Claim, the Owner may make settlement offers to settle the Claim at any time up to the date of the trial. Such settlement offers shall be subject to Rule 408 (Compromise and Offers of Compromise) of the Ohio Rules of Evidence. If at any stage of the litigation, including any appeals, the Contractor's Claim is dismissed or found to be without merit, or if the damages awarded to the Contractor on its Claim do not exceed the Owner's last settlement offer, the Contractor shall be liable to the Owner and shall reimburse the Owner for all of the Owner's attorneys' fees and expenses, arising out of or related to such Claim since the date of such last settlement offer.

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be

required as a condition precedent to any further proceeding permitted under these General Conditions of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within thirty (30) days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§15.2.2.1 Owner's Request for Documents. The Owner may request such documents and information from the Contractor as the Owner determines necessary to evaluate and comment upon the Claim. Upon receipt of such request from the Owner, the Contractor shall provide all requested documents and information within ten (10) days. Such documents and information may include but not be limited to the Contractor's Project accounting records, estimate for the Project, daily job logs, and other information from which the Contractor's Project costs may be derived. The Contractor shall provide the requested documents in the formats requested, which include both paper and electronic copies. If requested by the Owner, the electronic copies shall be provided in native computer language. To the extent permitted by law, the Owner shall keep the Project accounting records and estimate for the Project confidential. The Contractor's provision of the requested documents to the Owner in the format requested by the Owner shall be a condition precedent to any further proceeding under the Contract Documents.

Failure to provide the requested documents shall be a material breach of the Contract, and Contractor shall indemnify Owner for all of Owner's costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to Contractor's failure to comply with this provision. If the Contractor fails to provide the requested documents, the Contractor shall be precluded from presenting such documents in any subsequent dispute resolution proceedings, if the data was reasonably available at the time of the request.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part. If the Initial Decision Maker requests supporting data from a party and the party fails to provide it, the party thereafter shall be precluded from presenting such data in any subsequent dispute resolution proceedings, if the data was reasonably available to it at the time of the request.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum, GMP, and/or Contract Time. The initial decision shall be final and binding on the parties but subject to mediation, and if mediation is not successful in resolving the matter, litigation. Venue for such litigation shall be exclusive in the state court of competent jurisdiction in the county in which the Owner has its principal office. The parties expressly waive the right to remove any litigation to federal court.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 When a written decision of the Initial Decision Maker states that (1) the decision is final but subject to mediation and litigation and (2) a demand for mediation is not initiated by the Contractor within 30 days from the date of an initial decision, then failure by the Contractor to demand mediation within said 30-day period shall result in the Initial Decision Maker's decision becoming final and binding upon the Contractor. If the Initial Decision Maker renders a decision after litigation has been initiated, such decision may be entered as evidence, but shall not supersede the litigation proceedings unless the decision is acceptable to all parties concerned. Litigation shall be considered "initiated" upon either the service of the original complaint on the Owner or, if litigation relating to the project has already been filed, when a motion for leave to amend the complaint to add the claim has been filed.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 may, after initial decision by the Initial Decision Maker or 30 days after submission of the Claim to the Initial Decision Maker, be subject to mediation.

§ 15.3.2 A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the county where the Owner's principal office is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 LITIGATION

§ 15.4.1 Any Claim not resolved by mediation pursuant to Section 15.3.1 shall be subject to litigation unless both parties agree in writing to arbitrate the Claims. Any Claim subject to, but not resolved by, mediation may be decided by

(Paragraph Deleted)

arbitration

if the parties mutually agree in writing. There shall be no mandatory arbitration of Claims.

Additions and Deletions Report for AIA® Document A201™ – 2007

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for the following PROJECT:

...

New Jail and Sheriff's Administration Office Project

...

Board of County Commissioners
Warren County, Ohio
Administration Building
406 Justice Drive, First Floor
Lebanon, Ohio 45036

...

Wachtel & McAnally
Architects/Planners Inc. 35 South Park Place
Newark, Ohio 43055

...

The Architect may also be referred to as the "Design Professional" in this Agreement and other Contract Documents.

...

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(~~See~~ (See Defective or Nonconforming Work)

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ARTICLE 1 GENERAL PROVISIONS

...

§ 1.1 BASIC DEFINITIONS The definitions in this Section 1.1 shall apply throughout the Contract Documents.

...

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. the Contract Documents identified in the Owner-Contractor Agreement ("Agreement"). 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 Architect. ~~Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.~~

...

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project. The Work of the Contractor shall include the Work of all of its Subcontractors.

...

The Initial Decision Maker is the ~~person identified~~ Architect.

...

§ 1.1.9 SUBSTANTIAL COMPLETION

...

in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of Substantial Completion is the stage in the progress of the Work when the Work is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy and utilize the Work for its intended use. Notwithstanding anything in the Contract Documents to the contrary, this shall include, but is not limited to, start up and successful testing of all systems and equipment.

...

§ 1.1.10 DATE FOR SUBSTANTIAL COMPLETION

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The Date for Substantial Completion is the Date for Substantial Completion as set forth in the Owner-Contractor Agreement or in the Guaranteed Maximum Price Amendment, as applicable. The Date for Substantial Completion shall only be changed or modified by Change Order, other Modification or a Claim that is Finally Resolved, regardless of any dates in the Construction Schedule.

...

§ 1.1.11 FINALLY RESOLVED

...

under Section 14.2.2. Finally Resolved means that the Initial Decision Maker has made a decision on a Claim under Section 15.2.6.1 of the General Conditions and that any litigation regarding the Claim has been concluded.

...

§ 1.1.12 CLAIM

...

Claim is defined in Section 15.1.1 of these General Conditions.

...

§ 1.1.13 NOTICE OF CLAIM FORM

...

Notice of Claim Form means the Notice of Claim Form included as Exhibit E to the Agreement.

...

§ 1.1.14 FINAL COMPLETION

...

Final Completion shall mean that the Work is complete in all respects in accordance with the Contract Documents and the Contractor has submitted to the Architect all documents required to be submitted to the Architect for final payment.

...

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor ~~Contractor whether or not expressly shown or described.~~ The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; ~~all~~ and performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

...

§ 1.5.1 ~~The Architect and the Architect's consultants shall be deemed the authors and owners of their Ownership of the respective Instruments of Service, including the Drawings and Specifications, and will retain all common-law, statutory and other reserved rights, including copyrights, shall be as provided in the Owner-Architect Agreement. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights ownership of the Instruments of Service.~~

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§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative ~~who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative representative. The Owner's representative shall only have such authority as is expressly authorized by the Owner's Board and as is permitted under the laws of the State of Ohio. The Contractor is responsible for determining the limits of that authority.~~

...

§ 2.1.2 The Owner shall prepare a Notice of Commencement for the Project, as required by the Ohio Revised Code, and furnish to the Contractor a copy of the Notice of Commencement for the Project within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein request.

...

§ 2.2.1 ~~Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements. The Owner shall attach to the Agreement with the Contractor the certificates of available resources required by the Ohio Revised Code as evidence of available funds, to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.~~

...

~~§ 2.2.3 The~~ Unless otherwise provided in the Contract Documents, to the extent necessary for the Work and as requested by the Contractor, the Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. ~~The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.~~

...

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or ~~repeatedly~~ fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

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If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ~~ten-day period~~ two (2) business days after receipt of written notice from the Owner to commence and ~~continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case or thereafter proceed without interruption to correct such default or neglect within fifteen (15) days of such notice, the Owner, without prejudice to its other remedies, may correct such deficiencies. If such default or neglect results in a threat to the safety of any person or property, the Contractor shall immediately commence to correct such default or neglect upon receipt of written or oral notice thereof. In all such cases of default or neglect, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's costs arising out of or related to the investigation and correction of such deficiencies, including the Owner's attorneys' and consultants' fees and expenses and other expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.~~

...

~~§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.~~ Documents and shall comply with all rules, regulations and policies of the Owner and all applicable federal, State, and local codes, statutes, ordinances, and regulations in the performance of the Work on the Project.

...

~~§ 3.2.1 Execution of the Contract Agreement by the Contractor is a representation that the Contractor has visited the site, become generally carefully and diligently investigated the entire site and the surrounding area, including location, condition and layout of the site and utility locations, become thoroughly familiar with local conditions under which the Work is to be performed and correlated personal observations performed, including the generally occurring climatic conditions and carefully correlated personal observations and other information with requirements of the Contract Documents.~~

...

~~§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, Work and in addition to the reviews required by the Instructions to Bidders and by these General Conditions, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, 2.2.3. In addition, prior to performing each portion of its Work, the Contractor shall take field measurements of any existing conditions related to that~~

portion of the Work, and shall observe any conditions at the site affecting it. ~~These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the it, including the Work of any other Contractors. These obligations of this Section 3.2 are for the purposes of facilitating construction by the Contractor, for determining that the Work is constructible, for determining if the work of the Contractor is coordinated in the Contract Documents with the work of any other Contractors, and for verifying that field conditions, including the Work of any other Contractors, are consistent with the information in the Contract Documents and ready for the Work. The Contractor shall promptly report to the Architect any errors, inconsistencies or omissions and the Owner any errors or omissions in the sizing, load bearing capacity or other similar design information in the Contract Documents discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor-Construction Manager at Risk and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.~~

...

§ 3.2.4 ~~If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs these obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.~~

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§ 3.3.1 ~~The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention; attention and consistent with the skill of a competent contractor familiar with jail construction. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner required means, methods, techniques, sequences or procedures. The Contractor shall immediately upon entering the project for the purpose of beginning work, locate all general reference points and take such action as necessary to prevent their destruction. Contractor shall lay out his own work and be responsible for all lines, elevations and measurements of the building, demolition work, utilities, and any other work to be executed by him under the contract. The Contractor shall verify grades, lines, levels, and dimensions indicated on the drawings and shall notify the Architect of errors or inconsistencies before commencing work. The Contractor shall establish and maintain a permanent bench mark, batter boards, level and grades and shall layout the exact location of all walls, partitions, openings, etc. Contractor shall employ experienced and competent engineers and exercise proper precautions to verify the figures shown on the drawings for laying out work, and will be held responsible for any error resulting from his failure to exercise such precautions.~~

...

§3.3.4 ~~The Contractor shall maintain readily accessible to the Architect and the Owner at the Project site, the following documents all of which shall be "public records" within the meaning of the Ohio Public Records Act:~~

...

.1 A set of Drawings and Specifications as approved by the Authority Having Jurisdiction.

...

.2 A copy of the Drawings and Specifications upon which the Contractor shall record changes made during the course of its Work. The Contractor shall keep an accurate record of all changes made to the Drawings to show actual installation where installation varies from Work as originally shown, including the location and depth of underground utility lines. Any such changes shall be noted by Change Order Number, if a Change Order was issued, and drawn neatly in a contrasting color on the drawings. The Contractor shall also keep record of all changes to the Specifications. When Shop Drawings are used, the Contractor shall cross-reference the drawings and sections of the specifications.

1. A daily log at the Project site in which it has recorded Project-related information, including, but not limited to, the weather, number of workers on site, identification of equipment, Work accomplished, problems encountered, and other similar relevant Project data;

1. As applicable to its Work, all Bulletins, Addenda, approved Shop Drawings, Product Data, Samples, manufacturers' installation, operating and/or maintenance instructions or requirements, certificates, warranties, Change Orders, Change Directives, other Modifications and complete back up data for all Change Orders, Change Directives and other Modifications; and

1. All the Contractor's communications, including but not limited to letters, memoranda, e-mail, invoices and bills of lading, arising out of or related to the Project with the Architect, Owner, other Contractors, and/or its subcontractors, materialmen and/or employees, shall be provided upon Owner's request.

...

Claims for the Contractor's failure to comply with the Ohio Public Records Act, if applicable, shall be claims under Section 3.18.1.

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§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, which the Owner may withhold in its sole discretion, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

...

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. ~~The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.~~ only assign competent supervisors and workers to the Project, each of whom is fully qualified to perform the tasks assigned. If the Owner or Architect deems any employee of the Contractor or a Subcontractor unsatisfactory, the Contractor will transfer or require its Subcontractor to transfer such employee from the Project immediately and replace or require the prompt replacement of such employee with a competent employee. The Owner, however, shall be under no obligation to do so.

...

§3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be

free from defects, ~~except for those inherent in the quality of the Work the Contract Documents require or permit.~~ ~~defects.~~ Work, materials, or equipment not conforming to these requirements may be considered defective. ~~The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage.~~

...

~~If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.~~ § 3.5.2 If the Contractor breaches any of its obligations under Section 3.5.1, the Contractor will pay the Owner for its damages and expenses, including but not limited to attorneys' and consultants' fees and expenses, arising out of or related to such breach.

...

~~The Contractor shall pay sales, consumer, use-use, commercial activity, and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, at the time the Agreement is executed, whether or not yet effective or merely scheduled to go into effect. The Contractor acknowledges that the Owner is a political subdivision of the State of Ohio or tax exempt organization and is exempt from state sales and use taxes. Upon written request, the Owner will provide the Contractor with any applicable certificates of exemption.~~

...

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. ~~the Agreement is executed.~~

...

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders and all other requirements of public authorities applicable to performance of the Work.

...

§ 3.7.3 If the Contractor In addition to its other obligations under the Contract Documents, if the Contractor or any of its Subcontractors or Sub-subcontractors performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders and all other requirements of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

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§ 3.7.4 Concealed or Unknown Conditions. If Except as provided herein, if the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. Sum, GMP and/or Contract Time. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall

promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

...

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract ~~Sum and Sum, GMP and/or~~ Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

...

§ 3.8.1 The Contractor shall include in the Contract Sum and GMP all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

...

- .2** Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the ~~Contract Sum but not in the allowances;~~ base Contract Sum and shall not be chargeable against the allowance; and

...

- .3** Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2; in accordance with Paragraph 5.3.5.4 of the Agreement. However the Contractor shall timely seek and obtain a final Change Order before incurring any costs in excess of an allowance.

...

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not ~~change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.~~ replace the assigned Superintendent without the consent of the Owner, except with another Superintendent who is satisfactory to the Owner. If the Contractor proposes to change the Superintendent, the Contractor shall submit to the Architect a written request for the change, including the justification for the change, the name and qualifications for the proposed replacement, and the time frame within which the change is proposed to take place. The Contractor shall provide promptly any related additional information the Architect or Owner requests.

...

§ 3.10.1 ~~The Contractor, promptly after being awarded~~ Throughout the design phases, the Contractor shall prepare and submit a Construction Schedule with each cost estimate or at regular intervals agreed upon by the Owner. The Contractor shall submit the current Construction Schedule upon which the GMP is based, with its GMP Proposal, in accordance with the Agreement.

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~~the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction~~

~~schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required. The Construction Schedule shall include and be consistent with any applicable Milestone Dates provided by the Owner. The Contractor shall prepare all Construction Schedules in CPM format unless provided otherwise in the Contract Document or otherwise agreed in writing by the Owner. Each major category of work shall be shown separately in the Construction Schedule with all the significant activities involved, showing durations of time, manpower requirements, and restraints. The Construction Schedule is for the purpose of coordinating the timing, phasing and sequence of the Work of the Contractor and to provide an instant evaluation of progress of the Work and manpower requirements. The Construction Schedule shall not change or modify the Date for Substantial Completion. The Date for Substantial Completion shall only be changed or modified by Change Order, other Modification or a Claim that is Finally Resolved, regardless of the dates in the Construction Schedule.~~

...

~~by the conditions of the Work and Project, shall be related to the entire Project.~~ 1 The Contractor shall submit a Weekly Progress Report to the Owner during Weekly Job Meetings (or other frequency agreed upon by the Owner in writing). This report shall consist of a simple checklist on which the Contractor shall indicate start and finish dates for all activities, as well as its percentage completion. The Contractor shall also report which activities it plans to start the following week. Included shall be shop drawings, procurement of material, other pertinent items as well as actual on-site construction activities. If requested, Contractor shall submit to the Owner a daily count of manpower and that of its subcontractors. This information shall then be compared with the Construction Schedule for an evaluation of the status of the job. The manpower count shall be discussed at the Weekly Job Meeting and documented in the minutes of the meeting;

...

2 The Construction Schedule shall be manpower loaded and shall include a schedule of the submission of Shop Drawings, Product Data and Samples;

...

~~to the extent required by the Contract Documents, and~~ 3 The float in the Construction Schedule and any updates to it shall belong to the Owner. Float shall mean the amount of time by which activities may be delayed without affecting the Contract Date for Substantial Completion; and

...

~~shall provide for expeditious and practicable execution of the Work.~~ 4 The Contractor's obligation to furnish requested scheduling information is a material term of its Contract. If the Contractor fails to furnish requested scheduling information in writing within five (5) days of a request for such information from the Architect or Owner, the Contractor shall pay and the Owner may withhold from the Contractor Liquidated Damages at the rate of Fifty Dollars (\$50.00) a day for each calendar day thereafter that the Contractor fails to furnish the requested information.

...

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase

in Contract Sum or Sum, GMP, and/or extension of Contract Time based on the time required for review of submittals.

...

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to accordance with the most recent Construction Schedule prepared by the Contractor, provided that the Contractor shall comply with any orders under Section 3.10.4. However, preparation of such schedule shall not constitute a waiver of Owner's rights under the Contract to have the Work completed by the contractual dates of Substantial and Final Completion.

...

§ 3.10.4 If the Architect or the Owner determines that the performance of the Work has not progressed so that it is likely that the Contractor will not Substantially Complete its Work by its Date for Substantial Completion, the Owner and Architect shall have the right to order the Contractor to take corrective measures necessary to expedite the Work, including, without limitation: (i) working additional shifts or overtime; (ii) supplying additional manpower, equipment, and facilities; and (iii) other similar measures (collectively referred to as "Corrective Measures"). If the Owner orders the Contractor to take such corrective measures, the Contractor shall take and continue such Corrective Measures until the Owner is satisfied that the Contractor is likely to Substantially Complete its Work by its Date for Substantial Completion.

...

- .1 The Contractor shall not be entitled to adjustment in the Contract Sum or the GMP in connection with the Corrective Measures required by the Owner pursuant to this Section 3.10.4, unless the Contractor is able to establish that it is entitled to additional compensation under the terms of the Contract Documents.

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The Contractor shall maintain at the site for the Owner ~~one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals~~ and the Architect the documents required by Section 3.3.4. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed or earlier when required by the Contract Documents.

...

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work. Shop Drawings shall also include fabrication, erection and setting Drawings, scheduled Drawings, manufacturer's scale Drawings, wiring and control diagrams, cuts or entire catalogs, pamphlets, descriptive literature, performance and technical data.

...

- .1 If the Shop Drawings or other submittals show variations from the requirements of the Contract Documents, the Contractor shall specify such variations in the Contractor's letter of submittal to the Architect accompanying the submittal. Variations must be approved by Change Order.

- ...
2. If the Contractor's Shop Drawings or its submittals do not contain sufficient information, and the Architect must perform more than two reviews with respect to any submittal, the Contractor shall pay the additional costs and expenses incurred by the Owner as a result of such additional reviews by the Architect, and the Owner may withhold from sums due or coming due the Contractor amounts to cover such additional costs and

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§

...

expenses.

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§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, ~~or will do so and~~ (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

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§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, professional who shall comply with reasonable requirements of the Owner regarding qualifications and insurance and whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, ~~provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy, professionals.~~ Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

...

§ 3.12.11 **INSTRUCTIONS.** Unless otherwise expressly provided in the Contract Documents, the Contractor shall provide typed or printed instructions covering the operation and maintenance of each item of equipment furnished in a notebook submitted to the Architect for review and transmittal to the Owner. The instructions, as applicable, shall include the following:

...

.1 Any schematic piping and wiring diagrams;

...

.2 Any valve charts and schedules;

...

.3 Any lubrication charts and schedules;

...

.4 Guides for troubleshooting;

...

.5 Pertinent diagrams and maintenance instructions for all equipment;

...

.6 Manufacturer's data on all equipment;

...

.7 Operating and maintenance instructions for all equipment;

...

.8 Manufacturer's parts list;

...

.9 Any testing procedures for operating tests; and

...

.10 Other instructions and materials as required by the Contract Documents.

...

The Contractor shall provide two (2) copies of the above instruction books on or before the Substantial Completion of its Work. The books shall describe the information to be covered clearly and in detail and shall be in form and content satisfactory to the Architect and the Owner.

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§ 3.12.12 TESTING FOLLOWING FINAL COMPLETION. The Contractor will participate in training sessions for the Owner's maintenance personnel. During the first twelve (12) months following Final Completion of each part of the Project, the Contractor (without additional compensation) will participate in tests scheduled by the Owner, which test the following building systems to the extent applicable to the Contractor's Work: air conditioning system (which shall be conducted during the first full summer following the completion of the Project or at such earlier time as scheduled by the Owner), heating system (which shall be conducted during the first full winter following the

completion of the Project or at such earlier time as scheduled by the Owner), and such other systems, including the electrical system, plumbing system, fire protection system, communications systems, as reasonably requested by the Owner. The Owner will be advised when the testing will be conducted and may observe the testing. It is intended that the testing be a comprehensive series of operation tests designed to determine whether the systems are fully operational in accordance with the requirements of the Contract Documents. If it appears that any of the systems, including equipment and software, do not conform to the requirements of the Contract Documents, the Contractor will remedy the defective and/or non-conforming work as provided in Section 12.2.2.1 of these General Conditions.

...

§ 3.12.13 MANUFACTURER'S INSTRUCTIONS OR REQUIREMENTS. Without waiving, modifying or relieving the Contractor from its other obligations under the Contract Documents, including its warranties and any performance specifications, the Contractor shall furnish and install its Work in accordance with any applicable manufacturer's instructions or requirements. Prior to installation, the Contractor shall review carefully the manufacturer's instructions and requirements, and if there is a conflict between such instructions or requirements and the Drawings and/or Specifications, the Contractor shall request clarification from the Architect prior to commencing the Work.

...

§3.12.14 The Contractor shall furnish for each submission of Shop Drawings, one (1) transparency reproduction and sufficient number of prints so the Architect can retain four (4) copies. Where the nature of the material being submitted is such that letter size sheets are a convenient method of presentation, such sheets shall be assembled in the form of booklets with covers showing the name of the job, the names of the Contractor and subcontractor or vendor, the location on the job and a list of the sheets contained. Such booklets need not be in the form of transparencies. Do not submit complete catalogues with items checked for use as shop drawings.

...

§3.12.15 After review of the submittal, the Architect will return the transparency to the Contractor marked "approved" or "not approved" and shall furnish promptly one copy in either case to the Owner for information and reference purposes on the job. If marked "not approved", Contractor shall resubmit showing corrections made. After the transparency has been stamped "approved", the Contractor shall distribute all necessary prints to trades involved. No Shop Drawings shall be used if not stamped "approved" by the Architect. All work shall be done in accordance with approved Shop Drawings.

...

§3.12.16 Schedules, diagrams, cuts, catalogs, data, etc., as mentioned in this Section 3.12, shall be furnished in sufficient numbers so the Architect can retain four (4) copies and the Contractor will have the necessary number for its distribution. One copy of each of these shall be furnished the Owner by the Architect for reference on the job and for his permanent records.

...

§3.12.17 All Contractors furnishing material or equipment where shop or setting drawings are required shall obtain measurements and observe conditions at the job and indicate on their drawings that such dimensions have been field measured. The Contractor shall affix its stamp of approval on the drawings as evidence they have been checked before submitting them to the Architect for approval. Where information from one Contractor is required by another before drawings can be made, that information shall be given in sufficient time to cause no delay on the part of either party.

...

§3.12.18 The Contractor shall maintain a separate complete clean set of all shop drawings, data and correspondence pertinent to maintenance requirement. This complete file shall be submitted to the Owner upon substantial completion. Drawings shall contain all changes made during construction.

...

§3.12.19 The Contractor shall keep a complete record of all drawings including dates of issuance, receipt and approval. A second set shall be maintained at the Project job site.

...

§3.12.20 When a Contractor requests a change in any item which will involve a change in related items or supports, the Contractor requesting the change shall be responsible for, and pay all costs in connection with such changes. Changes shall be recorded on shop drawings.

...

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

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

...

§ 3.13.3 RESTRICTED ACTIVITIES. Unless expressly permitted by the Contract Documents or by the Owner in writing, the Contractor shall not interfere with the Owner's ongoing operations, shall not permit any of its employees or its Subcontractor's or materialmen's employees to use any existing facilities on the Project site, including, without limitation, lavatories, toilets, entrances, and parking areas, and shall not permit its employees or its Subcontractor's or materialmen's employees to bring any tobacco products, alcoholic beverages, controlled substances, or firearms onto the Project site or any other property owned or controlled by the Owner. Additionally, the Contractor shall not permit its employees or its Subcontractor's or materialmen's employees to use any radios, tape or compact disc players, or sound amplification equipment at or near the Project site.

...

§ 3.13.4 The Contractor shall conspicuously post notice of the prohibitions listed in the preceding subparagraphs at the Project site in the same locations as OSHA notices are required to be posted, and shall verbally inform all of the Contractor's employees, and the employees of the Contractor's Subcontractors and materialmen, regardless of tier, of such prohibitions.

...

§ 3.14.3 Patching resulting from operations of any Contractor shall be performed by workers skilled in the trade being patched, and paid for by Contractor causing such patching.

...

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project. At weekly intervals and as directed by the Owner, the Contractor shall clean up the job. Contractor shall remove all discarded materials, rubbish and debris from the premises, taking care to avoid scattering debris along the path of travel. The Contractor shall have a dumpster on the site so as to maintain clean and safe conditions throughout the duration of the Project.

...

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor. The Architect's determination of the costs to be charged to the Contractor shall be final and binding.

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§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18. any and all claims, demands, costs, losses and/or damages, including but not limited to all fees and charges of architects, attorneys and other professionals and all court, arbitration or other dispute resolution costs, arising out of or related to Contractor's negligence or any breach of Contractor's obligations under the Contract Documents, including but not limited to the breach of any warranty provided in the Contract Documents.

...

§ 3.19 COMPLIANCE WITH DEMOLITION LAWS. The Contractor will, at the Contractor's expense, fully comply with all statutes and regulations regarding notification and disposal of construction and demolition debris, including, without limitation, Ohio Revised Code Chapter 3714 and the regulations enacted thereunder.

...

§ 3.20 UNDERGROUND UTILITY FACILITIES.

...

§ 3.20.1 The Contractor, at least two (2) working days prior to commencing construction in an area that may involve underground utility facilities, shall give notice to the Architect and the Owner and to the registered underground utility protection services and the owners of underground utility facilities shown on the Drawings and Specifications.

...

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

...

§ 3.21 WAIVERS OF CLAIMS.

...

§ 3.21.1 Beginning with the second Application for Payment, the Contractor will submit a) a release and/or waiver of claims, including a waiver of all lien rights, in the form attached to the Agreement for itself and each of its Subcontractors and Suppliers, regardless of tier, and b) a complete list of its Subcontractors and Suppliers using the form included in the Contract Documents or as required by the Architect.

...

§ 3.22 RECORDS AND AUDITS. The Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's accountants shall be afforded access to review and audit the Contractor's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda, timesheets, payroll, and other data relating to this Project, records of time spent by each person performing work on the Project and time spent on all other projects; such time and payroll records shall include the location of services, detailed description of time and work on this Project and any other projects (redacting the client name or description to the extent necessary) and the Contractor shall preserve these for a period of four years after final payment, or for such longer period as may be required by law. Contractor shall make all such records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda, timesheets, payroll, and other data relating to this Project, available to the Owner and the Owner's accountants in a location designated by Owner at the time of Owner's request. In the event that the Contractor's records are not available at the agreed upon time or place, or in the event that the Owner finds incomplete records or inaccurate accounting of paid expenses, the Contractor shall reimburse the Owner for its time, travel, related expenses and Contractor shall reimburse Owner the full amount of any discrepancies or overages.

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§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

...

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction (1) during construction, (2) until the date the Architect issues the final

~~Certificate for Payment. For Payment, and (3) with the Owner's concurrence, from time to time during the one-year period for correction of Work described in Section 12.2 and for such additional periods as the Owner and Architect may agree. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents. Documents and as authorized by the Owner's Board.~~

...

~~§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with as agreed upon with the Owner (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.~~

...

~~§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible. Except as required by its duty of care owed to the Owner, the Architect (a) will not be responsible to the Owner for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect Documents, and (b) will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.~~

...

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors under contract directly with the Owner, if any, shall be through the Owner-Architect.

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...

~~§ 4.2.8 The Architect will prepare Bulletins, Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.~~

...

~~§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue, execute and distribute a final Certificate for Payment pursuant to Section 9.10.~~

...

~~§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of~~

such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents consistent with these General Conditions.

...

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. Copies of all Requests for Information shall be copied to the Owner by the Contractor at the time they are submitted to the Architect.

...

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing ~~within any time limits agreed upon or otherwise with reasonable promptness.~~ 72 hours unless otherwise agreed upon by the Construction Manager, in writing. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for ~~information.~~ information, within 7 calendar days.

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§ 5.2.1 ~~Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection. Construction Manager shall bid the Subcontracts in accordance with Ohio law.~~

...

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made ~~reasonable and timely~~ objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

...

§ 5.2.3 If the Owner or Architect has ~~reasonable an~~ objection to a person or entity proposed by the Contractor, the Contractor shall propose within 10 days another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and ~~Contract Time~~ shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum ~~or Contract Time~~ shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

...

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect ~~makes reasonable objection to such substitution.~~ objects to such substitute. The Owner, through the Architect, may require the Contractor to change any Subcontractor previously approved and, except as provided hereafter, the Contract Sum shall be increased or decreased by the difference in cost resulting from such change. If the Contractor is in default because of the Subcontractor's performance, then the Contractor shall not be entitled to any adjustment in the Contract Sum or GMP and shall remain liable to the Owner for any damages or losses caused by such default.

...

By appropriate agreement, ~~written where legally required for validity, written agreement,~~ the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

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~~When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.~~

...

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in ~~cost~~ direct costs incurred by the Subcontractor resulting from the suspension.

...

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. ~~If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.~~

...

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, ~~and to~~ and/or award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

...

§ 6.1.3 ~~The Owner shall provide for coordination of Contractor shall coordinate~~ the activities of the Owner's own forces and of each separate ~~contractor~~ contractor, if any, with the Work of the Contractor, who shall cooperate with them. ~~The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.~~

...

~~§ 6.2.3~~ The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

...

~~§ 6.2.4~~ ~~6.2.3~~ The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Owner, separate contractors as provided in Section 10.2.5.

PAGE 27

~~§ 6.2.5~~ ~~6.2.4~~ The Owner and each separate contractor ~~contractor, if any,~~ shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

...

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible. The Architect's decision allocating the cost shall be final and binding on the Contractor and the Owner.

...

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents. To be valid, all Changes involving an increase in the Contract Sum or GMP must have any required funding certificates attached to them.

...

§ 7.2.1 A Change Order is a written instrument prepared by the ~~Architect-Contractor~~ and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

...

- .2 The amount of the adjustment, if any, in the Contract ~~Sum;~~ Sum and/or GMP; and

...

§ 7.2.2 Methods used in determining adjustments to the Contract Sum or GMP may include those listed in Section 7.3.3.

...

§ 7.2.3 The agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including but not limited to, all direct, indirect and cumulative costs associated with such change and any and all adjustments to the Contract Sum, GMP, and the Contract Time. The Contractor shall not proceed with any change in the Work without a

signed Change Order, Construction Change Directive or Minor Change in the Work notice. The Contractor's failure to timely seek and obtain such authorization as specified herein, shall constitute a irrevocable waiver by the Contractor of an adjustment to the Contract Sum GMP, or Contract Time for the related

§

work.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract ~~Sum or Contract Time, or both Sum, GMP and/or Contract Time.~~ The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract ~~Sum, GMP, and Contract Time~~ being adjusted accordingly.

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§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract ~~Sum, Sum and/or GMP,~~ the adjustment shall be based on one of the following methods:

.3 Subject to a not-to-exceed amount, a Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

.4 As provided in Section ~~7.3.7.7.3.7;~~ or

.5 Except where unit prices are applicable, that Contractor agrees and represents to the Owner for the Owner's reliance that all Change Order or Change Directive pricing submitted by the Contractor shall be based on the Contractor's actual costs or the Contractor's reasonable estimate of what would be its actual costs plus permitted overhead and profit.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably ~~adjusted-adjusted in accordance with Paragraph 7.3.7.~~

...

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum, GMP or Contract Time.

...

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Sum, GMP, and/or Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

...

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, Sum or GMP, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, Sum or GMP, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data, ~~present a true and accurate itemized accounting of all labor and material with appropriate supporting data.~~ If the Architect prescribes a format for such accounting, the Contractor shall provide the accounting in such format. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

...

.4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and

...

.5 Additional reasonable costs of supervision and field office personnel directly attributable to the change;

...

.6 Any self-performed Work in an add Change Order shall be treated as a Cost of the Work based on the total cost of labor and material; and

...

.7 Total cumulative overhead and profit for all Subcontractors on any add or deduct Change Order shall not exceed 15% of the total cost of labor and material.

...

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum or GMP shall be actual net cost as confirmed by the ~~Architect.~~ Architect plus the credit for overhead and profit. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, or decrease if any, with respect to that change.

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§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum or GMP on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Sum, GMP, and/or Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.3.11 The Contractor shall not assign any portion of the Work to another contractor whereby the Contract or would benefit directly or indirectly from the double application of charges for overhead and profit.

§ 7.3.12 The Contractor shall not be reimbursed for the following costs:

1. Employee Profit Sharing Plans - regardless of how defined or described, the Contractor will pay these charges from Contractor profit and will not be reimbursed
2. Voluntary Employee Deductions (e.g. United Way contributions, U.S. Savings Bonds, etc).

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or Sum, GMP and/or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order conspicuously marked at the top of the order as a "MINOR CHANGE IN THE WORK" and signed by the Architect and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

§ 8.3.1 ~~If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then Excusable Delay as provided in Section 15.1.5.3, then subject to the agreement of the Owner the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.~~

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~~Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, Promptly after the award of the Contract, the Contractor shall submit to the Architect, before the first Application for Payment, for the Architect's review and approval, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, By submitting such schedule of values, the Contractor represents for the reliance of the Architect and the Owner that the allocation of the values to the portions of the Work is a fair and reasonable estimate of such allocation. Once approved, the Contractor will not change the allocations in the Schedule of Values without the Architect's further approval. The Architect may from time to time require the~~

Contractor to adjust such schedule if the Architect determines it to be in any way unreasonable or inaccurate. The Contractor then shall adjust the schedule of values as required by the Architect within ten (10) days. This schedule, with any adjustments approved by the Architect shall be used as a basis for reviewing the Contractor's Applications for Payment. The Contractor shall include a separate line item in its schedule of values for its Project Superintendent.

...

§ 9.2.1 Unless specifically approved in writing by the Owner, retained funds will not be released until As-Built Drawings and Record Documents are received, reviewed, and deemed complete by the Architect.

...

§ 9.3.1 At least ~~ten~~ three days before the date established in Section 9.3.1.3 for each progress payment, the Contractor shall submit to the Architect an itemized Owner and Architect a draft Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, values for completed portions of the Work. Such application. The draft Application for Payment shall be reviewed and adjusted, if necessary, by the Architect and returned to the Contractor. The application, as reviewed and / adjusted by the Architect, shall be notarized, if required, and supported by such be re-submitted with a properly completed Contractor's Payment Application Checklist (if required), all the documentation required to be submitted with such Checklist, and any other supporting documentation required by the Contract Documents or by the Architect. The percentage completion of each portion of the Work shall be consistent with the then current Construction Schedule for the Project. The Application for Payment will be in the form and submitted with the number of copies and all related documents as required by the Contract Documents. The Contractor also shall submit with its Application for Payment such other data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents. The Contractor shall also provide its monthly report detailing the Project's progress to date, projected progress for the next 30 days and current project financial summary including but not limited to:

...

.1 The balance of the GMP, contingency, and a summary list of how the contingency has been expended on the Project to date.

...

.2 The balance of any construction allowances and summary list of how the allowances have been expended to date.

...

.3 A change order log showing any proposed, pending, and approved change order expenses to date.

...

.4 Complete breakout showing the total completed and/or stored materials, labor, and equipment on the Project as of the date of the payment application, and anticipated schedule of payment applications detailing projections for the value of completed and/or stored materials, labor, and equipment, month by month, through the end of the Project.

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§ 9.3.1.3 Contractor shall provide lien waivers from itself and all subcontractors, material suppliers and any other party that performed work or supplied materials for the project. Each application for payment shall include, in the form attached to the Agreement, partial and conditional lien waivers from each of the aforementioned parties for the work performed to date on the Project and for the value of the work performed during the current billing period.

A final waiver of lien in the form attached to the Agreement, for the total value of each subcontract shall be included with the final application for payment for each subcontract and with the Contractor's final pay application for the project. The total of the lien waivers shall match the total amount paid to the Contractor, inclusive of all approved change orders.

...

§ 9.3.1.4 The Owner will withhold retainage from the amount set forth in the Application for Payment approved by the Architect, as provided in the Contract Documents.

...

§ 9.3.1.5 DOCUMENTATION. Upon request, the Contractor immediately will supply the Owner and the Architect with such information as may be requested so as to verify the amounts due to the Contractor, including but not limited to original invoices for materials and equipment and documents showing that the Contractor has paid for such materials and equipment, and so as to verify that amounts due laborers, Subcontractors, and Material Suppliers have been paid to them. The failure to provide such information shall be justification for withholding payment to the Contractor.

...

§ 9.3.1.6 Retainage or other Escrow Account. The Owner and the Contractor agree that any retainage or other escrow account required in connection with this Agreement for retained funds from the construction contract or for deposit of amounts claimed due under the Ohio Mechanic's Lien law will be established at a bank or savings and loan association in the State of Ohio used by the Owner, and that the expenses to establish and maintain the account will be paid in accordance with the schedule approved by the Owner from income from the account. If the income from the account is anticipated not to be sufficient to pay the compensation due to establish and maintain the account, the Contractor agrees that the Owner may keep the amounts in its construction fund or another fund used by Owner to avoid the extra costs to establish and maintain a separate account.

...

§ 9.3.1.7 The amount of each progress payment shall be computed as set forth in paragraph 7.1.7 of the Agreement.

...

§ 9.3.1.8 Except with the Owner'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.

...

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. The Contractor agrees to bond off any lien filed on the Project by providing a bond meeting the requirements of the Ohio Revised Code. The Contractor shall do so within sixty (60) days of the filing of the lien.

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's ~~Application for Payment, properly completed Application for Payment and Contractor's Payment Application Checklist (if required) and Certification, the documentation described in the Contractor's Payment Application Checklist and Certification and such other data substantiating the Contractor's right to payment as the Owner or Architect may require,~~ either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

...

.1 ~~defective Work not remedied;~~ remedied or the Contractor is in default of the performance of any of its obligations under the Contract Documents including but not limited to: failure to provide sufficient skilled workers, failure to provide scheduling information as provided in Section 3.10.1, failure to prepare the Construction Schedule as provided in Section 3.10.1, failure to conform to the Project Construction Schedule and/or failure to coordinate its Work with the work of other contractors, if any;

...

.6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; ~~or~~

...

.7 ~~repeated failure to carry out the Work in accordance with the Contract Documents;~~ Documents; or

...

.8 the Contractor is in default of the performance of any of its obligations under another contract it has with the Owner.

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall ~~make payment in the manner and within the time provided in the Contract Documents;~~ issue payment to the Contractor as set forth herein and shall so notify the Architect.

...

§ 9.6.2 The Contractor shall ~~pay each Subcontractor no later than seven days after promptly,~~ within the time period required by Ohio law, pay each Subcontractor upon receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. Neither the Contractor nor its Subcontractors shall withhold retainage from its Subcontractors or their sub-subcontractors beyond the retainage withheld by the Owner from the Contractor.

...

~~If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution,~~ within the time period set forth herein and Owner has no other basis to withhold payment under Article 9 of this Agreement, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be

extended appropriately and the Contract Sum and/or GMP shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

...

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. Notwithstanding anything in the Contract Documents to the contrary, this shall include, but is not limited to, start up and successful testing of all systems and equipment.

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§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final ~~payment~~ payment together with all required documents neatly bound and indexed. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. When a specific manufacturer's warranty is required by the Specifications, the Contractor shall state in writing to the Architect that all the manufacturer's requirements for the issuance of the warranty has been completed and that the Work is ready for the Architect's and Owner's inspection. All manufacturer's warranties required for the Work shall commence as of the Date of Substantial Completion stated on the certificate issued by the Architect.

...

§ 9.8.3 Upon receipt of the Contractor's ~~list~~ list and the documents required by Section 3.12.11 neatly bound and indexed, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that ~~the Owner can occupy or utilize the Work or designated portion thereof for its intended use,~~ the Work is Substantially Complete, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

...

§ 9.8.3.1 Time for Completion of Items on List and Remedies. The Contractor shall complete all items on the list accompanying the Architect's Certificate of Substantial Completion by the Date of Final Completion. If the Contractor fails to do so, the Owner in its discretion may perform the Work by itself or others and the cost thereof shall be charged against the Contractor. If the balance of the Contract Sum is insufficient, the Contractor will pay the Owner the balance on demand. The Contractor's warranties under the Contract Documents shall remain in full force and effect and cover any remedial work even if performed by others. If more than one inspection by the Architect for purposes of evaluating corrected Work is required, the Contractor shall pay the additional costs and expenses incurred by the Owner as a result of more than one inspection by the Architect, and the Owner may withhold from sums due or coming due the Contractor amounts to cover such additional costs and

...

§

...

expenses.

...

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and consistent with Section 9.8.3.1 shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

...

§ 9.8.5 ~~The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of~~ Upon receipt of the Certificate of Substantial Completion from the Architect and consent of the Contractor's surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

...

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the ~~Contractor, Contractor and/or with the Architect's approval,~~ provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. In the event of a disagreement about such responsibilities, correction period, or commencement of warranties, the Architect will resolve the disagreement, and the Architect's decision will be final and binding. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. ~~Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld.~~ The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the ~~Architect.~~ Architect, which shall be final and binding.

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§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for ~~Payment, Payment and a properly completed Contractor's Payment Application Checklist (if required), all the documentation required to be submitted with such Checklist, and any other supporting documentation required by the Contract Documents or by the Architect,~~ the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, including all required documents submitted, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. Final Completion is defined in Paragraph 1.1.14 above.

...

- .1 Unless otherwise provided in the Contract Documents, the final Application for Payment shall be itemized, and the Contractor shall ensure that the final Application for Payment transmitted to the Architect also is accompanied by the following additional documents, if not previously delivered to the Architect:

...
.1 Evidence that all Completion/Punch List items have been completed;

...
.2 Where applicable, keys and keying schedule;

...
.3 The documents, including as-built set of Drawings and Specifications, referred to in Section 3.3.4 both hard copy and electronic (in the format requested by Owner) copies, not otherwise required by the Contract Documents to be delivered earlier; and,

...
.4 Other documents required by the Contract Documents.

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§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from or related to:

...
.2 failure of the Work to comply with the requirements of the Contract Documents; or

...
.3 terms of special warranties required by the Contract Documents; or

...
.4 any claims, damages, losses or expenses for indemnification under Section 3.18.1.

...
The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the ~~Contract~~ Contract, including compliance with OSHA and other state and federal regulations applicable to the Work. The Contractor's safety program shall be written and a copy maintained at the Project site for inspection, upon request. Neither the Owner nor the Architect accept any responsibility or liability for the safety of the Contractor's employees or for enforcing the Contractor's safety program. Additionally, Contractor shall comply with the Owner's rules, regulations, and policies.

...
§ 10.2 SAFETY AND HEALTH OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take all reasonable precautions for safety and health of, and shall provide reasonable protection to prevent damage, injury or loss to

...

- .1 employees on the Work and other persons who may be affected ~~thereby;~~thereby, including the Owner's employees, employees of other contractors, their subcontractors, material suppliers, and persons on the site or adjoining property;

...

- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or ~~Sub-subcontractors;~~ Sub-subcontractors and/or the Work of any other contractor and the materials and equipment to be incorporated in such Work; and

...

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and ~~utilities;~~utilities The Contractor shall be responsible, at the Contractor's sole cost and expense, for all Measures necessary to protect any property adjacent to the Project and improvements therein.

...

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. The Contractor shall not bring any hazardous materials onto the Project site unless expressly required by the Contract Documents.

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§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18. In the event of a dispute about who is responsible for damage and loss to such property, the issue shall be submitted to the Architect and the Architect's decision shall be final and binding on the respective parties.

...

~~If either party~~the Contractor suffers injury or damage to person or property because of an act or omission of the ~~other party,~~ Owner, or of others for whose acts ~~such party is legally responsible,~~ written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter. the Owner is legally responsible, the Contractor shall submit a Notice of Claim Form for such injury or damage as required by Section 15.1.2.

...

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such

material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, Documents upon written request, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. ~~The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. Work in the affected area shall be resumed immediately following the occurrence of any one of the following events: (i) the Owner causes remedial work to be performed that results in the hazardous substance being rendered harmless; or (ii) the Owner and the Contractor, by written agreement, decide to resume performance of the Work; or (iii) the Work may safely and lawfully proceed using appropriate protective measures, as determined by a competent person employed by the Owner.~~ By Change Order, the Contract Time shall be extended appropriately and the Contract Sum and/or GMP shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up. The term "rendered harmless" shall be interpreted to mean that exposure levels of asbestos and polychlorinated biphenyl (PCB) are less than any applicable exposure standards set forth in OSHA regulations.

...

~~§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity. [Not Used.]~~

...

~~§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are expressly required by the Contract Documents. Hazardous materials shall be identified by a Material Safety Data Sheet (MSDS). These MSDS's shall be submitted by the Contractor to the Owner prior to that material being used on the Project. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.~~

...

~~§ 10.3.5 The In addition to the Contractor's obligations in Section 3.18 and elsewhere in the Contract Documents, the Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.~~

...

~~§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.~~

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In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, without special instructions or authorization, to prevent threatened damage, injury or loss. Additional compensation

or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

...

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies ~~lawfully authorized approved~~ by the Owner and licensed to do business in the jurisdiction in which the Project is located ~~State of Ohio~~ such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

...

- .7** Claims for bodily injury or property damage arising out of completed ~~operations; operations,~~ which coverage shall be maintained for no less than five (5) years following final payment; and

...

§ 11.1.2 ~~Certificates~~ **11.1.2.1** The minimum limits of liability for the required policies shall be not less than the following, unless a greater amount is required by law:

...

- .1** Commercial General Liability ("CGL"): Bodily injury (including death and emotional distress) and property damage with limits of \$2,000,000 each occurrence and \$2,000,000 aggregate. CGL shall include: (i) Premises-Operations, (ii) Explosion and Collapse Hazard, (iii) Underground Hazard, (iv) Independent Contractors' Protective, (v) Broad Form Property Damage, including Completed Operations, (vi) Contractual Liability, (vii) Products and Completed Operations, (viii) Personal Injury with Employment Exclusion deleted, (ix) Stopgap liability with Ohio Intentional Tort endorsement for \$100,000 limit; and (x) per project aggregate endorsement.

...

- .2** Automobile Liability, covering all owned, non-owned, and hired vehicles used in connection with the Work: Bodily injury (including death and emotional distress) and property damage with a combined single limit of \$1,000,000 each accident.

...

- .3** Workers' compensation with policy limits as established by Ohio law.

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§ 11.1.2.2 Such policies shall be supplemented by an umbrella policy in the amount of \$1,000,000 each occurrence and aggregate for contracts with a Contract Sum of \$250,000 or less, \$2,000,000 each occurrence and aggregate for contracts with a Contract Sum greater than \$250,000 but less than or equal to \$500,000, \$3,000,000 each occurrence and aggregate for contracts with a Contract Sum greater than \$500,000 but less than or equal to \$1,000,000; and \$5,000,000 each occurrence and aggregate for contracts with a Contract Sum greater than \$1,000,000.

...

§ 11.1.2.3 The Contractor shall also maintain Professional Liability coverage for claims arising out of the performance of the construction management services provided pursuant to this Agreement and caused by any error, omission or negligent act for which the Construction Manager is liable with a per claim limit of \$2,000,000 Each Occurrence .

...

§ 11.1.2.4 Contractors Pollution Liability and/or Asbestos Pollution Liability and/or Errors & Omissions applicable to the work being performed, with a limit no less than \$2,000,000 per claim or occurrence and \$2,000,000 aggregate per policy period of one year.

...

§ 11.1.2.5 Insurance policies shall be written on an occurrence basis.

...

§ 11.1.2.6 Products and completed operations coverage shall commence with the certification of the final Certificate for Payment to the Contractor and extend for not less than five years beyond that date.

...

§ 11.1.2.7 The Contractor shall require all Subcontractors to provide Workers' Compensation, CGL, and Automobile Liability insurance with the same minimum limits specified herein, unless the Owner agrees to a lesser amount.

...

§ 11.1.2.8 All liability policies required in Section 11.1, except Professional Liability, shall include an additional insured endorsement naming the Owner, the Owner's Board members and employees, and the Architect and its employees. The CGL additional insured endorsement shall be ISO 20 10 11 85 or its equivalent so that Completed Operations liability extends to the additional insureds.

...

§ 11.1.2.9 All liability policies required in Section 11.1 shall be primary and non-contributory.

...

§ 11.1.2.10 Other Insurance Provisions All insurance policies are to contain, or be endorsed to contain, the following provisions:

- ...
1. The Owner, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired, or borrowed by or on behalf of the Contractor. General liability

coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10, CG 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).

...

2. For any claims related to this project, the Contractor's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the Owner, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Owner, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

...

3. Each insurance policy required by this clause shall provide that coverage shall not be canceled, except with notice to the Owner.

...

4. Self-insured retentions must be declared to and approved by the Owner. At the option of the Owner, either: the contractor shall cause the insurer to reduce or eliminate such self-insured retentions as respects the Owner, its officers, officials, employees, and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the Owner guaranteeing payment of losses and related investigations, claim administration, and defense expenses. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Owner

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5. Acceptability of Insurers Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best rating of no less than A: VII, unless otherwise acceptable to the Owner. Waiver of Subrogation Contractor hereby agrees to waive rights of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the Owner shall be filed for all work performed by the Contractor, its employees, agents and subcontractors. Verification of Coverage Contractor shall furnish the Owner with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to Owner before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The Owner reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time. Subcontractors Contractor shall require and verify that all subcontractors maintain insurance meeting all requirements stated herein, and Contractor shall ensure that Owner is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a form at least as broad as CG 20 38 04 13.

...

§ 11.1.3 Contractor shall provide Owner with certificates of insurance acceptable to the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for

completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

...
~~§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents~~
11.1.3.1 The Contractor shall furnish to the Owner, through the Architect, one copy of each of the Certificates of Insurance required herein. The Certificate of Insurance shall specifically set forth evidence of all coverage required by Section 11.1.2. The form of certificate shall be the form prescribed by the Architect, which shall be the ACORD Form 25-S (7/90) with AIA Document G-715 "Supplemental Attachment" attached thereto. The Contractor shall furnish to the Owner copies of any endorsement that is subsequently issued amending coverage or limits.

...
~~to include (1) the Owner, the Architect and the Architect's consultants~~ § 11.1.4 In no event shall any failure of the Owner to receive certified copies or certificates of policies required under Section 11.1 or to demand receipt of such certified copies or certificates prior to the Contractor's commencing the Work be construed as a waiver by the Owner or the Architect of the Contractor's obligations to obtain insurance pursuant to this Article 11. The obligation to procure and maintain any insurance required by this Article 11 is a separate responsibility of the Contractor and independent of the duty to furnish a certified copy or certificate of such insurance policies.

...
§ 11.1.5 If the Contractor fails to purchase and maintain, or require to be purchased and maintained, any insurance required under Section 11.1, the Owner may but shall not be obligated to, upon five (5) days written notice to the Contractor, purchase such insurance on behalf of the Contractor and shall be entitled to be reimbursed by the Contractor upon demand.

...
~~as additional insureds for claims caused in whole or in part by~~ § 11.1.6 When any required insurance, due to the attainment of a normal expiration date or renewal date, shall expire, the Contractor shall supply the Owner with Certificates of Insurance and amendatory riders or endorsements that clearly evidence the continuation of all coverage in the same manner, limits of protection, and scope of coverage as was provided by the previous policy. In the event any renewal or replacement policy, for whatever reason obtained or required, is written by a carrier other than that with whom the coverage was previously placed, or the subsequent policy differs in any way from the previous policy, the Contractor shall also furnish the Owner with a certified copy of the renewal or replacement policy unless the Owner provides the Contractor with prior written consent to submit only a Certificate of Insurance for such policy. All renewal and replacement policies shall be in form and substance satisfactory to the Owner and written by carriers acceptable to the Owner.

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~~the Contractor's negligent acts or omissions during~~ § 11.1.7 Any aggregate limit under the Contractor's liability insurance shall, by endorsement, apply to the Project separately.

...
~~the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.~~ § 11.1.8 The Contractor shall

cause each of its Subcontractors to (i) procure insurance reasonably satisfactory to the Owner and (ii) name the Owner and Architect, and any of their employees and agents, as additional insureds under the Subcontractor's CGL policy. The additional insured endorsement included on the Subcontractor's CGL policy shall state that coverage is afforded the additional insureds with respect to claims arising out of operations performed by or on behalf of the Contractor. If the additional insureds have other insurance that is applicable to the loss, such other insurance shall be on an excess or contingent basis. The amount of the insurer's liability under this insurance policy shall not be reduced by the existence of such other insurance.

...

§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy ~~form for the project~~ in the amount of the initial ~~Contract Sum, GMP,~~ plus value of subsequent ~~Contract Modifications~~ contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such ~~property-builder's risk~~ insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

...

§ 11.3.1.1 ~~Property insurance~~ The builder's risk insurance obtained by the Owner shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

...

~~§ 11.3.1.2~~ If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Property insurance provided by the Owner shall not cover any tools, apparatus, machinery, scaffolding, hoists, forms, staging, shoring, and other similar items commonly referred to as construction equipment that may be on the site and the capital value of which is not included in the Work, nor shall such insurance cover any materials or equipment before these materials and equipment are physically incorporated into the Work. The Contractor shall make its own arrangements for any insurance it may require on such construction equipment and materials and equipment. Any policy obtained by the Contractor under this Section 11.3 and related sections shall include a waiver of subrogation in accordance with the requirements of Section 11.3.7. If the Work is located in a Special Flood Hazard Area, as defined by the Federal Emergency Management Agency, the Owner shall provide an endorsement to the property insurance policy that provides coverage for physical loss or damage caused by flood.

...

~~Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.~~ **§ 11.3.1.2** When it is available, Owner shall provide Contractor with written proof of the builder's risk insurance, upon Contractor's written request.

...

§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles cause of any loss payment under such insurance is the fault of the Contractor or any of its subcontractors, then the Contractor shall pay such deductible in accordance with A133, Section 5.2.1.1(d).

...

§ 11.3.1.4 ~~This property~~ The builder's risk insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

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§ 11.3.1.6 Damages to Other Property. The maintaining of such insurance as outlined in Section 11.1 shall in no way constitute a waiver of the Contractor's legal liability for damage to any adjoining buildings or existing buildings or their contents or the Work and property of others on the site beyond the limits of insurance thus maintained. The Contractor shall hold the Owner free and harmless from any injury and damage resulting from the negligent or faulty performance of the Contract by the Contractor or its Subcontractors or others under its control or direction.

...

§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor. The Owner shall maintain copies of the policies of insurance it is required to purchase and maintain hereunder at its offices and shall permit the Architect or the Contractor to inspect the policies during normal business hours and upon reasonable advance written notice.

...

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by of actual recovery of any insurance proceeds under any property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary-in good faith. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

...

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary-in good faith and made payable to the Owner as fiduciary-in good faith for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

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~~§ 11.3.9~~ If required in writing by a party in interest, the Owner as fiduciary in good faith shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary in good faith. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may ~~reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor, reach.~~ If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

...

~~§ 11.3.10~~ The Owner as fiduciary in good faith shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved ~~in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement, as provided in Sections 15.3 and 15.4.~~ If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary in good faith shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

...

~~§ 11.4.1~~ The Owner shall have Contractor shall provide a contract bond to guaranty payment and performance of the Work, as required by Ohio law.

...

the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract. § 11.4.1.1 If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of the Agreement or Ohio law, Contractor shall promptly notify Owner and Architect and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of the Contract Documents.

...

§ 11.4.3 MATERIAL DEFAULT OR TERMINATION. If the Owner notifies the Contractor's surety that the Contractor is in material default or terminates the Contract, the surety will promptly and in not more than 21 days investigate the claimed material default or termination. If the Owner gives a notice of material default and then terminates the Contract, the surety shall complete its investigation within 21 days of the notice of material default. As part of such investigation, the surety shall visit the offices of the Contractor, Architect and Owner to review the available project records. If the surety proposes to take over the Work, the surety shall do so no later than the expiration of such 21 day period or 10 days after the date the Owner terminates the Contract, whichever is later. If the Owner terminates the Work, and the surety proposes to provide a replacement contractor, the replacement contractor shall be fully capable of performing the Work in accordance with the Contract Documents, including meeting all the requirements of the Contract Documents. If the Contractor is terminated, the replacement contractor shall not be the Contractor. The surety will provide the Owner with the results of its investigation, including any written report or documents. This Section 11.4.3 is in addition to the Owner's rights under Section 14.2.2 and is not intended to create any rights of the surety, including but not limited to the right to takeover the Contractor's obligations.

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The In addition to the rights and remedies under Section 2.4, the Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected

Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

...

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly and in not more than 30 days after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. ~~During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty.~~ If the Contractor fails to correct nonconforming Work within a reasonable time during that period 30 days after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

...

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, ~~Work and does not limit any warranty period under these Contract Documents,~~ and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

...

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made. Any such acceptance shall be in writing and executed by a representative of the Owner who has been expressly authorized to do so.

...

The Contract shall be governed by the law of the place where the Project is located ~~except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.~~ located.

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Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered mail, over night delivery, or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

...

§ 13.4.2 ~~No~~ Except as otherwise provided in the Contract Documents, no action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

...

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. Contractor shall provide proper facilities at all times for inspections and tests of work by the Owner and other authorities having jurisdiction over the Project. Contractor shall remove any water used in conducting such tests and inspections in a manner so as not to discharge the water on any portions of the Work or damage any portion of the Work. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, the GMP Amendment is executed, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

...

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense. Neither the observations by the Owner or its designated representative, nor inspections, tests, or approvals by persons other than the Contractor, shall relieve the Contractor from its obligations to perform the Work in accordance with the Contract Documents.

...

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered in duplicate to the Owner and Architect.

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The Owner and Contractor shall commence all claims As between the Owner and Contractor the statute of limitations shall commence as provided in current Ohio law.

...

§ 13.8 ATTORNEY-CLIENT CONFIDENTIAL AND PRIVILEGED COMMUNICATIONS

...

~~and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.~~ § 13.8.1 The Contractor 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 Architect. The Contractor agrees that such communications will be privileged communications and, if there is a Claim contemplated or pending, any written communications will be confidential work product.

...

- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped; or

...

.3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents;
~~or Documents.~~

...

~~.4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.~~

...

.1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

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.3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or

...

.4 otherwise is guilty of substantial breach of a provision of the Contract Documents ~~Documents,~~
including but not limited to failure to maintain the Construction Schedule or failure to correct defective and/or non-conforming Work.

...

§ 14.2.2 When any of the above reasons exist, the Owner, ~~upon certification by the Initial Decision Maker that sufficient cause exists to justify such action,~~ may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the ~~surety; surety as expressly stated in the applicable surety bond;~~

...

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

...

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other costs or damages incurred by the Owner and not expressly waived, including but not limited to the Owners' attorneys' and consultants' fees and expenses, arising out of or related to the termination, such excess shall be paid to the Contractor. If such ~~costs-costs,~~ other costs, and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

...

~~§ 14.3.2~~ The Contract ~~Sum and Sum, GMP and/or~~ Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

...

~~§ 14.4.3~~ In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for ~~Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed~~ in accordance with Article 10 of the Agreement.

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A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The Contractor's Claims must be initiated by submitting the Notice of Claim Form ("Form") included with the Contract Documents to the Architect and the Owner, properly completed in accordance with the instructions accompanying the Form and submitted within the 21 day period under Section 15.1.2. The responsibility to substantiate Claims shall rest with the party making the Claim. The Contractor shall not knowingly present or cause to be presented to the Owner a false or fraudulent Claim. Knowingly shall have the same meaning as in Section 3729(b) USC of the Federal False Claims Act. If the Contractor knowingly presents or causes to be presented a false or fraudulent Claim, then the Contractor shall be liable to the Owner for the same civil penalty and damages as the United States Government would be entitled to recover under such Section 3729(a) USC and shall also indemnify and hold the Owner harmless from all costs and expenses, including Owner's attorneys' and consultants' fees and expenses incurred in investigating and defending against such Claim and in pursuing the collection of such penalty, damages and fees and expenses.

...

The Contractor acknowledges and agrees that the Owner and/or parties in privity of contract with the Owner may delay, interfere with and/or disrupt the Work of the Contractor, and such actions shall not constitute a breach of contract by the Owner, since the Contractor is entitled to additional compensation by properly submitting and pursuing a Claim as permitted by these General Conditions. Pending final resolution of the Claim, the Contractor shall continue performance of the Work as provided in Section 15.1.3.

...

~~Claims by either the Owner or Contractor must be initiated by written notice to the other party and As a condition precedent to a change in the Contract Price or the Contract Times, for each Claim the Contractor shall deliver a fully completed Notice of Claim Form, a copy of which form is a Contract Document, to the Initial Decision Maker with a copy sent to the Owner and the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence-Maker, within 21 days of the start of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. the Claim. The Contractor shall be responsible for substantiating its Claim. The Contractor's failure to deliver a fully completed Notice of Claim form shall be an irrevocable waiver of Contractor's right to any form of additional compensation, be it in time or money, arising out of the Claim or the circumstances underlying the Claim. Further, the Contractor's obligation to deliver a fully completed Notice of Claim form within such 21 day period is a material term of the Contract Documents and provides the Owner with the opportunity to mitigate its damages.~~

...

~~If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Sum and/or GMP, the Contractor shall submit the Notice of Claim~~

Form as required by Section 15.1.2. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

...
§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein the Contractor shall submit a Notice of Claim Form as required by Section 15.1.2.

...
shall be given. The Contractor's Claim shall include an estimate of cost and § 15.1.5.2 If the Contractor is prevented from completing any part of the Work within the Contract Time due to weather conditions and the Contractor wants additional time to complete the Work, the Contractor shall initiate a Claim by submission of the Notice of Claim Form in accordance with Section 15.1.2. The Contractor's entitlement to additional time shall be evaluated and substantiated as provided in Section 15.1.5.2.1.

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of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary. §15.1.5.2.1 Weather Delays. When the Contractor is prevented from completing any part of the Work on the critical path within the Contract Time due to weather conditions, provided the Contractor properly initiates a Claim, the Contract Time will be extended by one (1) day for each work day lost due to weather that delays Work on the critical path in excess of those in the following table:

...

<u>Month</u>	<u>Number of Workdays Lost Due To Weather</u>
<u>January</u>	<u>8</u>
<u>February</u>	<u>8</u>
<u>March</u>	<u>7</u>
<u>April</u>	<u>6</u>
<u>May</u>	<u>5</u>
<u>June</u>	<u>4</u>
<u>July</u>	<u>4</u>
<u>August</u>	<u>4</u>
<u>September</u>	<u>5</u>
<u>October</u>	<u>6</u>
<u>November</u>	<u>6</u>
<u>December</u>	<u>6</u>

...

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal. 15.1.5.3 Excusable and Compensable Delays. The delays for which the Contractor is entitled to additional time are "Excusable Delays." The only Excusable Delays are delays which the Contractor establishes were: (a) caused by the Owner or those in privity of contract with the Owner, (b) physical damage to the Project over which the Contractor has no control, (c) labor disputes beyond the control of the Contractor, (d) work days lost due to weather conditions as provided under Section 15.1.5.2, and (e) concealed or unknown conditions under Section 3.7.4.

...

for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction. The delays for which the Contractor is entitled to additional time and money are "Compensable Delays." The only Compensable Delays are the Excusable Delays which the Contractor establishes were proximately caused by an improper action or failure to act by Owner.

...

§ 15.1.7 Settlement Offers. If the Contractor initiates a Claim, the Owner may make settlement offers to settle the Claim at any time up to the date of the trial. Such settlement offers shall be subject to Rule 408 (Compromise and Offers of Compromise) of the Ohio Rules of Evidence. If at any stage of the litigation, including any appeals, the Contractor's Claim is dismissed or found to be without merit, or if the damages awarded to the Contractor on its Claim do not exceed the Owner's last settlement offer, the Contractor shall be liable to the Owner and shall reimburse the Owner for all of the Owner's attorneys' fees and expenses, arising out of or related to such Claim since the date of such last settlement offer.

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§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to ~~mediation~~ any further proceeding permitted under these General Conditions of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

...

§ 15.2.2 The Initial Decision Maker will review Claims and within ~~ten~~ ten-thirty (30) days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

...

§15.2.2.1 Owner's Request for Documents. The Owner may request such documents and information from the Contractor as the Owner determines necessary to evaluate and comment upon the Claim. Upon receipt of such request from the Owner, the Contractor shall provide all requested documents and information within ten (10) days. Such documents and information may include but not be limited to the Contractor's Project accounting records, estimate for the Project, daily job logs, and other information from which the Contractor's Project costs may be derived. The Contractor shall provide the requested documents in the formats requested, which include both paper and electronic copies. If requested by the Owner, the electronic copies shall be provided in native computer language. To the extent permitted by law, the Owner shall keep the Project accounting records and estimate for the Project confidential. The Contractor's provision of the requested documents to the Owner in the format requested by the Owner shall be a condition precedent to any further proceeding under the Contract Documents.

...

Failure to provide the requested documents shall be a material breach of the Contract, and Contractor shall indemnify Owner for all of Owner's costs, losses, and damages (including but not limited to all fees and charges of

engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to Contractor's failure to comply with this provision. If the Contractor fails to provide the requested documents, the Contractor shall be precluded from presenting such documents in any subsequent dispute resolution proceedings, if the data was reasonably available at the time of the request.

...

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part. If the Initial Decision Maker requests supporting data from a party and the party fails to provide it, the party thereafter shall be precluded from presenting such data in any subsequent dispute resolution proceedings, if the data was reasonably available to it at the time of the request.

...

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. Sum, GMP, and/or Contract Time. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution mediation, and if mediation is not successful in resolving the matter, litigation. Venue for such litigation shall be exclusive in the state court of competent jurisdiction in the county in which the Owner has its principal office. The parties expressly waive the right to remove any litigation to federal court.

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§ 15.2.6.1 Either party may, When a written decision of the Initial Decision Maker states that (1) the decision is final but subject to mediation and litigation and (2) a demand for mediation is not initiated by the Contractor within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision. then failure by the Contractor to demand mediation within said 30-day period shall result in the Initial Decision Maker's decision becoming final and binding upon the Contractor. If the Initial Decision Maker renders a decision after litigation has been initiated, such decision may be entered as evidence, but shall not supersede the litigation proceedings unless the decision is acceptable to all parties concerned. Litigation shall be considered "initiated" upon either the service of the original complaint on the Owner or, if litigation relating to the project has already been filed, when a motion for leave to amend the complaint to add the claim has been filed.

...

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution may, after initial decision by the Initial Decision Maker or 30 days after submission of the Claim to the Initial Decision Maker, be subject to mediation.

...

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in

writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

...

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project county where the Owner's principal office is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

...

§ 15.4 ARBITRATION LITIGATION

...

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded. Any Claim not resolved by mediation pursuant to Section 15.3.1 shall be subject to litigation unless both parties agree in writing to arbitrate the

...

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim. Claims. Any Claim subject to, but

...

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. not resolved by, mediation may be

...

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof. decided by

...

§ 15.4.4 CONSOLIDATION OR JOINDER

...

~~§ 15.4.4.1~~ Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

...

~~§ 15.4.4.2~~ Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent if the parties mutually agree in writing. There shall be no mandatory arbitration of

...

~~§ 15.4.4.3~~ The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement. Claims.

this Amendment, attach a schedule of such other alternates showing the amount for each and the date when the amount expires.)

«[insert alternates, if any] »

§ A.1.1.4 Allowances included in the Guaranteed Maximum Price, if any:
(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price (\$0.00)

§ A.1.1.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

« »

§ A.1.1.6 The Guaranteed Maximum Price is based upon the following Supplementary and other Conditions of the Contract: N/A

§ A.1.1.7 The Guaranteed Maximum Price is based upon the following Specifications:
(Either list the Specifications here, or refer to an exhibit attached to this Agreement.)

« »

Section	Title	Date	Pages

§ A.1.1.8 The Guaranteed Maximum Price is based upon the following Drawings:
(Either list the Drawings here, or refer to an exhibit attached to this Agreement.)

« »

Number	Title	Date

§ A.1.1.9 The Guaranteed Maximum Price is based upon the following other documents and information:
(List any other documents or information here, or refer to an exhibit attached to this Agreement.)

« »

ARTICLE A.2

§ A.2.1 The Date for Substantial Completion established by this Amendment:

« _____, 201__ »

§ A.2.2 The date of Final Completion established by this Amendment:

« _____, 201__ »

OWNER (Signature)

CONSTRUCTION MANAGER (Signature)

« »« »

(Printed name and title)

« »« »

(Printed name and title)

Date

Date

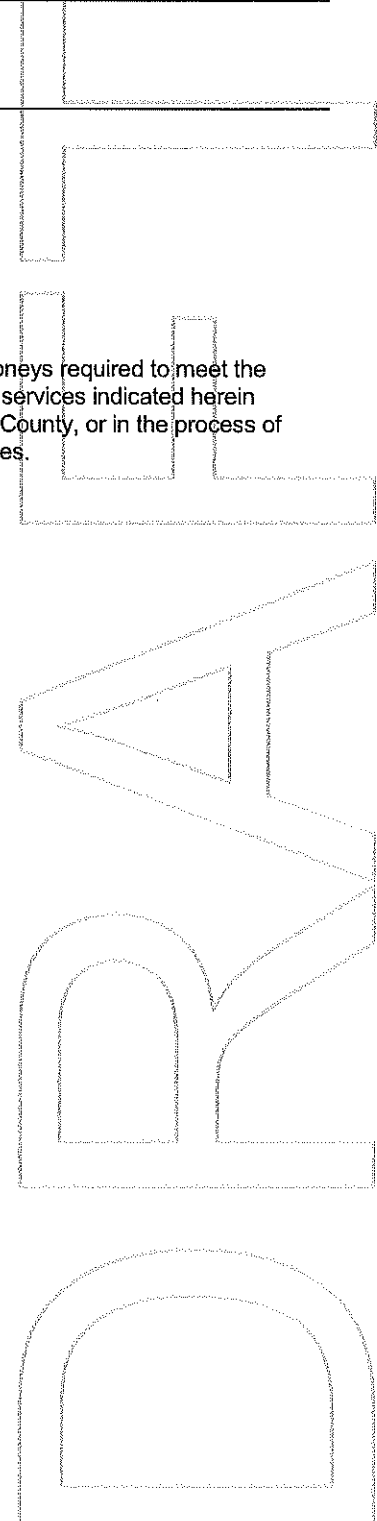
CERTIFICATE OF FUNDS
(ORC Section 5705.41)

The undersigned, Fiscal Officer of Warren County, Ohio, hereby certifies that the moneys required to meet the obligations of the County 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 County, or in the process of collection to the credit of the appropriate account or fund, free from any previous encumbrances.

DATED: _____

Warren County

By: _____
Fiscal Officer



**PROPOSAL FORM 5
GUARANTEED MAXIMUM PRICE PROPOSAL***

Note: This form shall be submitted at the completion of the Preconstruction services for the Project, per the instructions in the RFP.

Item	Price
(A) Construction Fee	<p align="center"><u>2.25</u> % of the Cost of the Work, which equates to: \$ _____ when applied to the Maximum Cost of the Work provided in (E) below.</p>
(B) At-Risk Fee	<p align="center"><u>0.25</u> % of the Cost of the Work, which equates to: \$ _____ when applied to the Maximum Cost of the Work provided in (E) below.</p>
(C) General Conditions**	<p align="center">\$ _____ (which is equal to the monthly cost of \$ <u>77,646</u> multiplied by _____ month Project duration)</p>
(D) Contingency	<p align="center"><u>2.0</u> % of the Cost of the Work, which equates to: \$ _____ when applied to the Maximum Cost of the Work provided in (E) below.</p>
(E) Maximum Cost of the Work	<p align="center">\$ _____</p>
Guaranteed Maximum Price = (A)+(B)+(C)+(D)+(E)	<p align="center">\$ _____</p>

* = These values must be consistent with Proposer's Price Proposal.

**As set forth in Proposer's Itemized General Conditions, included with the Proposal.

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

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

KNOW ALL PERSONS BY THESE PRESENTS, that we, the undersigned _____
_____, as Principal,
and _____ as Sureties,
are hereby held and firmly bound unto _____
_____ as Obligee(s), in the penal sum of _____ dollars,
for the payment of which well and truly to be made, we jointly and severally bind ourselves, our heirs, executors,
administrators, successors, and assigns.

SIGNED AND SEALED this _____ day of _____, _____.

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

Project Number: _____

Project Name: _____

Contract Description: **Construction Manager at Risk**
(e.g., Construction Manager at Risk, Design-Build)

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

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

PRINCIPAL:

Principal Signature

By: _____

Title: _____

SURETY:

Surety Signature

By: _____
Attorney-in-Fact

SURETY INFORMATION:

Street

City State Zip

Telephone Number

SURETY AGENT'S INFORMATION:

Agency Name

Street

City State Zip

Telephone Number

Email Address

END OF DOCUMENT

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

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

KNOW ALL PERSONS BY THESE PRESENTS, that we, the undersigned _____
_____, as Principal,
and _____ as Sureties,
are hereby held and firmly bound unto _____
_____ as Obligee(s), in the penal sum of _____ dollars,
for the payment of which well and truly to be made, we jointly and severally bind ourselves, our heirs, executors,
administrators, successors, and assigns.

SIGNED AND SEALED this _____ day of _____, _____.

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

Project Number: _____

Project Name: _____

Contract Description: **Construction Manager at Risk**
(e.g., Construction Manager at Risk, Design-Build)

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

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

PRINCIPAL:

Principal Signature

By: _____

Title: _____

SURETY:

Surety Signature

By: _____
Attorney-in-Fact

SURETY INFORMATION:

Street

City State Zip

Telephone Number

SURETY AGENT'S INFORMATION:

Agency Name

Street

City State Zip

Telephone Number

Email Address

END OF DOCUMENT

Exhibit C

Itemized General Conditions

GENERAL CONDITIONS BREAKDOWN

ITEM	Qty	Unit	Rate	Cost
Project Director - Jason Woehrle	189	HR	\$ 110.00	\$ 20,743
Sr. Project Manager - Todd Butler	377	HR	\$ 80.00	\$ 30,171
Project Manager - Jason Kaminski	3771	HR	\$ 78.00	\$ 294,171
Project Engineer - Matt Bauer	3771	HR	\$ 50.00	\$ 188,571
Superintendent - Mark Marlow	3771	HR	\$ 70.00	\$ 264,000
BIM Coordinator - Jacob Boyd	137	HR	\$ 65.00	\$ 8,914
Drawing Reproductions	1.00	LS	\$ 2,500.00	\$ 2,500
Mailing / UPS	1.00	LS	\$ 1,500.00	\$ 1,500
Jobsite Office	22.00	MO	\$ 1,250.00	\$ 27,500
Office Supplies	22.00	MO	\$ 200.00	\$ 4,400
Construction Technology & Software	22.00	EA	\$ 1,930.00	\$ 42,460
BIM Technology & Software	4.00	EA	\$ 750.00	\$ 3,000
Telephone Service	22.00	MO	\$ 300.00	\$ 6,600
Internet Service	22.00	MO	\$ 250.00	\$ 5,500
On-Site Staff Living Expenses	22.00	MO	\$ 2,300.00	\$ 50,600
On-Site Staff Travel Expenses	110500.00	MI	\$ 0.58	\$ 64,090
Off-Site Staff Travel Expenses	44.00	MO	\$ 350.00	\$ 15,400
Project Progress Cleaning	760.00	HR	\$ 60.00	\$ 45,600
Project Debris Removal	22.00	MO	\$ 2,100.00	\$ 46,200
Construction Fencing	1.00	LS	\$ 35,000.00	\$ 35,000
Permit Fee Allowance	1.00	LS	\$ 40,000.00	\$ 40,000
Utility Fee Allowance	1.00	LS	\$ 10,000.00	\$ 10,000
Temp Utility Consumption Allowance	22.00	MO	\$ 2,350.00	\$ 51,700
Safety Supplies	22.00	MO	\$ 100.00	\$ 2,200
Water / Ice / Cups	22.00	MO	\$ 50.00	\$ 1,100
Project Signage	1.00	LS	\$ 5,000.00	\$ 5,000
Benchmark Layout	1.00	LS	\$ 4,000.00	\$ 4,000
Temp Sanitary Facilities	66.00	EA	\$ 130.00	\$ 8,580
Final Cleaning	130000.00	SF	\$ 0.45	\$ 58,500
Jobsite Photos	22.00	MO	\$ 75.00	\$ 1,650
General Liability Insurances (0.30 %)	1.00	LS	\$ 122,850	\$ 122,850
Builders Risk Insurance	1.00	LS	By Owner	\$ -
Performance & Payment Bond	1.00	LS	\$ 245,700	\$ 245,700
TOTAL GENERAL CONDITIONS				\$ 1,708,201
TOTAL GENERAL CONDITIONS / MONTH				\$ 77,646

Exhibit D
Not Used

NOTICE OF CLAIM FORM

Claim No. ___ for Construction Manager at Risk

1. Name of Construction Manager at Risk (CMAR): _____

2. Date written claim given: _____.

3. CMAR's representative to contact regarding the claim:

Name: _____ Title: _____

Telephone No. _____ (office) FAX No. _____

E-mail: _____

4. General description of claim:

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

6. Delay claims:

6.1 Date delay commenced: _____

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

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

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

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

8. Instructions for Completing the Notice of Claim Form ("Instructions"). The Instructions are incorporated in this Form.

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

CMAR: _____

By: _____

Name and Title: _____

Date: _____

Exhibit E

CMAR'S ACKNOWLEDGMENT

State of _____,

County of _____, ss:

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

Sworn to before me a notary public by _____ on _____, 20__.

Notary Public

WHEN COMPLETED, FORWARD A COPY OF THIS NOTICE AND NOTICE OF CLAIM FORM TO THE OWNER AND DESIGN PROFESSIONAL.

INSTRUCTIONS FOR COMPLETING THE NOTICE OF CLAIM FORM

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

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

6. Paragraph 6.4. Time is of the essence under the Contract Documents. If there is a delay, it is important to know what can be done to minimize the impact of the delay. It therefore is important that the CMAR provide specific recommendations on how to do so.
7. Paragraph 7. The CMAR must provide a specific and detailed breakdown of the additional compensation it seeks to recover. For future compensation, the CMAR shall provide its best estimate of such compensation.
8. Paragraph 8 and Acknowledgment. By submitting this Claim, the CMAR and its representative certify that after conscientious and thorough review and to the best of his or her knowledge and belief a) the CMAR has complied fully with the Instructions, b) the information in this Claim Form is accurate, c) the CMAR is entitled to recover the compensation in paragraph 7, and d) the CMAR has not knowingly presented a false or fraudulent claim. The CMAR by its authorized representative must acknowledge this Statement of Claim before a notary public.

End of Instructions

CMAR: [insert name]

BY: _____
(Signature of authorized representative)

NOTARY PUBLIC

Subscribed and sworn to before me on this date by _____ on behalf of _____.

Signature of Notary Public

Notary Public: _____

My Commission Expires: _____

**CONSTRUCTION MANAGER AT RISK'S PROGRESS PAYMENT WAIVER & RELEASE AFFIDAVIT
("AFFIDAVIT")**

Project:

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

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

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

_____	State of: _____ County of _____
Company Name	Subscribed and sworn to before me this _____
_____	day of _____
Authorized Signature (Company Officer)	Notary Public: _____
_____	My Commission Expires: _____
Title	

Date	

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

Project:

The undersigned hereby acknowledges receipt of payment for all Work on the Project through the date of the prior Application for Payment by the Construction Manager at Risk ("CMAR") with whom it has a contract.

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

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

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

_____ State of: _____ County of _____
Company Name

_____ Subscribed and sworn to before me this _____
Authorized Signature (Company Officer) day of _____

_____ Notary Public: _____
President Title

_____ My Commission Expires: _____

_____ Date

Exhibit I

Not Used

Exhibit J

CONSTRUCTION MANAGER'S PERSONAL PROPERTY TAX AFFIDAVIT
(Attach)

TRANSMITTAL LETTER ATTACHMENT 4

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

State of Michigan,
County of Ingham, ss:

Christopher Duprey, being first duly sworn, deposes and says that he/she
(Name)

is the Director of Finance of Granger Construction Company ("CMR"), with
(Title) (CMR)

offices located at 6267 Aurelius Road, Lansing, MI 48911
(Address of CMR)

and as the CMR's duly authorized representative, states that effective this

11 day of April, 2018, the CMR:

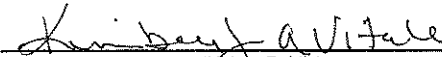
() is charged with delinquent personal property taxes on the general list of personal property as set forth below:

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

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


(Affiant)

Sworn to and subscribed this 11 day of April, 2018.


(Notary Public)

My commission expires **KIMBERLY A. VITALE**
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF INGHAM
My Commission Expires August 11, 2020
August 11, 2020



STEC-CC
Rev. 3/15/04

Sales and Use Tax Construction Contract Exemption Certificate

Identification of Contract:

Contractee's (Owner's) name: Board of County Commissioners, Warren County, Ohio

Exact location of job/project: _____

Name of job/project as it appears on contract documentation: New Jail and Sheriff's Administration Office Project

The undersigned hereby certifies that the tangible personal property purchased under this exemption certificate was purchased for incorporation into:

<input checked="" type="checkbox"/>	real property under a construction contract with the United States government, its agencies, the State of Ohio, or an Ohio political subdivision;	<input checked="" type="checkbox"/>	real property which is owned, or will be accepted for ownership at the time of completion, by the United States government, its agencies, the State of Ohio, or an Ohio political subdivision;
<input type="checkbox"/>	a horticulture structure or livestock structure for a person engaged in the business of horticulture or producing livestock;	<input type="checkbox"/>	a house of public worship or religious education;
<input type="checkbox"/>	a building used exclusively for charitable purposes by a nonprofit organization operated exclusively for charitable purposes as defined in section 5739.02(B)(12) of the Revised Code;	<input type="checkbox"/>	a building under a construction contract with an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986 when the building is to be used exclusively for the organization's exempt purposes;
<input type="checkbox"/>	the original construction of a sports facility under section 307.696 of the Revised Code;	<input type="checkbox"/>	a hospital facility entitled to exemption under section 140.08 of the Revised Code;
<input type="checkbox"/>	real property outside this state if such materials and services, when sold to a construction contractor in the state in which the real property is located for incorporation into real property in that state, would be exempt from a tax on sales levied by that state		

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

Prime Contractor

Name: _____

Signed by: _____

Title: _____

Street address: _____

City, state, ZIP code: _____

Date: _____

Owner/Contractee

Name: Board of County Commissioners, Warren County, Ohio

Signed by: _____

Title: _____

Street address: Administration Building
406 Justice Drive, First Floor

City, state, ZIP code: Lebanon, Ohio 45036

Date: _____

Subcontractor

Name: _____

Signed by: _____

Title: _____

Street address: _____

City, state, ZIP code: _____

Date: _____

Political Subdivision

Name: same as Owner/Contractee

Signed by: _____

Title: _____

Street address: _____

City, state, ZIP code: _____

Date: _____

Exhibit L

**CONSTRUCTION MANAGER AT RISK'S FINAL WAIVER & RELEASE AFFIDAVIT
("AFFIDAVIT")**

Project: _____

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

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

Company Name

State of: _____ County of _____

Authorized Signature (Company Officer)

Subscribed and sworn to before me this _____

day of _____

Title

Notary Public: _____

Date

My Commission Expires: _____

Exhibit M

PREVAILING WAGE RATES

(Provided separately and incorporated by reference)

