

# Resolution

Number 17-1529

Adopted Date October 03, 2017

ACCEPT RESIGNATION OF MAXIMO REYES, SOCIAL SERVICE WORKER II, WITHIN THE WARREN COUNTY JOB AND FAMILY SERVICES DEPARTMENT, HUMAN SERVICES DIVISION, EFFECTIVE OCTOBER 13, 2017

BE IT RESOLVED, to accept the resignation of Maximo Reyes, Social Service Worker II, within the Warren County Job and Family Services Department, Human Services Division, effective October 13, 2017.

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 3<sup>rd</sup> day of October 2017.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: Human Services (file)  
Maximo Reyes' Personnel File  
OMB – Sue Spencer  
Tammy Whitaker

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

# Resolution

Number 17-1530

Adopted Date October 03, 2017

AUTHORIZE THE POSTING OF THE "SOCIAL SERVICE WORKER II" POSITION, WITHIN THE DEPARTMENT OF JOB AND FAMILY SERVICES, HUMAN SERVICES DIVISION, IN ACCORDANCE WITH WARREN COUNTY PERSONNEL POLICY MANUAL, SECTION 2.02(A).

WHEREAS, there exists an opening for the "Social Service Worker II" position within The Job and Family Services Department, Human Services Division; and

NOW THEREFORE BE IT RESOLVED, to authorize the posting of the position of "Social Service Worker II" 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 October 4, 2017.

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 3<sup>rd</sup> day of October 2017.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: Human Services (file)  
OMB-Sue Spencer

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

# Resolution

Number 17-1531

Adopted Date October 03, 2017

ACCEPT RESIGNATION OF CARLY HOUNSHELL, UNIT SUPPORT WORKER II, WITHIN THE WARREN COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES, HUMAN SERVICES DIVISION, EFFECTIVE OCTOBER 10, 2017

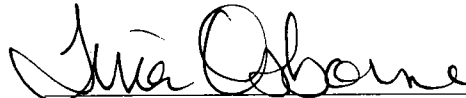
BE IT RESOLVED, to accept the resignation, due to retirement, of Carly Hounshell, Unit Support Worker II, within the Warren County Department of Job and Family Services, Human Services Division, effective October 10, 2017.

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 3<sup>rd</sup> day of October 2017.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: Human Services (file)  
Carly Hounshell's Personnel File  
OMB – Sue Spencer  
Tammy Whitaker

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

# Resolution

Number 17-1532

Adopted Date October 03, 2017

AUTHORIZE THE POSTING OF THE "UNIT SUPPORT WORKER II" POSITION, WITHIN THE WARREN COUNTY JOB AND FAMILY SERVICES DEPARTMENT, HUMAN SERVICES DIVISION, IN ACCORDANCE WITH WARREN COUNTY PERSONNEL POLICY MANUAL, SECTION 2.02(A)

WHEREAS, there one openings for the "Unit Support Worker II" position within the department;  
and

NOW THEREFORE BE IT RESOLVED, to authorize the posting of the position of "Unit Support Worker II" 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 October 4, 2017.

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 3<sup>rd</sup> day of October 2017.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: Human Services (file)  
OMB – Sue Spencer

# Resolution

Number 17-1533

Adopted Date October 03, 2017

ACCEPT RESIGNATION OF AMBER CASTRO, ALTERNATIVE RESPONSE CASEWORKER I, WITHIN THE WARREN COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES, CHILDREN SERVICES DIVISION, EFFECTIVE SEPTEMBER 28, 2017

BE IT RESOLVED, to accept the resignation of Amber Castro, Alternative Response Caseworker I, within the Warren County Department of Job and Family Services, Children Services Division, effective September 28, 2017.

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 3<sup>rd</sup> day of October 2017.

BOARD OF COUNTY COMMISSIONERS

  
Tina Osborne, Clerk

cc: Children Services (file)  
Amber Castro's Personnel File  
OMB – Sue Spencer  
Tammy Whitaker

# Resolution

Number 17-1534

Adopted Date October 03, 2017

AUTHORIZE THE POSTING OF THE "ALTERNATIVE RESPONSE CASEWORKER I OR II" POSITION, WITHIN THE DEPARTMENT OF JOB AND FAMILY SERVICES, CHILDREN SERVICES DIVISION, IN ACCORDANCE WITH THE WARREN COUNTY PERSONNEL POLICY MANUAL, SECTION 2.02(a)

WHEREAS, there exists one opening for an "Alternative Response Caseworker I or II" position within the Department of Job and Family Services, Children Services Division; and

NOW THEREFORE BE IT RESOLVED, to authorize the posting of the position of "Alternative Response Caseworker I or II" 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 October 4, 2017.

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 3<sup>rd</sup> day of October 2017.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

H/R

cc: Children Services (File)  
S. Spencer - OMB

# Resolution

Number 17-1535

Adopted Date October 03, 2017

AUTHORIZE THE POSTING OF THE "DIRECTOR OF EMERGENCY SERVICES" 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 "Director of Emergency Services" position within the Emergency Services Department; and

NOW THEREFORE BE IT RESOLVED, to authorize the posting of the position of "Director of Emergency Services" 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 October 4, 2017, until the position is filled.

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 3<sup>rd</sup> day of October 2017.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: Emergency Services (file)  
OMB – Sue Spencer

# Resolution

Number 17-1536

Adopted Date October 03, 2017

APPOINT MELISSA BOUR AS THE INTERIM DIRECTOR OF WARREN COUNTY EMERGENCY SERVICES

WHEREAS, it is the desire of the Board of County Commissioners to appoint Melissa Bour as Interim Director of Warren County Emergency Services due to the resignation of the current director; and

NOW THEREFORE BE IT RESOLVED, to appoint Melissa Bour, as the Interim Director of Warren County Emergency Services , unclassified, full-time permanent, exempt status (40 hours per week), Pay Range #C, \$ 2,773.17 effective pay period starting September 29, 2017.

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 3<sup>rd</sup> day of October 2017.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: Commissioners file  
M. Bour's Personnel file  
OMB – Sue Spencer  
Emergency Services (file)



# Resolution

Number 17-1537

Adopted Date October 03, 2017

**AUTHORIZE THE EXECUTION OF A CONSTRUCTION MANAGER AT RISK SERVICES CONTRACT WITH CONGER CONSTRUCTION GROUP FOR CONSTRUCTION OF THE WARREN COUNTY FAIRGROUNDS EVENT CENTER**

**WHEREAS**, this Board of County Commissioners (the "Board") has sought to procure construction services for a new Warren County Fairgrounds Event Center (the "Project"); and

**WHEREAS**, the Board on August 22, 2017, by Resolution Number 17-1322 authorized the County Administrator to negotiate a construction manager at risk contract (the "Agreement") with Conger Construction Group ("Conger") after it was determined to be the best value firm pursuant to Section 9.334 of the Ohio Revised Code and Section 153:1-6-01 of the Ohio Administrative Code; and

**WHEREAS**, negotiations are complete; the terms and conditions of the Agreement are satisfactory to both parties, and the cost of preconstruction services and contemplated professional fees and rates have been deemed fair and reasonable to the Board; and

**WHEREAS**, after execution of the Agreement, Conger shall proceed with preconstruction services as the parties will work towards an agreed upon Guaranteed Maximum Price for the Project to be executed at a later date;

**NOW THEREFORE BE RESOLVED**, to authorize the President or Vice President of the Board of County Commissioners to execute the Construction Manager at Risk Service Contract with Conger Construction Group for the construction of the Warren County Fairgrounds Event Center.

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 3<sup>rd</sup> day of October 2017.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: c/a – Conger Construction Group  
Fairgrounds (file)  
OMB Bid file  
Martin Russell

 **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**

**MODIFIED STANDARD 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)*

Warren County Board of County Commissioners  
406 Justice Drive  
Lebanon, Ohio 45036

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

Conger Construction Group, Inc.  
PO Box 1069  
Lebanon, Ohio 45036  
(513) 932-1206

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

Warren County Fair Grounds Event Center  
665 North Broadway Ave.  
Lebanon, Ohio 45036

A new one story, 18,000 SF Event Center.

The Construction Manager has been selected by the Owner following the qualification-based selection guidelines contained in O.R.C. 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)*

Randal Merrill and Jack Willard  
McGill Smith Punshon, Inc.  
3700 Park 42 Drive, Suite 190B  
Cincinnati, Ohio 45241

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

**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.

Martin Russell, *Deputy County Administrator*  
Martin.Russell@co.warren.oh.us

Rebecca Osborne, *Lessee / Property Manager*  
Warren County Fair Board  
665 North Broadway Ave.  
Lebanon, Ohio 45036  
ROsborne@warrencountyfairhio.org

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

Justin Conger, President – Conger Construction Group  
[justin@congerbuilt.com](mailto:justin@congerbuilt.com)

Andrew Tompkins, Project Manager – Conger Construction Group  
[atompkins@congerbuilt.com](mailto:atompkins@congerbuilt.com)  
PO Box 1069  
Lebanon, Ohio 45036

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

The Owner and Construction Manager agree as follows.

Init.

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## EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

### 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 Contract 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; provided, however, that to the extent the Owner or the Architect fail to resolve any inaccuracies or inconsistent terms or delay construction or the Construction Manager's ability to perform the services hereunder, then Owner shall extend the Contract Time, increase the GMP and compensate Construction Manager for all additional Work required in connection with such inconsistencies, conflicts, or ambiguities. In the event of any of the foregoing are discovered, the provisions of this Agreement shall control over any proposal, document, or other attachment, or exhibit.

#### § 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™–2017, General Conditions of the Contract for Construction, 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 A201–2017, which document is incorporated herein by reference. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

§ 1.4 Nothing contained in this Agreement shall create a contractual relationship with or 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 Construction Phase to work cooperatively with the Owner and Architect 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.

### § 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.

§ 2.1.3 At the conclusion of the schematic design, design development and construction document phases, the Construction Manager shall prepare and periodically update a Project schedule 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.

Init.

**§ 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 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 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. 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.

Init.

§ 2.1.6.5 The solicitation and selection of a Subcontractor 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 a 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. 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. 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.

§ 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 not less than 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 appropriate design and 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.

**§ 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 L.



§ 2.1.7 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. 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 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. As part of the Preconstruction Services, the Construction Manager shall work with the Architect to revise and finalize the Construction Documents as necessary. Within 15 calendar days of the Architect issuing 80% complete drawings for construction, the Construction Manager shall submit its Guaranteed Maximum Price Proposal to the Owner, based upon the approved Construction Documents, in accordance with the Contract Documents and using the form included in the Owner's RFP. The Construction Manager, Owner and the Design Professional (along with selected engineers and consultants) shall 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 the Owner.

§ 2.2.2 Construction Manager guarantees that it shall not exceed the GMP, subject to additions and deductions by changes in the Work as provided in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price or GMP. The only exception to the GMP will be for changes directed by the Owner in writing that exceed the scope of the Project. All other costs which cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner. 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 § 11.5.3 of this Agreement.

§ 2.2.2.1 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the GMP 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 of 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, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, general condition costs, contingency, and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; 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 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. If the proposed GMP exceeds the original estimated GMP, the Owner may (1) require that the Construction Manager review the information provided by the Owner or obtained by the Construction Manager during the design development phase and construction document phase and reconcile the Guaranteed Maximum Price proposal with the original estimated GMP, (2) require the Architect to revise the Drawings and Specifications such that a revised estimated GMP based on those revisions is equal to or less than the original estimated GMP, (3) agree to an increase in Owner's construction budget and accept the Guaranteed Maximum Price Proposal or (4) terminate the Agreement pursuant to Section 14.4 of the AIA A201-2017, as modified.

**§ 2.2.6** Following acceptance of a Guaranteed Maximum Price Proposal, 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. Should the parties fail to reach a written agreement regarding the Guaranteed Maximum Price, the Owner shall be entitled to terminate this Agreement pursuant to Article 10 of this Agreement 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.

**§ 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

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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 A201-2017, 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 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 Owner. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. 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 approve of the criteria, for prequalifying prospective Bidders for the work to be performed, for soliciting bids from prequalified prospective Bidders, for obtaining 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 applicable payment provisions 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 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 minutes to the Owner and Architect.

§ 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 A201-2017.

§ 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,

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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 A201-2017 shall apply to both the Preconstruction and Construction Phases.

#### § 2.5 Hazardous Materials

Section 10.3 of A201-2017 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 Paragraph not used.

§ 3.1.3 Paragraph not used.

§ 3.1.4 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services 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. 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.

§ 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 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 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. 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 Work. Construction Manager shall be responsible for independently confirming the location of utility lines and exercising reasonable care related thereto.

§ 3.1.4.3 The Owner, or when such services are requested by Owner then the Construction Manager, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations. Construction Manager may not make any Claim against the Owner or Design Professional, or any of their agents or employees, to the extent the Construction Manager disregards the information contained in such reports or tests. However, Owner acknowledges that reliance on such tests and reports by the Construction Manager shall not constitute a waiver of Claims pursuant to Section 3.7.4 of the AIA A201-2017, as modified.

§ 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 A201-2017, 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 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.)*

\$ 5,000.00. This Preconstruction Fee shall not be included in the GMP to be provided by the Construction Manager in the GMP amendment.

§ 4.1.3 Paragraph 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.

§ 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 a 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; provided, however, that Owner's refusal to execute a signed agreement shall not preclude Construction Manager's right to make a Claim under Section 15.1.5 of the AIA A201-2017, as modified.

**§ 4.2 Payments**

§ 4.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

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§ 4.2.2 Payments are due and payable as set forth in Document A201-2017 as modified. Amounts unpaid shall bear interest at the rate entered below.

*(Insert rate of monthly or annual interest agreed upon.)*

prime plus 0.5 %

#### 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 Cost of the Work as defined Article 6 of this Agreement, the Construction Manager's Fee (the sum of the Construction Fee and At-Risk Fee), the General Conditions, and the amount of Contingency used, as each is defined in the Construction 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 A201-2017 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 A201-2017 as modified

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall be in accordance with Article 7 of Document A201-2017 as modified.

§ 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 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 or pursuant to Section 8.3.1 as provided in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price or GMP. The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. 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. The GMP shall be established upon execution of the Guaranteed Maximum Price Amendment, Exhibit A.

§ 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.

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).

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**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 shall 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 (including 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); status reporting; progress scheduling; compliance notices; contract and subcontract administration; trash removal for construction office; project record keeping and documentation; Ohio Utilities Protection Services/Dig Safe program notice and coordination; document control and record keeping; project health and safety program including but not limited to equipment, supplies, training, record keeping, plan development, incentives, audits and drills; taxes; staff expense allowances; personnel and site vehicle rental/mileage, fuel and maintenance; relocation and temporary lodging and per diem expense; ice and water; safety supplies; 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, office mobilization and demobilization; badging and site security; temporary fencing and barricades for construction office; photography/progress photos; tool trailer and hand tools; project signage; groundbreaking and dedication events; portable toilets, lockers and washrooms; temporary power; business licenses; patent fees and royalties; training; and recruiting. The General Conditions shall include premiums for that portion of insurance and bonds required by the Contract Documents that can be attributed to this Contract. 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 charge 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.

**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 or design changes. 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. The Contingency may be used for Work relating to design errors and omissions except where such design errors and omissions could have been identified pursuant to the Construction Manager's duties per the Contract Documents. 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

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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.

**§ 5.2.1.3 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 50 % by the Owner and 50 % by the Construction Manager.

**5.2.1.4 Shared Savings** earned will be distributed to the Owner at Substantial Completion of the overall Project by deductive change order to the Guaranteed Maximum Price. Fifty percent (50 %) of the savings earned by the Construction Manager at the time of Substantial Completion of the entire Project will be paid to the Construction Manager within forty-five (45) days of the Owner's acknowledgment of the completion of all required punch list work and receipt of all required Project documentation. The balance of the Construction Manager's share of savings as adjusted by the reallocation of any unused Contingency to the Savings, will be distributed when the Project is 100% closed out as determined by the Owner.

**§ 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.

**§ 5.2.3** If the parties cannot agree on a GMP for the Project, the Owner may terminate the Contract for convenience

### **§ 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 A201-2017 and the term "costs" as used in Section 7.3.7 of AIA Document A201-2017 shall have the meanings assigned to them in AIA Document A201-2017 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 A201-2017 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.

*(Paragraph deleted)*

### **§ 5.3.5 Allowances.**

**§ 5.3.5.1** The Contract Sum 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.

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§ 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 § 11.5.13 of this Agreement.

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## § 6.2 Labor Costs

§ 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.

§ 6.2.1.1 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost.

§ 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 written approval and Owner's prior written approval of the rates for such personnel. *(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.)*

§ 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 Costs, meaning 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 Actual costs without mark-up 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 less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 6.5.2 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 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.

§ 6.5.5.1 Reimbursable Expenses shall be submitted to the Owner no later than sixty (60) days after such expense is incurred by the Construction Manager. Construction Manager's failure to timely submit Reimbursable Expenses to the Owner as required herein, shall be an irrevocable waiver of Construction Manager's right to reimbursement of such expense.

§ 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 Paragraph Not Used.

§ 6.6.2 Subject to 6.8.1.12, taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable, not including Commercial Activity Tax or income taxes which shall be the sole responsibility of Construction Manager.

§ 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.

§ 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 A201-2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents.

§ 6.6.6 This paragraph not used.

§ 6.6.7 This paragraph not used.

§ 6.6.8 This paragraph not used.

§ 6.6.9 This paragraph not used.

#### § 6.7 Other Costs and Emergencies

§ 6.7.1 Other actual costs without mark-up 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 A201-2017.

§ 6.7.3 Actual costs without mark-up 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 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 A201-2017 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.

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**§ 6.8 Costs Not To Be Reimbursed as Costs 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 Phase incurred during the Preconstruction Phase;
- .9 Costs which are included in the Construction Manager's General Conditions and At-Risk Fee;
- .10 Computers 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, except for sales or use taxes, including, but not limited to, Federal, State or Local Business Tax, Franchise Tax, Commercial Activities Tax, or similar taxes are the responsibility of the Construction Manager, and the Owner shall not pay or reimburse the Construction Manager for such tax obligations;
- .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 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 A201-2017, 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 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.

§ 7.1.3 Provided that an Application for Payment is received as set forth in Document A201-2017 as modified, the Owner shall make payment as set forth in Document A201-2017 as modified.

*(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 submit 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 shall be submitted with the Application for Payment. Invoices of \$1,000 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, Preconstruction Fee, and General Conditions shall be shown as a single separate item. 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 Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values; 2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment

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- 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 Fee and At-Risk Fee, which shall be computed upon the Cost of the Work at the rate stated in the GMP Amendment.
  - .4 Add General Conditions earned since previous Application for Payment;
  - .5 Subtract the Retainage in accordance with the Ohio Revised Code;
  - .5.1 Subtract the aggregate of previous payments made by the Owner;
  - .6 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 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 A201-2017.

§ 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 7.1.7 and AIA® A201™ - 2017 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) Certificate of Insurance, as required; (3) Affidavits that the surety and insurance company or companies meets the requirements in AIA® A201™ - 2017 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 A201-2017, 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, which shall be issued promptly consistent with the Standard of Care, and not unreasonably withheld

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

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§ 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 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 A201-2017. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201-2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 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 A201-2017. 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 Paragraph 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 A201-2017.

*(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2017.)*

##### Type of Insurance or Bond

Payment Bond required by Ohio law and Performance Bond in the forms attached hereto as **Exhibit B**, as required by Ohio Law.

##### Limit of Liability or Bond Amount (\$0.00)

Initially, the penal sum of the bond shall be the amount of the preconstruction fee set forth herein. Upon execution of the GMP Amendment, Construction Manager shall provide a replacement payment and performance bond in the full amount of the GMP and deliver written consent from its surety. The penal sum of the bond is at all times, subject to O.R.C. § 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 A201-2017. 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

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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 A201-2017, 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 A201-2017
- Litigation in a court of competent jurisdiction in the county in which the Project is located. The parties expressly waive the right to remove any litigation to federal court.
- Other: *(Specify)*

**§ 9.3 Initial Decision Maker**

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2017 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 Prior to Establishment of the Guaranteed Maximum Price**

**§ 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 A201-2017.

**§ 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 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;
- 3 Add that portion of the General Conditions incurred to the date of termination; and
- 4 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

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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.

#### **§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price.**

This Agreement may be terminated after establishing the Guaranteed Maximum Price as provided in Article 14 of AIA Document A201-2017, as modified.

*(Paragraphs deleted)*

#### **§ 10.3 Suspension**

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2017, as modified. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201-2017, as modified, 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 A201-2017, as modified.**

#### **§ 11.2 Ownership and Use of Documents**

Section 1.5 of A201-2017, as modified, shall apply to both the Preconstruction and Construction Phases.

#### **§ 11.3 Governing Law**

Section 13.1 of A201-2017, as modified, 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 A201-2017, 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.

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**§ 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.

**§ 11.5.7 Wages of Construction Manager's Supervisory and Administrative Personnel.** The Contractor shall be reimbursed for supervisory and administrative personnel, as described in Section 6.2.2 of the Agreement, based on the reimbursement costs outlined in the Contract Documents including Exhibit D. These costs will be fixed at the time of the GMP, and will only increase in the event of Change Orders and other changes as provided in the Contract Documents. For purposes of Change Orders and other changes in the Work, the Contractor will be reimbursed the hourly rates for its personnel, as set forth in Exhibit D.

**§ 11.5.8 Liquidated Damages.** If the Construction Manager does not have its Work on the Project substantially complete by the Date of Substantial Completion, subject to delays set forth in Section 8.3.1 of the A201-2017, as modified, the Construction Manager shall pay the Owner (and the Owner may set off from sums coming due the Construction Manager) liquidated damages in the amount of \$2,000 per day for each day beyond the Date of 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 set forth in the table 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. Nothing in this section shall preclude the Owner from recovering its actual damages from the Construction Manager. If the Construction Manager does not have its Work on the Project finally complete by the Date of Final Completion, subject to delays set forth in Section 8.3.1 of the A201-2017, the Construction Manager shall pay the Owner liquidated damages in the amount of \$200 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

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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, disability, military status, 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, disability, military status, 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 A201-2017, General Conditions of the Contract for Construction, as modified.

**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, as modified, 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
- .2 AIA Document A201-2017, , as modified, General Conditions of the Contract for Construction
- .3

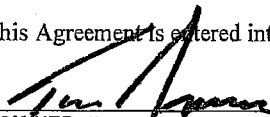
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- .5 Other documents:  
(List other documents, if any, forming part of the Agreement.)

Exhibit A GMP Amendment  
Exhibit B Payment and Performance Bond as prescribed by OAC 153:1-4-02  
Exhibit C Itemized General Conditions  
Exhibit D Personnel Hourly Rates  
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 CMAR's PPTA  
Exhibit J Construction Tax Exemption Certificate  
Exhibit K Final Lien Waiver and Release Affidavit  
Exhibit L Prevailing Wage Determination Letter

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

  
\_\_\_\_\_  
OWNER (Signature)

Tom Grossmann, President  
(Printed name and title)

  
\_\_\_\_\_  
CONSTRUCTION MANAGER (Signature)

Justin Conger, President  
(Printed name and title)

**APPROVED AS TO FORM**

  
\_\_\_\_\_

Adam M. Nice  
Asst. Prosecuting Attorney

Init.

## **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 09:45:57 on 09/25/2017.

PAGE 1

MODIFIED STANDARD AGREEMENT made as of the day of  in the year  date of execution by the Owner

...

*(Name, legal status and address)*

Warren County Board of County Commissioners  
406 Justice Drive  
Lebanon, Ohio 45036

...

Conger Construction Group, Inc.  
PO Box 1069  
Lebanon, Ohio 45036  
(513) 932-1206

...

Warren County Fair Grounds Event Center  
665 North Broadway Ave.  
Lebanon, Ohio 45036

A new one story, 18,000 SF Event Center.

The Construction Manager has been selected by the Owner following the qualification-based selection guidelines contained in O.R.C. 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.

...

Randal Merrill and Jack Willard  
McGill Smith Punshon, Inc.  
3700 Park 42 Drive, Suite 190B  
Cincinnati, Ohio 45241

PAGE 2

Martin Russell, Deputy County Administrator  
Martin.Russell@co.warren.oh.us  
Rebecca Osborne, Lessee / Property Manager

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User Notes:

(1999652208)

Warren County Fair Board  
665 North Broadway Ave.  
Lebanon, Ohio 45036  
ROsborne@warrencountyfairhio.org

...

Justin Conger, President – Conger Construction Group

...

Andrew Tompkins, Project Manager -- Conger Construction Group  
atompkins@congerbuilt.com  
PO Box 1069  
Lebanon, Ohio 45036

### PAGE 3

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 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; provided, however, that to the extent the Owner or the Architect fail to resolve any inaccuracies or inconsistent terms or delay construction or the Construction Manager's ability to perform the services hereunder, then Owner shall extend the Contract Time, increase the GMP and compensate Construction Manager for all additional Work required in connection with such inconsistencies, conflicts, or ambiguities. In the event of any of the foregoing are discovered, the provisions of this Agreement shall control over any proposal, document, or other attachment, or exhibit.

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For the Preconstruction Phase, AIA Document A201<sup>TM</sup> 2007, ~~A201<sup>TM</sup> 2017~~, General Conditions of the Contract for Construction, 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, A201-2017~~, which document is incorporated herein by reference. The term "Contractor" as used in ~~A201-2007 shall mean the Construction Manager. A201-2017 shall mean the Construction Manager.~~

§ 1.4 Nothing contained in this Agreement shall create a contractual relationship with or 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 Construction Phase to work cooperatively with the Owner and Architect 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.

...

§ 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 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.

#### PAGE 5

§ 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 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 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. 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 a Subcontractor 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 a 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. 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. 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.

§ 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 not less than 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 appropriate design and 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.

§ 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 L.

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§ 2.1.10 Communications with Local 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. As part of the Preconstruction Services, the Construction Manager shall work with the Architect to revise and finalize the Construction Documents as necessary. Within 15 calendar days of the Architect issuing 80% complete drawings for construction, the Construction Manager shall submit its Guaranteed Maximum Price Proposal to the Owner, based upon the approved Construction Documents, in accordance with the Contract Documents and using the form included in the Owner's RFP. The Construction Manager, Owner and the Design Professional (along with selected engineers and consultants) shall 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 the 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. Construction Manager guarantees that it shall not exceed the GMP, subject to additions and deductions by changes in the Work as provided in the Contract Documents. Such

maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price or GMP. The only exception to the GMP will be for changes directed by the Owner in writing that exceed the scope of the Project. All other costs which cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner. 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 § 11.5.3 of this Agreement.

§ 2.2.2.1 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the GMP 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 of quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

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.3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, general condition costs, contingency, and the Construction Manager's Fee;

...

.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.

§ 2.2.5 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. If the proposed GMP exceeds the original estimated GMP, the Owner may (1) require that the Construction Manager review the information provided by the Owner or obtained by the Construction Manager during the design development phase and construction document phase and reconcile the Guaranteed Maximum Price proposal with the original estimated GMP, (2) require the Architect to revise the Drawings and Specifications such that a revised estimated GMP based on those revisions is equal to or less than the original estimated GMP, (3) agree to an increase in Owner's construction budget and accept the Guaranteed Maximum Price Proposal or (4) terminate the Agreement pursuant to Section 14.4 of the AIA A201-2017, as modified.

§ 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, Price Proposal, 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. Should the parties fail to reach a written agreement regarding the Guaranteed Maximum Price, the Owner shall be entitled to terminate this Agreement pursuant to Article 10 of this Agreement or the Owner may elect to change the project delivery method to construction manager agency.

...

§ 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.

§ 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, A201-2017, 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-Owner. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. 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 approve of the criteria, for prequalifying prospective Bidders for the work to be performed, for soliciting bids from prequalified prospective Bidders, for obtaining 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.

...

§ 2.3.2.6 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, A201-2017.

§ 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~~, Architect in a format acceptable to the Owner, in accordance with Section 2.3.2.7 above.

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Section 3.12.10 of ~~A201-2007~~ A201-2017 shall apply to both the Preconstruction and Construction Phases.

...

Section 10.3 of ~~A201-2007~~ A201-2017 shall apply to both the Preconstruction and Construction Phases.

...

§ 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.~~ Paragraph 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.~~ Paragraph not used.

...

§ 3.1.4.2 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 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. 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 Work. Construction Manager shall be responsible for independently confirming the location of utility lines and exercising reasonable care related thereto.

§ 3.1.4.3 ~~The Owner, or when such services are requested, requested by Owner then the Construction Manager, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations. Construction Manager may not make any Claim against the Owner or Design Professional, or any of their agents or employees, to the extent the Construction Manager disregards the information contained in such reports or tests. However, Owner acknowledges that reliance on such~~

tests and reports by the Construction Manager shall not constitute a waiver of Claims pursuant to Section 3.7.4 of the AIA A201-2017, as modified.

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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, A201-2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

...

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 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: :

...

\$ 5,000.00. This 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. Paragraph Not used.

...

§ 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 a 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; provided, however, that Owner's refusal to execute a signed agreement shall not preclude Construction Manager's right to make a Claim under Section 15.1.5 of the AIA A201-2017, as modified.

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§ 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 Document A201-2017 as modified. Amounts unpaid 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.

...

prime plus 0.5 %

...

**§ 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, ~~funds for the Construction Manager's performance of the Contract.~~ The Contract Sum is the Cost of the Work as defined in Section 6.1.1 ~~plus the Construction Manager's as defined Article 6 of this Agreement, the Construction Manager's Fee (the sum of the Construction Fee and At-Risk Fee), the General Conditions, and the amount of Contingency used, as each is defined in the Construction 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 A201-2017 as modified

...

Shall be in accordance with Article 7 of Document A201-2017 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.~~ be in accordance with Article 7 of Document A201-2017 as modified.

...

None identified prior to construction

...

**§ 5.2.1** 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 or pursuant to Section 8.3.1 as provided in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price or GMP. The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the ~~Cost of the Work 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. The GMP shall be established upon execution of the Guaranteed Maximum Price Amendment, Exhibit A.

~~(Insert specific provisions if the Construction Manager is to participate in any savings.)~~ **§ 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.

**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 shall 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 (including 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); status reporting; progress scheduling; compliance notices; contract and subcontract administration; trash removal for construction office; project record keeping and documentation; Ohio Utilities Protection Services/Dig Safe program notice and coordination; document control and record keeping; project health and safety program including but not limited to equipment, supplies, training, record keeping, plan development, incentives, audits and drills; taxes; staff expense allowances; personnel and site vehicle rental/mileage, fuel and maintenance; relocation and temporary lodging and per diem expense; ice and water; safety supplies; 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, office mobilization and demobilization; badging and site security; temporary fencing and barricades for construction office; photography/progress photos; tool trailer and hand tools; project signage; groundbreaking and dedication events; portable toilets, lockers and washrooms; temporary power; business licenses; patent fees and royalties; training; and recruiting. The General Conditions shall include premiums for that portion of insurance and bonds required by the Contract Documents that can be attributed to this Contract. 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 charge 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.

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 or design changes. 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. The Contingency may be used for Work relating to design errors and omissions except where such design errors and omissions could have been identified pursuant to the Construction Manager's duties per the Contract Documents. 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.

§ 5.2.1.3 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 50 % by the Owner and 50 % by the Construction Manager.

5.2.1.4 Shared Savings earned will be distributed to the Owner at Substantial Completion of the overall Project by deductive change order to the Guaranteed Maximum Price. Fifty percent ( 50 %) of the savings earned by the Construction Manager at the time of Substantial Completion of the entire Project will be paid to the Construction Manager within forty-five (45) days of the Owner's acknowledgment of the completion of all required punch list work and receipt of all required Project documentation. The balance of the Construction Manager's share of savings as adjusted by the reallocation of any unused Contingency to the Savings, will be distributed when the Project is 100% closed out as determined by the Owner.

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§ 5.2.3 If the parties cannot agree on a GMP for the Project, the Owner may terminate the Contract for convenience

§ 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.

§ 5.3.3 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-A201-2017 and the term "costs" as used in Section 7.3.7 of AIA Document A201-2007-A201-2017 shall have the meanings assigned to them in AIA Document A201-2007-A201-2017 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-A201-2017 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 Contract Sum 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 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 § 11.5.13 of this Agreement.

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§ 6.2.1.1 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost.

§ 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-written approval and Owner's prior written approval of the rates for such personnel.

...

§ 6.4.1 Costs, meaning 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-Actual costs without mark-up 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 less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 6.5.2 Rental charges-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.

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§ 6.5.5.1 Reimbursable Expenses shall be submitted to the Owner no later than sixty (60) days after such expense is incurred by the Construction Manager. Construction Manager's failure to timely submit Reimbursable Expenses to the Owner as required herein, shall be an irrevocable waiver of Construction Manager's right to reimbursement of such expense.

...

§ 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. Paragraph Not Used.

~~§ 6.6.2 Sales, use or similar~~ Subject to 6.8.1.12, taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is ~~liable~~ liable, not including Commercial Activity Tax or income taxes which shall be the sole responsibility of Construction Manager.

...

~~§ 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~~ A201-2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

~~§ 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.~~ Documents.

~~§ 6.6.6~~ Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval. This paragraph 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. This paragraph 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.~~ This paragraph 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. This paragraph not used.

...

~~§ 6.7.1~~ Other actual costs without mark-up 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~~ A201-2017.

~~§ 6.7.3~~ ~~Costs~~ Actual costs without mark-up 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.

~~§ 6.7.4~~ 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~~ A201-2017 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 Costs of the Work

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~~.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 Phase incurred during the Preconstruction Phase;
- ~~.9 Costs which are included in the Construction Manager's General Conditions and At-Risk Fee;~~
- ~~.10 Computers 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, except for sales or use taxes, including, but not limited to, Federal, State or Local Business Tax, Franchise Tax, Commercial Activities Tax, or similar taxes are the responsibility of the Construction Manager, and the Owner shall not pay or reimburse the Construction Manager for such tax obligations;~~
- ~~.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.~~

...

**§ 6.9.1** 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.

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The Construction Manager shall keep full and detailed records and accounts related to the ~~cost~~ 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 A201-2017, General Conditions of the Contract for Construction, as modified.

...

**§ 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:~~ month.

...

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the 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 set forth in Document A201-2017 as modified, the Owner shall make payment as set forth in Document A201-2017 as modified.

...

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit 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 shall be submitted with the Application for Payment. Invoices of \$1,000 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 Fee, At-Risk Fee, Preconstruction Fee, and General Conditions shall be shown as a single separate item. 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 properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the 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;
- ~~2~~ values; 2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- 3 Add the Construction Manager's Fee, less retainage of percent ( %). The Construction Manager's Fee Fee and At-Risk Fee, which 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; the GMP Amendment.
- 4 Subtract retainage of percent ( %) from that portion of the Work that the Construction Manager self performs; Add General Conditions earned since previous Application for Payment;
- .5 Subtract the Retainage in accordance with the Ohio Revised Code;
- ~~.5~~ .5.1 Subtract the aggregate of previous payments made by the Owner;

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- 7 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/A201-2017.

...

§ 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 7.1.7 and AIA® A201™ - 2017 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) Certificate of Insurance, as required; (3) Affidavits that the surety and insurance company or

companies meets the requirements in AIA® A201™ - 2017 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.

...

- .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, A201-2017, and to satisfy other requirements, if any, which extend beyond final payment;

...

- .3 a final Certificate for Payment has been issued by the ~~Architect~~ Architect, which shall be issued promptly consistent with the Standard of Care, and not unreasonably withheld

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:~~

#### Payment

§ 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 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, A201-2017. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201-2007, A201-2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 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, A201-2017. 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 ~~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. Paragraph 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.

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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~~A201-2017.

*(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document ~~A201-2007~~A201-2017.)*

...

Payment Bond required by Ohio law and Performance Bond in the forms attached hereto as Exhibit B, as required by Ohio Law.

Initially, the penal sum of the bond shall be the amount of the preconstruction fee set forth herein. Upon execution of the GMP Amendment, Construction Manager shall provide a replacement payment and performance bond in the full amount of the GMP and deliver written consent from its surety. The penal sum of the bond is at all times, subject to O.R.C. § 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.

§ 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~~A201-2017. 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~~A201-2017, the method of binding dispute resolution shall be as follows:

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- Arbitration pursuant to Section 15.4 of AIA Document ~~A201-2007~~A201-2017
- Litigation in a court of competent jurisdiction in the county in which the Project is located. The parties expressly waive the right to remove any litigation to federal court.

...

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document ~~A201-2007~~A201-2017 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.

...

§ 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-A201-2017~~.

§ 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.

...

- .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;
- ~~.3~~ .3 Add that portion of the General Conditions incurred to the date of termination; and
- ~~.3~~ .4 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

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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~~ Termination Subsequent to Establishing Guarantee d 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.~~ This Agreement may be terminated after establishing the Guaranteed Maximum Price as provided in Article 14 of AIA Document A201-2007-A201-2017, as modified.

~~§ 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 Work may be suspended by the Owner as provided in Article 14 of AIA Document ~~A201-2007-A201-2017~~, as modified. 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-A201-2017~~, as modified, 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.

...

§ 11.1 Terms in this Agreement shall have the same meaning as those in ~~A201-2007~~, A201-2017, as modified.

...

Section 1.5 of ~~A201-2007~~-A201-2017, as modified, shall apply to both the Preconstruction and Construction Phases.

...

Section 13.1 of ~~A201-2007~~-A201-2017, as modified, shall apply to both the Preconstruction and Construction Phases.

...

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~~, A201-2017, 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.

**§ 11.5.7 Wages of Construction Manager's Supervisory and Administrative Personnel.** The Contractor shall be reimbursed for supervisory and administrative personnel, as described in Section 6.2.2 of the Agreement, based on the reimbursement costs outlined in the Contract Documents including Exhibit D. These costs will be fixed at the time of the GMP, and will only increase in the event of Change Orders and other changes as provided in the Contract Documents. For purposes of Change Orders and other changes in the Work, the Contractor will be reimbursed the hourly rates for its personnel, as set forth in Exhibit D.

**§ 11.5.8 Liquidated Damages.** If the Construction Manager does not have its Work on the Project substantially complete by the Date of Substantial Completion, subject to delays set forth in Section 8.3.1 of the A201-2017, as modified, the Construction Manager shall pay the Owner (and the Owner may set off from sums coming due the Construction Manager) liquidated damages in the amount of \$2,000 per day for each day beyond the Date of 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 set forth in the table 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. Nothing in this section shall preclude the Owner from recovering its actual damages from the Construction Manager. If the Construction Manager does not have its Work on the Project finally complete by the Date of Final Completion, subject to delays set forth in Section 8.3.1 of the A201-2017, the Construction Manager shall pay the Owner liquidated damages in the amount of \$200 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, disability, military status, 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, disability, military status, 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 A201-2017, General Conditions of the Contract for Construction, as modified.

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- .1 AIA Document A133-2009, as modified, 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
- .2 AIA Document A201-2007, A201-2017, as modified, General Conditions of the Contract for Construction
- .3 ~~AIA Document E201™ 2007, Digital Data Protocol Exhibit, if completed, or the following:~~

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- .4 ~~AIA Document E202™ 2008, Building Information Modeling Protocol Exhibit, if completed, or the following:~~

...

Exhibit A GMP Amendment  
Exhibit B Payment and Performance Bond as prescribed by OAC 153:1-4-02  
Exhibit C Itemized General Conditions  
Exhibit D Personnel Hourly Rates  
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Exhibit F CMAR Affidavit with List of Subcontractors and Suppliers with Amounts Withheld  
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Exhibit L Prevailing Wage Determination Letter


...

Justin Conger, President

**Certification of Document's Authenticity**  
**AIA® Document D401™ – 2003**

**RANDAL MERRILL**

I, **RANDAL MERRILL**, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 09:45:57 on 09/25/2017 under Order No: 8592693388 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of 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 published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

  
\_\_\_\_\_  
(Signed)

**VICE PRESIDENT OF ARCHITECTURE**  
\_\_\_\_\_  
(Title)

**10.2.17**  
\_\_\_\_\_  
(Dated)

# AIA® Document A201™ - 2017

## MODIFIED General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Warren County Fair Grounds Event Center  
665 North Broadway Ave  
Lebanon, Ohio 45036

### THE OWNER:

(Name, legal status and address)

Warren County Board of County Commissioners  
406 Justice Drive  
Lebanon, Ohio 45036

The Owner's Representative is: Martin Russell  
Email: Martin.Russell@co.warren.oh.us

### THE ARCHITECT:

(Name, legal status and address)

Jack Willard  
Randal Merrill  
McGill Smith Parrish, Inc.  
3700 Park 42 Drive, Suite 190B  
Cincinnati, Ohio 45241

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

**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.

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

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

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## **ARTICLE 1 GENERAL PROVISIONS**

### **§ 1.1 Basic Definitions**

#### **§ 1.1.1 The Contract Documents**

The Contract Documents are the documents identified as such 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. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

### **§ 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.

### **§ 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. 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 or any litigation regarding the Claim has been concluded.

### § 1.1.12 CLAIM

Claim is identified 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 with the Project Manual.

### § 1.1.14 FINAL COMPLETION

Final Completion shall mean that the Work is complete 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; 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.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 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 Unless otherwise indicated in the Owner-Architect Agreement, the Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and 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 the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, 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 suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

## § 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to



whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

#### § 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

#### § 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™-2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

### 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 granted by the Owner's Board and as is permitted under the laws 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, within fifteen days after receipt of a written request.

#### § 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Owner will obtain a certificate of available funds as required by the Ohio Revised Code, and will provide a copy to Contractor upon Contractors' further request.

#### § 2.3 Information and Services Required of the Owner

§ 2.3.1 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.

§ 2.3.2 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.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 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.

§ 2.3.5 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. The Contractor shall be entitled to rely on the accuracy and

completeness of such information any alterations to such information contained in the Contract Documents thereafter shall entitle the Contractor to an equitable adjustment in the Contract Price and/or Contract Time.

§ 2.3.6 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.

#### § 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that was performed by it or its subcontractors but which 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, and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such Work with diligence and promptness, 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.

#### § 2.5 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 ten-day period after receipt of 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 default or neglect. If such default or neglect results in 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. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15. The Owner shall take all reasonable actions to mitigate the cost of correction. The ten-day written notice provided to the Contractor must specifically identify the reasons for Contractor's default. If the Contractor substantially corrects the problems that are alleged as set forth in the Owner's written notice within the ten-day period, the Owner's right to carry out the Work will expire.

#### § 2.6 Communication and Non-Interference with Subcontractors/Suppliers

§ 2.6.1 Owner acknowledges that Contractor has the sole responsibility for the completion of the Work and hereby expressly agrees that Owner and its Architect and agents shall not materially interfere with Contractor's agents, employees, subcontractors, or suppliers ability to complete the Work.

§ 2.6.2 With the exception of incidental or non-substantive communications or contact, Owner shall not communicate directly with Contractor's subcontractors or suppliers unless directed to do so by the Contractor, and then, only for the purpose of selecting products to be used.

### 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 its 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 Contract by the Contractor is a representation that the Contractor has visited the site, investigated the entire site and the surrounding area using the standard of care applied to Contractors, including location, condition and layout of the site and utility locations, become familiar with local conditions under which the Work is to be performed, including the generally occurring climatic conditions, and correlated personal observations 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 2.3.4, and prior to performing each portion of its work, 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 Contractor shall promptly report to the Architect and Owner any errors, inconsistencies or omissions discovered by or made known to the Contractor, including any errors or omissions in the sizing, load bearing capacity or other similar design information in the Contract Documents 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 and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

**§ 3.2.3** Prior to performing each portion of the Work, the Contractor shall have a competent person review the Contract Documents for compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. The Contractor shall promptly report in writing to the Architect and Owner any nonconformity or conflicts with such laws, statutes, ordinances, building codes, rules and regulations discovered by or made known to the Contractor as a request for information. If, after execution of this Agreement, the enactment or revision of applicable laws, statutes, ordinances, codes, rules and regulations which govern the Project cause an increase or decrease of the Contractor's Contract Sum or Contract Time required for performance of the Work, the Contract Sum and/or Contract Time shall be adjusted accordingly upon the mutual written agreement of the parties. If the Owner and Contractor cannot agree upon an adjustment in the Contract Sum or Contract Time, the Contractor shall submit a Claim pursuant to Article 15.

**§ 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 submit 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, subject to Section 15.1.7, 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 consistent with that of the skill of a competent contractor. 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. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be 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 notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures. Further, 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 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 and Architect shall maintain readily the following documents, which shall be accessible to the Contractor, Architect and the Owner at the Project site, all of which shall be "public records" within the meaning of the Ohio Public Records Act:

- .1 A set of Drawings and Project Manuals, as approved by the appropriate Building Department.
- .2 Unless otherwise specifically provided in the Contract Documents, a neat and legible set of As-Built Drawings and Project Manuals on which:
  - .1 The Contractor shall keep an accurate record of all approved changes made to the Drawings to show actual installation where installation varies from Work as originally shown, including the exact location and depth of underground utility lines. Any such changes shall be noted by Change Order Number and drawn neatly in a contrasting color;
  - .2 When Shop Drawings are used, the Contractor shall cross-reference the corresponding sheet numbers on the As-Built Drawings and sections of the Specifications;
  - .3 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 for each Contractor, identification of equipment, Work accomplished, problems encountered, and other similar relevant Project data;
  - .4 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;
  - .5 All 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 and/or its subcontractors, materialmen and/or employees; and
  - .6 The payroll reports for its employees and the employees of its Subcontractors working on the Project.
- .3 Claims for the Contractor's failure to comply with the Ohio Public Records Act, if applicable, shall be claims under Section 3.18.1.
- .4 Any other forms required under the terms of the Agreement.

#### § 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 approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, which 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, for a period of twelve months after Substantial Completion of the Work, 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. 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. The Contractor's warranty and any call back obligations exclude liability for any indirect or consequential damages incurred by the Owner in the event the Contractor is not able to correct its Work as a result of events set forth in Section 8.3.1 or any other cause beyond the Contractor's control.

**§ 3.5.2** All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

**§ 3.5.3** Except to the extent that the Contractor has notified the Architect in writing at least ten (10) days prior to the bid opening of specific problems with specified equipment or materials, the Contractor warrants that any equipment or materials selected by it from among the equipment or materials specified will be fit for its intended purposes, compatible with the design intent and constructible all without additional cost to the Owner. Such notice shall be conspicuously labeled at the top of the first page in not less than twelve point type, "NOTICE OF PROBLEMS WITH SPECIFIED EQUIPMENT OR MATERIALS."

**Additional Warranties.** The Contractor gives the Owner the following additional warranties:

- .1 If the Contractor's Work includes all or part of the exterior roofing system, provided that the Architect has designed the roofing system to be weather tight, the Contractor warrants that the roofing system will be weather tight; and,
- .2 If the Contractor's Work includes all or part of the exterior wall system, provided that the Architect has designed the wall system to be weather tight, the Contractor warrants that the wall system will be weather tight.

Weather tight shall mean the roofing and/or wall system does not permit any infiltration of water in any form that would have any adverse effect on the Work itself or the Owner's occupancy and operations. Notwithstanding the specific reference to Architect in this Section, the Contractor's warranty obligations hereunder are subject to the proper design and specifications of the Architect hereunder and Contractor shall not be liable for design defects which result in any constructability issues.

### **§ 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 when bids are received or negotiations concluded, 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 bids are received or negotiations concluded.

§ 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 requirements of public authorities applicable to performance of the Work.

§ 3.7.3 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 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 14 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 that an equitable adjustment be made in the Contract Sum, GMP, and/or Contract Time, or both. 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, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim 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 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 accordingly by Change Order. The amount of the Change Order shall reflect the difference between actual costs and the allowances under Section 3.8.2.1. Remaining Allowances amounts not due to the Construction Manager on account of Work covered by the Allowances shall be retained by the Owner. 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. Any delay by Owner with respect to such selections shall entitle Contractor to an extension in the Contract Time for the reasonable length of such delay.

**§ 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 notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice 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 change the superintendent without the Owner's consent. 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 and Submittal Schedules**

**§ 3.10.1** The Contractor shall prepare the Construction Schedule within ten (10) days of the date of the Notice to Proceed and thereafter provide regular updates to the Construction Schedule. The Construction Schedule shall include and be consistent with any applicable Milestone Dates in the Bidding Documents. 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. 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, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably 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, or fails to provide submittals in accordance with the approved 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 general accordance with the most recent schedules submitted to the Owner and Architect. 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 Except for delays set forth in Section 8.3.1, 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 make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

**§ 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 how 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 due to insufficient information, the Contractor shall pay the reasonable architectural costs incurred by the Owner as a result of such additional reviews by the Architect.

§ 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.

§ 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 the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect 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 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.

§ 3.12.10.1 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 be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately 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 and accuracy of the services, certifications, and approvals performed or provided by such design professionals. Pursuant to this Section 3.12.10, the Architect will review and 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.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

### 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

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.13.1 **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 shall not be unreasonably withheld.

§3.13.2 **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.

§13.13.3 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, or patching shall be restored to the condition existing prior to the cutting, fitting, or 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 construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its 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 and 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 the Owner shall be entitled to reimbursement from the Contractor for the reasonable costs.

### § 3.16 Access to Work

The Contractor shall provide the Owner and Architect with 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 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 an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the 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, , 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, or any breach of Contractor's obligations under the Contract Documents, 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. 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.

§ 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 WAIVER OF CLAIMS.

§ 3.21.1 Beginning with the second Application for Payment, the Contractor will submit a) a release and/or waiver of all lien rights, in the form required by the Architect 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 Project Manual 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 Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 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.

##### § 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 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 to the extent as authorized by the Owner's Board.

§ 4.2.2 The Architect will visit the site at intervals as agreed upon with the Owner, (1) to become generally familiar with and to inform the Owner regarding 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.

§ 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 promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. Except as required by its duty of care owed to the Owner, the Architect 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 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

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 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 13.4.2 and 13.4.3, whether or not the 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, 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 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 order 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 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 Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 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.

§ 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 any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information. If no agreement is made concerning the time within which interpretations are required of the Architect, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until 15 days after written request is made for them and the Contractor establishes that the Architect's delay in responding delayed the critical path of the Work

## 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 the 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 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection. Copies of all bids or other proposals from Subcontractors or Sub-subcontractors shall, upon the request of the Owner or Architect, be submitted to the Owner and the Architect.

§ 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 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 for one previously selected if the Owner or Architect makes objection to such substitution. 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 and Contract Time shall be increased. 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 that the Contractor, by these Contract 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; and
  - .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

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 direct cost incurred by the Subcontractor resulting from the suspension.

**§ 5.4.3** Upon 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 for work not yet performed as of the date of the assignment.

### **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 term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and/or with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

**§ 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 or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has 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 notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work 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. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 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.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor 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.

## 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.

§ 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. The Contractor shall proceed promptly with changes in the Work, 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 Architect 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
- .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.

### § 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. 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, 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; or
- .4 As provided in Section 7.3.4, or;
- .5 Except where unit prices are applicable, that Contractor agrees and represents to 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 cost plus permitted overhead and profit.

§ 7.3.4 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 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, in such form as the Architect may prescribe, a true and accurate itemized accounting of all labor and material together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect; Contractor shall submit pricing information with the number of hours and rate of pay for each classification of work, if the Contractor pays an employee a base rate exceeding prevailing wage the Contractor shall submit certified payroll records that substantiate that rate, the Contractor shall submit documentation supporting the calculation of the amounts for each fringe benefit for each worker classification;
- .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, Contractor shall submit copies of actual paid invoices to substantiate rental costs; Downtime due to repairs, maintenance and weather delays shall not be allowed; No recovery will be allowed for hand tools, minor equipment, simple scaffolds, etc;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.
- .6 Profit of up to 5% on items in Section 7.3.7.1 through 7.3.7.3; Any overhead shall be limited to 5%, which shall include all costs required to schedule the Work and coordinate with the Contractors; Overhead includes telephone, telephone charges, facsimile, telegrams, postage, photos, photocopying, hand tools, simple scaffolds, tool breakage, tool repairs, tool replacement, tool blades, tool bits, home office estimating and expediting, home office clerical and accounting support, home office labor, all other home office expense, legal services, travel and parking expenses
- .7 The reasonable cost of all labor and material provided by a subcontractor with a markup of no more than 5%

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 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 or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 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 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 Contractor 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 may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum, GMP, and/or an extension of the Contract Time. The Architect's order for minor changes shall be in writing and conspicuously marked at the top of the order as a "MINOR CHANGE IN THE WORK." If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum, GMP and/or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum, GMP, and/or Contract Time, the Contractor waives any adjustment to the Contract Sum, GMP, and/or extension of the Contract Time.

### 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, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 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 15.1.6, then subject to the agreement of the Owner the Contract Time shall be extended 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**

**§ 9.1.1** 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 a schedule of values to the Architect for review and approval, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. By submitting such schedule of values, the Contractor represents for 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. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

**§ 9.2.1** Each Contractor will identify in its Schedule of Values a line item entitled "As-Built Drawings and Record Documents". The Scheduled Value for this item will be one percent (1%) of the Contract Sum. When As-Built Drawings and Record Documents are received and reviewed by the Architect, and a letter is forwarded to the Owner affirming the completeness of these documents, these costs may be released. At the Owner's discretion, the costs dedicated to this Scheduled Value may be adjusted to reflect adjustments to the Contract Sum due to approved change orders. 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 ten days before the date established for each progress payment, the Contractor shall submit to the Owner and Architect an itemized 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, 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 that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

**§ 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 supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.1.3 The Contractor shall submit its Application for Payment to the Owner and Architect in the form attached to this Agreement or such other format as the Owner specifies, Payment Application Checklist, 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 Contractor 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.

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

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage as required by Ohio law. However, payments for Construction Stage Personnel Costs and CM's Fee shall not be subject to retainage. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Article 7 of AIA Document A201™-2007, General Conditions of the Contract for Construction, as modified;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage as required by Ohio law for materials and equipment that have not been incorporated into the Work;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 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, General Conditions of the Contract for Construction, as modified.

§ 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, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work. The Contractor agrees to bond off any lien filed on the Project by Contractor's subcontractors or suppliers, 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 Application for Payment Checklist 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 Owner or Architect may require, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole 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 in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. 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. 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 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 suppliers 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; or
- 7 repeated 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 either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.4 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 supplier 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 Contractor shall reflect such payment on its next Application for Payment.

#### § 9.6 Progress Payments

§ 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, and shall so notify the Architect.

§ 9.6.2 The Contractor shall promptly within the time period required by Ohio law, pay each Subcontractor promptly, 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 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 and suppliers 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 or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to 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 or provided by 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, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any

tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

#### **§ 9.7 Failure of Payment**

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within fourteen days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within fourteen days after the date established in the Contract Documents, 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' 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 shall be increased by the amount of the Contractor's reasonable costs of shutdown, 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 manufacturers' 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 the Contractor shall make the Work Substantially Complete, 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.** With the exception of extensions of Contract Time properly authorized under the terms of this Agreement 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.

**§ 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; 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 the 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 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, 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 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, 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. 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 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 shall mean that the Work is complete 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.

**§ 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, (3) a written statement that the Contractor knows of no 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, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and 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, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance 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 the lien, claim, security interest, or encumbrance, 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:
- .2 Evidence that all Completion/Punchlist List items have been completed;

- .3 Where applicable, keys and keying schedule;
- .4 The documents, including as-built set of Drawings and Specifications, referred to in Section 3.3.4 not otherwise required by the Contract Documents to be delivered earlier; and,
- .5 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, corrected, 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 the 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.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .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 audits performed by the Owner, if permitted by the Contract Documents, after final payment;
- .5 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 a 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 accepts 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 of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety 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, 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, a Subcontractor, or a Sub-subcontractor; 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 implement, 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 the owners and users of adjacent sites and utilities of

the safeguards. The Contractor shall be responsible, at the Contractor's sole cost and expense, for all Corrective 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. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is 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 either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the 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.

#### § 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. 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 notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's 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 the material or substance or who are to perform the task of removal or safe containment of the 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 by the amount of the Contractor's reasonable additional costs of shutdown, 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 Paragraph Not Used.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous 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 hazardous 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 reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances 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, any Sub-Contractor, or Sub-Subcontractor, and Contractor has met all requirements and responsibilities under Article 10, 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 reimburse the Contractor for all cost and expense thereby incurred.

#### § 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, 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 Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents. The insurance shall protect the Contractor and additional insured parties from claims including but not limited to the 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 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.

§11.1.1.9 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 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.

§ 11.1.2.4 Such policies shall be supplemented by an umbrella policy in the amount of \$5,000,000.00 each occurrence and aggregate.

§ 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 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 Certificates of insurance acceptable to the Owner shall be filed with 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 11.1.1.9. 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.

§ 11.1.2.11 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. 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.

§ 11.1.3 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.

§ 11.1.4 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.

§ 11.1.5 Any aggregate limit under the Contractor's liability insurance shall, by endorsement, apply to the Project separately.

§ 11.1.6 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.

§ 11.1.7 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.8 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.

§ 11.1.9 **Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

## § 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain the Owner's usual liability insurance.

§ 11.2.2 **Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 **Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance

required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

### § 11.3 Waivers of Subrogation

§ 11.3.1 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; (2) the Architect and Architect's consultants; and (3) Separate Contractors, 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 those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 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, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

### § 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

### § 11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

## 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, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

### § 12.2 Correction of Work

#### § 12.2.1 Before 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, discovered before 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. Notwithstanding the foregoing, in the event that Owner or Architect know any portion of the Work is not in conformance with the Contract Documents, then such party has a duty to timely notify Contractor. Failure to notify Contractor in a timely manner will entitle Contractor to include the cost of such correction in the cost of the Work which may contribute to an increase in the Contract Time.

#### § 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 any 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, due to Contractor's negligence, the Contractor shall correct it promptly and in not more than 30 days after receipt of 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 30 days after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

§ 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.

§ 12.2.2.4 The Contractor's obligation hereunder excludes any Work not in conformance with the requirements of the Contract Documents due to abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation or normal wear and tear and normal usage. This warranty is limited to the repair and/or replacement of materials, equipment and labor originally furnished for the Work under the terms of this Agreement. In no event will the Contractor have any liability for any loss, claims for labor, loss of profits, or consequential damages or any other type, whether the Owner's claims is based in contract, tort, warranty, strict liability or otherwise.

§ 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 of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is determined not in accordance with the requirements of the Contract Documents through adjudication.



§ 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 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, excluding that jurisdiction's choice of law rules.

### § 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 an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 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 the assignment.

### § 13.3 Rights and Remedies

§ 13.3.1 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.

§ 13.3.2 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 thereunder, except as may be specifically agreed upon in writing.

### § 13.4 Tests and Inspections

§ 13.4.1 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 tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 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 13.4.1, 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 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 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.

§ 13.4.4 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.

§ 13.4.5 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.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

#### § 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties 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.

#### § 13.6 ATTORNEY-CLIENT CONFIDENTIAL AND PRIVILEGED COMMUNICATIONS

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, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, 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;
- .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.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, 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 The Contractor may terminate the Contract if the Owner materially defaults under any obligation contained in the Construction Documents.

§ 14.1.4 If one of the reasons described in Section 14.1.1, 14.1.2 or 14.1.3 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.5 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions

of the Work 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' 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 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 repeatedly fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or Suppliers;
- .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 reasons described in Section 14.2.1 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, fourteen (14) days' notice, and following the failure of the Contractor to commence to remedy the reasons set forth in the notice during the fourteen-day period, 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 Document and at law, all of which shall survive termination.

The fourteen-day written notice period provided to the Contractor must specifically identify the reasons for which the Owner intends to terminate the Agreement. If the Contractor substantially corrects the problems that are alleged as the grounds for termination set forth in the Owner's fourteen-day written notice, the Owner's right to terminate for cause will expire.

§ 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, and other reasonable damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such 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 under 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 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 Owner shall pay the Contractor for Work properly executed; and, costs incurred by reason of the termination, including costs attributable to termination of Subcontracts.

## 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, a change in the Contract Time, 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 15.1.3. 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. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

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 15.1.4.

#### § 15.1.2 Time Limits on Claims

As between the Owner and Contractor the statute of limitations shall commence as provided in current Ohio law.

#### § 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by delivering a fully completed Notice of Claim Form, a copy of which form is a Contract Document notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence 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 requirement that a claim be in writing shall be satisfied only by using the Notice of Claim Form. Either party's failure to deliver a fully completed Notice of Claim form shall be an irrevocable waiver of such party'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 party'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 other party with the opportunity to mitigate its damages.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

**§ 15.1.4 Continuing Contract Performance**

§ 15.1.4.1 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.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

**§ 15.1.5 Claims for Additional Cost**

If the Contractor wishes to make a Claim for an increase in the Contract Sum and/or GMP, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

**§ 15.1.6 Claims for Additional Time**

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented in a Notice of Claim Form in accordance with Section 15.1.3, and the Contractor's entitlement to additional time shall be evaluated and substantiated as follows:

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

**§ 15.1.6.3 EXCUSABLE AND COMPENSABLE DELAYS.** The delays for which the Contractor is entitled to an increase in the Contract 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, an employee of either, or of a Separate Contractor, (b) physical damage to the Project over which the Contractor has no control, (c) labor disputes beyond the control of the Contractor, fire, unavoidable casualites, (d) work days lost due to weather conditions as provided under Section 15.1.6.2, and (e) (e) or 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..

### § 15.1.7 Waiver of 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 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

### § 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, 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. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a 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.

§ 15.2.1.1 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.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten 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.

§ 15.2.3 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 the 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.

§ 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 receipt 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 15.1.7, shall 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 as a condition precedent to litigation.

§ 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 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the county where the Project 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, shall be subject to litigation, unless both parties agree in writing to arbitrate the Claims. There shall be no mandatory arbitration of Claims.

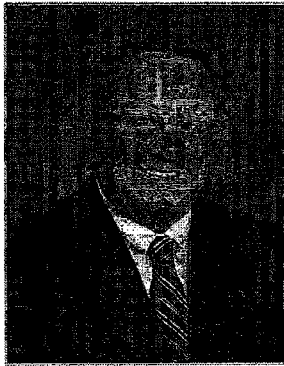




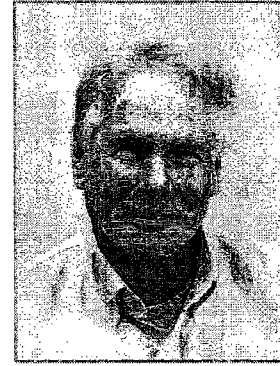
Justin Conger,  
President



Don Hayes, Director  
of Construction



Larry Conger, Director of  
Pre-Construction



Steve Deger,  
Superintendent



Mario Geraci,  
Sr. Estimator



Ty Wilson,  
Project Engineer



Andrew Tompkins,  
Project Manager



**HOURLY RATE SHEET**

Name	Role	Rate
Justin Conger	President	\$ 144.90
Larry Conger	Director of Preconstruction	\$ 200.79
Don Hayes	Director of Construction Operations	\$ 101.45
Mario Geraci	Senior Estimator	\$ 72.45
Andrew Tompkins	Project Manager	\$ 82.80
Ty Wilson	Project Engineer	\$ 60.05
	Site Superintendent	\$79.70
Jeremy Bolling	Controller	\$91.10
Vicky Short	Accounting Clerk / Project Admin	\$47.65

2020 McKinley Blvd. • P.O. Box 1069 • Lebanon, Ohio 45036  
Phone: (513) 932-1206 • Fax: (513) 932-3204

*An equal opportunity employer*

Exhibit E

**SAMPLE 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: \_\_\_\_\_

**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: \_\_\_\_\_

Exhibit G - SAMPLE

**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 Board Of County Commissioners, **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	



Exhibit H

**SAMPLE 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 Board of County Commissioners, **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 \_\_\_\_\_

\_\_\_\_\_  
President  
Title

Notary Public: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Date

TRANSMITTAL LETTER ATTACHMENT 4

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

State of Ohio, County of Warren, ss:

Justin Conger, being first duly sworn, deposes and says that (name)

he/she is the President of Conger Construction Group ("CMR"), with (title) (CMR)

offices located at 2020 McKinley Ave, Lebanon, Ohio 45036 (Address of CMR)

and as the CMR's duly authorized representative, states that effective this 28th day of July, 2017, the CMR:

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

Table with 2 columns: County, Amount (include total amount, penalties and interest thereon). Rows for County, County, County.

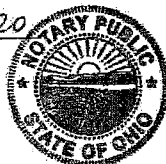
(X) IS NOT charged with delinquent personal property taxes on the general list of personal property in any Ohio County

(Affiant)

Sworn to and subscribed this 28 day of July, 2017.

My Commission expires:

2/8, 2020



(Notary Public) VICKY L. SHORT Notary Public, State of Ohio My Commission Expires 2/8/2020 Recorded in Warren County



## Sales and Use Tax Construction Contract Exemption Certificate

**Identification of Contract:**

Contractee's (owner's) name Warren County Board of County Commissioners  
 Exact location of job/project Warren County Fairgrounds, 665 North Broadway, Lebanon, Ohio 45036  
 Name of job/project as it appears on contract documentation Warren County Fairgrounds Event Center

The undersigned hereby certifies that the tangible personal property purchased under this exemption certificate was purchased for incorporation into:

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

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 \_\_\_\_\_

**Subcontractor**

Name \_\_\_\_\_  
 Signed by \_\_\_\_\_  
 Title \_\_\_\_\_  
 Street address \_\_\_\_\_  
 City, state, ZIP code \_\_\_\_\_  
 Date \_\_\_\_\_

**Owner/Contractee**

Name Warren County Board of County Commissioners  
 Signed by [Signature]  
 Title President, Warren County Board of Commissioners  
 Street address 406 Justice Drive  
 City, state, ZIP code Lebanon, Ohio 45036  
 Date 10/31/17

**Political Subdivision**

Name Warren County Board of County Commissioners  
 Signed by [Signature]  
 Title President, Warren County Board of Commissioners  
 Street address 406 Justice Drive  
 City, state, ZIP code Lebanon, Ohio 45036  
 Date 10/31/17

Exhibit K - SAMPLE

**CONSTRUCTION MANAGER AT RISK'S FINAL WAIVER & RELEASE AFFIDAVIT  
("AFFIDAVIT")**

Project:

In consideration for payment received from Warren County Board of County Commissioners, **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.

_____	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		

# Document 00 73 43 - Wage Rate Requirements

## State of Ohio Standard Requirements for Public Facility Construction

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### PREVAILING WAGE RATES

#### 1.1 Payment of Prevailing Wage Rates

1.1.1 The Contractor shall pay the prevailing wage rates of the Project locality, as issued by the Ohio Department of Commerce, Wage and Hour Bureau to laborers and mechanics performing Work on the Project.

1.1.2 The Contractor shall comply with the provisions, duties, obligations, and is subject to the remedies and penalties of ORC Chapter 4115.

1.1.3 If the Contractor or its Subcontractors fail to comply with ORC Chapter 4115, the Contracting Authority may withhold payment pursuant to **Section 9.8.2.5** of the **General Conditions**. The Contractor is liable for violations committed by the Contractor or its Subcontractors to the extent provided in ORC Chapter 4115.

1.1.4 The Contractor shall submit all payroll reports in compliance with the requirements of **Section 1.2** for all of the employees of the Contractor and of the Contractor's Subcontractors.

1.1.5 By executing a Contract, the Contractor certifies that it based its Bid upon the prevailing rates of wages as ascertained by the Ohio Department of Commerce, Wage and Hour Bureau for the Project as provided in ORC Sections 4115.03 through 4115.14, which are inserted at the end of this Document.

#### 1.2 Prevailing Wage Rate Revisions

1.2.1 The Contracting Authority shall, within 7 business days after receipt of a notice of a change in the prevailing wage rates, notify the Contractor of the change. The prevailing wage rates are available at the Ohio Department of Commerce's web site: <http://com.state.oh.us/>.

1.2.2 The Contractor shall pay any revised wage rates issued during the term of the Contract.

#### 1.3 Payroll Schedule

1.3.1 Within 10 days of the date of the Notice to Proceed, the Contractor shall provide the Contracting Authority's Prevailing Wage Coordinator a schedule of dates during the term of the Contract on which wages shall be paid to employees for the Project.

#### 1.4 Payroll Reports

1.4.1 The Contractor shall submit payroll reports with each Contractor Payment Request, which reports shall be certified by the Contractor that the payroll is correct and complete and the wage rates shown are not less than those required by the Contract. The Contractor is responsible for submitting all payroll reports of its Subcontractors.

1.4.1.1 Each payroll report shall indicate the period covered and include a list containing the name, address and social security number of each employee of the Contractor and its Subcontractors paid for the Work.

1.4.1.2 Each payroll report shall list the number of hours each employee worked each day on the Project during the reporting period, the total hours each week on the Project, the employee's hourly rate of pay, job classification, hourly rate of fringe benefits, and all deductions from wages and net pay.

1.4.1.3 Each payroll report shall list each fringe benefit and state if it is paid as cash to the employee or to a named plan.

1.4.1.4 The Contractor and its Subcontractors shall submit apprenticeship agreements for all apprentices utilized on the Project with the first payroll report from the Contractor or its Subcontractor that includes apprentices.

END OF DOCUMENT

# Resolution

Number 17-1538

Adopted Date October 03, 2017

APPROVE AND ENTER INTO A CRITERIA ARCHITECT SERVICES CONTRACT WITH K2M DESIGN INC. RELATIVE TO THE PROBATE/JUVENILE COURT EXPANSION PROJECT

BE IT RESOLVED, to approve and enter into a criteria architect services contract with K2M Design Inc. relative to the Probate/Juvenile Court Expansion Project; as 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 3<sup>rd</sup> day of October 2017.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: c/a—K2M Design Inc.  
OMB Bid file  
Auditor

# Criteria Architect Agreement Form

## Warren County Board of County Commissioners | Professional Services Agreement

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This Agreement is made as of the date set forth below between Warren County, Ohio Board of County Commissioners and the Architect in connection with the Project.

**Project Number:** N/A  
**Project Name:** Warren County Probate Juvenile Court Expansion Project  
**Site Address:** 900 Memorial Drive  
Lebanon, OH 45036

**Owner:** Warren County Board of County Commissioners  
**Owner's Representatives:** Tiffany Zindel | Trevor Hearn  
**Address:** 406 Justice Drive  
Lebanon, OH 45036

**Criteria Architect ("CA"):** K2M Design, Inc.  
**CA's Principal Contact:** Scott C. Maloney, AIA, LEED AP, President  
**Address:** 3121 Bridge Avenue  
Cleveland, Ohio 44113

### ARTICLE 1 - SCOPE OF WORK; CONSTRUCTION BUDGET

1.1 The CA shall perform and provide all of the Services described in the Agreement.

1.1.1 The project delivery method for this Project shall be **Design-Build**.

1.2 The Total Project Budget (Stated Cost Limitation) is not to exceed three million and five hundred thousand dollars (\$3,500,000.00), including professional fees, criteria architect fees, design build firm fees, as well as construction costs, meaning all elements of construction including but not limited to utilities, site work, building construction, landscaping, and furniture, fixtures, and equipment.

### ARTICLE 2 - COMPENSATION

2.1 The total compensation for the CA's Services is a maximum of \$ 117,750, which includes the sum of (1) the Basic Fee, (2) Additional Services Fee, and (3) Reimbursable Expenses. The Owner shall pay the total compensation amount to the CA in exchange for the CA's proper, timely, and complete performance of the Services.

#### 2.2 Basic Fee.

2.2.1 For Basic Services provided by the CA and all Consultants in accordance with the **Scope of Services** attached as **Exhibit B**, the Owner shall pay the CA the Basic Fee of **\$86,500.00** which shall not be exceeded without the prior written approval of the Owner and an amendment to this Agreement. The Basic Fee is subject to the following allocation:

Project Stage	Associated Fee	Portion of Basic Fee
Organizational Meeting	\$5,000.00	6%
Concept and Design Criteria Stage	\$30,000.00	35%
Best Value Selection Stage	\$17,500.00	30%
Preconstruction Stages	\$8,750.00	10%
Construction and Closeout	\$25,250.00	29%
<b>Total Basic Fee</b>	<b>\$86,500</b>	<b>100%</b>

**2.3 Additional Services Fee.**

**2.3.1** For Additional Services provided by the CA and all Consultants, the Owner shall pay the CA the Additional Services Fee of up to **\$28,000 and per hourly rates or site visits trip costs on other additional services items**, which shall not be exceeded without the prior written approval of the Owner and an amendment to this Agreement. The Additional Services Fee is subject to the following allocation:

Description of Additional Services	Allowance	Associated Fee
Special Inspections	Yes \$4,000	\$2,000 each. 2 budgeted
Geotechnical Investigation	Yes \$5,000	Estimated. To be reimbursed at actual cost
Site Topographical and Boundary Survey	Yes \$12,000	Estimated. To be reimbursed at actual cost
BIM Model of Interior with Walk-thru	Yes \$2000	Fixed Cost One Model will be prepared with Revisions of up to 20% of the Current Design included
Schematic Design Stage	No	By Design-Builder unless this agreement is amended
Design Development Stage	No	By Design-Builder unless this agreement is amended
Interior Design Services	No	By Design-Builder unless this agreement is amended
Assistance with permitting process, presentations, etc.	Yes \$5,000	Maximum Per actual hourly rates
Additional Construction Site Visit (over 22 trips)	\$750 / trip	None budgeted
<b>Total Additional Services Fee</b>	<b>\$28,000</b>	<b>Allowance</b>

**2.3.2** Hourly Rates for Additional Services are as follows:

Senior Principal:	\$225.00 per hour
Project Manager:	\$150.00 per hour
Assistant Project Manager:	\$125.00 per hour
Construction Administrator:	\$125.00 per hour
Interior Designer:	\$125.00 per hour
Project Architect:	\$125.00 per hour
Project Engineer:	\$150.00 per hour
Administrative Support:	\$100.00 per hour

**2.4 Reimbursable Expenses.**

**2.4.1** For Reimbursable Expenses incurred by the CA and all Consultants, the Owner shall pay the CA up to **\$3250** which shall not be exceeded without the prior written approval of the Owner and an amendment to this Agreement. Reimbursable Expenses are subject to the following allocation:

Description	Allowance	Associated Amount
Document Printing	Yes	\$ 250
Travel Expenses	Yes	\$3000



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Description	Allowance	Associated Amount
<hr/>		
<b>Total Reimbursable Expenses</b>		<b>\$3250</b>

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### ARTICLE 3 - KEY PERSONNEL

3.1 The CA's key personnel for the Project are:

3.1.1 – Project Manager: Daniel D. Rawlins, RA, DBIA

3.1.2 – Assistant Project Manager Phillip C. Wink, RA, DBIA

3.2 The identities of the principal persons, and the extent of their participation in performing the CA's services as identified above, shall not be altered without the Owner's prior written consent.

3.3 The CA shall dismiss from the Project any individual employed by the CA or a Consultant who the Owner finds, in its sole discretion, to be incompetent, guilty of misconduct, or detrimental to the Project.

### ARTICLE 4 - CONSULTANTS

4.1 The CA's Consultants for the Project are (as applicable):

4.1.1 None anticipated

### ARTICLE 5 - GENERAL PROVISIONS

5.1 Effectiveness.

5.1.1 It is expressly understood by the CA that none of the rights, duties, and obligations described in the Contract Documents shall be valid and enforceable until such time as all necessary funds are available or encumbered.

5.1.2 Subject to Section 5.1.1, the Agreement shall become binding and effective upon execution by the Owner and the CA.

### ARTICLE 6 - ENUMERATION OF DOCUMENTS

6.1 This Agreement includes the following documents:

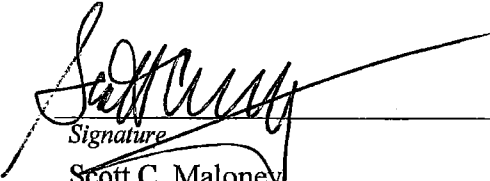
6.1.1 CA Standard Terms and Conditions attached as Exhibit A.

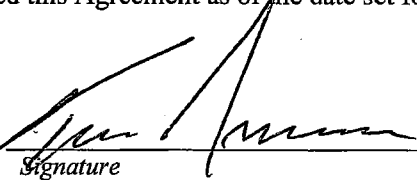
6.1.2 CA Scope of Services attached as Exhibit B.


6.1.3 Criteria Architect, Statement of Qualifications dated July 7, 2017

**SIGNATURES**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth below:


  
\_\_\_\_\_  
*Signature*  
Scott C. Maloney  
\_\_\_\_\_  
*Printed Name*  
President, K2M Design, Inc.  
\_\_\_\_\_  
*Title*

  
\_\_\_\_\_  
*Signature*  
Tom Grossmann  
\_\_\_\_\_  
*Printed Name*  
President  
\_\_\_\_\_  
*Title*

**APPROVED AS TO FORM**  
  
\_\_\_\_\_  
Adam M. Nice  
Asst. Prosecuting Attorney

**TREASURER'S CERTIFICATION**

This signature certifies the amount required to meet the obligation in the fiscal year in which this Agreement is made has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances.

  
\_\_\_\_\_  
*Signature*  
BARNEY WRIGHT  
\_\_\_\_\_  
*Printed Name*

**END OF DOCUMENT**

# Exhibit A – Criteria Architect | Standard Terms and Conditions

## Lebanon Public Library | Professional Services Agreement

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### ARTICLE 1 - ARCHITECT'S RESPONSIBILITIES

#### 1.1 Nondiscrimination

1.1.1 The CA shall comply with Applicable Law regarding equal employment opportunity, including Ohio Revised Code ("ORC") Section 153.59.

1.1.1.1 As required under ORC Section 153.59, the CA agrees to both of the following:

- .1 "in the hiring of employees for the performance of work under the contract or any subcontract, no contractor, subcontractor, or any person acting on a contractor's or subcontractor's behalf, by reason of race, creed, sex, disability or military status as defined in section 4112.01 of the Revised Code, or color, shall discriminate against any citizen of the state in the employment of labor or workers who is qualified and available to perform the work to which the employment relates; and"
- .2 "no contractor, subcontractor, or any person on a contractor's or subcontractor's behalf, in any manner, shall discriminate against or intimidate any employee hired for the performance of work under the contract on account of race, creed, sex, disability or military status as defined in section 4112.01 of the Revised Code, or color."

## 1.2 Royalties and Patents

1.2.1 The CA shall inform the Owner if the CA is aware that a particular invention, design, process, or device specified in the Contract Documents is subject to patent rights or copyrights calling for the payment of a license fee or royalty.

## 1.3 Assignment of Antitrust Claims

1.3.1 Each party to this Agreement recognizes that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the ultimate purchaser of goods and services; in this instance the ultimate purchaser is the Owner. Therefore, the following assignment is made:

1.3.1.1 The CA hereby assigns, sells, conveys and transfers to the Owner any and all rights, title, and interest in and to any and all claims and causes of action which the CA may now have or hereafter acquire under the antitrust laws of the United States of America or the state of Ohio, provided that the claims or causes of action relate to the particular goods, products, commodities, intangibles, or services purchased, procured, or acquired by, or rendered to, the Owner pursuant to this Agreement, and except as to any claims or causes of action which result from antitrust violations commencing after the compensation is established under this Agreement, which are not passed on to the Owner by any means.

In addition, the CA warrants and represents that it will require any and all of its Consultants and suppliers to assign any and all federal and state antitrust claims and causes of action to the Owner, subject to the proviso and exception stated above.

## 1.4 CA's Services

1.4.1 The CA shall provide Services for the Project, including, but not limited to, Services customarily furnished in accordance with generally accepted architectural or engineering practice, in accordance with the terms of this Agreement.

1.4.2 The CA shall provide the Services in accordance with Applicable Law, the applicable announcement issued pursuant to ORC Section 153.67 ("Announcement"), and the Owner's Standards of Design, if any.

1.4.3 The CA shall not be responsible for and shall not have control or charge of construction means, methods, techniques, sequences, procedures, or scheduling used by a Contractor to comply with the Contractor's obligations under its Contract for the Project or for safety precautions and programs in connection with the Contractor's Work on the Project.

1.4.4 The CA shall not be responsible for or have control or charge over the acts or omissions of Contractors or Subcontractors, any of their agents or employees, or any other persons performing any Work on the Project.

1.4.5 The CA shall render decisions in connection with a Contractor's responsibilities under the Contract Documents and submit recommendations to the Owner for enforcement of the Contractor's contract as necessary.

1.4.6 The CA is the initial interpreter of all requirements of the Contract Documents.

1.4.7 All of the CA's decisions are subject to final determination by the Owner.

### **1.5 Standard of Care**

1.5.1 The CA shall perform its Services consistent with the professional skill and care ordinarily provided by registered architects in the same or similar locality under the same or similar circumstances.

1.5.2 The CA shall perform its Services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

1.5.3 The CA shall perform its Services in accordance with the applicable rules established by its respective state board of registration, including, but not limited to, the following codes of conduct and/or ethics pursuant to the Ohio Administrative Code ("OAC"):

1.5.3.1 Registered architects: OAC Section 4703-3-07

### **1.6 Construction Budget**

1.6.1 The Owner shall provide written notice to the CA of any change in the Construction Budget.

1.6.2 The CA shall perform its Services so that the Project is completed within the Construction Budget.

1.6.3 The CA and Owner do not have control over the cost of labor, materials, or equipment, over Contractors' methods of determining prices, or over competitive bidding, market, or negotiating conditions. Accordingly, the CA does not warrant or represent that competitively bid or negotiated prices will not vary from the Construction Budget or from any estimate of cost or evaluation prepared, or agreed to, by the CA.

### **1.7 Cooperation**

1.7.1 The CA shall perform the Services so as not to interfere with, disturb, hinder, or delay the services of Separate Consultants or the Work of the Contractors. The CA shall cooperate and coordinate fully with all Separate Consultants and Contractors and shall freely share all of the CA's Project-related information with them to facilitate the timely and proper performance of the Services and of the services and work of the Separate Consultants and Contractors.

1.7.2 If the CA damages the property or work of any Separate Consultant or Contractor, or by failure to perform the Services with due diligence, delays, interferes with, hinders, or disrupts the services of any Separate Consultant or the work of any Contractor who suffers additional expense and damage as a result, the CA is responsible for that damage, injury, or expense.

1.7.3 If the proper execution or results of any part of the Services depends upon work performed or services provided by the Owner, a Separate Consultant, or a Contractor, the CA shall inspect that other work and appropriate instruments of service, and promptly report to the Owner in writing any defects or deficiencies in that other work or services that render it unavailable or unsuitable for the proper execution and results of the Services. The CA's failure so to report will constitute an acceptance of the other work and

services as fit and proper for integration with the CA's Services except for defects and deficiencies in the other work or services that were not reasonably discoverable at the time of the CA's inspection.

1.7.4 The CA shall not delay the Services on account of any claim, dispute, or action between the CA and a Separate Consultant or Contractor.

## 1.8 Records

1.8.1 The records of all of the CA's Direct Personnel Expenses, Reimbursable Expenses, and payments to Consultants pertaining to the Project shall be kept on a generally recognized accounting basis and shall be available to the Owner at all times and shall be maintained for 5 years after the Owner's Final Acceptance of the Project.

1.8.2 All other records kept by the CA related to the Project shall be available to the Owner at all times and shall be maintained for 5 years after the Owner's Final Acceptance of the Project.

## ARTICLE 2 - OWNER'S RIGHTS AND RESPONSIBILITIES

### 2.1 Owner

2.1.1 The Owner shall designate an Owner's Representative, a person authorized to act on the Owner's behalf with respect to the Project to the extent provided in the Contract Documents.

2.1.2 The Owner shall furnish information and services required of it in a timely manner.

### 2.2 Required Actions

2.2.1 The Owner shall review, approve, or take such actions as are required of them by this Agreement, the Contract Documents, and Applicable Law in a reasonable and timely manner.

### 2.3 Owner's Requirements

2.3.1 The Owner shall provide, to the CA, full information regarding its requirements for the Project including, but not limited to, the Program of Requirements, design and construction standards, and work rules, which shall set forth the Owner's use, design, time, and financial objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability, time constraints imposed by fiscal and budgetary considerations, special equipment, and systems and Site requirements.

2.3.2 The Owner shall furnish information and services required of it in a timely manner.

### 2.4 Site Description

2.4.1 If reasonably requested by the CA as necessary for the Project, the Owner shall furnish a legal description and a certified land survey of the Site, giving, as applicable, grades and lines of streets, alleys, pavements and adjoining property; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the Site; locations, dimensions, and complete data pertaining to existing buildings, other improvements, and trees; and full information concerning available service and utility lines, both public and private, above and below grade, including inverts and depths.

**2.5 Notice to CA**

2.5.1 If the Owner observes or otherwise becomes aware of any Defective Work or other fault or defect in the Project, prompt written notice thereof shall be given to the CA.

**2.6 Legal Representation**

2.6.1 The Owner shall not be responsible to provide or pay for any legal representation of the CA.

**2.7 Limitation of Authority**

2.7.1 The CA shall not have any authority to bind the Owner for the payment of any costs or expenses without the prior express written approval of the Owner, as applicable.

2.7.2 The CA shall have authority to act on behalf of the Owner only to the extent provided in this Agreement and the Contract Documents.

2.7.3 The CA's authority to act on behalf of the Owner may be modified only by an amendment to this Agreement in accordance with Section 4.3.

**ARTICLE 3 - CONSULTANTS****3.1 Consultant Services**

3.1.1 The CA may provide a portion of the Services through one or more Consultants, provided, however, that the CA shall remain responsible for all of the CA's duties and obligations under this Agreement.

3.1.2 By appropriate written agreement, the CA shall require each Consultant, to the extent of the Consultant's portion of the Services, to be bound to the CA by the terms of this Agreement, and to assume toward the CA

all of the obligations and responsibilities which the CA assumes toward the Owner.

3.1.2.1 The CA shall not retain any Consultant on terms inconsistent with this Agreement.

3.1.2.2 All agreements between the CA and a Consultant shall identify the Owner as the agreement's intended third-party beneficiary.

3.1.3 The CA shall obtain the Owner's written approval before engaging any Consultant not named in the Agreement. The CA shall not employ any Consultant against whom the Owner has a reasonable objection. The Owner's approval or disapproval of any Consultant, however, will not relieve the CA of the CA's full responsibility for the performance of the services.

3.1.4 The CA shall not remove any Consultant from the Project or reduce the extent of any Consultant's participation in providing the services without the Owner's prior written consent. The CA shall not permit any Consultant to replace any previously identified team member except with the Owner's prior written consent unless the Consultant ceases to employ that person. On notice from the Owner, the CA shall immediately and permanently remove from the Project any Consultant or person under a Consultant's control whose performance is not satisfactory to the Owner.

3.1.5 The Owner may communicate with any Consultant either through the CA or directly with the Consultant, but the Owner may not modify the agreement between the CA and any Consultant.

### 3.2 Payments by CA

3.2.1 Within 10 business days of receipt of payment made pursuant to this Agreement, the CA shall pay all portions thereof due to Consultants and to persons who provided items, the expenses of which are Reimbursable Expenses.

3.2.2 The Owner has no obligation to pay or see to the payment of money to any Consultant except as otherwise required under Applicable Law.

## ARTICLE 4 - MODIFICATIONS

### 4.1 Compensation for Extension of Project Time

4.1.1 If the CA notifies the Owner not less than 30 days before the date for completion of the Project set in the approved Project Schedule, that the time for completion is reasonably expected to be exceeded by more than 10 percent through no fault of the CA, the CA's compensation Services to be rendered during such extended period, shall be negotiated to the mutual reasonable satisfaction of the Owner and the CA.

4.1.2 If, through such negotiation, the Owner agrees that the CA shall be paid additional compensation, an amendment to that effect shall be executed in accordance with Section 4.3.

4.1.3 Such amendment shall be executed before the CA renders any Services made necessary by such extension of the time of completion, unless otherwise agreed in writing by the Owner.



**4.2 Compensation for Change of Scope of Project or Construction Budget**

4.2.1 The Project Scope is defined by the Approved Program of Requirements, as provided in Exhibit B.

4.2.2 The Construction Budget is defined in the Agreement Form.

4.2.3 If the Owner, through no fault of the CA, materially change the Project Scope after the Schematic Design Stage or materially change the Construction Budget at any time after the execution of this Agreement, any necessary adjustment in the CA's compensation shall be negotiated to the mutual reasonable satisfaction of the Owner and the CA.

4.2.4 If, through such negotiation, the Owner agrees that the CA shall be paid additional compensation, an amendment to that effect shall be executed in accordance with Section 4.3.

4.2.5 Such amendment shall be executed before the CA renders any Services made necessary by such change in the Project Scope or the Construction Budget, unless otherwise agreed in writing by the Owner.

**4.3 Amendments**

4.3.1 This Agreement may be modified only by an amendment prepared by the Owner and signed by both the CA and the Owner.

**4.4 Allocation Adjustments**

4.4.1 Without exceeding the total compensation for this Agreement, the allocation of costs, as described in the Agreement Form, may be adjusted upon request of the CA and approval by the Owner without a formal signed amendment.

**ARTICLE 5 - DISPUTE RESOLUTION****5.1 Mediation**

5.1.1 The Owner and the CA may by written agreement submit any claims, requests, disputes, or matters in question between or among them to mediation as shall be mutually agreeable.

**5.2 Notice and Filing of Requests**

5.2.1 Any request by the CA for additional fees or expenses shall be made in writing to the Owner and filed prior to payment of the final 5 percent of the Basic Fee. The CA's failure to comply with the requirements of this Section 5.2.1 shall constitute an irrevocable waiver by the CA of any request for such fees and expenses.

**5.3 Substantiation of Request**

5.3.1 In every written request filed pursuant to Section 5.2, the CA shall provide the nature and amount of the request; identification of persons, entities and events responsible for the request; activities on the Project

Schedule affected by the request or new activities created by any delay and the relationship with existing activities; anticipated duration of any delay; and recommended action to avoid or minimize any future delay.

#### **5.4 Meeting with the Owner**

**5.4.1** Within 30 days after receipt of the request filed with the Owner pursuant to **Section 5.2**, or other period mutually agreed by the parties, the Owner shall schedule a meeting to resolve the request and render a decision on the request promptly thereafter or render a decision on the request without a meeting.

**5.4.2** The meeting scheduled by the Owner shall be attended by persons expressly and fully authorized to resolve the request on behalf of the CA.

#### **5.6 Performance**

**5.6.1** The CA shall proceed with the CA's performance of this Agreement during any dispute resolution process, unless otherwise agreed by the CA and the Owner in writing.

**5.6.2** The Owner shall continue to make payment, in accordance with this Agreement, of any amounts not in dispute pending final resolution of any dispute.

## ARTICLE 6 - COMPENSATION AND PAYMENT

### 6.1 Basic Fee

6.1.1 For Basic Services provided by the CA and all Consultants, the Owner shall pay the CA a Basic Fee in accordance with the amount identified in the Agreement Form.

6.1.2 A change in the Basic Fee may be made only by an amendment to this Agreement in accordance with Section 4.3.

### 6.2 Additional Services Fee

6.2.1 The Owner shall pay the CA the Additional Services Fees for the associated Additional Services, when those Services are performed in accordance with the Agreement.

6.2.2 For Change Order work authorized by the Owner, the CA shall be compensated at the prescribed rate of the additional construction cost up to the amount of the Change Order Fee Allowance. There shall be no fees for approved Change Orders processed as a result of errors and/or omissions on the part of the CA or decreases in construction cost.

6.2.3 Except for the Additional Services and Additional Services Fee listed above, Additional Services and any Additional Services Fee shall be approved only by an amendment to this Agreement in accordance with Section 4.3.

6.2.3.1 For Additional Services not included in the original Agreement Form that are provided by the CA and any Consultants in accordance with Section 4.3, the Owner shall pay the CA Additional Services Fee in an amount negotiated to the mutual reasonable satisfaction of the Owner and the CA

### 6.3 Reimbursable Expenses

6.3.1 The CA shall use its best efforts to minimize Reimbursable Expenses.

6.3.2 In all events, total Reimbursable Expenses shall not exceed the amount identified in the Agreement Form, without the prior written approval of the Owner and an amendment to this Agreement in accordance with Section 4.3.

6.3.3 Reimbursable Expenses shall only be permitted for the items identified in the Agreement Form and shall not exceed the respective amounts.

6.3.4 No mark-up shall be permitted on Reimbursable Expenses.

### 6.4 Method and Terms of Payment

#### 6.4.1 Basic Fee.

6.4.1.1 Payment of the Basic Fee shall be made monthly in proportion to Basic Services performed in each Stage, in accordance with Section 6.1, and the percentages of the Basic Fee described in the Agreement Form.

6.4.1.2 The Owner may, in its sole discretion, waive the withholding of any final balance or part thereof if the CA has performed to the satisfaction of the Owner.

6.4.1.3 Payment of the last 20 percent of the Basic Fee for any Stage of the Services shall be made only after all deliverables required for the Stage have been submitted by the CA to the Owner, as applicable, in form and substance reasonably satisfactory to the Owner.

**6.4.2 Additional Services Fee and Reimbursable Expenses.**

**6.4.2.1** Payments of the Additional Services Fee in accordance with Section 6.2 and for Reimbursable Expenses in accordance with Section 6.3 shall be made monthly based upon Additional Services performed or expenses incurred, as applicable, and as shown by a properly completed Professional Services Pay Request.

**ARTICLE 7 - INSURANCE AND INDEMNIFICATION****7.1 CA's General Insurance Requirements**

**7.1.1** Throughout the performance of the Services or longer as may be described below, the CA shall obtain, pay for, and keep in force, the minimum insurance coverage described in this Article 7.

**7.1.1.1** Each requirement of this Article 7 applies to Consultants just as it applies to the CA.

**7.1.1.2** If a Consultant's usual insurance coverage does not meet the minimum coverage requirements, before entering into an agreement with that Consultant, the CA shall submit to the Owner (1) a certificate of insurance evidencing the insurance the Consultant will carry without additional compensation and (2) if the Owner requests, a written proposal from the Consultant to provide coverage which meets the minimum coverage requirements. The Owner will decide whether to accept the non-conforming insurance coverage or the proposal to provide conforming coverage.

**7.1.1.3** On a case-by-case basis, the Owner and the CA may agree to adjust the below requirements for any particular Consultant.

**7.1.2** Before starting the Services, upon renewal of any policy, and upon a change of any insurance carrier, the CA shall deliver to the Owner certificates evidencing that the required insurance is in force.

**7.1.3** With the exception of government-controlled workers compensation coverage:

**7.1.3.1** the CA shall place the insurance with companies that (1) are satisfactory to the Owner, (2) hold an A.M. Best Rating of A-, or higher, and (3) are authorized to conduct business in Ohio;

**7.1.3.2** if the certificate(s) of insurance is not on the ACORD 25 (2009/09 or more recent) form, it (1) shall provide or be endorsed to provide that coverage will not be cancelled or not renewed until at least 30-days' prior written notice (10-day notice for nonpayment of premium) has been given to the Owner, and (2) shall have the words "endeavor to" and "but failure to do so shall impose no obligation or liability of any kind upon insurer, its agents or representatives" and any like provisions crossed out or deleted; and

**7.1.3.3** within 30 days of the Owner's request, the CA shall submit insurance-company certified copies of the policies, the policy endorsements, or both.

**7.1.4** The CA shall pay all deductibles, or self-insured retentions, or both contained in the CA's policies of insurance required or provided in connection with the Project. The Owner reserves the right to

approve or reject all levels of self-insured retention, captive insurance programs, or other alternative risk financing the CA may use to comply with any insurance requirement.

7.1.6 The Owner does not represent that required coverage or limits are adequate to protect the CA.

7.1.7 Failure of the Owner to demand a certificate or other evidence of full compliance with the insurance requirements or failure of Owner to identify a deficiency from evidence that is provided shall not be construed as a waiver of the CA's obligation to maintain the required insurance.

7.1.8 The Owner may terminate the Agreement for cause on account of the CA's failure to maintain the required insurance.

## 7.2 CA's Minimum Coverage Requirements

7.2.1 Workers Compensation. The CA shall maintain workers compensation coverage meeting the requirements of Applicable Law.

7.2.2 Employers Liability Coverage. The CA shall maintain employer's liability coverage with (1) an each-accident limit of not less than \$1,000,000, (2) a disease each-employee limit of not less than \$1,000,000, and (3) a disease policy limit of not less than \$1,000,000.

7.2.3 Commercial General Liability. The CA shall maintain commercial general liability ("CGL") coverage, which provides (1) an each-occurrence limit of not less than \$1,000,000, (2) a general-aggregate limit of not less than \$2,000,000, and (3) a products and completed-operations aggregate limit of not less than \$2,000,000.

7.2.3.1 The CGL insurance shall be written on ISO occurrence form CG 00 01 10 01 or a substitute form, providing at least equivalent coverage for liability arising from premises, operations, independent contractors, products/completed-operations, personal and advertising injury, and liability assumed under an insured contract.

7.2.3.2 The CA shall include the Owner as an additional insured party under the CGL policy using ISO endorsement CG 20 10 11 85 or a substitute form(s) providing equivalent coverage.

7.2.3.3 The CGL policy shall be endorsed using ISO endorsement CG 25 03 or a substitute form providing equivalent coverage to provide that the general aggregate limit applies separately to each of the insured's projects.

7.2.3.4 The CGL insurance shall apply as primary and non-contributory insurance with respect to any other insurance or self-insurance programs, which cover the additional insured(s).

7.2.3.5 The CGL policy shall not exclude coverage to the additional insured(s) for bodily injury or property damage arising out of the products/completed-operations hazard.

7.2.3.6 The CA shall maintain the CGL insurance in effect for no less than five years after the earlier of the termination the Agreement or Final Acceptance of all Work.

7.2.4 Business Automobile Liability. The CA shall maintain business automobile ("BA") coverage written on ISO form CA 00 01 10 01 or a substitute form, providing at least equivalent coverage with a limit of not less than \$1,000,000 each accident.

7.2.4.1 The coverage shall extend to any auto.

7.2.4.2 The CA shall include the Owner as an additional insured party under the BA policy.

**7.2.5 Umbrella/Excess Liability.** The CA may employ an umbrella/excess liability policy to achieve the above-required minimum coverage.

**7.2.6 Professional Liability.** The CA shall maintain professional liability ("PL") insurance with limits not less than as identified in the following table:

Construction Budget	Each Claim	Annual Aggregate
Up to \$10,000,000	\$1,000,000	\$2,000,000
From \$10,000,000.01 to \$25,000,000	\$3,000,000	\$3,000,000
From \$25,000,000.01 to \$50,000,000	\$5,000,000	\$5,000,000
More than \$50,000,000	\$10,000,000	\$10,000,000

**7.2.6.1** The PL policy shall have an effective date, which is on or before the date on which the CA first started to provide any Project-related Services.

**7.2.6.2** Upon submission of the associated certificate of insurance and at each policy renewal, the CA shall advise the Owner in writing of any actual or alleged claims, which may erode the PL policy's limits.

**7.2.6.3** The CA shall maintain the PL insurance in effect for no less than five years after the earlier of the termination the Agreement or Final Acceptance of all Work.

**7.2.6.4** If the Project is using the design-build project delivery system, the PL policy shall not contain any design-build exclusions.

### 7.3 Waivers of Subrogation

**7.3.1** To the fullest extent permitted by Applicable Law, the CA waives all rights against the Owner and their agents and employees for damages to the extent covered by any insurance, except rights to the proceeds of that insurance. All policies shall accomplish the waiver of subrogation by endorsement or otherwise.

**7.3.2** The Owner and the CA waive all rights against each other for damages caused by fire or other perils to the extent of actual recovery of any insurance proceeds under any property insurance, inland marine insurance, or builder's risk insurance applicable to the Work.

### 7.4 Indemnification for Injury or Damage

**7.4.1** To the fullest extent permitted by Applicable Law, the CA shall indemnify, defend, and hold harmless the Indemnified Parties from and against all claims, costs, damages, losses, fines, penalties, and expenses

(including but not limited to all fees and charges of contractors, engineers, architects, attorneys, and other professionals and all court, arbitration, or other dispute-resolution costs) arising out of or in connection with the Project, provided that any such claim, cost, damage, loss, fine, penalty, or expense (all of which may be direct, indirect, or consequential) is attributable to:

7.4.1.1 bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property but only to the extent caused by the negligent acts, errors, or omissions of the CA or a person or entity for whom the CA may be liable;

7.4.1.2 infringement of patent rights or copyrights by the CA or a person or entity for whom the CA may be liable; or

7.4.1.3 a violation of Applicable Law but only to the extent attributable to the CA or a person or entity for whom the CA may be liable.

7.4.2 The CA's indemnification obligation under Section 7.4 exists regardless of whether or not and the extent to which the claim, damage, loss, fine, penalty, or expense is caused in part by a party indemnified under Section 7.4. But nothing in Section 7.4 obligates the CA to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

7.4.3 In claims against an Indemnified Party by any direct or indirect employee (or the survivor or personal representative of that employee) of the CA or a person or entity for whom the CA may be liable, the indemnification obligation under Section 7.4 will not be limited by a limitation on the amount or type of damages, compensation, or benefits payable under workers' compensation acts, disability benefit acts, or other employee benefit acts.

7.4.4 The CA's indemnification obligation under Section 7.4 will not be limited by any insurance policy provided or required in connection with the Project.

7.4.5 The CA's obligations under Section 7.4 shall not negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to an Indemnified Party.

7.4.6 The CA's indemnification obligation under Section 7.4 will survive termination of the Agreement and Final Acceptance of the Work.

7.4.7 The Owner may deduct from the Basic Fee the claims, damages, losses, fines, penalties, and expenses for which the CA is liable under Section 7.4. If those claims, damages, losses, fines, penalties, and expenses exceed the unpaid balance of the Basic Fee, the CA shall immediately pay the difference to the Owner.

## 7.5 Indemnification for Use of Electronic Files

7.5.1 To the fullest extent permitted by law, the CA shall indemnify and hold harmless the Indemnified Parties from and against all claims, damages, losses, and expenses (including, but not limited to, the fees and charges of contractors, engineers, architects, attorneys, and other professionals) arising out of, or related to the CA's, or any other Person's use of electronic files, including, but not limited to, CAD or BIM files (collectively "Electronic Files").

7.5.1.1 These Electronic Files are provided solely for the CA's convenience and use related to the Project. Any use of the Electronic Files shall be at the sole risk of the CA.

7.5.1.2 The Owner alone owns the Electronic Files and every right, title, and interest therein from the moment of creation.

7.5.1.3 The Electronic Files are not products.

7.5.1.4 The CA shall not use the Electronic Files for any purpose other than as a convenience for preparing documents and other information intended solely for use on the Project.

7.5.1.5 The Owner makes no warranties, either express or implied, of the merchantability or fitness of the Electronic Files for any particular purpose.

7.5.1.6 The CA understands and accepts that the Electronic Files may deteriorate or be inadvertently or otherwise modified without authorization of the Owner.

7.5.1.7 The Owner makes no representations as to compatibility, usability, or readability of the Electronic Files resulting from the use of software, application packages, operating systems, or computer hardware differing from those used to create the Electronic Files.

7.5.1.8 In the event of a conflict between the Contract Documents and the Electronic Files, the Contract Documents shall control, take precedence over, and govern the Electronic Files.

7.5.1.9 The CA alone is responsible to check, verify, and otherwise confirm the accuracy of data on the Electronic Files.

7.5.1.10 The CA shall not make any claims and hereby waives, to the fullest extent permitted by law, any claims or causes of action of any nature against the Indemnified Parties, which may arise out of, or in connection with, the use of the Electronic Files.

## ARTICLE 8 - SUSPENSION AND TERMINATION

### 8.1 Suspension of the Services

8.1.1 The Owner, without cause and without prejudice to any other right or remedy it may have, may order the CA in writing to suspend, delay, or interrupt the performance of the Services in whole or in part for such period of time as the Owner may determine.

8.1.1.1 If the Owner suspends the Services under this Section 8.1.1 and the CA complies with Article 4, the Basic Fee, Additional Services Fee, and Reimbursable Expenses shall be adjusted for increases in the cost and time caused by the suspension, delay, or interruption.

8.1.1.2 Notwithstanding the foregoing, no adjustment shall be made to the Basic Fee, Additional Services Fee, or Reimbursable Expenses to the extent that:

- .1 performance was, or could have been, suspended, delayed, or interrupted by a cause for which the CA is responsible; or
- .2 an equitable adjustment is made or denied under another provision of the Agreement.

8.1.1.3 If the Owner suspends the Services under this Section 8.1.1 and the CA submits a proper Architect/Engineer Payment Request, but subject to all other provisions of the Agreement, the CA shall be entitled to payment of compensation due under the Agreement for Services satisfactorily performed before the suspension.

8.1.2 The Owner, without prejudice to any other right or remedy it may have, may order the CA in writing to suspend, delay, or interrupt the performance of the Services in whole or in part for such period of time as the Owner may determine on account of the CA's failure to properly or timely perform the Services.

8.1.2.1 The Owner's exercise of its right to suspend the Services under this Section 8.1.2 shall not entitle the CA to any adjustment of the Basic Fee, Additional Services Fee, or Reimbursable Expenses.

8.1.2.2 If the Owner is adjudged to have improperly suspended the Services under this Section 8.1.2, the suspension shall be deemed to have been a suspension under Section 8.1.1.

8.1.3 Upon receipt of notice of suspension under this Section 8.1, the CA shall cease providing the suspended Services and take all necessary or appropriate steps to limit disbursements and minimize respective costs. The CA shall furnish a report to the Owner, within 5 days of receiving the notice of suspension,



describing the status of the Services, including, but not limited to, results accomplished, resulting conclusions, and other information as the Owner may require.

8.1.4 The Owner's right to stop the Services shall not give rise to any duty to exercise the right for the benefit of the CA or any other party, and the Owner's exercise or failure to exercise the right shall not prejudice any of the Owner's other rights.

## 8.2 Termination for Convenience

8.2.1 The Owner may terminate the Agreement in whole or in part for the Owner's convenience and without cause, at any time upon written notice to the CA.

8.2.2 Upon receipt of the notice of termination for convenience, the CA shall immediately proceed with performance of the following duties in accordance with instructions from the Owner:

8.2.2.1 cease operation as specified in the notice;

8.2.2.2 no further Consultant agreements except as necessary to complete continued portions of the Project;

8.2.2.3 terminate all Consultant agreements to the extent they relate to the Services terminated; and

8.2.2.4 proceed with Services not terminated.

8.2.3 The Owner shall pay the CA for Services satisfactorily rendered before the date of termination in accordance with the allocations in the Agreement, including any Reimbursable Expenses incurred, but not in excess of the allocations and caps otherwise provided in the Agreement Form.

8.2.3.1 In no event shall the CA be entitled to overhead and profit associated with Services the CA did not perform on account of the termination or otherwise.

8.2.4 If the Owner terminates the Services under this Section 8.2, the termination shall not affect the rights or remedies of the Owner against the CA then existing or which may thereafter accrue.

8.2.5 Notwithstanding Section 8.2.3, if the Owner terminates the Services under this Section 8.2, but there exists an event of the CA's default, the CA shall be entitled to receive only such sums as it would be entitled to receive following the occurrence of an event of default as provided in Section 8.3.

## 8.3 Termination for Cause

8.3.1 The Owner may terminate all or a portion of the Agreement if the CA commits a material breach of the Agreement including but not limited to:

8.3.1.1 failure to prosecute the Services with the necessary force or in a timely manner;

8.3.1.2 refusal to remedy disapproved Services;

8.3.1.3 failure to properly make payment to Consultants;

8.3.1.4 performance of any services outside of the United States;

8.3.1.5 permitting Consultants to perform any services outside of the United States; or

8.3.1.6 disregarding laws, ordinances, or rules, regulations, or orders of a public authority with jurisdiction over the Project.

8.3.2 If the Owner intends to exercise its termination rights under this Section 8.3, the Owner shall notify the CA in writing of the Owner's intent to terminate this Agreement and the cause(s) for that termination.

8.3.3 If the CA fails to cure the identified cause(s) for termination within 7 days after receiving the notice described under Section 8.3.2, the Owner may terminate the Agreement by giving written notice of the termination to the CA.

8.3.4 If the Agreement is terminated, the Owner may complete the Services by means the Owner determines appropriate. The Owner may take immediate possession of all CA Documents.

8.3.5 If the Agreement is terminated, the CA shall not be entitled to further payment.

8.3.5.1 If the unpaid balance of the sum of the Basic Fee plus Additional Services Fee plus Reimbursable Expenses is exceeded by the costs of finishing the Services, including without limitation the fees and charges of contractors, engineers, architects, attorneys, and other professionals and court costs, and other damages incurred by the Owner and not expressly waived, the CA shall immediately pay the amount of the insufficiency to the Owner. This obligation for payment shall survive termination of the Agreement.

8.3.6 If the Owner terminates the Services under this Section 8.3, the termination shall not affect any rights or remedies of the Owner against the CA then existing or which may thereafter accrue. The Owner's retention or payment of funds due the CA shall not release the CA or the CA's Surety from liability for performance of the Services in accordance with the requirements of the Contract Documents.

8.3.7 If the Owner is adjudged to have improperly terminated the Services under this Section 8.3, the termination will be deemed to have been a termination under Section 8.2.

#### 8.4 CA Insolvency

##### 8.4.1 Bankruptcy of CA.

8.4.1.1 If the CA files a voluntary petition in bankruptcy or has an involuntary petition in bankruptcy filed against it, the CA, the CA as the debtor-in-possession, or the trustee of the CA's bankruptcy estate shall file a motion to assume or reject the Agreement under Bankruptcy Code §365, 11 U.S.C. §365, within 20 days after the filing of the voluntary petition or involuntary petition and shall diligently prosecute that motion to conclusion so as to obtain an order granting or denying that motion within 45 days after the filing of the voluntary or involuntary petition. The failure to file and prosecute that motion within the time frames provided by this Section 8.4 shall constitute a material breach of the Agreement as time is of the essence with respect to CA's performance of all terms of this Agreement. CA agrees to the granting of relief from the automatic stay of the Bankruptcy Code, 11 U.S.C. §362(a), to permit the Owner to terminate the Agreement for cause in such instance and issue and serve all notices necessary to terminate the Agreement or arising out of the termination of the Agreement and to take any and all other action necessary to terminate the Agreement.

##### 8.4.2 Receivership or Assignment for the Benefit of Creditors.

8.4.2.1 If the CA makes a general assignment for the benefit of creditors or if a receiver is appointed for all or a substantial part of the CA's business or property, the Owner shall serve written notice on the CA and the CA's Surety stating that any failure of the CA to provide adequate assurance of continued performance shall be considered a rejection of the Agreement, which shall result in termination of the Agreement for cause. Such termination of the Agreement need not be evidenced by an order of any court.

### ARTICLE 9 - GENERAL PROVISIONS

#### 9.1 CA's Documents and Contract Documents

9.1.1 Except as provided under Section 9.1.2 and subject to Section 9.1.6, the Owner alone owns the CA's Documents and the Contract Documents and every right, title, and interest in the CA's Documents and the Contract Documents from the moment of creation.

9.1.2 Section 9.1.1 does not apply to standard details and specifications regularly used by the CA or any of its Consultants in its normal course of business that are included in the CA's Documents. The CA grants to the

Owner an irrevocable, non-exclusive, perpetual, freely assignable, and royalty-free license to copy, reproduce, distribute, and otherwise use those standard details and specifications for all Project-related purposes such as but not limited to owning, financing, constructing, testing, commissioning, decommissioning, using, operating, maintaining, repairing, modifying, selling, obtaining insurance for, and obtaining permits for the Project before, during, and after termination or completion of this Agreement.

**9.1.3** The CA must execute and deliver and cause its employees and agents and all Consultants to execute and deliver, to the Owner any transfers, assignments, documents, or other instruments (if any) necessary to vest in the Owner complete right, title, interest in and ownership of all of the CA's Documents and the Contract Documents under **Section 9.1.1** and the license described under **Section 9.1.2**.

**9.1.4** The CA may retain copies, including reproducible copies of CA's Documents and the Contract Documents for information, reference, and the performance of the Services. The Owner grants to the CA and its Consultants a non-exclusive, royalty-free license to copy, reproduce, distribute, and otherwise use the CA's Documents and the Contract Documents in relation to the performance of the Services, including any Additional Services.

**9.1.5** The submission or distribution of CA's Documents and the Contract Documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the Owner's reserved rights in the CA's Documents and the Contract Documents. Any unauthorized use of the CA's Documents and the Contract Documents will be at the sole risk of the entity making the unauthorized use of the CA's Documents and the Contract Documents.

**9.1.6** Should Owner desire to use any of the CA's Documents for an addition to, remodeling or rehabilitation of, or change to any one or more of the Project improvements built on the basis of the CA's Documents, Owner shall engage one or more suitable licensed design professionals under terms that require each of those design professionals to independently evaluate any design or related features in the CA's Documents without reliance on any information in the CA's Documents that would be inconsistent to the standard of care applicable to that design professional.

**9.1.7** The CA shall provide Electronic Files to the Contractor for the Contractor's and Subcontractors' use in connection with the Project. CA shall provide the Electronic Files at no additional cost to the Contractor, the Subcontractors, or the Owner.

## **9.2 Public Relations**

**9.2.1 Publicity prior to completion of the Project.** Prior to completion of the Project, public relations or publicity about the Project shall be solely within the control, and with the consent of, the Owner.

**9.2.2 Publicity after completion of the Project.** After completion of the Project, the CA may exercise reasonable public relations and marketing efforts related to the Project, provided the CA properly identifies the Owner, and their participation in the Project.

**9.2.3 Professional Photography.** If the CA commissions photography of the completed Project, the CA shall include in its photography agreements a release for unrestricted and unlimited use of photographs by the Owner and the Owner, and shall provide the Owner with a reasonable quantity of photographs for use in the Owner's marketing and awareness activities, including, but not limited to, profiles of the Project on their respective websites.

**9.2.4 Design Awards and Other Recognition.**

**9.2.4.1** If the CA submits the Project for design awards or other similar venues for recognition of the Project, the CA shall properly identify the Owner, and their participation in the Project.

9.2.4.2 In addition, if the Project receives any design award or other recognition, the CA shall provide duplicate copies of the award plaque or other memento of the award to the Owner.

### 9.3 Application and Governing Law

9.3.1 This Agreement and the rights of the parties hereunder shall be governed by the laws of the state of Ohio and only Warren County, Ohio courts shall have jurisdiction and venue over any action or proceeding hereunder or related to the Project. The CA irrevocably consents to such jurisdiction.

9.3.2 The parties to the Agreement shall comply with Applicable Law.

9.3.3 Other rights and responsibilities of the Contractor, the CA, and the Owner are set forth throughout the Contract Documents and included under different titles, articles, and paragraphs for convenience.

### 9.4 Written Notice

9.4.1 Notice under this Agreement shall be validly given if:

9.4.1.1 delivered personally to a member of the organization for whom the notice is intended;

9.4.1.2 delivered, or sent by registered or certified mail, to the last known business address of the organization; or

9.4.1.3 sent by facsimile, email, or web-based project management software, provided the original, signed document is delivered within 3 business days after the date of the electronic transmission.

9.4.2 When the Owner, the CA, or a Contractor gives notice to one of the other 3, it shall also simultaneously send a copy of that notice to the others.

9.4.3 A copy of all notices, certificates, requests, or other communications to the Owner shall be sent to the Project Manager.

9.4.4 In the event of an emergency involving the Project, including, but not limited to, a fatality, serious injury, fire, collapse, flood, utility, or power loss to occupied facilities, explosion, or environmental damage, the CA shall immediately notify the Owner by telephone.

9.4.5 The Owner or the CA may, by written notice given hereunder, designate addresses, telephone numbers, email addresses, or facsimile numbers to which notices, certificates, requests, or communications shall be sent.

### 9.5 Computing Time

9.5.1 When this Agreement refers to a period of time by a number of days, the period shall be computed to exclude the first and include the last day of the period. If the last day of the period falls on a Saturday, Sunday, or a legal holiday, that day shall be omitted from the computation and the period shall end on the next succeeding day that is not a Saturday, Sunday, or legal holiday.

9.5.2 Except as excluded under Section 9.5.1, all time periods referred to in this Agreement include Saturdays, Sundays, and all days defined as legal holidays by Section 9.5.4.

9.5.3 The standard workdays for State projects are Monday through Friday, excluding legal holidays.

9.5.4 Legal holidays are as follows:

9.5.4.1 New Year's Day – First Day in January;

9.5.4.2 Martin Luther King Jr. Day – Third Monday in January;

9.5.4.3 Washington-Lincoln (President's) Day – Third Monday in February;

9.5.4.4 Memorial Day – Last Monday in May;

- 9.5.4.5 Independence Day – Fourth day of July;
- 9.5.4.6 Labor Day – First Monday in September;
- 9.5.4.7 Columbus Day – Second Monday in October;
- 9.5.4.8 Veteran’s Day – Eleventh Day of November;
- 9.5.4.9 Thanksgiving Day – Fourth Thursday of November; and
- 9.5.4.10 Christmas Day – Twenty-fifth day of December.

9.5.5 If a legal holiday falls on a Saturday, it is observed on the preceding Friday. If a legal holiday falls on a Sunday, it is observed on the following Monday.

## 9.6 Time of the Essence

9.6.1 Time limits stated in the Agreement are of the essence of the Agreement and all obligations under the Agreement. By signing the Agreement, the CA acknowledges that those time limits are reasonable.

9.6.1.1 The CA acknowledges that the Owner have entered into, or may enter into, other contracts based upon the CA properly providing the Services in a timely manner.

9.6.1.2 The CA shall perform the Work in a reasonable, efficient, and economical sequence, and in the order and time as provided in the Project Schedule.

9.6.1.3 The CA acknowledges that it may be subject to interference, disruption, hindrance, or delay in the progress of the Services from any cause. The sole remedy for such interference, disruption, hindrance, or delay shall be an extension of the time for performance of the Services, unless otherwise required by ORC Section 4113.62.

## 9.7 Successors and Assigns

9.7.1 The Owner and the CA, each bind themselves, their successors, assigns, and legal representatives, to the other party to this Agreement and to the successors, assigns, and legal representatives of the other party with respect to all terms of this Agreement.

9.7.2 The Owner and the CA each acknowledge that the Owner is the intended third-party beneficiary of this Agreement.

9.7.3 The CA shall not assign, or transfer any right, title, or interest in this Agreement without the Contracting Authority’s prior written consent.

## 9.8 Extent of Agreement

9.8.1 Entire Agreement. This Agreement, including the attached documents, and the Contract Documents represent the entire and integrated agreement between the Owner and the CA and supersede all prior negotiations, representations, or agreements, either written or oral.

9.8.1 Multiple Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

9.8.2 Captions. The captions and headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provisions or sections hereof.

9.8.3 Precedence. If there are any inconsistencies between the provisions of the Contract Documents and the provisions of the Announcement or this Agreement, the provisions of this Agreement shall prevail.

## 9.9 Severability

9.9.1 If any term or provision of this Agreement, or the application thereof to any Person or circumstance, is finally determined to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement or the application of such term or provision to other Persons or circumstances, shall not be

affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by Applicable Law.

#### 9.10 Facsimile Signatures

9.10.1 Any party hereto may deliver a copy of its counterpart signature page to this Agreement via fax, e-mail, or web-based project management software. Each party hereto shall be entitled to rely upon a scanned or facsimile signature of any other party delivered in such a manner as if such signature were an original.

#### 9.11 No Third-Party Interest

9.11.1 Except as expressly provided under Sections 3.1.6 and 9.7.2, (1) no person or entity, other than the Owner and the CA, will have any right or interest under the Agreement, and (2) the Agreement does not create a contractual relationship of any kind between any people or entities other than the Owner.

#### 9.12 No Waiver

9.12.1 The failure of the Owner or the CA to insist in any one or more instances upon the strict performance of any one or more of the provisions of the Agreement or to exercise any rights under the Agreement or provided by law will not be construed as a waiver or relinquishment of that provision or right or of the right to subsequently demand strict performance or exercise the right and the rights will continue unchanged and remain in full force and effect.

#### 9.13 Rights and Remedies

9.13.1 The duties, obligations, rights, and remedies under the Agreement are in addition to and not a limitation of the duties, obligations, rights, and remedies otherwise imposed by or available under Laws and Regulations.

#### 9.14 Survival of Obligations

9.14.1 All representations, indemnity obligations, warranties, guarantees, and necessarily continuing obligations under the Agreement, will survive final payment, completion and acceptance of the Work, and termination or completion of the Agreement.

### ARTICLE 10 - DEFINED TERMS AND ABBREVIATIONS

10.1 For the purposes of this Agreement, the words, terms, and abbreviations set forth below have the following meanings:

10.1.1 "Architect" or "CA" means the Person identified in the Agreement responsible for providing professional design services and construction contract administration for the Project. The CA shall be a registered architect holding a license and certificate of authorization issued by the Ohio Architects Board pursuant to ORC Chapter 4703. As used in the Agreement, the term CA will designate a Criteria Architect for a Design-Build project.

10.1.2 "CA's Documents" means all Project-related documents, including those in electronic form, prepared by the CA or Consultants.

10.1.3 "Change Order Fee Allowance" means the amount established by the Owner in the Agreement Form for the purpose of funding Change Order fees payable to the CA resulting from increases in the construction cost by approved Change Orders.

10.1.4 "Consultant" means a Person engaged by the CA to provide or perform a portion of the Services.

10.1.5 "Contractor" means a Person, which is party to a contract for the performance of Work on the Project in cooperation with Separate Contractors and Persons, and in accordance with the Contract Documents. As used in the Agreement, the term Contractor may include a Construction Manager at Risk or a Design-Builder.

10.1.6 "Direct Personnel Expense" means the portion of direct salaries and wages of all personnel of the CA or any Consultants, as applicable, including professional, technical, management, administrative and clerical employees, and principals engaged on the Project related to their time devoted to the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto such as employment taxes and other statutory employee benefits, social security contributions, insurance, sick leave, holidays, vacations, pensions, profit sharing, and similar benefits related to their time devoted to the Project.

10.1.7 "Equal Opportunity Coordinator" means the public official who exercises the duties and responsibilities of the position of the equal employment opportunity coordinator identified in ORC Section 121.04, including but not limited to issuing certificates of compliance with the State's affirmative action and EDGE programs.

10.1.8 "Fee" (as in "Basic Fee," "Additional Services Fee," and otherwise) means all of the compensation to be paid by the Owner to the CA on account of the proper, timely, and complete performance of the associated Services by the CA or its Consultants, including, but not limited to, salaries or other compensation of the CA's employees at the principal office, branch offices, and the field office, general operating expenses of the CA's principal office, branch offices, and the field office, any part of the CA's capital expenses, including interest on the CA's capital employed for the Project, overhead or expenses of any kind, except Reimbursable Expenses, any costs incurred due to the CA's negligence, the CA's general advertising, federal, state or local income, sales or other taxes, state franchise taxes and qualification fees, and membership in trade, business or professional organizations.

10.1.9 "Indemnified Parties" means the Owner, and their respective officials, officers, consultants, agents, representatives, and employees, in both individual and official capacities.

10.1.10 "Life Cycle Cost" means the sum of present values of investment costs, capital costs, installation costs, energy costs, operating costs, maintenance costs, and disposal costs over the lifetime of the Project, product, or measure.

10.1.11 "Life Cycle Cost Analysis" means an economic method for assessing the total cost of facility ownership, taking into account all costs of acquiring, owning, maintaining, and disposing of a building or building system. Life Cycle Cost Analysis is also utilized to compare design alternatives that fulfill the same performance requirements, but differ with respect to initial costs and operating costs, in order to select the one that maximizes net savings.

10.1.12 "Reimbursable Expenses" means actual expenditures incurred by the CA or its Consultants in the interest of the Project, approved by the Owner for reproduction of Contract Documents for distribution to Bidders, plan approval fees, building permits, and, if requested by the Owner, reformatting Project Record Submittals to a computer medium different than the computer medium used by the CA.

10.1.13 "Services" includes all of the CA's obligations, individually or collectively, under the Agreement including all items reasonably inferable from the Agreement, whether provided or to be provided by the CA, a Consultant, or any other entity for whom the CA is responsible. The Services include both Basic Services and Additional Services as defined in the Agreement.

10.1.14 "Submittals" means Shop Drawings, Product Data, Samples, and other items for the CA's review and action provided by a Contractor for any item required by the Contract Documents, but not fully described in the Contract Documents.

**END OF DOCUMENT**

# **Exhibit B - Criteria Architect's Scope of Services for a Design-Build Project Professional Services Agreement**

## **ARTICLE 1 - CRITERIA ARCHITECT'S BASIC SERVICES**

### **1.1 General**

1.1.1 Basic Services to be provided by the Criteria Architect shall consist of the activities and stages set forth in Article 2 through Article 5.

### **1.2 Criteria Architect's Relationship to the Contractor**

1.2.1 The Criteria Architect is authorized to disapprove or reject Defective Work. The Criteria Architect shall immediately notify the Owner in writing any time the Criteria Architect disapproves or rejects an item of Work.

1.2.2 The Criteria Architect is not responsible for design or construction means, methods, manners, techniques, sequences, procedures, or for safety precautions and programs in connection with the Work, or for the Contractor's failure to carry out the Work in conformity with the Contract Documents.

1.2.3 The Criteria Architect's review and approval of the Work and any information the Contractor submits to the Criteria Architect is for the sole purpose of determining whether the Work and information are generally consistent with the Contract's intent, and will not relieve the Contractor of its sole responsibility for the performance, preparation, completeness, and accuracy of the Work and information.

### **1.3 Limitation of Criteria Architect's Authority**

1.3.1 Under no circumstances is the Criteria Architect authorized to:

1.3.1.1 bind the Owner to any authorizations under, modifications of, or amendments to any contract;

1.3.1.2 accept any defective or non-conforming services, Work, or vendor-furnished items;

1.3.1.3 make any settlements on behalf of the Owner; or

1.3.1.4 assume any responsibilities of the Contractor, Consultants, or Subcontractors.

## **ARTICLE 2 - CONCEPT AND DESIGN CRITERIA STAGE**

### **2.1 Organizational Meeting**

#### **2.1.1 Commencement.**

2.1.1.1 The Criteria Architect's Services will begin on the date set forth in a notice that the Owner will issue to the Criteria Architect.

2.1.1.2 Unless the Owner agrees otherwise in writing, the Criteria Architect's Services will begin with an organizational meeting between the Owner and the Criteria Architect.

2.1.2 During the organizational meeting, the attendees will:

2.1.2.1 review the responsibilities of each of the Owner's key personnel involved in the Project;

2.1.2.2 review the scope of the Criteria Architect's Services;

2.1.2.3 review and establish lines of communication between the Owner and the Criteria Architect;

2.1.2.4 develop a list of the Owner's Project-stakeholder representatives to be involved in the Concept and Design Criteria Stage to inform the development of the Concept and Design Criteria Documents; and

2.1.2.5 review the then-available information and documents which reflect the Owner's requirements and objectives for the Project including Project Schedule and Construction Budget requirements and objectives.



**2.1.3** Within 5 days after the organizational meeting is adjourned, the Criteria Architect shall prepare and submit to the Contracting Authority and the Owner:

**2.1.3.1** detailed minutes of the organizational meeting; and

**2.1.3.2** a proposed Project Schedule reflecting the performance of the Criteria Architect's Services and the progression of the Project through award of the Contract to the Contractor.

- .1 The Owner and the Criteria Architect will promptly thereafter consult with one another as necessary to reach agreement on the initial Project Schedule, which shall be used as the basis for moving forward with the Project subject to revision.

## **2.2 General Requirements**

**2.2.1** In addition to performing those Services required to comply with Sections 2.3 and 2.4, during the Concept and Design Criteria Stage, the Criteria Architect shall:

**2.2.1.1** identify the building type, necessity or feasibility of relocating utilities, layout for building and parking, and research, analyze, and document relevant information specific to the same;

**2.2.1.2** meet and otherwise work with the Owner and others with an interest in the Project to establish goals and objectives for the Project;

**2.2.1.3** gather, analyze, and document information relevant to the identified Project goals and objectives;

**2.2.1.4** identify and evaluate strategies to achieve the identified Project goals and objectives;

**2.2.1.5** advise the Owner in writing if at any time it appears that the Project Schedule or Construction Budget may be exceeded and make recommendations for corrective action;

**2.2.1.6** meet with the Owner at intervals acceptable to the Owner, to review drawings and other documents which depict the current status of the Concept and Design Criteria Stage of the Project;

**2.2.1.7** identify and analyze issues related to compliance with Applicable Law and participate in related meetings with government authorities that have jurisdiction over the Project;

**2.2.1.8** investigate existing conditions and verify the accuracy of Owner-provided information about existing conditions, as appropriate;

**2.2.1.9** notify the Owner of the need for the professional services of any Separate Consultants required for the Project; and

**2.2.1.10** review and provide recommendations concerning Site use and improvements and alternative approaches to selection of materials, building systems, and equipment.

## **2.3 Criteria Architect's Concept and Design Criteria Submission**

**2.3.1** At the completion of the Concept and Design Criteria Stage, the Criteria Architect shall submit the provisional Concept and Design Criteria Documents to the Owner.

**2.3.2** The provisional Concept and Design Criteria Documents shall be in the form of a written report, conceptual drawings, and/or conceptual specifications. At a minimum, the Concept and Design Criteria Documents shall include:

**2.3.2.1** an executive summary of the Concept and Design Criteria Documents;

**2.3.2.2** building type information including: (1) the types of functions included in the building type, (2) the space criteria for those functions, (3) typical relationships of spaces for those functions, (4) typical site requirements for the building type (5) technical, mechanical, electrical, security, or other issues unique to the building type, and (8) unique data specific to the particular project;

**2.3.2.3** a narrative description of the Project's goals and objectives such as: (1) the role of the Project in the achievement of the Owner's overall organizational objectives and goals; (2) Project form and image goals such as aesthetics, relationship to the site, adjacent areas, and neighbors including any historic, cultural,

and/or context implications; (3) function goals including identification of all major building functions and occupancy requirements; (4) economic goals including total Project Budget, Construction Budget, factors related to initial costs versus long-range operating and maintenance costs, level of quality desired; and (5) schedule goals including desired dates for commencement of construction and for Final Completion;

2.3.2.4 a description of space requirements, including a listing of the desired spaces and an identification of each space's basic criteria such as occupancy requirements, dimensions, proportions, ceiling heights, and service, equipment, storage, utility, access, flexibility, configuration, security, adjacency, aesthetic, and other requirements;

2.3.2.5 a description of planning and design criteria such as workstation, office/room standards, clustering and layout, parking layout criteria; circulation criteria; applicable space-planning modules; dimensional criteria; building systems interface criteria; envelope criteria; accessibility requirements; and a description of performance criteria applicable to building components such as envelope, structure, interior construction, and mechanical, electrical, and plumbing systems, etc. as may be required;

2.3.2.6 a description of site development and design criteria including zoning, design guidelines, deed restrictions and requirements, utility availability, topography, built features, etc.;

2.3.2.7 a conceptual site plan and conceptual building plans illustrating the Project's scale and the relationship of Project components to one another and the relationship of the Project to surrounding properties;

2.3.2.8 if not noted on the drawings, conceptual specifications reflecting preliminary selections of materials, building systems, and/or equipment;

2.3.2.9 a preliminary estimate of Construction Cost using area, volume or similar conceptual estimating techniques;

2.3.2.10 a preliminary Project Schedule reflecting the design and construction of the Project through Owner occupancy;

2.3.2.11 an identification of Applicable Law.

## **2.4 Concept and Design Criteria Documents Review**

2.4.1 The Owner and the Criteria Architect shall meet to review the provisional Concept and Design Criteria Documents and to reach agreement on any Owner-authorized adjustments to the Concept and Design Criteria Documents, Project Schedule, Construction Budget, or Project Budget and any necessary clarifications of the provisional Concept and Design Criteria Documents.

2.4.2 Unless the Owner agrees otherwise in writing, within 5 business days after the review meeting, the Criteria Architect shall revise the provisional Concept and Design Criteria Documents to reflect the adjustments and clarifications agreed upon in the review meeting, and resubmit those documents to the Owner. When the Owner approves of the revised Concept and Design Criteria Document, the revised provisional Concept and Design Criteria Documents shall become the Final Concept and Design Criteria Documents.

## **ARTICLE 3 - BEST VALUE SELECTION STAGE**

### **3.1 Commencement**

3.1.1 Unless the Contracting Authority directs otherwise in writing, the Best Value Selection Stage will begin upon completion of the activities described under Section 2.4.

### 3.2 General Requirements

3.2.1 In addition to performing those Services required to comply with Sections 3.3 through 3.6, during the Best Value Selection Stage, the Criteria Architect shall:

3.2.1.1 meet with the Owner at intervals acceptable to the Owner, to review documents and other information which depict the current status of the Best Value Selection Stage;

3.2.1.2 develop the interest of design-build firms in the Project, including specifically those design-build firms (if any) the Owner asks the Criteria Architect to contact;

### 3.3 Preliminary Activities

3.3.1 The Criteria Architect shall schedule, conduct, and participate in meetings with the Contracting Authority and the Owner:

3.3.1.1 to identify design-builder qualifications criteria required for the Project and to determine how those criteria will be evaluated in the qualifications phase of the selection;

3.3.1.2 to identify the performance criteria and pricing criteria required for the Project and to determine how they will be evaluated and weighted in the request for proposal phase of the selection;

3.3.1.3 to identify and document any minimum or mandatory technical requirements for the project;

3.3.1.4 to establish a process for maintaining records of decisions made at all stages of the selection process; and

3.3.1.5 if applicable, to determine the amount of any stipend to be paid to the non-selected short-listed design-build firms for a responsive pricing and technical proposal.

### 3.4 Request for Qualifications

3.4.1 In consultation with the Owner, the Criteria Architect shall (1) assist with publishing the advertisement, (2) prepare the Request for Qualifications and related clarifications, and (3) the Statements of Qualifications shall be received by the Owner.

3.4.2 The Criteria Architect shall support the Evaluation Committee in its evaluation of the Statements of Qualifications by advising the Evaluation Committee on technical issues, however, the Criteria Architect shall not participate as a voting member of the Evaluation Committee .

### 3.5 Request for Proposals

3.5.1 In consultation with the Owner, the Criteria Architect shall (1) prepare and issue the Request for Proposals and related clarifications, (2) participate in pre-proposal meetings, and (3) the Proposals shall be received by the Owner, (4) provide relevant AIA Design Build Contract Forms to Owner to be reviewed and modified.

3.5.2 The Criteria Architect shall support the Evaluation Committee in its evaluation of the Proposals by attending proposer interviews and advising the Evaluation Committee on pricing and/or technical issues, but the Criteria Architect shall not participate in the ranking of the Proposals.

3.5.2.1 If the Proposals include GMP Proposals, the Criteria Architect shall assist the Evaluation Committee in its comparative analysis and normalization of the GMP Proposals, which Services include the Criteria Architect's detailed review and analysis of the proposed GMP Documents as described under Section 4.4.

### 3.6 Contract Award and Negotiation

3.6.1 The Criteria Architect shall assist the Owner with the award and negotiation of the Contract by advising the Owner on pricing and technical issues.

## ARTICLE 4 - PRECONSTRUCTION STAGES

### 4.1 Commencement

4.1.1 Unless the Owner directs otherwise in writing, the Criteria Architect's Services during the Project's Preconstruction Stages will begin upon completion of the activities described under Section 3.6.

4.1.2 The Criteria Architect shall attend and participate in the organizational meeting described in the Contract.

### 4.2 General Requirements

4.2.1 During the Preconstruction Stages, the Criteria Architect shall:

4.2.1.1 issue clarifications and interpretations of the Final Concept and Design Criteria Documents;

4.2.1.2 advise the Owner and the Contractor in writing if at any time it appears that the Project Schedule or Construction Budget may be exceeded and make recommendations for corrective action;

4.2.1.3 meet with the Owner and the Contractor at intervals acceptable to the Owner, to review drawings and other documents which depict the current status of the Preconstruction Stages;

4.2.1.4 notify the Owner of the need for and assist the Owner with obtaining the professional services of any Separate Consultants required for the Project; and

4.2.1.5 at the request of the Owner:

.1 identify and analyze issues related to compliance with Applicable Law and participate in related meetings with government authorities that have jurisdiction over the Project;

.2 investigate existing conditions and verify the accuracy of Owner-provided information about existing conditions;

.3 review Contractor submittals (in addition to the submittals described under Section 4.3) for acceptability and conformance with the Final Concept and Design Criteria Documents, Construction Budget, or Project Schedule;

.4 evaluate and provide recommendations to the Owner concerning contemplated modifications of the Final Concept and Design Criteria Documents;

.5 evaluate and provide recommendations to the Owner concerning disputes with the Contractor; and

.6 review and provide recommendations to the Owner concerning the Contractor's invoices for Preconstruction Services.

### 4.3 Submittal Reviews

4.3.1 The Criteria Architect shall receive from the Owner and promptly review a copy of the Contractor's submissions at the end of each of the Preconstruction Stages.

4.3.2 Within 7 days after receiving a Contractor submission, the Criteria Architect shall review and analyze it in detail and submit a report to the Owner through which the Criteria Architect shall individually address each of the following topics at a minimum:

4.3.2.1 whether the Work described in the submission appears consistent with the Final Concept and Design Criteria Documents;

4.3.2.2 whether the Work described in the submission appears consistent with the Construction Budget; and

4.3.2.3 whether the Work described in the submission appears consistent with the Project Schedule.

4.3.3 If the Criteria Architect finds that the Work described in the submission appears inconsistent with the Final Concept and Design Criteria Documents, Construction Budget, or Project Schedule, the Criteria Architect shall also describe and identify in writing to the Owner specific examples of the inconsistencies.

4.3.4 At the Owner request, the Criteria Architect shall meet with the Owner and the Contractor to review the Criteria Architect's report.

4.3.5 At the Owner's request, the Criteria Architect shall assist the Owner with the negotiation of the Contractor's GMP Amendment.

#### 4.4 GMP Proposal and Amendment

4.4.1 The Criteria Architect shall receive from the Owner and promptly review a copy of the Contractor's GMP Proposal.

4.4.2 Within 7 days after receiving a copy of the Contractor's GMP Proposal, the Criteria Architect shall review and analyze it in detail and submit a written report to the Owner through which the Criteria Architect shall individually address each of the following topics at a minimum as appropriate for the Stage in the Project when the Contractor submits the GMP Proposal:

4.4.2.1 clarity of the GMP Proposal;

4.4.2.2 completeness of the GMP Proposal;

4.4.2.3 coordination of the documents comprising the GMP Proposal;

4.4.2.4 whether the Work described in the GMP Proposal appears consistent with the Final Concept and Design Criteria Documents;

4.4.2.5 whether the Work described in the GMP Proposal appears consistent with the Construction Budget; and

4.4.2.6 whether the Work described in the GMP Proposal appears consistent with the Project Schedule.

4.4.3 If it is the Criteria Architect's opinion that the clarity, completeness, or coordination of the Contractor's GMP Proposal is deficient, the Criteria Architect shall also describe and identify in its report specific examples of the deficiencies. If the Criteria Architect finds that the Work described in the Contractor's GMP Proposal appears inconsistent with the Final Concept and Design Criteria Documents, Construction Budget, or Project Schedule, the Criteria Architect shall also describe and identify in its report specific examples of the inconsistencies.

4.4.4 At the Owner's request, the Criteria Architect shall meet with the Owner and the Contractor to review the Criteria Architect's report.

4.4.5 At the Owner's request, the Criteria Architect shall assist the Owner with the negotiation of the Contractor's GMP Amendment.

### ARTICLE 5 - CONSTRUCTION AND CLOSEOUT

#### 5.1 Commencement

5.1.1 Unless the Owner directs otherwise in writing, the Criteria Architect's Services during Construction and Closeout will commence with the Owner's issuance of the Notice to Proceed to the Contractor and will terminate upon Final Acceptance of the Project.

#### 5.2 General Requirements

5.2.1 During the Construction and Closeout, the Criteria Architect shall:

5.2.1.1 advise the Owner and the Contractor in writing if at any time it appears that the Project Schedule or Construction Budget may be exceeded and make recommendations for corrective action;

5.2.1.2 meet with the Owner and the Contractor at intervals acceptable to the Owner, to review the current status of the Project;

5.2.1.3 notify the Owner of the need for and assist the Owner with obtaining the professional services of Separate Consultants which may be required for the Project; and

5.2.1.4 at the request of the Owner:

- .1 identify and analyze issues related to compliance with Applicable Law and participate in related meetings with government authorities that have jurisdiction over the Project;
- .2 investigate existing conditions and verify the accuracy of Owner-provided information about existing conditions;
- .3 review Contractor submittals including Drawings, Specifications, and Action Items for acceptability and conformance with the GMP Documents;
- .4 visit the Site to observe the Work, up to twenty-two (22) site visits included in basic services, attend meetings, and determine in general if the Work is proceeding in accordance with the GMP Documents and the Project Schedule;
- .5 evaluate and provide recommendations to the Owner concerning Modifications and Claims;
- .6 advise the Owner as to the necessity of special inspections, tests, or approvals, and review the associated results;
- .7 review and provide recommendations to the Owner concerning the Contractor's DB Payment Requests;
- .8 review and provide recommendations to the Owner concerning the Contractor's closeout documentation.

### 5.3 Differing Site Condition Investigation

5.3.1 Promptly after receiving notice of a Differing Site Condition from the Contractor, the Criteria Architect shall investigate to determine whether the Contractor has encountered a Differing Site Condition.

5.3.2 The Criteria Architect shall give written notice of its determination to the Owner and the Contractor within 10 days after completing the investigation.

## ARTICLE 6 - ADDITIONAL SERVICES

### 6.1 General

#### 6.1.1 Services Not Included in Basic Services.

6.1.1.1 The Criteria Architect shall provide the services listed in Sections 6.2 through 6.4 as Additional Services only when identified in the Agreement Form and approved in writing by the Owner.

6.1.1.1.1 For this project, the Design-Build Entity (the Contractor) will provide Schematic Design, Design Development and Construction Documents Stage Design Services.

6.1.1.1.2 For this project, the Criteria Architect will review Contractor's Schematic Design, Design Development and Construction Documents Stage submittals in accordance with Section 4 as part of Criteria Architect's Basic Services.

6.1.1.1.3 The Additional Services listed in Sections 6.2 through 6.3 shall not apply to this project unless they are requested by Owner in writing and an amendment to the Agreement Form is executed.

6.1.1.2 The Fee for the Additional Services listed in Sections 6.2 through 6.4 shall be paid as provided in the Agreement Form, in addition to payment for the Basic Services; however, the Criteria Architect shall not be compensated for any of the Additional Services listed in Sections 6.2 through 6.4 made necessary by any act or omission of the Criteria Architect or any of the Criteria Architect's Consultants.

6.1.1.3 Unless waived by the Owner in writing, authorization to provide Additional Services must be obtained prior to providing the Additional Services.

## 6.2 Schematic Design Stage Services

### 6.2.1 Commencement.

6.2.1.1 Unless the Owner directs otherwise in writing, the Schematic Design Stage will begin upon completion of the activities described under Section 2.4.

### 6.2.2 General Requirements.

6.2.2.1 In addition to performing those Services required during the Schematic Design Stage, the Criteria Architect shall:

- .1 advise the Owner in writing if at any time it appears that the Project Schedule or Construction Budget may be exceeded and make recommendations for corrective action;
- .2 meet with the Owner at intervals acceptable to the Owner, to review drawings and other documents which depict the current status of the Schematic Design Stage of the Project;
- .3 further evaluate and refine the Final Concept and Design Criteria Documents;
- .4 identify all issues related to compliance with Applicable Law and participate in related meetings with government authorities that have jurisdiction over the Project;
- .5 investigate existing conditions and verify the accuracy of Owner-provided information about existing conditions, as appropriate;
- .6 notify the Owner of the need for and assist the Owner in selecting, retaining, and coordinating the professional services of any Separate Consultants required for the Project; and
- .7 assist the Owner with filing documents required for the approvals of governmental authorities with jurisdiction over the Project.

### 6.2.3 Criteria A/E's Schematic Design Submission.

6.2.3.1 At the completion of the Schematic Design Stage, the Criteria Architect shall submit the provisional Schematic Design Documents to the Owner.

6.2.3.2 The provisional Schematic Design Documents shall include:

- .1 a conceptual site plan and preliminary building plans and elevations illustrating the Project's scale and the relationship of Project components to one another and the relationship of the Project to surrounding properties;
- .2 if not noted on the drawings, a written description of preliminary selections of major building systems and construction materials;
- .3 an estimate of Construction Cost using area, volume or similar conceptual estimating techniques;
- .4 cost evaluations of alternative building systems and construction materials;
- .5 an identification of any unresolved issues related to compliance with Applicable Law;
- .6 a written description of all modifications of the Final Concept and Design Criteria Documents;
- .7 if agreed in writing by the Owner, the Criteria Architect will develop study models, perspective sketches, electronic modeling, or combinations of those media; and
- .8 all other documents and information required under the Minimum Stage Submission Requirements attached as an exhibit to the Agreement Form.

### 6.2.4 Schematic Design Documents Review.

6.2.4.1 The Owner, and the Criteria Architect shall meet to review the provisional Schematic Design Documents and to reach agreement on any Owner authorized adjustments to the Final Concept and Design Criteria Documents, Project Schedule, Construction Budget, or Project Budget and any necessary clarifications of the provisional Schematic Design Documents.

6.2.4.2 Unless the Owner agrees otherwise in writing, within 5 business days after the review meeting, the Criteria Architect shall revise its Schematic Design Stage submission to reflect the adjustments and clarifications agreed upon in the review meeting and resubmit those documents to the Owner. When the Owner approves of the revised Schematic Design Stage submission and signs the related Design Review Acceptance form, the revised Schematic Design Stage submission shall become the final Schematic Design Documents.

### 6.3 Design Development Stage Services

#### 6.3.1 Commencement.

6.3.1.1 Unless the Contracting Authority directs otherwise in writing, the Design Development Stage will begin upon completion of the activities described under Section 6.2.4.

#### 6.3.2 General Requirements.

6.3.2.1 In addition to performing those Services required to comply with Sections 6.3.3 through 6.3.5, during the Design Development Stage, the Criteria Architect shall:

- .1 advise the Owner in writing if at any time it appears that the Project Schedule or Construction Budget may be exceeded and make recommendations for corrective action;
- .2 meet with the Owner at intervals acceptable to the Owner, to review drawings and other documents which depict the current status of the Design Development Stage of the Project;
- .3 further evaluate and refine the Final Concept and Design Criteria Documents;
- .4 develop estimates of the Construction Costs in increasing detail;
- .5 prepare and submit a sole-source justification letter describing any materials, products, or systems included in the Work that are only available from a single manufacturer, supplier, or contractor to the Owner for its approval in writing;
- .6 resolve all issues related to compliance with Applicable Law (except to the extent stated otherwise in writing by the Criteria Architect for necessary variances and waivers at the time of the Criteria Architect's provisional Design Development Document submission) and participate in related meetings with government authorities that have jurisdiction over the Project;
- .7 investigate existing conditions and verify the accuracy of Owner-provided information about existing conditions, as appropriate;
- .8 notify the Owner of the need for and assist the Owner in selecting, retaining, and coordinating the professional services of any Separate Consultants required for the Project;
- .9 assist the Owner with filing documents required for the approvals of governmental authorities with jurisdiction over the Project; and
- .10 review and provide recommendations concerning Site use and improvements and alternative approaches to selection of materials, building systems, and equipment.

#### 6.3.3 Life Cycle Cost Analysis – Paragraph Not Used.

#### 6.3.4 Criteria Architect's Design Development Submission.

6.3.4.1 At the completion of the Design Development Stage, the Criteria Architect shall submit the provisional Design Development Documents to the Owner.

6.3.4.2 The provisional Design Development Documents shall include:

- .1 plans, sections, elevations, typical construction details, and equipment layouts that illustrate and describe the refinement of the Project's design and the size and character of the Project in terms of architectural, structural, mechanical, plumbing, and electrical systems, materials, and other elements as may be appropriate;
- .2 specifications sufficient to identify the quality and other characteristics of the proposed or selected materials, equipment, finishes, fixtures, and systems;



- .3 an estimate of Construction Cost;
- .4 a written description of all proposed or previously agreed upon alternates, which description may be included in the specifications rather than as a separate document;
- .5 a written description of all proposed or previously agreed upon allowances;
- .6 an identification of any unresolved issues related to compliance with Applicable Law;
- .7 a written description of all modifications of the Final Concept and Design Criteria Documents; and
- .8 all other documents and information required under the Minimum Stage Submission Requirements attached as an exhibit to the Agreement Form.

#### **6.3.5 Design Development Documents Review.**

**6.3.5.1** The Owner and the Criteria Architect shall meet to review the provisional Design Development Documents and to reach agreement on any Owner-authorized adjustments to the Final Concept and Design Criteria Documents, Project Schedule, Construction Budget, or Project Budget and any necessary clarifications of the provisional Design Development Documents.

**6.3.5.2** Unless the Owner agrees otherwise in writing, within 5 business days after the review meeting, the Criteria Architect shall revise its Design Development Stage submission to reflect the adjustments and clarifications agreed upon in the review meeting, and resubmit those documents to the Owner. When the Owner approves of the revised Design Development Stage submission and signs the related Design Review Acceptance form, the revised Design Development Stage submission shall become the final Design Development Documents.

#### **6.4 Miscellaneous Additional Services**

**6.4.1 Specialized Services.** Providing specialized design and engineering services, including, but not limited to, services for acoustical analysis or design, computer services, communication consultant services, design or specification of unusual or large volumes of fixtures, furnishings, and equipment.

**6.4.2 Additional On-Site Services.** Providing administration or observation of construction beyond the Basic Services.

**6.4.3 Extensive Change Orders.** Preparing Drawings, Specifications, cost estimates, and other documents and supporting data in connection with Change Orders beyond those services to be reasonably provided as Basic Services.

**6.4.4 Partnering and Scheduling Consultants.** Serving as a partnering or construction scheduling consultant or providing such consulting services.

**6.4.5 Perspectives, Models, Renderings.** Preparing professional perspectives, physical models, or renderings, which are not otherwise useful or necessary to the Criteria Architect in providing the Basic Services required hereunder and which are provided at the prior written request of the Owner.

**6.4.6 Grant Applications.** Preparing applications and supporting documents for governmental grants, loans, or advances.

**6.4.7 Special Studies.** Providing planning services, site evaluations, environmental studies, or comparative studies of prospective sites, preparing special surveys, studies, and submissions required under Applicable Law.

**6.4.8 Surveys.** Providing surveying services, including land surveys and rights-of-way studies.

**6.4.9 Investigation of Conditions for New Construction.** Providing services for new construction to investigate existing conditions or facilities, to make measured drawings thereof, or to verify the accuracy of drawings or other information furnished by the Owner.

**6.4.10 Constructability and Cost Analyses.** Preparing extensive analyses of the construction feasibility of the Project or of owning and operating costs, or preparing detailed quantity surveys or inventories of material, equipment, and labor beyond those services to be reasonably provided as Basic Services.

**6.4.11 Off-Site Services.** Providing planning or design services for off-site utilities, which are not adjacent to the Project, building connections, or roadways.

**6.4.12 Certain Revisions.** Making revisions in Drawings, Specifications, or other Contract Documents at the request of the Owner when such revisions are inconsistent with written approvals or instructions previously given or are required by the enactment or revision of Applicable Law subsequent to the preparation of such documents.

**6.4.13 Replacement Work.** Providing consultation and other services in connection with replacement of any Work damaged by fire, casualty, or other incident not caused by negligence of the Criteria Architect or any Consultant.

**6.4.14 Contractor Default.** Providing services made necessary by a Contractor's default.

**6.4.15 Additional Documents.** Providing more sets of Contract Documents than the number required as Basic Services.

**6.4.16 Special Inspections Required by the Ohio Building Code.**

**6.4.16.1** The special inspections indicated in the current edition of the OBC Chapter 17 are not included as Basic Services; however, in the event such special inspections are required as a condition of the Plan Approval issued by the Building Authority having jurisdiction for the Project, the Criteria Architect may provide the special inspections and be compensated for such as Additional Services, and may provide written notice to the Contractor and the Owner of the Special Inspection to be performed.

**6.4.16.2** The Criteria Architect shall not be compensated for any such Additional Services made necessary by the act or omission of the Criteria Architect or any Consultant of the Criteria Architect.

**END OF DOCUMENT**

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

# Resolution

Number 17-1539

Adopted Date October 03, 2017

APPROVE EXTENSION TO AGREEMENT FOR ADMINISTRATION FUNCTIONS WITH COUNCIL ON AGING OF SOUTHWESTERN OHIO RELATIVE TO WARREN COUNTY ELDERLY SERVICES

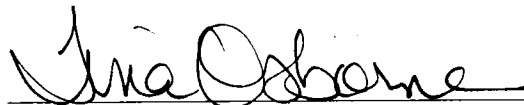
BE IT RESOLVED, to approve extension to the agreement for Administration Functions with Council on Aging of Southwestern Ohio; copy of said agreement attached hereto and made a part hereof.

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 3<sup>rd</sup> day of October 2017.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

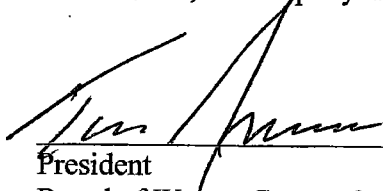
cc: c/a—Council of Aging of Southwestern, Ohio  
Elderly Services (file)  
E. Hartmann

**Third Service Agreement Extension**

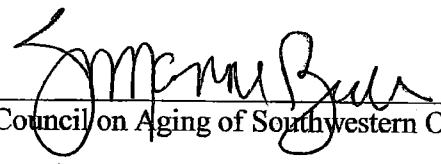
**WHEREAS**, Resolution Number 15-1379 approved and entered into an agreement with Council on Aging of Southwestern Ohio beginning 1 January 2015 and ending 31 December 2015 to provide administrative services for the senior citizens (elderly) residents of Warren County, and

**WHEREAS**, said agreement provided for its extension for successive one (1) year time periods, up to the five (5) tax years of the Senior Citizens Services Levy (Levy), subject to written agreement by both parties; and

**NOW THEREFORE BE IT RESOLVED**, that the Agreement between this Board and the Council on Aging of Southwestern Ohio for the administrative services is extended for the third one year term beginning 1 January 2018, and ending 31 December 2018, at a cost of \$457, 518.00 per year.

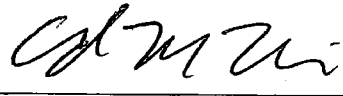
  
\_\_\_\_\_  
President  
Board of Warren County Commissioners

10-03-17  
Date

  
\_\_\_\_\_  
Council on Aging of Southwestern Ohio

9/21/17  
Date

Approved as to Form:

  
\_\_\_\_\_  
Adam Nice  
Assistant Prosecutor

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

# Resolution

Number 17-1540

Adopted Date October 03, 2017

APPROVE EXTENSION TO AGREEMENT FOR INTAKE, ASSESSMENT AND CASE MANAGEMENT FUNCTIONS WITH COUNCIL ON AGING OF SOUTHWESTERN OHIO ON BEHALF OF WARREN COUNTY ELDERLY SERVICES


BE IT RESOLVED, to approve extension to the agreement for Intake, Assessment and Case Management Functions with Council on Aging of Southwestern Ohio; copy of said agreement 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 3<sup>rd</sup> day of October 2017.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

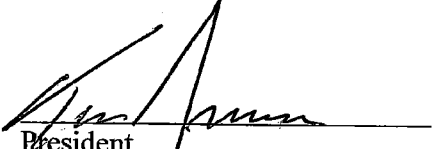
cc: c/a—Council of Aging of Southwestern, Ohio  
Elderly Services (file)  
E. Hartmann

**Third Service Agreement Extension**

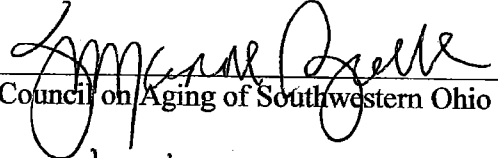
**WHEREAS**, Resolution Number 16-1378 approved and entered into an agreement with Council on Aging of Southwestern Ohio beginning 1 January 2015 and ending 31 December 2015 to provide intake, assessment and case management for the senior citizens (elderly) residents of Warren County, and

**WHEREAS**, said agreement provided for its extension for successive one (1) year time periods, up to the five (5) tax years of the Senior Citizens Services Levy (Levy), subject to written agreement by both parties; and

**NOW THEREFORE BE IT RESOLVED**, that the Agreement between this Board and the Council on Aging of Southwestern Ohio for intake, assessment and case management is extended for the third one year term beginning 1 January 2018, and ending 31 December 2018, at a cost of \$1,465,689 per year (\$82,948.00 – intake and information, \$1,382,741.00 – case management).


  
\_\_\_\_\_  
President  
Board of Warren County Commissioners

10-03-17  
Date

  
\_\_\_\_\_  
Council on Aging of Southwestern Ohio

9/21/17  
Date

Approved as to Form:

  
\_\_\_\_\_  
Adam Nice  
Assistant Prosecutor

# Resolution

Number 17-1541

Adopted Date October 03, 2017

AUTHORIZE THE PRESIDENT OF THIS BOARD TO SIGN A SATISFACTION OF MORTGAGE FOR DEBRA L. CHAMBERS

WHEREAS, Debra L. Chambers received a Mortgage to Secure a Loan for Purchase of Property through the First Time Home Buyers Assistance Program; and

WHEREAS, the Board has received payment in full for said mortgage;


NOW THEREFORE BE IT RESOLVED, to authorize the President of this Board to sign a Satisfaction of Mortgage for Debra L. Chambers.

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 3<sup>rd</sup> day of October 2017.

BOARD OF COUNTY COMMISSIONERS

  
Tina Osborne, Clerk

/vsp

cc: OGA (file)  
c/a – Chambers, Debra

# Resolution

Number 17-1542

Adopted Date October 03, 2017

WAIVE INSPECTION FEES ASSOCIATED THE CHANGE OF USE PERMIT FOR ORIGINS CHURCH IN CLEARCREEK TOWNSHIP

WHEREAS, Origins Church is submitting an application for a change of use permit for the property located at 946 E. Lower Springboro Road in Clearcreek Township to allow rental of the gymnasium; and

WHEREAS, we are in receipt of a letter requesting said fees be waived; and

NOW THEREFORE BE IT RESOLVED, to waive the fees associated with the Change of Use Permit for Origins Church; and

BE IT FURTHER RESOLVED, Origins Church be responsible for any surcharge required by the State of Ohio.

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 3<sup>rd</sup> day of October 2017.

BOARD OF COUNTY COMMISSIONERS

  
Tina Osborne, Clerk

/11

cc: Building Department (file)  
Zoning Department (file)  
Origins Church – [joel@originschurch.tv](mailto:joel@originschurch.tv)



# Resolution

Number 17-1543

Adopted Date October 03, 2017

APPROVE REPLACEMENT OF CULVERT WA 12-5.15 UNDER FORCE ACCOUNT

WHEREAS, there is need to replace structure WA 12-5-15 carrying Oregonia Road over a Branch of Hawley's Run in Turtlecreek Township; and

WHEREAS, Neil F. Tunison, P.E., P.S., Warren County Engineer proposes to replace the structure under force account; and

WHEREAS, the County Engineer's estimated cost of the portion of replacement, including labor and materials not purchased under contract as specified under Sections 5543.19 and 5575.01 of the Ohio Revised Code is \$42,743.44 and under the cap of \$100,000 for a bridge; and

WHEREAS, the Engineer's estimate is submitted and to be kept on file with the Board of County Commissioners;

NOW THEREFORE BE IT RESOLVED, to approve the construction of the bridge under force account provisions of Section 5543.19 and 5575.01 of the Ohio Revised Code.

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 3<sup>rd</sup> day of October 2017.

BOARD OF COUNTY COMMISSIONERS

  
Tina Osborne, Clerk

cc: Engineer (file)



**ESTIMATED EQUIPMENT**

Each piece of equipment used in a project must be assigned an hourly rate. For equipment owned by the public entity, this rate must reflect the original purchase price of the equipment, maintenance costs, time in service, depreciation, freight, fuel, and hauling. The public office may use any generally accepted rate that reflects all of the aforementioned considerations, or it may use the statewide rates published by the Ohio Department of Transportation and updated on a quarterly basis; however, the office must use the same rate source for all equipment used in a project. Any equipment rented by the public entity must be listed in the form and reflect the rental rate.

Description	Rate per		Hours	=	Total
	Hour				
Track Hoe	\$75.00	X	60	=	\$4,500.00
Compactor, Roller	\$30.00	X	5	=	\$150.00
Dump Truck	\$45.00	X	50	=	\$2,250.00
Dump Truck	\$45.00	X	50	=	\$2,250.00
Pickup Truck	\$15.00	X	14	=	\$210.00
Pickup Truck	\$15.00	X	14	=	\$210.00
Gradal	\$140.00	X	21	=	\$2,940.00
Sweeper	\$55.00	X	3	=	\$165.00
Skid Steer	\$26.00	X	25	=	\$650.00
DuraPatcher	\$75.00	X	3	=	\$225.00
		X		=	
		X		=	
<b>Total Equipment Estimate</b>					<b>\$13,550.00</b>

**TOTAL ESTIMATED PROJECT COST** \$42,743.44 (labor + materials + equipment)

**Prepared by:** Dominic M. Brigano  
**Title:** Assistant Bridge Engineer  
**Date:** September 26, 2017

# Resolution

Number 17-1544

Adopted Date October 03, 2017

## ADVERTISE FOR BIDS FOR THE FY13/16 VILLAGE OF PLEASANT PLAIN STORM SEWER CDBG PROJECT

BE IT RESOLVED, to advertise for bids for the FY13/16 Village of Pleasant Plain Storm Sewer CDBG Project to be funded under the County's Community Development Block Grant Program for the Warren County Office of Grants Administration; 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 October 15, 2017; bid opening to be October 31, 2017 @ 9:15 a.m.

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

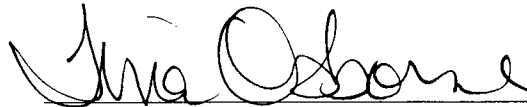
Mr. Grossmann – yea

Mr. Young – yea

Mrs. Jones – yea

Resolution adopted this 3<sup>rd</sup> day of October 2017.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

EH\

cc: OGA (file)  
OMB Bid file

# Resolution

Number 17-1545

Adopted Date October 03, 2017

APPROVE AND ENTER INTO A TANF SUBGRANT AGREEMENT BETWEEN THE WARREN COUNTY COMMISSIONERS ON BEHALF OF THE WARREN COUNTY DEPARTMENT OF HUMAN SERVICES AND WARREN COUNTY CHILDREN SERVICES

BE IT RESOLVED, to approve and enter into a Contract with Warren County Department of Human Services and Warren County Children Services in the total amount of \$500,000.00 Title XX TANF Transfer funds for 10/01/17, ending 09/30/18; contract 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 3<sup>rd</sup> day of October 2017.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: c/a – Warren County Human Services  
c/a – Warren County Children Services  
Human Services (file)  
Children Services (file)

**WARREN COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES  
TITLE XX TANF SUBGRANT AGREEMENT**

**WITNESSETH THAT;**

WHEREAS, it is the purpose of the Warren County Department of Job and Family Services to provide a variety of social services to Title XX TANF Transfer-eligible individuals in the community as a way to improve and enhance the quality of life of the county citizenry;

And

WHEREAS, one method the Department utilizes to fulfill this objective is through the issuance of Title XX TANF Transfer sub-grant to various community agencies that provide direct services to the target population in order to remediate socio-economic barriers;

And

WHEREAS, the Warren County Children Services is one such agency with which the Warren County Department of Job and Family Services desires to enter into contract for delivery of services;

NOW, THEREFORE, in consideration of the promises and the mutual covenants and obligations herein contained, and subject to the terms and conditions hereinafter stated, the parties hereto understand and agree as follows:

**ARTICLE I DEFINITIONS, PURPOSE, OBLIGATIONS**

**A. Definitions**

"State" means the Governor of the State of Ohio, or any agency, department, person or persons authorized in his behalf.

"Sub-recipient" means Warren County Children Services; 416 S East Street Lebanon OH 45036.

"Department" means the Warren County Department of Job and Family Services, 416 S East Street Lebanon OH 45036

**B. Purpose of Sub-grant**

The purpose of the sub-grant is to state the covenants and conditions under which the Sub-recipient will provide services for the purpose of promoting economic self-sufficiency and meeting the social service needs of low income individuals and families in Warren County.

**C. Obligations of the Sub-recipient**

The Sub-recipient agrees to operate a program, described in detail in Exhibit I hereafter, in accordance with Federal, State, and local laws, ordinances, regulations, and/or guidelines and any additions, deletions or amendments thereto.

The Sub-recipient shall not perform in any way inconsistent with the terms of this sub-grant except as approved, in writing, by the Department. Adjustments in the services to be provided per the attached Exhibits may not be made without prior approval of the Department.

The Sub-recipient agrees to accept responsibility for reconciling and/or complying with any audit finding rendered by an appropriate state or federal audit entity when the finding relates directly to the provisions of this sub-grant. The Sub-recipient agrees to reimburse the Department the full amount of payment received due to duplicate billing, erroneous billings, deceptive claims or falsification.

**D. Client Eligibility**

The Sub-recipient will determine client eligibility for those who will be serviced through the Sub-recipient's program, pursuant to Title XX of the Social Security Act, Chapter 5101 of the Ohio Revised Code, and any rules promulgated by the Ohio Department of Job and Family Services. The accuracy and legitimacy of the Sub-recipient's eligibility determination process will be subject to periodic monitoring by the Department.

**ARTICLE II CONTENT OF PROGRAM PROPOSAL**

Refer to Exhibits I, and incorporated herein by this reference.

**ARTICLE III COMPENSATION AND METHOD OF PAYMENT**

**A. Reimbursement**

The Department agrees that reimbursement of all costs will be dependent upon Sub-recipient performance in the delivery of services specified in Exhibit I, attached, which includes intake and investigations, case management services, casework counseling, parent education, diagnostic assessments and homemaker services for children and families with open cases. Payment shall be made by the Warren County Auditor upon proper presentation of request, when approved by the Department and the Sub-recipient, within 30 days from receipt of the approved invoice.

Reimbursement of Sub-recipient's cost shall be based on the costs billed through the Certification of Funds Process.

**B. Availability of Funds**

Payments for all services provided in accordance with the provisions of this Sub-Grant Agreement are contingent upon the availability of (and will not exceed the total of) local, state, and federal funds as follows:

TITLE XX/TANF TRANSFER FUNDS	\$ 500,000.00	CFDA NUMBER 93.667
---------------------------------	---------------	--------------------

Funds available under this agreement may not be used for food. Mileage cannot exceed the county's established mileage reimbursement rate, currently \$0.50.

**C. Maximum Compensation**

The Sub-recipient agrees to accept as payment in full, for services rendered in a manner satisfactory to the Department, the compensation stipulated in Exhibit I of this sub-grant, but not to exceed \$500,000.00 during the term of this sub-grant.

**D. Provision of Funding**

If funds anticipated to be received by the Department are suspended, not forthcoming, or terminated in whole or in part, funding for this sub-grant shall terminate, and the sub-recipient shall receive payments for services

rendered up to the date of notification of non-funding.

Unearned payments under this sub-grant may be suspended or terminated upon refusal to accept any additional conditions that may be imposed by ODJFS at any time.

#### **ARTICLE IV ACCESS TO RECORDS**

At any time, during regular business hours, with reasonable notice, and as often as the Department, the Comptroller General of the United States, the State, or other agency or individual authorized by the Department may deem necessary, Sub-recipient shall make available to any or all the above named parties or their authorized representatives, all sub-grantees, invoices, receipts, payrolls, personnel records, enrollees records, reports, documents and all other data relating to all matters covered by this Sub-grant. The Department and the above named parties shall be permitted by the Sub-recipient to inspect, audit, make excerpts, photo-static copies and/or transcripts of any and all documents relating to all matters covered by this contract. Sub-recipient must maintain all required records for three years after final payment is made and all other pending matters are closed.

Except as noted above, the Sub-recipient agrees that the use or disclosure by any party of any information concerning eligible individuals for any purpose not directly related to the performance of this sub-grant is prohibited, except upon written consent of the eligible individual or that individual's parent or guardian.

#### **ARTICLE V TIME OF PERFORMANCE**

This Sub-grant Agreement shall be effective **October 1, 2017** and shall terminate on **September 30, 2018**. The services of the Sub-recipient are to commence immediately upon execution of the sub-grant agreement and all costs allowable under the sub-grant agreement shall be incurred and the final invoice received by the Department no later than close of business **November 1, 2018**.

#### **ARTICLE VI BONDING AND INSURANCE**

The Sub-recipient shall maintain during the term of this Sub-grant agreement, the applicable insurance and bonds specified below:

- a. Worker's Compensation Insurance as required by Ohio law.
- b. Public Liability Insurance on comprehensive basis, including Contingent Liability, in amounts not less than \$100,000 per person, \$300,000 per occurrence for bodily injury, and \$25,000 per occurrence for property damage.
- c. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in performance of this sub-grant agreement, in amounts as indicated in b, above.

#### **ARTICLE VIII INDEPENDENT SUB-RECIPIENT RELATIONSHIP**

It is the intent of the Sub-recipient and the Department to create an independent Sub-recipient relationship. The Sub-recipient will determine eligibility for services based upon the guidelines or direction set forth by the Department, but the Sub-recipient shall determine the legal means by which this work is accomplished. The Department is not responsible for withholding, and shall not withhold, FICA or taxes of any kind from any compensation paid or owed to the Sub-recipient. Neither the Sub-recipient nor Sub-recipient's employees shall be entitled to receive from the Department any benefits which the officers and employees of the Department are entitled to receive and shall not be entitled to receive from the Department workers' compensation, unemployment compensation, medical insurance, life insurance, paid vacations, paid holidays, sick leave, pension benefits, profit sharing, Social Security, Ohio Public Employees Retirement, or any and all other benefits on account of their work for the Department.

This Sub-grant Agreement does not create an agency relationship, or partnership between the Sub-recipient and



the Department. The Sub-recipient has no authority to enter into agreements on behalf of the Department, to bind the Department to any obligation, or to incur any liability in behalf of the Department.

#### **ARTICLE IX MAINTENANCE OF EFFORT**

It is understood and agreed that the level of services, activities, and expenditures by the Sub-recipient, in existence prior to the initiation of services hereunder shall be continued and not be reduced in any way as a result of this sub-grant agreement except for reduction unrelated to the provisions of purposes herein stated. The Sub-recipient shall certify that any costs incurred pursuant to this Sub-grant agreement will not be included as a cost of any other federally financed program in either the current or a prior period.

#### **ARTICLE X CONFLICT OF INTEREST**

The Sub-recipient covenants that no person, under its employ, who presently exercises any functions or responsibilities in connection with the Department or projects or programs funded by the Department, has any personal financial interest, direct or indirect, in this Sub-grant agreement. The Sub-recipient further covenants that in the performance of this Sub-grant agreement, no person having such conflict shall be employed. Any such interest, on the part of the Sub-recipient or its employees, must be disclosed in writing to the Department.

#### **ARTICLE XI MODIFICATIONS**

Modifications of this Sub-grant agreement may be made by the written mutual consent of the parties hereto.

#### **ARTICLE XII TERMINATIONS**

This agreement may be terminated by:

- A. Either party, upon the provision of thirty (30) days written notice.
- B. Mutual Agreement of the parties.
- C. Death or some other incapacity that prevents the Sub-recipient from fulfilling Sub-recipient's duties as set out in this Sub-grant agreement.

#### **ARTICLE XIII BREACH BY SUB-RECIPIENT**

In the event that the Sub-recipient breaches the terms and conditions of this Sub-recipient, the Department may, at its discretion, immediately terminate the Agreement, withhold payment for services not rendered by the Sub-recipient or both.

#### **ARTICLE XIV ADDITIONAL OBLIGATIONS AND ASSURANCES OF SUBRECIPIENT**

1. The Sub-recipient certifies that it possesses legal authority to enter into this Sub-grant agreement and that a resolution, a motion or similar action has been duly adopted as an official act of the Sub-recipient's governing body which authorizes the negotiation and execution of this Sub-grant agreement by the representative who signed the Sub-grant agreement below on behalf of the Sub-recipient.
2. Subgrantee hereby agrees that it will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.); Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.); Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794.); the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.) all provisions required by the implementing regulations of the Department of Agriculture; Department of Justice Enforcement Guidelines (28 CFR Part 50.3 and Part 42); and FNS directives and guidelines, to the effect that, no person shall on the grounds of race, color, national origin, sex, religious creed, age, political beliefs, disability, or reprisal or retaliation for prior civil rights activity, be excluded

from participation in, be denied benefits of, or otherwise be subject to discrimination under any program or activity for which Subgrantee received Federal financial assistance from FNS; and hereby gives assurances that it will immediately take measures necessary to effectuate this agreement.

3. The Sub-recipient shall have safeguards to prohibit employees from using their positions for a purpose that is, or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business or other ties.
4. The Sub-recipient shall maintain appropriate standards of health and safety in work and training situations.
5. The Sub-recipient may not hold the Department responsible for payment of funds if those same funds have not been received by, or from the State.
6. All reports, brochures, literature and pamphlets developed by the Sub-recipient for its work under this Sub-grant agreement shall acknowledge the Department and its role as the funding source for activities, and programs conducted by the Sub-recipient pursuant to this Sub-grant agreement.
7. The Sub-recipient shall maintain easily accessible and auditable financial records.
8. The Sub-recipient, as a Sub-recipient of federal funds, shall provide a copy of their A-133 state audit. An A-133 audit is required if an organization is a non-profit, or a state or local government agency, and expends \$500,000.00 or more per year in federal awards.
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16. The Sub-recipient shall comply with any applicable minimum wage and maximum hour provisions of the Fair Labor Standards Act, and the Ohio Revised Code.
17. The Sub-recipient shall not make claims for payment from the Department for services rendered to eligible

individuals when such claims would duplicate claims made from other sources of public funds available for the same service. The services being contracted for hereunder are not available on a non-reimbursable basis.

18. The Sub-recipient shall not discriminate against applicants for, and participants in the Ohio Works First Program established under Chapter 5107 of the Revised Code, and the Prevention, Retention, and Contingency Program established under Chapter 5108 of the Ohio Revised Code. The Sub-recipient further certifies that it will include a provision in any agreement, contract, grant or procedure requiring the other party to include a similar provision in any subcontract, agreement or grant issued by that entity for the performance of duties related to such agreement, contract, grant or procedure.
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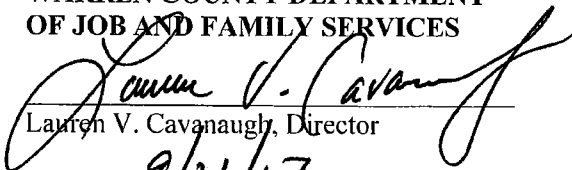
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**WARREN COUNTY DEPARTMENT  
OF JOB AND FAMILY SERVICES**

  
\_\_\_\_\_  
Lauren V. Cavanaugh, Director

Date

9/21/17

**WARRENCOUNTY  
CHILDREN SERVICES**

  
\_\_\_\_\_  
Susan Walther, Director

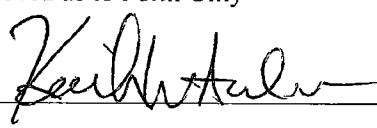
Date

10/21/17

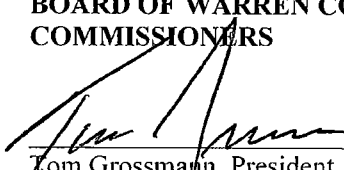
**WARREN COUNTY PROSECUTOR**

Approved as to Form Only

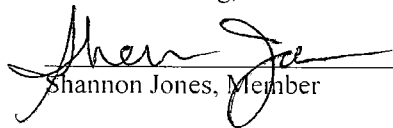
By:

  
\_\_\_\_\_

**BOARD OF WARREN COUNTY  
COMMISSIONERS**

  
\_\_\_\_\_  
Tom Grossman, President

\_\_\_\_\_  
David G. Young, Vice President

  
\_\_\_\_\_  
Shannon Jones, Member

Date

10-3-17

## **Exhibit I**

Warren County Children Services  
Title XX TANF Transfer Proposal for SFY 2017-2018  
416 S. East Street  
Lebanon OH 45036  
513-695-1538  
Susan Walther, Director

### Description of Services

This Title XX TANF Transfer contract will provide funds to Warren County Children Services (WCCS) for costs associated with providing services to families and eligible children placed with relatives or in Kinship homes. These services include, but are not limited to:

- Intake and investigations
- Providing case management services
- casework counseling
- parenting education
- diagnostic and assessment services
- homemaker services

This contract is intended to assist eligible children so that they can be cared for in the homes of relatives or kin and not be placed in a Foster home.

Title XX TANF Transfer services as described above and provided by WCCS can be delivered to eligible children who are below 200% of the poverty level. These Title XX TANF Transfer funds will augment the various Federal, State, and County funds currently received to deliver mandated services as defined in the Ohio Revised Code and Ohio Administrative Code.

### Anticipated Outcomes

Provision of services to these families will allow them to maintain the children in the Relative or Kinship home. Services will be child-centered and family preservation will be the outcome. It is expected these services will also help to maintain the family's self-sufficiency in keeping the children in the relative or kin home and out of a foster home. Specific case outcomes will be tracked as to satisfactory or unsatisfactory completion of case plans. We will measure the length of service time for each family from the beginning of each case episode to the end.

# Resolution

Number 17-1546

Adopted Date October 03, 2017

APPROVE AND ENTER INTO A TANF SUBGRANT AGREEMENT BETWEEN THE WARREN COUNTY COMMISSIONERS ON BEHALF OF THE WARREN COUNTY DEPARTMENT OF HUMAN SERVICES AND WARREN COUNTY CHILDREN SERVICES

BE IT RESOLVED, to approve and enter into a Contract with Warren County Department of Human Services and Warren County Children Services in the total amount of \$300,000.00 TANF/TANF Admin/PRC funds for 10/01/17, ending 09/30/18; contract 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 3<sup>rd</sup> day of October 2017.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: c/a – Warren County Human Services  
c/a – Warren County Children Services  
Human Services (file)  
Children Services (file)

**WARREN COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES  
TANF/PRC CHILD WELFARE SUBGRANT AGREEMENT**

**WITNESSETH THAT;**

WHEREAS, it is the purpose of the Warren County Department of Job and Family Services, Division of Human Services to provide a variety of Social Services to TANF/PRC eligible individuals in the community as a way to improve and enhance the quality of life of the county citizens;

And

WHEREAS, one method the Department utilizes to fulfill this objective is through the issuance of TANF funding through the Prevent Retention and Contingency Program for both direct and indirect services and benefits;

And

WHEREAS, Warren County Division of Human Services desires to enter into a Sub-grant agreement with Warren County Division of Children Services for delivery of both direct and indirect services and benefits;

NOW, THEREFORE, in consideration of the promises and the mutual covenants and obligations herein contained, and subject to the terms and conditions hereinafter stated, the parties hereto understand and agree as follows:

**ARTICLE I DEFINITIONS, PURPOSE, OBLIGATIONS**

**A. Definitions**

"State" means the Governor of the State of Ohio, or any agency, department, person or persons authorized in his behalf.

"Sub-recipient" means Warren County Job and Family Services, Division of Children Services; 416 S East Street Lebanon OH 45036.

"Department" means the Warren County Department of Job and Family Services, Division of Human Services, 416 S East Street Lebanon OH 45036

**B. Purpose of Sub-grant**

The purpose of the sub-grant is to state the covenants and conditions under which the Sub-recipient will provide services and benefits for the purpose of promoting economic self-sufficiency and meeting the social service needs of low income individuals and families and to provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives.

**C. Obligations of the Sub-recipient**

The Sub-recipient agrees to operate a program, described in the Warren County Job and Family Services Prevention Retention and Contingency Plan as found in Exhibit A, in accordance with Federal, State, and local laws, ordinances, regulations, and/or guidelines and any additions, deletions or amendments thereto.

The Sub-recipient shall not perform in any way inconsistent with the terms of this sub-grant except as approved, in writing, by the Department. Adjustments in the services to be provided per the attached Exhibits may not be made without prior approval of the Department.

The Sub-recipient agrees to accept responsibility for reconciling and/or complying with any audit finding rendered by an appropriate state or federal audit entity when the finding relates directly to the provisions of this sub-grant. The Sub-recipient agrees to reimburse the Department the full amount of payment received due to duplicate billing, erroneous billings, deceptive claims or falsification.

#### **D. Client Eligibility**

The Sub-recipient will determine client eligibility for those who will be serviced through the Sub-recipient's program, pursuant to Chapter 5101 of the Ohio Revised Code, and any rules promulgated by the Ohio Department of Job and Family Services. The accuracy and legitimacy of the Sub-recipient's eligibility determination process will be subject to periodic monitoring by the Department.

### **ARTICLE II CONTENT OF PROGRAM PROPOSAL**

Refer to Exhibits A, and incorporated herein by this reference.

### **ARTICLE III COMPENSATION AND METHOD OF PAYMENT**

#### **A. Reimbursement**

The Department agrees that reimbursement of all costs will be dependent upon Sub-recipient performance in the delivery of services and benefits specified in Exhibit A, attached, which includes; Kinship Navigator Services, TANF Child Welfare Services, Kinship and Child Welfare Conditional Services, Case Management Services, as described in the Warren County PRC Plan, Exhibit A. Payment shall be made by the Warren County Auditor upon proper presentation of request, when approved by the Department and the Sub-recipient, within 30 days from receipt of the approved invoice.

Reimbursement of Sub-recipient's cost shall be both through Social Services Random Moment Study and Direct Services expense reimbursement. The Sub-recipient agrees to bill on either a monthly or quarterly basis.

The Sub-recipient will bill the Department based on Program/Activity hits- 760/760, 760/762, 760/786, 760/776, 760/785 and any direct services provided. For further guidance on the correct RMS Codes please see Exhibit B, CW PRC RMS Code Tables.

#### **B. Availability of Funds**

Payments for all services provided in accordance with the provisions of this Sub-Grant Agreement are contingent upon the availability of (and will not exceed the total of) local, state, and federal funds as follows:

<b>Allocation</b>	<b>Contract Amount</b>	<b>Budget Reference</b>	<b>Award I.D./FAIN#</b>	<b>CFDA Number</b>
TANF Administration	\$100,000.00	JFSCACC2	1601OHTANF	93.558
TANF Regular	\$200,000.00	JFSCATFR	1601OHTANF	93.558

Funds available under this agreement may not be used for food. Mileage cannot exceed the county's established mileage reimbursement rate, currently \$0.50.

#### **C. Maximum Compensation**

The Sub-recipient agrees to accept as payment in full, for services rendered in a manner satisfactory to the Department, not to exceed \$300,000.00 during the term of this sub-grant.



#### **D. Provision of Funding**

If funds anticipated to be received by the Department are suspended, not forthcoming, or terminated in whole or in part, funding for this sub-grant shall terminate, and the sub-recipient shall receive payments for services rendered up to the date of notification of non-funding.

Unearned payments under this sub-grant may be suspended or terminated upon refusal to accept any additional conditions that may be imposed by ODJFS at any time.

#### **ARTICLE IV ACCESS TO RECORDS**

At any time, during regular business hours, with reasonable notice, and as often as the Department, the Comptroller General of the United States, the State, or other agency or individual authorized by the Department may deem necessary, Sub-recipient shall make available to any or all the above named parties or their authorized representatives, all sub-grantees, invoices, receipts, payrolls, personnel records, enrollees records, reports, documents and all other data relating to all matters covered by this Sub-grant. The Department and the above named parties shall be permitted by the Sub-recipient to inspect, audit, make excerpts, photo-static copies and/or transcripts of any and all documents relating to all matters covered by this contract. Sub-recipient must maintain all required records for three years after final payment is made and all other pending matters are closed.

Except as noted above, the Sub-recipient agrees that the use or disclosure by any party of any information concerning eligible individuals for any purpose not directly related to the performance of this sub-grant is prohibited, except upon written consent of the eligible individual or that individual's parent or guardian.

#### **ARTICLE V TIME OF PERFORMANCE**

This Sub-grant Agreement shall be effective **October 1, 2017** and shall terminate on **September 30, 2018**. If both parties agree, this Sub-grant agreement may be renewed with the same terms, conditions, and dollar amount for an additional year upon adoption of an amendment by the Warren County Board of County Commissioners. The services of the Sub-recipient are to commence immediately upon execution of the sub-grant agreement and all costs allowable under the sub-grant agreement shall be incurred and the final invoice received by the Department no later than close of business **November 1, 2018**.

#### **ARTICLE VI BONDING AND INSURANCE**

The Sub-recipient shall maintain during the term of this Sub-grant agreement, the applicable insurance and bonds specified below:

- a. Worker's Compensation Insurance as required by Ohio law.
- b. Public Liability Insurance on comprehensive basis, including Contingent Liability, in amounts not less than \$100,000 per person, \$300,000 per occurrence for bodily injury, and \$25,000 per occurrence for property damage.
- c. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in performance of this sub-grant agreement, in amounts as indicated in b, above.

#### **ARTICLE VIII INDEPENDENT SUB-RECIPIENT RELATIONSHIP**

It is the intent of the Sub-recipient and the Department to create an independent Sub-recipient relationship. The Sub-recipient will determine eligibility for services based upon the guidelines or direction set forth by the Department, but the Sub-recipient shall determine the legal means by which this work is accomplished. The Department is not responsible for withholding, and shall not withhold, FICA or taxes of any kind from any compensation paid or owed to the Sub-recipient. Neither the Sub-recipient nor Sub-recipient's employees shall be entitled to receive from the Department any benefits which the officers and employees of the Department are entitled to receive and shall not be entitled to receive from the Department workers' compensation, unemployment compensation, medical insurance, life insurance, paid vacations, paid holidays, sick leave, pension benefits, profit sharing, Social Security, Ohio Public Employees Retirement, or any and all other benefits on account of their work for the Department.

This Sub-grant Agreement does not create an agency relationship, or partnership between the Sub-recipient and the Department. The Sub-recipient has no authority to enter into agreements on behalf of the Department, to bind the Department to any obligation, or to incur any liability in behalf of the Department.

#### **ARTICLE IX MAINTENANCE OF EFFORT**

It is understood and agreed that the level of services, activities, and expenditures by the Sub-recipient, in existence prior to the initiation of services hereunder shall be continued and not be reduced in any way as a result of this sub-grant agreement except for reduction unrelated to the provisions of purposes herein stated. The Sub-recipient shall certify that any costs incurred pursuant to this Sub-grant agreement will not be included as a cost of any other federally financed program in either the current or a prior period.

#### **ARTICLE X CONFLICT OF INTEREST**

The Sub-recipient covenants that no person, under its employ, who presently exercises any functions or responsibilities in connection with the Department or projects or programs funded by the Department, has any personal financial interest, direct or indirect, in this Sub-grant agreement. The Sub-recipient further covenants that in the performance of this Sub-grant agreement, no person having such conflict shall be employed. Any such interest, on the part of the Sub-recipient or its employees, must be disclosed in writing to the Department.

#### **ARTICLE XI MODIFICATIONS**

Modifications of this Sub-grant agreement may be made by the written mutual consent of the parties hereto.

#### **ARTICLE XII TERMINATIONS**

This agreement may be terminated by:

- A. Either party, upon the provision of thirty (30) days written notice.
- B. Mutual Agreement of the parties.
- C. Death or some other incapacity that prevents the Sub-recipient from fulfilling Sub-recipient's duties as set out in this Sub-grant agreement.

#### **ARTICLE XIII BREACH BY SUB-RECIPIENT**

In the event that the Sub-recipient breaches the terms and conditions of this Sub-recipient, the Department may, at its discretion, immediately terminate the Agreement, withhold payment for services not rendered by the Sub-recipient or both.

#### **ARTICLE XIV ADDITIONAL OBLIGATIONS AND ASSURANCES OF SUBRECIPIENT**

1. The Sub-recipient certifies that it possesses legal authority to enter into this Sub-grant agreement and that a resolution, a motion or similar action has been duly adopted as an official act of the Sub-recipient's governing body which authorizes the negotiation and execution of this Sub-grant agreement by the representative who signed the Sub-grant agreement below on behalf of the Sub-recipient.
2. The Sub-recipient certifies that all applicants to the program operated under this Sub-grant agreement, either as an employee or subcontractor of the Sub-recipient or as a program client shall be apprised of their rights and responsibilities at the time of application. No person with responsibility in the operation of the program will discriminate with respect to any program because of race, creed, color, national origin, gender, political affiliation, age, belief, or handicap. Any complaint of discrimination in the operation of such programs shall be handled in a manner, compliant with the policies and procedures of the Department.
3. The Sub-recipient shall have safeguards to prohibit employees from using their positions for a purpose that is, or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business or other ties.

4. The Sub-recipient shall maintain appropriate standards of health and safety in work and training situations.
5. The Sub-recipient may not hold the Department responsible for payment of funds if those same funds have not been received by, or from the State.
6. All reports, brochures, literature and pamphlets developed by the Sub-recipient for its work under this Sub-grant agreement shall acknowledge the Department and its role as the funding source for activities, and programs conducted by the Sub-recipient pursuant to this Sub-grant agreement.
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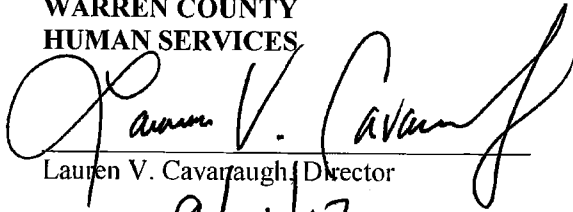
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**WARREN COUNTY  
HUMAN SERVICES**



Lauren V. Cavanaugh, Director

9/21/17  
Date

**WARREN COUNTY  
CHILDREN SERVICES**



Susan Walther, Director

9/22/17  
Date

**WARREN COUNTY PROSECUTOR**

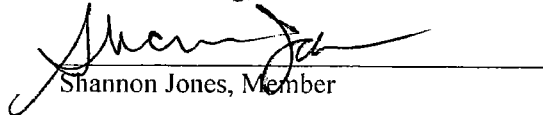
Approved as to Form Only

By: 

**BOARD OF WARREN COUNTY  
COMMISSIONERS**

  
Tom Grossman, President

David G. Young, Vice-President

  
Shannon Jones, Member

10-03-17  
Date

**Warren County  
Job and Family Services  
Division of Human Services  
Prevention, Retention, Contingency Plan (PRC)  
3/2017**

**Warren County Job & Family Services  
Division of Human Services  
416 S. East Street  
Lebanon, OH 45036  
513-695-1420**

**Contact Information:  
Lauren Cavanaugh, Director  
513-695-1402**

**Arlene Byrd, Deputy Director  
513-695-1422**

**Kiley Dane, Supervisor  
513-695-1405**

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## SECTION I INTRODUCTION

The Prevention, Retention and Contingency Program, better known as PRC is designed to assist families in overcoming immediate barriers to achieving or maintaining self-sufficiency and personal responsibility. This is accomplished by providing necessary benefits and services that will enable individuals to obtain employment, keep employment, and improve their overall economic circumstances and stability.

The PRC program provides for nonrecurring, short-term, crisis-oriented benefits and ongoing services that are directly related to one of the four purposes of the Temporary Assistance for Needy Families (TANF) Program. To ensure fair and equitable treatment of the families applying for PRC, the program shall be continuously in operation according to the standards and procedures as set forth within this document. The covered benefits, services, or amounts specified in this plan may not be reduced, limited or restricted unless the program is amended or at the discretion of the Director of the agency. The services and benefits provided under the PRC program fall into three categories:

- |                     |   |
|---------------------|---|
| <b>PREVENTION:</b>  | Benefits/Services are provided prevent a family's reliance on and/or divert them from ongoing cash assistance and guide them toward self-sufficiency by helping them through the presenting crisis. |
| <b>RETENTION:</b>   | Benefits/Services are provided to allow an employed individual to maintain employment and achieve self-sufficiency.   |
| <b>CONTINGENCY:</b> | Benefits/Services are provided to meet an emergent need that threatens the health or well being of one or more family members.  |

A program or service provided through the PRC program must accomplish one of the four purposes of TANF which include:

- |                        |  |
|------------------------|--|
| <b>TANF Purpose 1:</b> | To provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives.   |
| <b>TANF Purpose 2:</b> | To end the dependence of needy parents on government benefits by promoting job preparation, work and marriage.   |
| <b>TANF Purpose 3:</b> | To prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies. |
| <b>TANF Purpose 4:</b> | To encourage the formation and maintenance of two-parent families.   |

PRC funds may only provide benefits and services which are not considered "assistance" (45 C.F.R. 260.31). This definition includes non-recurrent, short-term benefits that are designated to deal with specific crisis or episode of need, are not intended to meet recurrent/ongoing needs, and will not extend beyond four (4) consecutive months. Non-recurrent benefits and services may encompass more than one payment per



calendar year, as long as the payment provides short-term relief and addresses a crisis situation rather than meeting an ongoing or recurrent need and does not exceed the assistance group benefit/cap limit.

## **SECTION II EMERGENT NEED AND EXPLORING COMMUNITY RESOURCES**

Every reasonable effort must be made to explore the availability of resources within the county prior to the authorization of PRC. An Assistance Group (AG) is required to apply for and utilize any program benefit or support system(s) which may reduce or eliminate the presenting need. County staff determining eligibility for PRC should be aware of community resources which may be utilized to help meet the need. Failure on behalf of the applicant to accept or utilize available community resources will be grounds for denial of a PRC application. The PRC Program is designed to provide **temporary** assistance to families with a demonstrated emergent need. In all cases, the amount of the PRC benefit issued must meet, but may not exceed the emergent need of the AG and fall within the established caps of the program. If the amount of PRC available cannot prevent the onset or continuation of the emergent situation, there is no eligibility for payment. In addition, multiple requests (more than one) for PRC services will be evaluated on a case by case basis. Services may not be provided if an abusive pattern of usage is established

## **SECTION III ELIGIBILITY**

### **A. Economic Need**

Economic eligibility includes the combination of income eligibility and evaluation of family needs. Income eligibility for PRC Services is based upon the Federal Poverty Guidelines (FPG) and varies per service category. Specific FPG guidelines have been established per service category and are listed per service are in sections IV, V, VI and VII.

#### **1. Income**

In order for the PRC AG to be found eligible, the PRC AG's income must be at or below 200% of the Federal Poverty Guidelines (FPG) in effect at the time of application, with the exception of Sub-grant and Contractual PRC Benefits and Services. PRC applicants must provide information regarding income for the last thirty (30) days prior to the date of application, including verification of this income if requested by the Warren County Department of Job and Family Services (WCDJFS). Income and family composition guidelines may vary according to the service/benefit and TANF priority. In order to determine income eligibility, WCDJFS will compare all gross income received within the last thirty (30) days to the FPG standard for the specific service category unless otherwise stated. In most cases, PRC assistance is only available to members who haven't received PRC assistance above the monetary cap during the previous 12 consecutive months. Families receiving assistance under another program may receive PRC assistance. Some exceptions to this rule exist and can be found within each service category.

All gross earned and unearned income which has been received by any member of the PRC AG during the 30 day budget period is considered when determining financial need. The 30 day period begins 30 days prior to the date of the application and ends on the application date. The income received during this period is used in the computation of financial eligibility. This includes all income which is normally exempt or disregarded when determining eligibility for OWF, FA or DA. Examples of gross earned and unearned income include;

Gross earned income examples include, but are not limited to:

- Earnings from work as an employee
- Earnings from self-employment, less the cost of doing business
- Training allowance
- Commission

Gross unearned income examples include, but are not limited to:

- RSDI benefits
- Alimony and child support
- Veterans Administration Benefits
- Worker's Compensation
- Unemployment Benefits
- Pension and retirement benefits
- Investment Income
- Rental Income
- OWF and SSI payments

Income of all Assistance Group members must be verified. Only **earned** income of an AG member under the age of 18 will be **excluded** (unless child is a parent).

Per OAC 5101:1-24-20, Prevention, retention and contingency program: excluded income and resources. The following income and resources are excluded when determining financial eligibility for PRC Benefits and Services;

- Child Support payment distributions made by Ohio Department of Job and Family Services (ODJFS) pursuant to division (C) of Section 1 of Am. S.B. 170 of the 124<sup>th</sup> General Assembly (10/25/2001).
- All income that is federally excluded in the determination of eligibility for federal needs-based programs. Federally excluded income include the income sources identified below;
  - Drug discounts and transitional assistance received under the Medicare Prescription Drug Improvement, and Modernization Act, at Section 1860D-31(g)(6) of the Social Security Act (12/08/2003). The language in Section 1860D-319(g)(6) of the Social Security Act states that the availability of negotiated prices or transitional assistance under this section shall not be treated

as benefits or otherwise taken into account in determining an individual's eligibility for, or the amount of benefits under any other federal program.

- Monetary allowances paid under Section 401 of the Veterans Benefits and Health Care Improvement Act of 2000, effective December 1, 2000. Payments authorized and made by the veteran's administration (VA) to provide certain benefits, including a monthly monetary allowance for children with covered birth defects are the natural children of women veterans serviced in the republic of Vietnam from February 28, 1961 through May 7, 1975.

With the above exception, the total gross income, both earned and unearned, of all the PRC AG members, shall be counted. There are no deductions or exclusions allowed from any type of countable income. Written or verbal verification of income is required. For any verification which is obtained by phone, there must be clear documentation in the PRC AG record concerning the name and position of the information provider, the date the verification was obtained, the amount of the verified income, and the name of the individual who obtained the verification.

Once the total gross countable income of a PRC AG is determined and verified, the amount is compared to the 200% Federal Poverty Guidelines for the appropriate PRC AG size. If the total PRC AG income is equal to or less than 200% of the FPG amount for the applicable PRC AG size, the PRC AG meets the income requirement.

## **2. Resource/Assets**

A general principle of the PRC Program is any resources which an Assistance Group (AG) member currently has available must be applied toward the emergent need. The resources to be considered for PRC are those which are both liquid and available to help the AG meet the emergent need. Liquid resources are those which are in cash or payable in case upon demand-the most common types being;

- Savings accounts, checking account, stocks, bonds, mutual funds and promissory notes. Available liquid resources are those in which any AG member has a legal interest and legal ability to use or dispose of.

Resources owned by one AG member are considered available to all other AG members. If ownership of a resource is shared by an AG member and a non-AG member, it is considered available if the AG member has access to the entire resources.

All available liquid resources which any AG member has in excess of \$500.00 must be applied toward the emergent need; the exception being contractual agreements or some special programs offered by WCDJFS. Any resources exceeding \$500.00 which was transferred without adequate consideration within the past 30 days prior to the PRC application shall be considered a resource which is available to be applied toward the emergency need.

**B. Assistance Group (AG):**

General PRC eligibility requires that a child under the age of eighteen (18) or age nineteen (19) but attending high school or its equivalent reside in the household. Special consideration has been made to non-custodial parents, shared parenting, families where children have been temporarily removed, kinship providers, and pregnant women in their third trimester of pregnancy.

The method of defining the PRC Assistance Group (AG) varies by service category and is described per service area. AG determination for families where children are temporarily absent from the home or shared parenting situations are described below.

1. Temporary Absence (5101:1-3-04)- The absence of a member of the AG is temporary when all of the following conditions are met;
  - a. The location of the absent individual is known;
  - b. There is a definite plan for the return of the absent individual to the home; and
  - c. The absent individual shared the home with the assistance group prior to the onset of the absence. A newborn is considered to be sharing the home with the assistance group at the time of birth.

An AG member may be considered temporarily absent for up to 45 consecutive days. An AG member who is, or is expected to be absent from the home without good cause for longer than 45 consecutive days does not meet the temporary absence requirement of PRC/OWF. Good cause reasons can be found in OAC 5101:1-3-04 (C) (1-8).

2. Cases where children are temporarily absent from the home (i.e., taken into legal protective custody by the Warren County JFS, Division of Children Services), remaining household members may be eligible for PRC assistance if the following criteria apply:
  - The child has been out of the home less than a total of six (6) consecutive months,
  - The family has a Children Services reunification plan in place,
  - The family is actively working toward reunification, as verified by the Children Services caseworker. Authorization of PRC services must contribute to the reunification process.

3. Shared Parenting

In a situation where two parents claim custody or shared parenting of child(ren) and are claiming the child to be in the home for purposes of PRC eligibility, one of the following three criteria must be verified:

Does the requesting parent receive and/or pay support for the child(ren)? If one parent pays support, the parent in receipt of the support should be considered the custodial parent. If no support order is established, verify

- a. Does the requesting parent or the other custodial parent receive OWF case assistance? If one parent receives cash assistance and the child(ren) are part of the assistance group, the OWF recipient should be considered the custodial parent. If neither household receives cash assistance, verify (b).

- b. The parent requesting PRC services may present one of two documents to verify shared parenting. He/She may bring verification that the child is claimed as a dependent on the most recent Federal tax filing OR may bring in a signed letter from the other parent. Such letter should state that the parenting is shared, that the signer understands the other parent is applying for PRC services, and that any approval of services may affect the signer's future eligibility for PRC services.

**C. Disqualifiers**

Disqualifiers are listed per service category and deem the applicant ineligible for the services. Refer to specific service area for list of corresponding disqualifiers.

**D. Application Process**

The PRC applicant or an authorized representative must complete the WCDJFS, Prevention, Retention, and Contingency Program (PRC) Application or other required applications to request PRC benefits or services. In accordance with Section 329.051 of the ORC each applicant will be provided with a voter registration form when requesting a PRC application. An applicant is responsible for completing all necessary documents, furnishing all available facts and information, and cooperating in the eligibility determination process.

Eligibility for PRC is dependent upon the PRC Assistance Group's (AG) demonstration and verification of the need for financial assistance and/or services, and whether the county determines that a provision of PRC will satisfy the need.

Samples of all PRC Applications appear in the Exhibits Section of the Plan.

The county is responsible for using objective criteria when determining eligibility and approving or denying the application within 10 days after completion of the application process in a fair and equitable manner, which includes verification of information. Eligibility will be carefully evaluated on a case-by-case basis. Immediate needs, whether or not the PRC Program can be of benefit, will be determined by the WCDJFS. WCDJFS has the authority to designate the application process be completed by other entities based upon a contractual agreement.

This program is designed to help people overcome immediate barriers to achieving or maintaining self-sufficiency and personal responsibility, thereby preventing the need for ongoing public assistance. However, the fact that an ongoing Medicaid, OWF, Food Assistance or DA assistance group is active is not necessarily a determining factor in the consideration of eligibility for the PRC Program. In addition, the WCDJFS must inform individuals about other programs (i.e., Medicaid and Food Assistance) that are available and of hearing rights that are applicable.

Once the PRC application is approved, WCDJFS will authorize and generate payment for assistance, goods, or services. Authorization may occur any time after the application is approved.

The applicant shall receive a notice of approval or denial within forty-five 45 days of the date of application. The applicant shall receive Notice of Approval of Your Application for Assistance (ODJFS 4074) or Notice of Denial Your Application for Assistance (ODJFS 7334) pursuant to the decision rendered. Applicants shall receive a copy of hearing rights at the time of the decision.

- Applicants have 14 days from the date of application to submit all required payments, in the form of a money order, toward the approved benefit. Failure to comply will result in denial of the approved application on the 15<sup>th</sup> day.
- Failure to cooperate during the eligibility process which results in a denial for PRC Services and/or Benefits, will result in the inability to re-apply for 30 days after the denial, unless the agency determines otherwise.

Under this Program, an eligible AG may receive customized assistance, goods, or services determined by the WCDJFS. Ongoing receipt of Medicaid, Food Assistance, Ohio Works First, or Disability Assistance is not a determining factor in considering an AG's eligibility for PRC services (outside of any income received through said programs). WCDJFS will inform applicants of other programs/services available through the Agency.

Receipt of PRC services in another county or PRC/TANF services provided in another state shall be considered when processing a PRC application. PRC/TANF benefits and amounts received in other counties and/or states shall be considered and included in the caps.

WCDJFS will pursue collection of PRC assistances which has been obtained fraudulently or that has been determined to be an overpayment.

**E. PRC Program Modification/Termination**

Warren County reserves the right to modify or terminate the PRC program at any time. Modifications may encompass any or all areas of the county PRC Plan. Any modifications of the PRC Plan will be submitted to the Warren County Board of County Commissioners for approval. Upon approval, WCDJFS will submit the modified plan to the Ohio Department of Job and Family Services. Warren County reserves the right to modify or terminate PRC services or eligibility requirements for any reason, including (but not limited to) reduction of funds, changes in State or Federal Regulations, and the need to address appropriate emerging needs within the community.

## SECTION IV CHILD WELFARE SERVICES AND BENEFITS

PRC payments are limited to the amount actually required to meet the presenting need, up to the amounts listed below for each type of assistance received within the timeframes described. Verifications of amounts owed must be original bills or invoices.

- A. **Kinship Navigator Services-** are designed to provide support and assistance to relatives, legal guardians or caregivers of minor children who are not able to be cared for by their biological parents or stepparents. Kinship services can be provided to those who are responsible for the day to day care and well-being of a child(ren) on a long term basis.

Kinship Navigator Services meet TANF Purposes 1.

**AG definition for Kinship Navigator-** A child under age eighteen (18)/age nineteen (19) and still attending high school or its equivalent and immediate household members which includes the relative, legal guardian, or caregiver, spouses of the relative, legal guardian, or caregiver, all children for whom the caregiver is responsible for and living in the household. Other adult household members and children, for whom the relative, legal guardian or caregiver is not responsible, will not be considered part of the AG.

**Eligibility:** At or below 200% FPG. Eligibility is based on the Self-Declaration Application found on page 35 of this plan.

**Disqualifiers:** Any one of the following AG characteristics will deem the applicant ineligible for services:

- The applicant is not a U.S. citizen or legal alien (ineligible aliens may apply on behalf of their eligible children)
- Any members of the AG are fugitive's felons or probation/parole violators.

Kinship Navigator Services	Description	Eligibility at or below 200% FPG	CAPS per rolling twelve (12) month period and TANF Purpose
Information and referral  Comprehensive information and access to legal services  Comprehensive information and access to child care  Respite care  Training	Kinship Navigator services provide an opportunity for the Warren County JFS, Division of Children Services to assist children and family members/care givers providing care for children who are unable to be cared for by their biological or step parents.	At least one child in the household must be a kinship care placement.  Kinship services can be provided to relatives/caregivers who are responsible for the day to day care and wellbeing of a child(ren) on a long term basis.  Self-Declaration Application	N/A  <b>TANF Purpose: 1</b>  (see the assistance group section for information regarding child who are temporarily absent from the home)

Comprehensive information and access to financial assistance			
Evaluation and reporting			
Identification of Kinship Caregivers with Self-Declaration Application			

**B. TANF Child Welfare**

**AG definition for TANF Child Welfare consists of a child under age eighteen (18)/age nineteen (19) and still attending high school or its equivalent and immediate family members in the household. Immediate family members include biological parents and stepparents, designated guardians or caregivers, biological and step-siblings in the household. Other adult household members will not be considered part of the AG.**

TANF Child Welfare services meet TANF Purpose 1.

**Eligibility:** At or below 200% FPG. Child welfare services activities must meet a documented and specified purpose for the well-being of child/children within the AG. Eligibility is based on the Self-Declaration Application found on page 35 of this plan.

**Disqualifiers:** Any one of the following AG characteristics will deem the applicant ineligible for services:

- o The applicant is not a U.S. citizen or legal alien (ineligible aliens may apply on behalf of their eligible children)
- o Any members of the AG are fugitive felons or probation/parole violators.

<b>TANF Child Welfare Services</b>	<b>Description</b>	<b>Eligibility at or below 200% FPG</b>	<b>CAPS per rolling twelve (12) month period and TANF Purpose</b>
Child welfare services allowable under the TANF program but not limited to: <ul style="list-style-type: none"> <li>• Emergency housing services</li> <li>• Domestic Violence Services</li> <li>• Homes-based services &amp; mentoring programs</li> <li>• Parent education and training</li> <li>• Respite care services</li> <li>• Transportation Services</li> </ul>	TANF Child Welfare services provided an opportunity for the Warren County Job and Family Services, Division of Children Services to provide services to assist in family reunification or to prevent children from being removed from the home.  (See definitions of eligible TANF Child Welfare Services)	Child/ren may reside in the family home or the child has been out of the home less than a total of <u>six consecutive months</u>  If the children are out of the home, the family must have a reunification plan in place, and actively working toward reunification, as verified by the Children Services Caseworker	N/A  <b>TANF Purpose: 1</b>  Financial Benefits received cannot exceed 4 consecutive months.



<ul style="list-style-type: none"> <li>• Voluntary or formalized court diversion activities &amp; mediation</li> <li>• Case management services</li> <li>• Supervised Visits</li> </ul>		<p>Authorization of PRC services must contribute to the reunification process.</p> <p>Self-Declaration Application</p>	
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## Definitions of Eligible TANF Child Welfare Services

Eligible services for TANF/PRC Child Welfare include certain direct services and case management or supportive services. The following services are also allowable TANF Child Welfare Services under the Warren County PRC Plan:

### Emergency Housing

Providing case management or supportive services as it relates to emergency housing needs including: making referrals, arranging for, and planning for emergency housing needs and services.

### Children Services Case Management

Case management services including: making referrals to, arranging for services, planning, supervising, and assessing results of services provided to families and children.

### Domestic Violence Services

Domestic violence services are defined as providing direct assistance to victims of domestic violence and their dependents for the purpose of preventing further violence and may include but not be limited to: meals, transportation, housing referral services, legal advocacy, children’s counseling and support services and other services to victims of domestic violence and their dependents. Other eligible services include providing case management or supportive services including: making referrals, arranging for and planning for care or services, planning, supervising an assessing results of care as it relates to domestic violence services.

### Home Based Services

Home Based Services are those services provided to families in their own homes or community which are intended to either preserve the family by reducing risks or achieve successful reunification from out of home placements. Services provided to help meet basic human needs, examples include case management functions related to arranging or obtaining financial assistance, food, clothing, housing, household management or repairs, child care and transportation services, Home based services also include direct (face to face) education and counseling, referral and linkage to other community services and case management.

### Parent Education Services

Parent education is a teaching process to assist a parent, guardian, or custodian in developing the basic skills necessary to provide adequate care and support to a child in his own home. This also includes case

management, making referrals to, arranging for services, planning, supervising, and assessing results of Parent Education services.

### **Respite Care Services**

Eligible services include case management, making referrals to, arranging for services, planning, supervising, and assessing results of respite care activities and the provision of respite care. Respite care services are services designed to provide temporary relief to child-caring functions which may include, but are not limited to, crisis nurseries, day treatment and volunteers or paid individuals who provide such services within the home. Respite Care Services may be provided to a child placed in a foster home or with a relative as well as for a child in his own home.

### **Transportation Services**

Transportation Services include arranging for or providing transportation to and from needed services, resources and facilities. (It may include the provision of escort assistance). Transportation provided to children/parents for visits are eligible as well as arranging, scheduling and monitoring visits.

#### **The following services are not PRC eligible**

- Foster care and out of home maintenance payments.
- Juvenile justice services.
- Any costs associated with children who do not live with a custodial parent or other adult caretaker relative, legal guardian, or legal custodian (Except for the 180 day provision or Federal TANF goals # 3 and #4).
- Services available through other federal funding sources.
- Medical services with the exception of those services allowable under Ohio's 1996 IV-A state plan.

### **C. Kinship and Child Welfare Conditional Services**

**AG Definition for Child Welfare Conditional Services:** A child under age eighteen (18)/age nineteen (19) and still attending high school or its equivalent and immediate family members in the household. Immediate family members include biological parents and stepparents, kinship caregivers who have legal custody of a minor child, biological and step-siblings in the household. Other adult household members will not be considered part of the AG. Pregnant women in their third trimester of pregnancy-each fetus is considered a separate family member. Kinship and Child Welfare Conditional Services meeting TANF Purpose 1.

#### **Eligibility:**

- At or below 200% FPG.
- Eligibility is based on the Self-Declaration Application located on page 35 of this plan.
- Families must work with Children Services or meet the definition for kinship services, and are in need of services in order to reunite, maintain or care for children in their home.

**CAP:** Kinship and Child Welfare Conditional are not to exceed \$5,000 per family.

**Disqualifiers:** Any one of the following AG characteristics will deem the applicant ineligible for services:

- o The applicant is not a U.S. citizen or legal alien (ineligible aliens may apply on behalf of their eligible children)
- o Any member of the AG are fugitive felons or probation/parole violators.

<b>Kinship &amp; Child Welfare Conditional Service</b>	<b>Description</b>	<b>Eligibility at or below 200% FPG and TANF Purpose</b>
Rent (Excludes late fees)	To prevent homelessness or necessary relocation moving due to domestic violence, to alleviate an overcrowded situation, acceptance into a subsidized housing program, or employment related out of county relocation. Assistance is limited to a maximum of 4 consecutive months.	Rent is limited to a maximum of 4 consecutive months <b>TANF Purpose: 1</b>
Security Deposit	For necessary relocation, to alleviate an overcrowded situation (out of county relocation must be employment related). Assistance is limited to a maximum of 4 consecutive months.	Unsubsidized and subsidized housing <b>TANF Purpose: 1</b>
Utilities/Deposits for utilities	Gas/heating fuel Cooking fuel Electric Water Sewage Basic telephone services  Assistance is limited to a maximum of 4 consecutive months.	If the HEAP eligible applicant is requesting assistance with heating or utility payment, the applicant should be referred to WCCS (Warren County Community Services) during HEAP Season prior to accessing services through the PRC Program  <b>TANF Purpose: 1</b>
Household items	Includes necessary household items such as mattresses, beds, cribs, appliances, linens or any other necessary household item. Assistance is limited to a maximum of 4 consecutive months.	<b>TANF Purpose: 1</b>
Transportation	Assistance with transportation needs through various methods which include but are not limited to; transit tickets, gas cards, pre-arranged transportation, and mileage reimbursement at the rate of reimbursement in effect for the County. Assistance is limited to 4 consecutive months.	<b>TANF Purpose: 1</b>
KPIP Administration	The Kinship Permanency Incentive Program (KPIP) is designed to support kinship caregivers in their decision to make permanent commitments by helping defray some of the costs of caring for children. Eligible caregivers receive a one-time payment to reduce costs of initial placement. They may receive subsequent payments every six months to support the stability of the child's placement in the home.	<b>TANF Purpose 1</b>

## SECTION V WCDJFS SERVICES AND BENEFITS

### Ineligible Applicants

The following applicants are ineligible for in-house PRC Assistance and/or Benefits in Warren County if any of the following apply:

- Individuals who are not citizens of the United States and do not meet the definition of qualified aliens;
- Families that have fraudulently received assistance including Food Assistance, Cash Assistance, Medicaid and Child Care, until repayment in full occurs, except overpayments that are determined by WCDJFS to result from an agency error these situations will not restrict eligibility for PRC;
- Individuals who have quit or refused a job without good cause or have significantly reduced their hours of employment without good cause within 60 days prior to the date of the PRC application,
- Individuals serving a sanction.

Service or Benefit	CAP	Assistance Group	Targeted Group	Economic Need Standard and TANF Purpose	Verifications
<p><b>Contingency Services:</b> An emergent need that threatens the health, safety, or acceptable living arrangement to the extent that it prohibits children from being cared for in their own home or inhibits job preparation/retention, work or marriage.</p> <p>Examples include but not limited too; home repairs, purchase of new appliance or any situation that does not meet any of the categories listed but would threaten the health and safety of the family.</p>	<p>Any number of individual payments to meet a non-recurrent crisis or episode of need up to <b>\$1,000.00</b> per assistance group per 24 month period.</p>	<p>Minor child who resides with a parent, specified relative, legal guardian or legal custodian (a child may be temporarily absent from the home provided certain requirements are met)</p> <p>Pregnant individuals with no other children</p>	<p>AG must have experienced an unforeseen circumstance that places a documented financial hardship on the AG, promoting the request for PRC.</p> <p>Adults in AG must be employed, awaiting UCB, or have other income such as, but not limited to disability payments. An AG whose only income is that of minor children shall not be eligible for PRC contingency services.</p>	<p><b>At or below 200% FPL</b></p> <p><b>TANF Purpose: 1 and 2</b></p>	<p>Must verify current employment or verify consistent unearned income sources such as Social Security.</p> <p>and</p> <p>For all contingency services, the applicant AG must show a pattern of good faith effort to maintain payment to the best of their ability.</p>

Service or Benefit	CAP	Assistance Group	Targeted Group	Economic Need Standard and TANF Purpose	Verifications
<b>Employment and Training Services and Benefits:</b> <ul style="list-style-type: none"> <li>• Purchase clothing or uniforms for work.</li> <li>• Purchase safety equipment, i.e., shoes, glasses, work boots.</li> <li>• Purchase special tools and/or equipment required for employment.</li> </ul>	\$250.00 for non-recurrent short term benefits to be provided once within a 12 month period.	<p>Minor child who resides with a parent, specified relative, legal guardian or legal custodian (a child may be temporarily absent from the home provided certain requirements are met)</p> <p>Non-custodial parent who lives in the state, but does not reside with his/her minor child(ren) and is cooperating with CSEA.</p>	<p>Recently employed individuals</p> <p>Under employed individuals- not having enough paid work or not doing work that makes full use of their skills and abilities.</p> <p>Unemployed families in receipt of OWF who are actively participating in their work activity and have obtained employment and/or training opportunities.</p>	<p>At or below 200% FPL</p> <p>TANF Purpose: 2</p>	Proof of employment or offer of employment

Service or Benefit	CAP	Assistance Group	Targeted Group	Economic Need Standard and TANF Purpose	Verifications
<b>Rent Payment</b>  (No payment will be made for extra fees for pets unless the pet is also a service animal. No payment will be made for any additional extras fees charged by the landlord) Landlords/managers must sign a repayment agreement for security deposits.	<p>Past due rent or deposit up to \$1,200.00, payment to the landlord.</p> <p>Non-recurrent short term benefits to be provided once within a 24 month period.</p> <p>Amount to be paid by WCDJFS is limited to one month of late fees. Additional monthly late fees are the responsibility of the AG.</p>	<p>Minor child who resides with a parent, specified relative, legal guardian or legal custodian (a child may be temporarily absent from the home provided certain requirements are met)</p> <p>Pregnant individuals with no other children</p>	<p>AG's who can provide a court ordered eviction.</p> <p>*No employment requirement with this benefit.</p> <p>AG must be able to provide a plan to avoid continuation of this issue.</p>	<p>At or below 200% FPL</p> <p>TANF Purpose: 1 and 2</p>	<p>Court Ordered Eviction Notice</p> <p>Homeless</p> <p>Uninhabitable residence determined by Health Department</p> <p>Residing in spousal abuse center</p> <p>Overcrowded conditions (number in home must be verified by landlord)</p> <p>An AG whose monthly income has decreased by half due to a situation beyond their control and who needs to relocate to a less expensive housing option.</p>

Service or Benefit	CAP	Assistance Group	Targeted Group	Economic Need Standard and TANF Purpose	Verifications
<b>Utility Assistance for Initial Services and Shut-offs:</b> <ul style="list-style-type: none"> <li>Gas, propane, kerosene, wood, electric, water, sewer</li> <li>AG must be responsible for the utility</li> <li>Must be a current bill</li> <li>Must be a bill for the current residence</li> </ul>	<p>Amount due, up to <b>\$500.00</b> once within a 12 month period to assist with initial services or disconnects. Only during non-HEAP (Home Energy Assistance Program) season.</p> <p>HEAP Referral Exception one-time <b>\$200.00</b> within 12 month period</p>	<p>Minor child who resides with a parent, specified relative, legal guardian or legal custodian (a child may be temporarily absent from the home provided certain requirements are met)</p> <p>Pregnant individuals with no other children</p>	<p>Families at risk:</p> <p>“The existence of or potential for a disruption to the health, safety or decent living arrangement of the family.”</p> <p>Families with children at risk of abuse or neglect.</p> <p>Victims of domestic violence</p> <p>*No employment requirement with this benefit. AG must have an ongoing plan to avoid future issues.</p>	<p><b>At or below 200%</b></p> <p><b>TANF Purpose: 1 and 2</b></p>	<p>AG must provide a current utility bill with the account number, service address, amount due and account holder’s name. Must enroll in PIP.</p> <p>AG must have at least made 1 payment within the 3 months prior to filing a PRC application to be considered for assistance.</p> <p>Not available during HEAP season with the exception of a one-time assistance payment for <i>heating</i> of up to \$200.00 with a referral from HEAP/ERHEAP with proper verification.</p>

Service or Benefit	CAP	Assistance Group	Targeted Group	Economic Need Standard and TANF Purpose	Verifications
<b>Automobile Repair</b>	<p>Up to <b>\$1,500.00</b> one time in a 12 month period.</p> <p>CDJFS has the option to deny repairs based on age, condition, repair needed and value of the vehicle.</p>	<p>Minor child who resides with a parent, specified relative, legal guardian or legal custodian (a child may be temporarily absent from the home provided certain requirements are met)</p> <p>Non-custodial parent who lives in the state, but does not reside with his/her minor child(ren) and is cooperating with CSEA.</p>	<p>Employed individuals</p> <p>Recently employed individuals</p> <p>Under employed individuals- not having enough paid work or not doing work that makes full use of their skills and abilities.</p> <p>Individuals in education or training for up to 4 consecutive months.</p>	<p><b>At or below 200% FPL</b></p> <p><b>TANF Purpose: 1 and 2</b></p>	<p>The applicant must be scheduled or have worked for a minimum of 30 hours per week at minimum wage (or the equivalent), participating at a verifiable work experience program, or enrolled and attending education/training for up to 4 consecutive months.</p> <p>Automobile repairs will only be provided in those situations where the automobile is needed to retain employment, meet the above work activity requirement, or assist with transportation for education/training.</p> <p><i>Two bids are required from certified auto repair company.</i></p>

Service or Benefit	CAP	Assistance Group	Targeted Group	Economic Need Standard and TANF Purpose	Verifications
<b>Transportation</b>	<p>Limited to contracted amount. <u>Transit tickets are the preferred option.</u></p> <p>Transit tickets capped at <b>30 days</b> for newly employed individuals.</p> <p style="text-align: center;"><b>OR</b></p> <p>Gas Cards- Limited to 4 Gas Cards issued either Weekly or Bi-Weekly dependent on proof of mileage by applicant in the amount of \$50.00 per card not to exceed a \$200.00 total disbursement.</p> <p>Uncapped for active OWF/TANF Work Activity participants</p> <p>Non-recurrent short term benefits to be provided as defined above once within a 12 month period</p>	<p>Minor child who resides with a parent, specified relative, legal guardian or legal custodian (a child may be temporarily absent from the home provided certain requirements are met)</p> <p>Pregnant individuals with no other children</p> <p>Non-custodial parent who lives in the state, but does not reside with his/her minor child(ren) and is cooperating with CSEA.</p>	<p>Recently employed individuals</p> <p>OWF Work Activity Participants</p>	<p><b>At or below 200% FPL</b></p> <p><b>TANF Purpose: 2</b></p> <p><b>TANF Purpose: 4</b></p>	<p>Newly Employed OWF Recipients must provide proof of employment.</p> <p>OWF/TANF Work Activity Participants, no cap.</p> <p>Newly employed individuals must provide proof of employment.</p>
<b>Child Care Registration Fee</b>	<p>Not to exceed \$200.00 per family.</p> <p>Non-recurrent short term benefits to be provided as defined above once within a 12 month period.</p>	<p>Minor child who resides with a parent, specified relative, legal guardian or legal custodian</p>	<p>Recently employed individuals</p> <p>OWF Work Activity Participants</p>	<p><b>At or below 300% FPL</b></p> <p><b>TANF Purpose: 1</b></p> <p><b>TANF Purpose: 2</b></p>	<p>This benefit is for full and part-time employment to assist with any required Child Care Registration Fees.</p> <p>OWF/TANF Work Activity Participants, no cap.</p>

Service or Benefit	CAP	Targeted Group	Economic Need Standard and TANF Purpose	Verifications
<b>Ohio Youth to Work Program</b>	Hourly wage capped at \$10.00 per hour.  Services not to exceed agency TANF grant amount.	Youth age 14-15, as long as the youth is a minor child in a needy family and is in school.  Youth age 16-24 or 16-24 who have a minor child and are considered needy, will be served under the CCMEP Program.	<b>At or below 200% FPL</b>  <b>TANF Purpose: 1 and 2</b>	<i>Eligibility</i> - An Ohio Youth Works program funded through PRC shall only serve persons from a TANF-eligible family. The types of persons that may be served are: • Youth ages 14-15, as long as the youth is in a needy family and is in school.  The youth served may be non-custodial parents as long as they are considered "needy" and have a minor child. "Needy" is not specifically defined by state or federal regulation but may be no greater than income at 200% of the federal poverty level.  <i>Family</i> is defined in federal and state law and regulations as follows: a minor child who resides with a parent, specified relative, legal guardian or legal custodian (a child may be temporarily absent from the home provided certain requirements are met); a pregnant individual with no other children; or a non-custodial parent who lives in the state, but does not reside with his/her minor child(ren).  <i>Foster Care</i> : Youth in a foster care setting age 14 to 15 years of age if they are a full-time student in a secondary school may be served under Ohio Youth Works. The United States Department of Health and Human Services, Administration for Children and Families (ACF) has provided guidance respective to the Youth Employment Program.

Service or Benefit	CAP	Assistance Group	Economic Need Standard and TANF Purpose	Verifications
<b>Other Services/Benefits Targeted to Goals of TANF and the PRC Plan</b>	Determined by County	Minor child who resides with a parent, specified relative, legal guardian or legal custodian  Pregnant women  Non-custodial parent who lives in the state, but does not reside with his/her minor child(ren) and is cooperating with CSEA.	<b>At or below 200% FPL</b>  <b>TANF Purposes: 1,2,3,4</b>	<ul style="list-style-type: none"> <li>• Required Application</li> <li>• Required Verifications</li> <li>• Must meet TANF eligibility criteria</li> </ul>



**SECTION VI**  
**WCDJFS EMPLOYMENT RELATED**  
**SERVICES AND BENEFITS**

Service or Benefit	CAP	Assistance Group	Economic Need Standard and TANF Purpose	Verifications
<p><b>Transitional Benefit for Full Time Employment</b></p> <p>This benefit is not available for work assignments made through temporary staffing agencies until individual is hired by the placement company.</p> <p>This program is only available to participants who are experiencing a termination or reduction in TANF/OWF benefits as a result of securing full time employment.</p> <p>The Transitional Benefit Program provides benefits for up to 2 months from the start of employment. The transitional benefit is not considered assistance as defined in 45 C.F.R. 260.31.</p> <p>If a participant is transitioning off of the TANF/OWF Program to Full Time Employment they may receive their Full or Partial TANF/OWF Allotment at the time they leave the program for no more than 2 months. If the participant is receiving a reduction of TANF/OWF Benefits and not termination of full benefits, the transitional benefit amount will be for the difference between the monthly allotment amounts at the time of full time employment minus the amount it is reduced to. Below are two examples for guidance;</p> <p><b><u>Termination of OWF/TANF due to full time employment</u></b>            Example; current allotted amount of OWF/TANF is \$582.00 per month. If approved for Transitional Benefit Program the recipient would receive that monthly benefit for 2 months after beginning full time employment in order to assist with the transition time.</p>	<p>2 month Cap based on the last monthly allotment amount of OWF/TANF or at the difference if a reduced amount.</p> <p>Transitional Benefits are available for 2 new jobs within a 24 month period.</p> <p><b>**Cut Off- If employment is reported prior to agency cut off (adverse action) then the transitional benefit will be for 2 months following the month reported Example; If reported in prior to cut off in February AG will receive Transitional Benefit for March and April</b></p>	<p>Minor child who resides with a parent, specified relative, legal guardian or legal custodian</p> <p>Pregnant individuals with no other children</p>	<p><b>At or below 200% FPL</b></p> <p><b>TANF Purposes: 1 and 2</b></p>	<p>Verification of Full Time Employment from Employer, full time employment means scheduled to work 30 hours or more each week.</p> <p>Current Pay Stubs, if available</p> <p><b>**Cut Off- if employment reported after cut off (adverse action) AG will receive full benefit month following and transitional benefit the month after that.</b>            Example; if reported at end of February after cut off client will receive normal benefit in March and Transitional benefit in April.</p>

<p><b><u>Reduction of OWF/TANF due to full time employment</u></b>  Example; current allotted amount of OWF/TANF is \$582.00 per month, amount will be reduced to \$382.00 as a result of new full time employment. The Transitional Benefit amount will be \$200.00 for the 2 months to assist with the transition time.</p> <p>The participants of the Transitional Benefit Program are still eligible to receive the New Employment Bonus for Full Time Employment in addition to the Transitional Benefit. Participants must apply for each program separately.</p> <p>Transitional Benefits are not countable income for public assistance programs, they are intended to assist the participant in moving toward self-sufficiency.</p> <p>If participant leaves employment during the two month period without good cause the agency will seek measures to re-coup the Transitional Benefit Amount.</p>				
<p><b>New Employment Bonus for Full Time Employment</b></p> <p>This benefit is not available for work assignments made through temporary staffing agencies until individual is hired by the placement company.</p> <p>Employment Bonus is available after the verified completion of 4 weeks (30 days) of full-time employment.</p> <p>The PRC Application must be received within 30 days of when the bonus is available.</p>	<p>\$100.00 after 30 days of full-employment,</p> <p>Cannot exceed more than 2 <u>new</u> jobs in a 36 month period</p>	<p>Minor child who resides with a parent, specified relative, legal guardian or legal custodian</p> <p>Pregnant individuals with no other children</p> <p>Non-custodial parent who lives in the state, but does not reside with his/her minor child(ren) and is cooperating with CSEA.</p>	<p><b>At or below 200% FPL</b></p> <p><b>TANF Purposes: 1 and 2</b></p>	<p>Verification of Full Time Employment from Employer, full time employment means scheduled to work 30 hours or more each week.</p> <p>Current Pay Subs, if available</p>
<p><b>Employment Retention Bonus for Full Time Employment</b></p> <p>This benefit is not available for work assignments made through temporary</p>	<p>\$150.00 after 90 days</p> <p>\$300.00 after 180 days</p>	<p>Minor child who resides with a parent, specified relative, legal guardian or legal custodian</p>	<p><b>At or below 200% FPL</b></p> <p><b>TANF Purposes: 1 and 2</b></p>	<p>Verification of Full Time Employment from Employer, full time employment means scheduled to</p>

<p>staffing agencies until individual is hired by the placement company.</p> <p>Employment Bonus is available after the verified completion of 90 days (3 months) or 180 days (6 months) of full-time employment.</p> <p>The PRC Application must be received within 30 days or after the completion of the 90<sup>th</sup> day or the 180<sup>th</sup> day of verified job retention.</p>	<p>Cannot exceed more than 2 <u>new</u> jobs in a 36 month period</p>	<p>Pregnant individuals with no other children</p> <p>Non-custodial parent who lives in the state, but does not reside with his/her minor child(ren) and is cooperating with CSEA.</p>		<p>work 30 hours or more each week.</p> <p>Current Pay Stubs, if available</p>
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**SECTION VII  
WCDJFS DISASTER SERVICES AND BENEFITS**

Service or Benefit	CAP	Assistance Group	Targeted Group	Economic Need Standard and TANF Purpose
<p><b>Disaster Assistance</b> Benefits to assist with the damage or loss sustained as a result of natural disaster upon declaration by County Commissioners, identified by the Red Cross, or otherwise identified. All families are potentially eligible for this category of assistance regardless of OWF sanction status. PRC issued in this category will not apply toward the yearly cap per family. If the applicant has homeowners insurance that can address the emergent need, it must be accessed prior to the issuance of PRC. The following list is not all inclusive.</p> <ul style="list-style-type: none"> <li>➤ <i>Shelter Assistance</i> <ul style="list-style-type: none"> <li>• Rent/Rent Deposits</li> <li>• Mortgage Payments</li> <li>• Emergency shelter/temporary shelter (excluding hotel charges)</li> <li>• Payment of moving expenses</li> </ul> </li> <li>➤ <i>Utility Assistance</i> <ul style="list-style-type: none"> <li>• Payments for initial hook up</li> <li>• Purchase bulk fuel destroyed or damaged by disaster</li> <li>• Installation or repair of telephone (when medically necessary with Doctor Statement)</li> <li>• Home repair or replacements affecting basic structure (provided to the homeowner only)</li> <li>• Appliances or fixture repair or replacements</li> </ul> </li> </ul>	<p>Determined by State or County, not to exceed \$1,500 per family.</p> <p>All Disaster Benefits are dependent on available PRC funding.</p>	<p>Parents or specified relatives with minor children.</p> <p>Pregnant women</p> <p>Non-custodial parent and minor child(ren)</p> <p>Child only minor child temporarily out of home with reunification plan.</p>	<p>Families sustaining disaster related damage or loss</p>	<p><b>Determined by State Declaration</b></p> <p>or</p> <p><b>At or below 200% FPL</b></p> <p><b>TANF Purpose: 1</b></p>

<ul style="list-style-type: none"> <li>• Repair or purchase of furnace, air conditioning, or water heater (provided to the homeowner only)</li> <li>• Purchase or replace essential household contents <ul style="list-style-type: none"> <li>➤ <i>Personal items</i></li> </ul> </li> <li>• Essential clothing for members of the Assistance Group</li> <li>• Essential non-consumable products, excluding tobacco products and alcohol <ul style="list-style-type: none"> <li>➤ Vehicle repair for damage caused by the disaster provided the automobile is necessary for employment or medical condition</li> </ul> </li> </ul>				
<p><b>Disaster Relief for Adults and Disabled NOT eligible for TANF Plan.</b></p>	<p>Determined by State or County, not to exceed \$750 per family.</p> <p>Disaster Relief for Adults and Disabled are dependent on available PRC funding.</p>	<p>Age 55 or over with no minor children</p> <p style="text-align: center;"><b>OR</b></p> <p>No minor children but in Receipt of disability payments such as SSI, Social Security Disability, VA Disability, PERS or STERS Disability, Railroad Retirement Disability, Black Lung Benefits, etc.</p>	<p>Families sustaining disaster related damage or loss</p>	<p><b>Determined by State Declaration</b></p> <p>or</p> <p><b>At or below 200% FPL</b></p> <p><b>TANF Purpose: 1</b></p>

**SECTION VIII**  
**SERVICES AND BENEFITS**  
**SUBGRANTED OR CONTRACTUAL PRC**

**A. Subgranted and Contractual PRC**

Subgranted or Contractual PRC benefits and services are provided with local TANF/PRC allocations or State designated TANF pass-through programs and are administered by entering into agreements with other public, private non-profit, and private for-profit vendors. Eligibility for subgranted or contractual PRC services may have different eligibility standards from the in-house PRC services if specified in the agreement or as noted in the List of Services & Benefits in this document. There is no dollar cap for sub granted or contractual services.

All PRC subgrants and contracts must still address the connection of the service being provided to one or more of the four (4) purposes of TANF.

Unless otherwise documented as categorically eligible, eligibility for subgranted/contractual services is accomplished using the **Self-Declaration Application for TANF/Title XX Services**. Applicants for subgranted/contractual services will be notified of approvals, denials, and terminations using the Decision of Your Application for TANF/Title XX Services.

The use of subgranted/contractual PRC services will not prohibit an assistance group from being eligible for other PRC services (in-house or other subgranted/contractual services) noted in the list of services section of this plan.

Services/Benefits	Description	Eligibility at or below 300% FPG and TANF Purpose	CAPS per rolling twelve (12) month period
Warren County Job and Family Services, Division of Children Services	PRC funding to assist with the administration, services and benefits for Warren County Job and Family Services, Division of Children Services	At or Below 200% of FPL  Families with Minor Children  Self-Declaration Application  TANF Purpose: 1, 2, 3, 4	Warren County Funding
Interfaith Hospitality Network (INH)	Services for homeless children and families. Primary focus is to address the needs of homeless families. The goal of IHNWC is to assist homeless families as they seek to build a better life through education, employment and self-sufficiency.	Families with minor children; non-custodial parents.  At or below 300% of FPL  TANF Purpose 1, 2, 4	Warren County Funding
Abuse and Rape Crisis Shelter of Warren County (ARCS)	ARCS will provide 24/7, trauma-informed, family focused advocacy and case management to survivors and children of domestic violence with the primary goal of ensuring safety, healing and empowerment, while increasing	Families with minor children; non-custodial parents.  At or below 250% of FPL  TANF Purpose 1, 2, 4	Warren County Funding

	batterer's accountability for their abuse behavior.		
Educational Service Center- Resource Coordinator Program for Schools	The Resource Coordinator program provides supports and resources to needy families with academically and otherwise at-risk children. Resource Coordinators focus on low-income students and their families who have been identified within the school system. Resource Coordinators help identify, create, and maintain resources for families.	Families with minor children; non-custodial parents.  At or below 250% FPL  TANF Purpose 1, 2, 4	Warren County Funding
Workforce Development Training & Curriculum  Employment Related Short-Term Training Services	Provides Training needed to gain, maintain, or advance in the workforce. (ABLE)  Provides Assessments and planning as recommended by Workforce Development Staff or Sub-grant Recipients.	Families with minor children; non-custodial parents.  At or below 200% FPL  TANF Purpose 1 & 2	Warren County Funding
Workforce services allowable under TANF Program include but not limited to:  TANF Administration/Eligibility, Case Management, Work Activities, Education and Training, Work Subsidies/Subsidized Employment	TANF Workforce Services provide an opportunity for Warren County Job & Family Services to partner with Ohio Means Jobs of Warren County to provide services to assist in TANF Administration/Eligibility, Case Management, Work Activities, Education & Training, and Work Subsidies/Subsidized Employment.	Families with minor children; non-custodial parents.  At or below 200% FPL  TANF Purpose 1 & 2	Warren County Funding

### TANF EDUCATION & TRAINING

Services provided to improve knowledge of daily living skills and enhance opportunities. Education and training may include, but are not limited to, instruction in consumer education, health education, community protection, literacy education, computer skills training, or English as a second language. Also includes services or activities related to screening, assessment, testing, individual and group instruction, counseling, and referral to community resources.



# Application A- WCDJFS PRC Application

WARREN COUNTY JOB & FAMILY SERVICES  
DIVISION OF HUMAN SERVICES

## WARREN COUNTY PRC APPLICATION

NAME: \_\_\_\_\_  
 ADDRESS: \_\_\_\_\_  
 CITY/ST./ZIP \_\_\_\_\_  
 PHONE: \_\_\_\_\_ DATE: \_\_\_\_\_

<b>FOR AGENCY USE</b>
CASE # _____

COMPLETE THE CHART FOR EVERY PERSON LIVING IN YOUR HOUSEHOLD, INCLUDING YOURSELF.

Name	Relationship to Applicant	SSN	Age	Source of Income	Monthly Income
					\$
					\$
					\$
					\$
					\$
					\$

1. Have you or anyone in the household received any type of assistance from any county in Ohio or any other state this month or in the past 3 months?  YES  NO. If "yes" please explain \_\_\_\_\_  
 \_\_\_\_\_
2. Explain what you are needing and why you are needing it \_\_\_\_\_  
 \_\_\_\_\_
3. Explain your household plan to address this need in the future: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
4. Is anyone in your household currently ineligible for or disqualified from any programs of assistance?  
 Yes  No Explain \_\_\_\_\_



**WARREN COUNTY JOB & FAMILY SERVICES  
DIVISION OF HUMAN SERVICES**

5. Has anyone in your household quit a job, refused a job, or significantly reduced hours of employment in the last 60 days?  
 Yes  No Explain \_\_\_\_\_
6. Do you pay Rent or a Mortgage?  YES  NO, if "yes", monthly amount: \$ \_\_\_\_\_
7. List the Utilities you pay and the average monthly amount: \$ \_\_\_\_\_
8. Are you and your family:  In a Shelter  Have a court ordered eviction  Homeless
9. Is anyone in the household pregnant?  Yes  No If "yes" please list who \_\_\_\_\_

**DOES ANYONE IN THE HOME HAVE RESOURCES? SUCH AS;**

Resource	Person with Resource	Amount of Resource
<input type="checkbox"/> Cash on Person		\$
<input type="checkbox"/> Checking Account		\$
<input type="checkbox"/> Savings Accounts		\$
<input type="checkbox"/> Stocks/Bonds		\$
<input type="checkbox"/> Other		\$

If Other, Please Specify: \_\_\_\_\_

**BENEFIT OR PROGRAM YOU ARE REQUESTING ASSISTANCE FOR (MAY ONLY SELECT ONE PER APPLICATION):**

**PROGRAM SERVICES AND BENEFITS**

- |  |  |
|--|--|
| <input type="checkbox"/> Automobile Repairs          | <input type="checkbox"/> Rent Assistance or Security Deposit |
| <input type="checkbox"/> Child Care Registration Fee | <input type="checkbox"/> Transportation Assistance           |
| <input type="checkbox"/> Contingency Services        | <input type="checkbox"/> Utility Disconnect or Deposit       |
| <input type="checkbox"/> Employment/Training         |  |
| <input type="checkbox"/> Other (Explain) _____       |  |

**EMPLOYMENT RELATED BENEFITS**

**TRANSITIONAL BENEFIT PROGRAM**

- Transitional Benefit Program- Verification of employment is required for this benefit category

**EMPLOYMENT BONUS/RETENTION PROGRAM**

- New Employment Bonus (\$100.00) after first 30 days of Verified Employment
- Employment Retention Bonus (\$150.00) after first 90 days of Verified Employment
- Employment Retention Bonus (\$300.00) after first 180 days of Verified Employment

WARREN COUNTY JOB & FAMILY SERVICES  
DIVISION OF HUMAN SERVICES

Note: Regardless of your eligibility for PRC Benefits/Services, you have the right to apply for all other programs of assistance offered by this agency, such as Medicaid, Food Assistance, Cash Assistance, and Child Care Assistance. If you wish to apply, please inquire. Also, if you wish to register to vote, please request a voter registration form.

Please use the back of this form as needed to provide the requested information.

\_\_\_\_\_  
Applicant Signature

\_\_\_\_\_  
Date

REV 02/2017

**\*\*Please Note\*\*:** Applicants have 14 days from the date of application to submit all required payments toward the approved benefit. Failure to comply will result in denial of the approved application on the 15<sup>th</sup> day. Failure to cooperate during the eligibility process which results in a denial for PRC Services and/or Benefits, will result in the inability to re-apply for 30 days after the denial, unless the agency determines otherwise.

WARREN COUNTY JOB & FAMILY SERVICES  
DIVISION OF HUMAN SERVICES

PRC Verification Checklist

**REQUIRED VERIFICATIONS FOR ALL PRC PROGRAM SERVICES AND/OR BENEFITS**

- Verification of Social Security Numbers for EVERYONE in the household
- ID for all ADULTS in the Household
- Verification that resources do not exceed \$500 (checking, savings acct, etc.)
- Verification of ALL household income for the past 30 days (earned and unearned; ex: pay stubs, child support, and social security)

**\*\*Please supply appropriate verifications based on the one program you apply for:**

**RENT OR SECURITY DEPOSIT:**

- Verification form signed by the landlord verifying they will accept a voucher
- Landlord's form to return deposit to WCDHS
- Eviction notice.

**NOTE:** You CANNOT move into an apartment BEFORE you receive our voucher.  
YOU are responsible for taking the voucher to the Landlord.

**UTILITY BILLS (when HEAP is NOT in operation):**

- Shut off notice/bill (must be in applicant's name and for applicant's current address)
- Assistance Group must have made at least one payment within the past 3 months

**NOTE:** This is not available during the HEAP season November – March 31st

**AUTO REPAIRS/TIRES:**

- Valid Driver's License
- Proof of Auto ownership (must be in applicant's name)
- Proof of registration
- Proof of mileage
- Proof of insurance
- Two quotes are required from a certified mechanic. All vendors MUST actually SEE the vehicle.

Verification of employment 30 hours per week at minimum wage (or a guaranteed start date)

**TRANSPORTATION ASSISTANCE/GAS CARDS**

- Valid Driver's License
- Proof of insurance
- Verification of employment at 30 hours per week at minimum wage (or a guaranteed start date)

**CHILD CARE REGISTRATION FEE**

- Proof of Registration with Child Care Provider
- Proof of Full Time and/or Part-time employment or Work Required

**TRANSITIONAL BENEFIT**

- Proof of Employment

**EMPLOYEE BONUS PROGRAM**

- Proof of Employment

Warren County Department of Human Services

## Application B

### WCDJFS- TANF Summer Youth Employment Program Application

#### PRC Request for TANF Summer Youth Employment Program 2016



**Instructions: Please complete Sections I, II, III and IV.**  
Incomplete applications will not be considered for this program.

**Section I: Complete the Demographic Information Below**

Parent or Guardian Name	Youth Name	
Social Security Number	Youth Social Security Number	Youth Age
Present Address	Present Phone Number	

**Section II: List All Household Members:**

Name (YOUTH NAME)	Date of Birth	Relationship to Youth	Does this person receive OWF, Food Assistance, or Medicaid?
		SELF	<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No

(List any additional household members on the back of this form.)

**Section III: Complete and answer all questions about income.**

- Is your household actively receiving Food Assistance Benefits?  Yes  No
- Is your household actively receiving Medicaid?  Yes  No
- Is your household actively receiving Cash Assistance (OWF) Benefits?  Yes  No
- Does anyone in the household have an outstanding OWF overpayment?  Yes  No

Check the box to indicate your family income in the last 30 days and list each individual with income, type of income and monthly amount. Attach proof of income for each income type. (Note: If your family receives Ohio Works First cash assistance or food assistance, you will not need to provide verification of income but you will still be required to complete the section below.)

	List the Individuals with Income	List the Type of Income (Examples: Wages, Social Security, SSI, Child Support)	List the Monthly Amount of Income
<input type="checkbox"/> \$0 - \$1980			
<input type="checkbox"/> 1981 - 2670			
<input type="checkbox"/> 2671 - 3360			
<input type="checkbox"/> 3361 - 4050			
<input type="checkbox"/> 4051 - 4740			
<input type="checkbox"/> 4741 - 5430			
<input type="checkbox"/> 5431 - 6122			
<input type="checkbox"/> 6123 - 6815			



## Application C WCDJFS- Winter Coat Program Application

### WARREN COUNTY HUMAN SERVICES PRC APPLICATION WINTER COAT PROGRAM

NAME: _____	<b>FOR AGENCY USE</b> ARAD # _____ CASE # _____
ADDRESS: _____	
CITY/ST./ZIP: _____	
PHONE: _____ DATE: _____	

Please list EVERY person in the home :

Last Name	First Name	SSN	Relationship	DOB	SEX	AGE	SIZE
			<b>SELF</b>				

Are you currently receiving any of the following:  CASH ASSISTANCE  FOOD ASSISTANCE

Is anyone in the home currently employed?  Yes  No (INCLUDE 4-6 WEEKS PAY)

	WHO	WHERE	HOURLY RATE	# HOURS PER WEEK
JOB 1				
JOB 2				

Unearned income:  SSI  Social Security  Child Support  Alimony  Unemployment  Other  
If yes

WHO	SOURCE	WHEN	AMOUNT

\_\_\_\_\_  
Applicant Signature

\_\_\_\_\_  
Date

APPROVED  DENIED

\_\_\_\_\_  
WORKER SIGNATURE

\_\_\_\_\_  
Date

\_\_\_\_\_  
SUPERVISOR SIGNATURE

\_\_\_\_\_  
Date

## Application D

### TANF Child Welfare/Kinship Navigator Self-Declaration Application

#### WARREN COUNTY SELF-DECLARATION APPLICATION FOR TANF/CHILD WELFARE

Name:	<b>For Agency Use Only</b>
Social Security Number:	Subgrantee:
Present Address:	Worker:
Telephone/Contact Number:	Date received:

**1. List EVERYONE living in your household, including yourself.**

*(If you are a non-custodial parent, list your children residing in Ohio.)*

**2. Circle your family size below.**

Name	Relationship to Applicant	Age	Source of Income	Family Size	Monthly Gross Income at 200% of the Federal Poverty Level
1.				1	\$1980
2.				2	\$2670
3.				3	\$3360
4.				4	\$4050
5.				5	\$4740
6.				6	\$5430
7.				7	\$6122
8.				8	\$6815

**3. Check one:**

- I declare that my family's gross monthly income is at or below the standard listed.  
 I declare that my family's gross monthly income is above the standard listed.

**4. Please read this statement carefully and respond below:**

I reside in Warren County and have a child younger than 19 years of age in Ohio. All members of my household are citizens or qualified aliens. I am not in debt to the Department of Job & Family Services for an OWF or PRC overpayment due to fraud. I am not an unmarried parent under 18 who is not attending school or not living in an adult-supervised living arrangement. No one in my household is a fleeing felon or probation/parole violator. No one in my household is failing to cooperate with the Child Support Enforcement Agency in establishing paternity or securing child support. No one in my household has been found to have fraudulently misrepresented their residence in order to obtain benefits in two or more states.

- YES, I agree with the above statement (it is correct/true for me).  
 NO, I disagree with the above statement (it is not correct/true for me).

**5. Sign this application.**

*The information provided above is complete and correct to the best of my knowledge and belief.*

Signature of Applicant: \_\_\_\_\_ Date: \_\_\_\_\_

**Voter Registration Notification:** If you are not registered to vote where you live now, would like to register to vote at this time?

Yes, I want to register to vote.  No, I do not want to register to vote.

*(If you do not check either box, you will be considered to have decided not to register to vote at this time. This does NOT affect your application for benefits in any way.)*

FOR AGENCY USE ONLY			
<input type="checkbox"/> Eligible	<input type="checkbox"/> Decision Letter Given (retain copy)	<input type="checkbox"/> Net Eligible	<input type="checkbox"/> Decision Letter Given (retain copy)
Signature of Worker		Date	

## Application E

### Self-Declaration Application for TANF PRC/Title XX Services

#### WARREN COUNTY SELF-DECLARATION APPLICATION FOR TANF/TITLE XX SERVICES

Name:	<b>For Agency Use Only</b>
Social Security Number:	Subgrantee:
Present Address:	Worker:
Telephone/Contact Number:	Date received:

**1. List EVERYONE living in your household, including yourself.**  
(If you are a non-custodial parent, list your children residing in Ohio.)

**2. Circle your family size below.**

Name	Relationship to Applicant	Age	Source of Income	Family Size	Monthly Gross Income at 200% of the Federal Poverty Level
1.				1	\$1980
2.				2	\$2670
3.				3	\$3360
4.				4	\$4050
5.				5	\$4740
6.				6	\$5430
7.				7	\$6122
8.				8	\$6815

**3. Check one:**

- I declare that my family's gross monthly income is at or below the standard listed.  
 I declare that my family's gross monthly income is above the standard listed.

**4. Please read this statement carefully and respond below:**

I reside in Warren County and have a child younger than 19 years of age in Ohio. All members of my household are citizens or qualified aliens. I am not in debt to the Department of Job & Family Services for an OWF or PRC overpayment due to fraud. I am not an unmarried parent under 18 who is not attending school or not living in an adult-supervised living arrangement. No one in my household is a fleeing felon or probation/parole violator. No one in my household is failing to cooperate with the Child Support Enforcement Agency in establishing paternity or securing child support. No one in my household has been found to have fraudulently misrepresented their residence in order to obtain benefits in two or more states.

- YES, I agree with the above statement (it is correct/true for me).  
 NO, I disagree with the above statement (it is not correct/true for me).

**5. Sign this application.**

*The information provided above is complete and correct to the best of my knowledge and belief.*

Signature of Applicant: \_\_\_\_\_ Date: \_\_\_\_\_

Voter Registration Notification: If you are not registered to vote where you live now, would like to register to vote at this time?

Yes, I want to register to vote.  No, I do not want to register to vote.  
(If you do not check either box, you will be considered to have decided not to register to vote at this time. This does NOT affect your application for benefits in any way.)

<b>FOR AGENCY USE ONLY</b>			
<input type="checkbox"/> Eligible	<input type="checkbox"/> Decision Letter Given (retain copy)	<input type="checkbox"/> Not Eligible	<input type="checkbox"/> Decision Letter Given (retain copy)
Signature of Worker		Date	



# Resolution

Number 17-1547

Adopted Date October 03, 2017

ENTER INTO A COOPERATIVE AGREEMENT WITH THE OHIO DEPARTMENT OF TRANSPORTATION ON BEHALF OF THE WARREN COUNTY ENGINEER'S OFFICE TO MAINTAIN THE RETAINING WALL ON MASON MONTGOMERY ROAD AND SIDEWALK LOCATED AT THE INTERSECTION OF AND ALONG MASON MONTGOMERY ROAD AND FIELDS ERTEL ROAD IN DEERFIELD TOWNSHIP, WARREN COUNTY OHIO

WHEREAS, it is desirable to establish an agreement whereby the county will assume the maintenance of the retaining wall, starting at Station 11 + 70 (per Deerfield Township Gateway Project – Plans Prepared by FTC&H) and extending north on Mason Montgomery Road for 339 feet to the end of the wall, and sidewalk items at the intersection of Mason Montgomery Road, Fields Ertel Road and Interstate Route 71; and

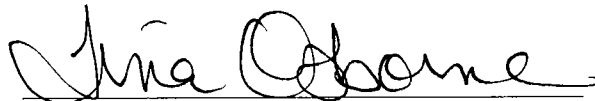
NOW THEREFORE BE IT RESOLVED, to approve the attached cooperative agreement with the Ohio Department of Transportation on behalf of the Warren County Engineer's Office for the maintenance of the retention wall and sidewalk located in Deerfield Township, Warren County, Ohio.

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 3<sup>rd</sup> day of October 2017.

BOARD OF COUNTY COMMISSIONERS

  
Tina Osborne, Clerk

cc: C/A – Ohio Department of Transportation  
Engineer (file)

**ODOT AGREEMENT NO. 31213**

**AGREEMENT  
BETWEEN THE STATE OF OHIO, DEPARTMENT OF TRANSPORTATION AND  
WARREN COUNTY, ENGINEER'S OFFICE TO MAINTAIN INTERSTATE ROUTE 71  
LOCATED WITHIN DEERFIELD TOWNSHIP, WARREN COUNTY**

This Agreement is made by and between the State of Ohio, acting by and through the Director of the Department of Transportation (hereinafter referred to as the "ODOT"), 1980 West Broad Street, Columbus, Ohio 43223 and the Warren County Board of Commissioners (hereinafter referred to as the "COUNTY"), on behalf of the Warren County Engineer, 210 W Main Street, Lebanon, Ohio 45036.

1. PURPOSE

- 1.1 Section 5501.03(A)(3) of the Ohio Revised Code (ORC) provides that ODOT may coordinate its activities with those of other appropriate state departments, public agencies, and authorities, and enter into any contracts with such departments, agencies, and authorities as may be necessary to carry out its duties, powers, and functions.
- 1.2 ORC § 5501.11(A)(4) states the department of transportation with respect to highways shall cooperate with the counties, municipal corporations, townships, and other subdivisions of the state in the establishment, construction.
- 1.3 It is desirable to establish an agreement whereby the COUNTY will assume the entire maintenance of the retaining wall, limits starting at Station 11+70 (per Deerfield Township Gateway Project – Plans Prepared by FTC&H) and extending north on Mason Montgomery Road for 339 feet to the end of the wall, and sidewalk items at the intersection of Mason Montgomery Road, Fields Ertel Road and Interstate Route 71.
- 1.4 The COUNTY and ODOT agree that it is in the public interest to maintain the retaining wall, within previous described limits, and sidewalk items at the intersection of Mason Montgomery Road, Fields Ertel Road and Interstate Route 71 as needed.
- 1.5 The purpose of this Agreement is to establish the respective responsibilities of the parties with regard to the general maintenance of the retaining wall, within previous described limits, and sidewalk items.

2. OBLIGATIONS OF THE COUNTY

- 2.1 The COUNTY shall perform and be responsible for all general maintenance of the retaining wall, within previous described limits, and sidewalk items for the Interstate Route 71 intersection with Mason Montgomery Road and Fields Ertel Road in the COUNTY.
- 2.2 The COUNTY shall record all maintenance performed on the retaining wall, within previous described limits, and sidewalk items at the intersection of Mason Montgomery Road, Fields Ertel Road and Interstate Route 71. Said record shall be submitted to ODOT.
- 2.3 All charges submitted to ODOT for the maintenance of Interstate Route 71 shall be true and reasonable and of standard industry charges submitted in detail on a monthly basis.

3. OBLIGATIONS OF THE STATE

- 3.1 ODOT agrees to grant any necessary permits to the COUNTY to use and occupy the IR 71 at Mason Montgomery Road and Fields Ertel Road right-of-way for purposes of general maintenance of the retaining wall, within previous described limits, and sidewalk items.

4. NOTICE

- 4.1 Notice under this Agreement shall be directed as follows:

Warren County Engineer  
210 W Main Street  
Lebanon, Ohio 45036  
Attn: Neil F. Tunison, P.E., P.S.

Ohio Department of Transportation  
District 8  
505 South SR 741  
Lebanon, Oh 45036  
Attn: District Deputy Director

5. DEFAULT AND BREACH OF CONTRACT

- 5.1 Neglect or failure of the COUNTY to comply with any of the terms, conditions, or provisions of this Agreement, including misrepresentation of fact, shall be an event of default, unless such failure or misrepresentation are the result of natural disasters, strikes, lockouts, acts of public enemies, insurrections, riots, epidemics, civil disturbances, explosions, orders of any kind of governments of the United States or State of Ohio or any of their departments or political subdivisions (EXCEPT THOSE REASONABLY FORESEEABLE IN CONNECTION WITH THE USES CONTEMPLATED BY THIS AGREEMENT), or any other cause not reasonably within the COUNTY'S control. The COUNTY, however, shall remedy as soon as possible each cause preventing its compliance with this Agreement.
- 5.2 If notified by ODOT in writing that it is in violation of any of the terms, conditions, or provisions of this Agreement, and a default has occurred, the COUNTY shall have thirty (30) days from the date of such notification to remedy the causes preventing its compliance and curing the default situation. Expiration of the thirty (30) days and failure by the COUNTY to remedy the default shall result in termination of this Agreement by ODOT.
- 5.3 Upon a termination of this Agreement by ODOT, ODOT shall conduct an inspection of the facility to determine whether the facility has been maintained in an acceptable condition. If the facility is not maintained to an acceptable degree and condition, then ODOT may take any measures necessary to maintain the facility. The COUNTY shall be held responsible for full restitution of all expenses incurred in maintaining the facility.
- 5.4 No remedy herein conferred upon or reserved by ODOT is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or option accruing to ODOT upon any default by the COUNTY shall impair any such right or option or shall be construed to be a waiver thereof, but any such right or option may be exercised from time to time and as often as may be deemed expedient by ODOT.

6. GENERAL PROVISIONS

- 6.1 The signing of the Agreement does not in any way abridge the right of the Director of Transportation in his jurisdiction over the state highway system. If, at any time, it becomes necessary, in the opinion of the Director of Transportation to order the removal, reconstruction, relocation, or repair of the facility, said removal work shall be completed wholly at the expense of the COUNTY, and be made as directed by the Director of Transportation.

- 6.2 This Agreement constitutes the entire Agreement between the parties. All prior discussions and understandings between the parties are superseded by this Agreement.
- 6.3 Neither this Agreement nor any rights, duties, or obligation described herein shall be assigned by any party hereto without the prior express written consent of the other parties. Any change to the provisions of this Agreement must be made in a written amendment executed by all parties.
- 6.4 This Agreement shall be construed and interpreted and the rights of the parties determined in accordance with the laws of the State of Ohio.
- 6.5 The District Deputy Director of District 8 shall have full authority to ensure the full compliance of the provisions of this Agreement.
- 6.6 The signing of the Agreement or the doing of any work thereunder shall constitute an agreement by the COUNTY to comply with all of the conditions and restrictions written herein.
- 6.7 The COUNTY shall be responsible for all suits, actions or claims of any character brought on account of any injuries or damages sustained by any person or property in consequence of any neglect or on account of any wrongful act or omission on the part of the COUNTY as a result of the maintenance of said facility.
- 6.8 The COUNTY shall comply with the Air Pollution requirements of Rule 3745-17-08 of the Ohio Administrative Code Promulgated and enforced by the Ohio Environmental Protection Agency.
- 6.9 This agreement may be terminated by either party upon ninety (90) days written notice to the other party. Upon mutual written consent of the parties, this agreement can be renewed for periods of one year.

7. SIGNATURES

- 7.1 Any person executing this agreement in a representative capacity hereby warrants that he/she has been duly authorized by his/her principal to execute this agreement on such principal's behalf.

STATE OF OHIO  
Department of Transportation

By: \_\_\_\_\_  
Jerry Wray, Director

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

WARREN COUNTY  
BOARD OF COMMISSIONERS

By: \_\_\_\_\_  
President / Vice-President

Date: 10-03-17

APPROVED AS TO FORM:

DAVID P. FORNSHELL,  
PROSECUTING ATTORNEY  
WARREN COUNTY, OHIO

By: \_\_\_\_\_  
Assistant Prosecuting Attorney

# Resolution

Number 17-1548

Adopted Date October 03, 2017

AUTHORIZE PRESIDENT OF BOARD TO SIGN THE FINAL ACCEPTANCE MILESTONE CERTIFICATE BETWEEN MOTOROLA SOLUTIONS, INC. AND WARREN COUNTY COMMISSIONERS IN REGARDS TO PROJECT SP-17I-T5N

WHEREAS, Paul Kindell, Director of Telecommunications, has reviewed, verified and recommended that the Board of County Commissioners sign the Final Acceptance Milestone Certificate; and

NOW THEREFORE BE IT RESOLVED, to authorize President of the Board to sign this Final Milestone Acceptance Certificate with Motorola indicating Completion of the Installation of the New Paging Equipment. The Final Milestone Acceptance Certificate is 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 3<sup>rd</sup> day of October 2017.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: c/a – Motorola Solutions, Inc.  
Telecom (file)

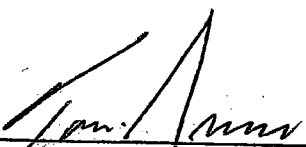



**CERTIFICATE OF MILESTONE COMPLETION:**  
**FINAL ACCEPTANCE**  
**WARREN COUNTY, OHIO**  
**PAGING PROJECT**  
**SP-17I-T5N**

The purpose of this document is to recognize the efforts of Motorola Solutions, Inc and Warren County, Ohio, being under contract as described in the documents signed by both parties for the purposes of installing new paging equipment.

**Milestone Description:**

Motorola has completed the installation of new paging equipment. As such, Motorola and Warren County, Ohio formally recognize and acknowledge completion of this Final Acceptance Milestone.

	
Authorized Customer Signature	Authorized Motorola Signature
<u>Tom Grossmann</u>	<u>Scott Pitman</u>
Print Name	Print Name
<u>President</u>	<u>Project Manager</u>
Title	Title
<u>10/03/17</u>	<u>9/22/17</u>
Date	Date

# Resolution

Number 17-1549

Adopted Date October 03, 2017

APPROVE AMENDMENT NO. 3 TO FOOD SERVICE AGREEMENT WITH ARAMARK CORRECTIONAL SERVICES, LLC.

BE IT RESOLVED, to approve and authorize the Board to sign Amendment No. 3 to Food Service Agreement with ARAMARK Correctional Services, LLC. for food service to the Warren County Jail and Juvenile Justice Center, as 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 3<sup>rd</sup> day of October 2017.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: c/a – ARAMARK Correctional Services, LLC  
Sheriff (file)  
Juvenile (file)

**Amendment No. 3 to Food Service Agreement**

**THIS AMENDMENT NO. 3** is entered into this 3 day of October, 2017 by and between the **Warren County Board of Commissioners** ("County"), and **Aramark Correctional Services, LLC** ("Aramark"), a Delaware limited liability company, having its principal place of business located at the Aramark Tower, 1101 Market Street, Philadelphia, Pennsylvania 19107 ("Aramark").

**WHEREAS**, the parties entered into an Agreement effective October 1, 2014 for the management of the food service operation at the Warren County Jail and Juvenile Justice Facility (as amended, the "Agreement"); and,

**WHEREAS**, the parties desire to amend said Agreement as hereinafter set forth, effective as of October 1, 2017.

**NOW, THEREFORE**, in consideration of the foregoing and of the mutual promises in the Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as set forth below. Capitalized terms used but not defined in this Amendment have the meanings ascribed to such terms in the Agreement.

1. **Term:** Pursuant to Paragraph 5 of the Agreement, the parties agree that the Agreement shall be extended for a one-year period, from October 1, 2017 through September 30, 2018.
2. **Price Per Meal:** In accordance with Paragraph 5 of the Agreement, the parties agree that the price per meal charged to County by Aramark shall be changed as set forth on Attachment A as a result of changes in the Consumer Price Index. This price shall be effective from October 1, 2017 through September 30, 2018, and shall supersede in all respects the price per meal set forth in Aramark's Proposal, Attachment A of the Agreement, or in any other prior amendments between the parties.
3. Except as hereinabove provided, said Agreement is hereby in all other respects ratified and confirmed.

**IN WITNESS WHEREOF**, the parties hereto have caused this Amendment No. 3 to be signed by their duly authorized representatives the day and year first written above.

**Aramark Correctional Services, LLC**

By: 

Mark R. Adams  
Vice President, Finance

**Warren County Board of Commissioners**


By: 

Name: Tom Grossmann  
Title: President

By: \_\_\_\_\_

Name:  
Title:

**APPROVED AS TO FORM**



Adam M. Nice  
Asst. Prosecuting Attorney

By: 

Name: Shannon Jones  
Title: member



**Attachment A**  
**Warren County, Ohio**  
**Effective October 1, 2017 through September 30, 2018**

<b>No. of Residents*</b>	<b>Price Per Meal</b>
201 – 220	\$1.262
221 – 240	\$1.197
241 – 260	\$1.164
261 – 280	\$1.118
281 – 300	\$1.109
301 – 320	\$1.101
Staff & Visitors	\$2.00
Juvenile Meals**	\$3.403
Juvenile Snacks**	\$0.540

\*The total number of resident meals served per week is divided by 19 in order to determine the price point on the sliding scale.

\*\*Juvenile meals and snacks will be billed on the actual number of juvenile meals ordered or served in a seven day period, whichever is greater.

# Resolution

Number 17-1550

Adopted Date October 03, 2017

ENTER INTO CONTRACT WITH BARRETT PAVING MATERIALS INC FOR THE FY17  
FRANKLIN TOWNSHIP HARRIET LIVE MENTZ ROAD RESURFACING CDBG PROJECT

WHEREAS, pursuant to Resolution #17-1439, adopted September 19, 2017, this Board approved a Notice of Intent to Award Bid for the FY17 Franklin Township Harriet Live Mentz Road Resurfacing CDBG Project to Barrett Paving Materials Inc., for a total bid price of \$139,693.75; and

WHEREAS, all documentation, including performance bonds, insurance certificates, etc., has been submitted by the contractor; and

NOW THEREFORE BE IT RESOLVED, to enter into contract with Barrett Paving Materials Inc., 3751 Commerce Drive, Franklin, Ohio, for a total bid price of \$139,693.75; as 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 3<sup>rd</sup> day of October 2017.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

EH\

cc: c/a— Barrett Paving Materials Inc.  
Grants Admin. (file)  
OMB Bid file

## CONTRACT

THIS AGREEMENT, made this 3 day of October, 2017, by and between the Warren County Board of Commissioners, 406 Justice Drive, Lebanon, Ohio, hereinafter called "Owner" and Barrett Paving Materials, Inc., 3751 Commerce Drive, Franklin, Ohio, doing business as a corporation, hereinafter called "Contractor".

**WITNESSETH:** That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the Owner, the Contractor hereby agrees with the Owner to commence and complete the construction described as follows:

### **FY2017 Franklin Township Harriet Live Mentz Road Resurfacing CDBG Project**

hereinafter called the project, for the sum of \$139,693.75 (One hundred thirty nine thousand six hundred ninety three dollars and seventy five cents) and all work in connection therewith, under the terms as stated in the Conditions of the Contract; and at his (it's or their) own proper cost and expense furnish all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance and other accessories and services necessary to complete the said project in accordance with the conditions and prices stated in the Proposal, Conditions of the Contract, the specifications and Contract Documents. "Contract Documents" means and includes the following:

- A. Invitation to Bid
- B. Instructions to Bidders
- C. General Contract Conditions
- D. Technical Specifications
- E. Proposal Forms
  - Affidavit of Non-Delinquency of Personal Property Taxes
  - Bid Guarantee and Contract Bond
  - Non-collusion Affidavit
- F. Contract Forms
  - Notice of Award and Acceptance
  - Notice to Proceed and Acceptance
  - Change Order
- G. Conflict of Interest
  - Special Conditions Pertaining to Hazards Safety
  - Standards and Accident Prevention
  - Special Equal Opportunity Provisions (Section 3 Compliance)
  - Certifications of Compliance with Air and Water Acts
  - Architects Certification of Compliance with Minimum Standards for Accessibility by the Physically Handicapped
  - Designers Certification of Compliance with Minimum Standards or Accessibility by the Physically Handicapped
- H. Federal Labor Standards
  - Prevailing Wage Rates

The CONTRACTOR hereby agrees to commence work under this contract on or before a date to be specified in a Written "Notice to Proceed" of the OWNER and to fully complete the project within sixty days of date of Notice to Proceed. The Contractor further agrees to pay, as liquidated damages, the sum of \$100.00 for each consecutive calendar day thereafter until such time as work is completed.

Upon completion of said project, the CONTRACTOR shall submit an invoice to the OWNER. Upon approval by the Project Engineer, the submittal of a contractor's affidavit, and all prevailing wage reports, the OWNER shall make payment to the CONTRACTOR.

This Agreement may be terminated by either party upon written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement. The nonperforming party shall have fifteen (15) calendar days from the date of the termination notice to cure or to submit a plan for cure acceptable to the other party.

OWNER may terminate or suspend performance of this Agreement for OWNER'S convenience upon written notice to CONTRACTOR. CONTRACTOR shall terminate or suspend performance of the services/work on a schedule acceptable to the OWNER.

The CONTRACTOR will indemnify and save the OWNER, their officers and employees, harmless from loss, expenses, costs, reasonable attorney fees, litigation expenses, suits at law or in equity, causes of actions, actions, damages, and obligations arising from (a) negligent reckless or willful and wanton acts, errors, omissions by CONTRACTOR, its agents, employees, licensees, consultants or subconsultants; (b) the failure of the CONTRACTOR, its agents, employees, licensees, consultants or subconsultants to observe the applicable standard of care providing services pursuant to this agreement; (c) the intentional misconduct of the CONTRACTOR, its agents, employees, licensees, consultants or subconsultants that result in injury to persons or damage to property for which the OWNER may be held legally liable.

The CONTRACTOR does hereby agree to indemnify and hold the OWNER harmless for any and all sums for which the OWNER may be required to pay or for which the OWNER may be held responsible for failure of the CONTRACTOR or any subcontractor to pay the prevailing wage upon this project.

The OWNER agrees to pay the CONTRACTOR in the manner and at such times as set forth in the General Provisions such amounts as required by the Contract Documents.

This CONTRACT shall be construed under the laws of the State of Ohio, and the parties hereby stipulate to the venue for any and all claims, disputes, interpretations, litigation of any kind arising out of this Contract being exclusively in the Warren County, Ohio Court of Common Pleas (unless both parties mutually agree in writing to alternate dispute resolution), as well as waiving any right to bring or remove such matters in or to any other state or federal court.

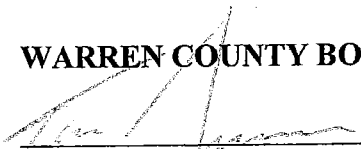
This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.

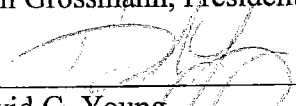
CONTRACTOR shall bind every subcontractor to, and every subcontractor must agree to be bound by the terms of this Agreement, as far as applicable to the subcontractor's work particularly pertaining to Prevailing Wages and Equal Employment Opportunity (EEO) requirements. Nothing contained in this Agreement shall create any contractual relationship between any subcontractor and OWNER, nor create any obligations on the part of the OWNER to pay or see to the payment of any sums to any subcontractor.

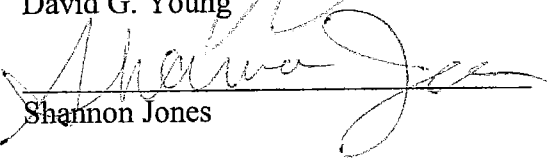
**IN WITNESS WHEREOF**, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in two counterparts, each of which shall be deemed an original on the date first above written.

(Seal)

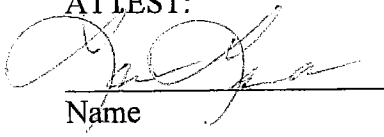
**WARREN COUNTY BOARD OF COMMISSIONERS**

  
\_\_\_\_\_  
Tom Grossmann, President

  
\_\_\_\_\_  
David G. Young

  
\_\_\_\_\_  
Shannon Jones

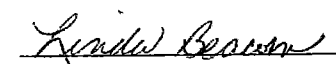
ATTEST:


  
\_\_\_\_\_  
Name

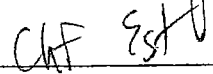
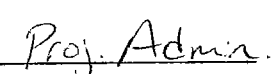
(Seal)

**BARRETT PAVING MATERIALS, INC.**

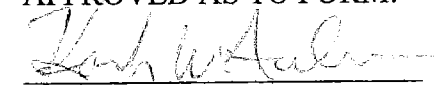
ATTEST:

  
\_\_\_\_\_  
Name

   
\_\_\_\_\_  
Name

   
\_\_\_\_\_  
Title

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Assistant County Prosecutor

# Resolution

Number 17-1551

Adopted Date October 03, 2017

APPROVE CHANGE ORDER NO. 1 TO THE CONTRACT WITH SMITH & BROWN CONTRACTORS, INC. FOR THE CONSTRUCTION OF THE WAYNE MASSIE SEWER DISTRICT IMPROVEMENT PROJECT, PURCHASE ORDER NO. 18137

WHEREAS, this Board, on July 12, 2016, entered into a Contract with Smith & Brown Contractors, Inc. for the construction of sewer forcemain, lift stations and gravity sewer with along State Route 73 and within Harveysburg; and

WHEREAS, the Warren County Water and Sewer Department has requested additional construction be completed to accommodate unknown site conditions, unsuitable soils, and elimination of shutdowns to sanitary system; and

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

NOW THEREFORE IT BE RESOLVED:

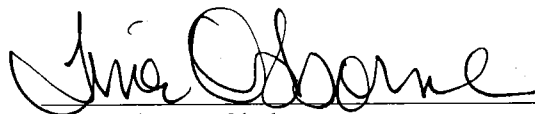
1. Approve Change Order No. 1 to the Contract with Smith & Brown Contractors, Inc. increasing Purchase Order No. 18137 by \$67,756.61 and creating a new Contract and Purchase Order price in the amount of \$ 1,425,877.61.
2. By said Change Order, attached hereto and made part hereof, all costs and work associated with the change shall be added to the Contract.
3. That this Board is hereby directed to execute and sign Change Order No.1 of the Contract with Smith & Brown Contractors, Inc. for the construction of the Wayne Massie Sewer District Improvement Project.

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 3<sup>rd</sup> day of October 2017.

BOARD OF COUNTY COMMISSIONERS

  
Tina Osborne, Clerk

cc: Auditor   
c/a – Smith & Brown Contractors, Inc

Water/Sewer (file)  
Project File



# Warren County Water & Sewer Dept.

406 Justice Drive  
Lebanon, Ohio 45036  
Phone: (513) 695-1377  
FAX (513) 695-2995

# CHANGE ORDER

DATE: August 10, 2017

Change Order Number 1

Project Name: Wayne Massie Sewer District Improvement Project

QTY	UNIT	DESCRIPTION	UNIT PRICE	ADDITIONS	DELETIONS
18	LF	12" HDD Force Main	\$277.00		\$4,986.00
90	LF	12" HDD Force Main w/o Encasement	\$194.00	\$17,460.00	
72	LF	12" Force Main	\$47.00	\$3,196.00	
1	EA	Sanitary Cleanouts	\$10,827.00	\$10,827.00	
1	LS	Drilled Piers @ 50 Springs LS	\$7,850.00	\$7,850.00	
1	LS	All Off Pump Float-50 Springs	\$734.00	\$734.00	
1	T&M	Repair/Replace Existing Broken Valve to Accommodate Tie-In	\$4,030.53	\$4,030.53	
1	T&M	Remove & Replace Customer Fence Installed After Bid Documents	\$1,644.40	\$1,644.40	
1	T&M	Unsuitable Soils Undercut for Gravity Sewers	\$6,802.51	\$6,802.51	
1	T&M	Install 10" Insertion Valve	\$9,978.64	\$9,978.64	
1	T&M	Downtime for Bypass by WCWS	\$2,944.70	\$2,944.70	
1	T&M	Ex. 8" Sanitary Sewer Repair - Found in Field	\$1,688.25	\$1,688.25	
1	T&M	Add 6" Gate Valve for Future	\$1,283.83	\$1,283.83	
1	LS	Bypass Hose Rental	\$1,377.39	1,377.39	
13	LF	4" Force Main	\$108.00	\$1,404.00	
82	LF	6" Force Main	\$70.00		\$5,740.00
104	LF	6" HDD Force Main	\$42.00	\$4,368.00	
106	LF	12" Force Main	\$47.00	\$4,982.00	
3	EA	12" Gate Valves	\$1,960.00	\$5,880.00	
200	LF	Concrete Curb & Gutter	\$35.00		\$7,000.00
2	EA	Labor for Installation of 12" Plug Valves	\$484.32		\$968.64

Sums of the ADDITIONS and DELETIONS

\$86,451.25

\$18,694.64

TOTALS FOR THIS CHANGE ORDER

\$67,756.61

Purpose of the Change Order: Unlown Site Conditions (Fiber Optic), Unsuitable Soils, Unknown Site Conditions (Location of Existing Forcemains), Installation of Private Fence after bidding, Elimination of Shutdowns to Sanitary System

Attachments:

Smith & Brown. Change Order Requests -- 1-6, 8-13

Original contract price \$1,358,121.00 .

Current contract price adjusted by previous change orders \$ 1,358,121.00 .

The Contract price due to this change order will be increased/~~decreased~~.

The New contract price including this change order will be \$1,425,877.61.



I HEREBY AGREE TO PERFORM THE WORK AND TO THE NON-PERFORMANCE OF WORK AS LISTED

[Signature] 9/22/17  
Contractor's Signature Date

Recommended By:

[Signature] 9/28/17  
Warren Sanitary Engineer Date  
COUNTY DEPUTY SANITARY ENGINEER

[Signature] 10/3/17  
Warren County Commissioner Date

[Signature] 12/3/17  
Warren County Commissioner Date

[Signature] 12/3/17  
Warren County Commissioner Date

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

# Resolution

Number 17-1552

Adopted Date October 03, 2017

AFFIRM "THEN AND NOW" REQUESTS PURSUANT TO OHIO REVISED CODE  
5705.41(D) (1)

BE IT RESOLVED, to affirm the following "Then and Now" requests pursuant to Ohio Revised  
Code 5705.41(D) (1), as attached hereto and made a part hereof:

Veterans	\$ 1,761.80
Veterans	\$ 1,800.00
BDD	\$ 2,656.10

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

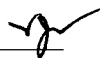
Mr. Grossmann – yea  
Mr. Young – yea  
Mrs. Jones – yea

Resolution adopted this 3<sup>rd</sup> day of October 2017.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: Auditor   
Veterans (file)  
Board of Developmental Disabilities (file)  
OMB

# THEN & NOW REQUEST

To: Matt Nolan, Warren County Auditor

Date: 9/26/17

From: WC Veterans

Please complete a Then & Now Certification for the attached purchase.

A purchase order was not completed for this procurement because: Between purchase orders  
when relief was issued

FUND	SUB FUND	FUNCTION	OBJECT	AMOUNT
101		5220	920	\$ 1761.80

VENDOR NAME Wells Fargo

DESCRIPTION OF SERVICES Client Mortgage

DATE OF OBLIGATION 9/26/17

## THEN & NOW CERTIFICATION

### CERTIFICATE OF FISCAL OFFICER IN LIEU OF PURCHASE ORDER

Pursuant to Sec. 5705.41 (D)(1) O.R.C.

*The Warren County Auditor hereby certifies that even though there was not a Purchase Order executed prior to this obligation being incurred, there was at the time of the obligation, and there is now, sufficient appropriation for the purpose of such obligation and sufficient funds in the treasury to the credit of such fund free from any previous encumbrances to honor this payment.*

UNENCUMBERED ACCOUNT BALANCE - THEN \$ 182,687.27 DATE 9-26-17

UNENCUMBERED ACCOUNT BALANCE - NOW \$ 178,468.35 DATE 9-29-17

FUND BALANCE NOW \$ 38,605,569.59

CERTIFIED BY: Matt Nolan 

**MATT NOLAN, WARREN COUNTY AUDITOR**

# THEN & NOW REQUEST

To: Matt Nolan, Warren County Auditor

Date: 9/27/17

From: WC Veterans

Please complete a Then & Now Certification for the attached purchase.

A purchase order was not completed for this procurement because: original purchase order was too small

FUND	SUB FUND	FUNCTION	OBJECT	AMOUNT
101		5210	<del>400</del> 2100 <i>g</i>	\$ 1800.00

VENDOR NAME Paradise Graphix

DESCRIPTION OF SERVICES Full Graphic Wrap

DATE OF OBLIGATION 9/27/17

# THEN & NOW CERTIFICATION

## CERTIFICATE OF FISCAL OFFICER IN LIEU OF PURCHASE ORDER

Pursuant to Sec. 5705.41 (D)(1) O.R.C.

*The Warren County Auditor hereby certifies that even though there was not a Purchase Order executed prior to this obligation being incurred, there was at the time of the obligation, and there is now, sufficient appropriation for the purpose of such obligation and sufficient funds in the treasury to the credit of such fund free from any previous encumbrances to honor this payment.*

UNENCUMBERED ACCOUNT BALANCE - THEN \$ 19,996.97 DATE 9-27-17

UNENCUMBERED ACCOUNT BALANCE - NOW \$ 19,996.97 DATE 9-29-17

FUND BALANCE NOW \$ 38,605.59 ~~569.59~~

CERTIFIED BY: Matt Nolan *DA* 2017 SEP 28 AM 11:44

**MATT NOLAN, WARREN COUNTY AUDITOR**

# THEN & NOW REQUEST

To: Matt Noian, Warren County Auditor

Date: 9-27-17

From: Warren County Board of DD

Please complete a Then & Now Certification for the attached purchase.

A purchase order was not completed for this procurement because: order date

was prior to certification date of PO.

FUND	SUB FUND	FUNCTION	OBJECT	AMOUNT
<u>205</u>		<u>6710</u>	<u>421</u>	<u>\$ 2,456.10</u>

VENDOR NAME A & S Play Zone LLC

DESCRIPTION OF SERVICES rental of inflatables for Family  
Fun Day

DATE OF OBLIGATION 9-16-17

# THEN & NOW CERTIFICATION

## CERTIFICATE OF FISCAL OFFICER IN LIEU OF PURCHASE ORDER

Pursuant to Sec. 5705.41 (D)(1) O.R.C.

*The Warren County Auditor hereby certifies that even though there was not a Purchase Order executed prior to this obligation being incurred, there was at the time of the obligation, and there is now, sufficient appropriation for the purpose of such obligation and sufficient funds in the treasury to the credit of such fund free from any previous encumbrances to honor this payment.*

UNENCUMBERED ACCOUNT BALANCE - THEN \$ 229,686.00 DATE 9/25/17

UNENCUMBERED ACCOUNT BALANCE - NOW \$ 226,421.50 DATE 9/28/17

FUND BALANCE NOW \$ 49,007,689.20

CERTIFIED BY: Matt Noian<sup>VP</sup>

MATT NOLAN, WARREN COUNTY AUDITOR

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

# Resolution

Number 17-1553

Adopted Date October 03, 2017

## ACKNOWLEDGE PAYMENT OF BILLS

BE IT RESOLVED, to acknowledge payment of bills as submitted on batches #09/28/2017 001, #09/28/2017 002, #09/28/2017 003, #09/28/2017 004, #09/28/2017 005, and #09/28/2017 006; said batches are 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 3<sup>rd</sup> day of October 2017.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

kh

cc: Auditor 

# Resolution

Number 17-1554

Adopted Date October 03, 2017

## 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. Young. Upon call of the roll, the following vote resulted:

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

Resolution adopted this 3<sup>rd</sup> day of October 2017.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: Auditor   
Refunds file

# Resolution

Number 17-1555

Adopted Date October 03, 2017

APPROVE A STREET AND APPURTENANCES BOND REDUCTION FOR CYPRESS RIDGE, LTD FOR COMPLETION OF PERFORMANCE OF CONSTRUCTION OF IMPROVEMENTS AND ENTER INTO THE MAINTENANCE SECURITY FOR CYPRESS RIDGE, PHASE VII 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;

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	:	14-009 (P-M)
Development	:	Cypress Ridge, Phase VII
Developer	:	Cypress Ridge, Ltd.
Township	:	Clearcreek
Reduction Amount	:	\$7,539.00
Surety Company	:	Huntington National Bank - Cashier's Check #2010113746

BE IT FURTHER RESOLVED: the original amount of bond was \$56,938.38 and after the above reduction, the remaining bond amount is \$49,399.38; and


BE IT FURTHER RESOLVED: due to the Developer having posted the original bond amount in the form of a cash bond, the original purchase order will be reduced and the Developer will be reimbursed the sum of \$7,539.00 from the Escrow Rotary Fund containing the cash bond.

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 3<sup>rd</sup> day of October 2017.

BOARD OF COUNTY COMMISSIONERS

  
Tina Osborne, Clerk

cc: Cypress Ridge, Ltd. Attn: Alan Harshman, 8534 Yankee Street, Dayton, OH 45458  
E. Hartmann  
Engineer (file)  
Bond Agreement file



# Resolution

Number 17-1556

Adopted Date October 03, 2017

APPROVE OPERATING TRANSFER FROM SEWER REVENUE FUND 580-3319 (SURPLUS) INTO FUND 575 SEWER REVENUE PROJECTS AND SUBFUND ADJUSTMENT IN 575

WHEREAS, it has previously been determined that the projects in Fund 575 are going to be financed fully or partially through water revenue funds; and

WHEREAS, a portion of those funds are necessary to pay current and anticipated obligations within Fund 575; and

NOW THEREFORE BE IT RESOLVED, to approve the following Operating Transfer:

\$ 65,552.61            from #580-3319-3319-997 (Operational Transfers)  
                              into #575-3375-9000-999 (Wayne-Massie Sewer District System Imp)

NOW THEREFORE BE IT RESOLVED, to approve the following Subfund Adjustment:

\$ 12,000.00            from #575-3374                    (Simpson Trace Sewer Improvement)  
                              into #575-3375                    (Wayne-Massie Sewer District System Imp)

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 3<sup>rd</sup> day of October 2017.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

jmb

cc: Auditor   
Operating Transfer File  
Subfund Adj. file  
Water/Sewer (File)  
OMB

# Resolution

Number 17-1557

Adopted Date October 03, 2017

APPROVE SUPPLEMENTAL APPROPRIATION INTO TAX SETTLEMENT FEES  
WITHHELD FUND #101-1990

BE IT RESOLVED, to approve the following supplemental appropriation:

\$9,907.83 into #101-1990-909 (Commissioners – Auditor & Treasurer Fees)

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 3<sup>rd</sup> day of October 2017.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: Auditor   
Supplemental App. file  
Treasurer (file)  
OMB

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

# Resolution

Number 17-1558

Adopted Date October 03, 2017

APPROVE SUPPLEMENTAL APPROPRIATIONS INTO COUNTY WIDE FINANCIAL  
SOFTWARE FUND 401

BE IT RESOLVED, to approve the following supplemental appropriations:

\$7,056.00 into #401-1120-102 (Regular Salaries)

\$ 987.84 into #401-1120-811 (PERS)

\$ 102.31 into #401-1120-871 (Medicare)

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 3<sup>rd</sup> day of October 2017.

BOARD OF COUNTY COMMISSIONERS

  
Tina Osborne, Clerk

cc: Auditor (file)   
Supplemental App. file  
OMB

# Resolution

Number 17-1559

Adopted Date October 03, 2017

APPROVE SUPPLEMENTAL APPROPRIATIONS INTO COMMON PLEAS COURT  
COMMUNITY BASED CORRECTIONS SMART OHIO PILOT PROGRAM FUND #289

BE IT RESOLVED, to approve the following supplemental appropriations:

\$ 25,000.00	into	#289-1226-210	(Office Supplies-General)
\$125,000.00	into	#289-1226-400	(Purchased Services)
\$ 15,000.00	into	#289-1226-855	(Clothing-Personal Equip)

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 3<sup>rd</sup> day of October 2017.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: Auditor   
Supplemental Adjustment file  
Common Pleas (file)  
OMB

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

# Resolution

Number 17-1560

Adopted Date October 03, 2017

**APPROVE SUPPLEMENTAL APPROPRIATION INTO FACILITIES MANAGEMENT  
FUND #499**

BE IT RESOLVED, to approve a supplemental appropriation into Facilities Management Fund #499 as follows:

\$117,750.00 from Fund #499  
into Fund #499-3725-320 (Juvenile/Probate Expansion)

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 3<sup>rd</sup> day of October 2017.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: Auditor   
Supplemental Appropriation file  
Facilities Management (file)  
OMB

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

# Resolution

Number 17-1561

Adopted Date October 03, 2017

APPROVE APPROPRIATION ADJUSTMENT FROM COMMISSIONERS FUND #101-1110  
INTO FRANKLIN MUNICIPAL FUND #101-1271

BE IT RESOLVED, to approve the following appropriation adjustment:

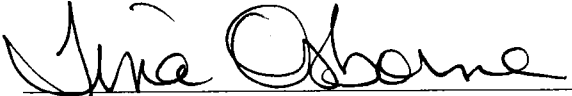
\$5,582.59	from	#101-1110-840	(Commissioners – Unemployment Comp)
	into	#101-1271-820	(Franklin Municipal – Health Insurance)


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 3<sup>rd</sup> day of October 2017.

BOARD OF COUNTY COMMISSIONERS

  
Tina Osborne, Clerk

cc: Auditor   
Appropriation Adjustment file  
Commissioners file  
Franklin Municipal Court (file)  
OMB

# Resolution

Number 17-1562

Adopted Date October 03, 2017

APPROVE APPROPRIATION ADJUSTMENTS FROM COMMISSIONERS GENERAL FUND #101-1110 INTO TELECOM – DATA SYSTEMS FUND #101-2812

BE IT RESOLVED, to approve the following appropriation adjustments from Commissioners Fund #101-1110 into Telecomm – Data Systems Fund #101-2812 in order to process a vacation leave payout for Brian Haney former employee of Telecom – Data Systems:


\$1,995.85	from	#101-1110-882	(Comm. – Vacation Leave Payout)
	into	#101-2812-882	(Telecom- Data Systems – Vac. Leave Payout)

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 3<sup>rd</sup> day of October 2017.

BOARD OF COUNTY COMMISSIONERS

  
Tina Osborne, Clerk

cc: Auditor   
Appropriation Adjustment file  
Telecommunications (file)  
OMB

# Resolution

Number 17-1563

Adopted Date October 03, 2017

APPROVE APPROPRIATION ADJUSTMENT FROM COMMISSIONERS GENERAL FUND #101-1110 INTO COMMUNICATIONS CENTER – DISPATCH FUND #101-2850

BE IT RESOLVED, to approve the following appropriation adjustment from Commissioners Fund #101-1110 into Communications Center – Dispatch Fund #101-2850 in order to process a vacation leave payout for Stevenson Long former employee of the Communications Center - Dispatch:


\$1,224.43	from	#101-1110-882	(Commissioners – Vacation Leave Payout)
	into	#101-2850-882	(Comm. Ctr. – Dispatch - Vacation Leave Payout)

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 3<sup>rd</sup> day of October 2017.

BOARD OF COUNTY COMMISSIONERS

  
Tina Osborne, Clerk

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



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

# Resolution

Number 17-1564

Adopted Date October 03, 2017

APPROVE APPROPRIATION ADJUSTMENTS WITHIN COMMON PLEAS COURT FUND  
#101-1220

BE IT RESOLVED, to approve the following appropriation adjustments:


\$4,000.00	from	#101-1220-910	(Other Expense)
	into	#101-1220-400	(Purchased Services)
\$6,000.00	from	#101-1220-910	(Other Expense)
	into	#101-1220-441	(Jury Fees)


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 3<sup>rd</sup> day of October 2017.

BOARD OF COUNTY COMMISSIONERS

  
Tina Osborne, Clerk

cc: Auditor   
Appropriation Adjustment file  
Common Pleas Court (file)  
OMB

# Resolution

Number 17-1565

Adopted Date October 03, 2017

APPROVE APPROPRIATION ADJUSTMENT WITHIN THE BUILDING AND ZONING  
DEPARTMENT FUND #101-2300

BE IT RESOLVED, to approve the following appropriation adjustment:

\$1,179.71      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. Young. Upon call of the roll, the following vote resulted:

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

Resolution adopted this 3<sup>rd</sup> day of October 2017.

BOARD OF COUNTY COMMISSIONERS

  
Tina Osborne, Clerk

cc: Auditor   
Appropriation Adj. file  
Building/Zoning (file)  
OMB

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

# Resolution

Number 17-1566

Adopted Date October 03, 2017

APPROVE APPROPRIATION ADJUSTMENT WITHIN TELECOMMUNICATIONS  
DEPARTMENT FUND #101-2810

BE IT RESOLVED, to approve the following appropriation adjustment:

\$500.00      from #101-2810-220      (Telecommunications – Operating Supplies)  
                 into #101-2810-210      (Telecommunications – Office Supplies)

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 3<sup>rd</sup> day of October 2017.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

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

# Resolution

Number 17-1567

Adopted Date October 03, 2017

APPROVE APPROPRIATION ADJUSTMENTS WITHIN PROBATE COURT FUND #101 – 1250 AND FROM PROBATE COURT FUND #101–1250 INTO JUVENILE DETENTION FUND #101-1240, AND FROM JUVENILE PROBATION FUND #101-2500 INTO JUVENILE DETENTION FUND #101-1240

BE IT RESOLVED, to approve the following appropriation adjustments:

\$ 800.00	from #101-1250-160	(Visiting Judge)
	into #101-1250-111	(Part Time Employees)
\$ 112.00	from #101-1250-160	(Visiting Judge)
	into #101-1250-811	(PERS)
\$ 11.60	from #101-1250-160	(Visiting Judge)
	into #101-1250-871	(Medicare)
\$ 5,000.00	from #101-1250-210	(Office Supplies)
	into #101-1240-415	(Attorneys, Indigent)
\$ 4,000.00	from #101-1250-317	(Capital Purchases under \$10,000)
	into #101-1240-415	(Attorneys, Indigent)
\$12,000.00	from #101-1250-400	(Purchased Services)
	into #101-1240-415	(Attorneys, Indigent)
\$ 3,500.00	from #101-1250-910	(Other Expense)
	into #101-1240-415	(Attorneys, Indigent)
\$ 1,500.00	from #101-1250-940	(Travel)
	into #101-1240-415	(Attorneys, Indigent)
\$ 16,000.00	from #101-2500-102	(Regular Salaries)
	into #101-1240-415	(Attorneys, Indigent)
\$ 2,700.00	from #101-2500-210	(Office Supplies)
	into #101-1240-415	(Attorneys, Indigent)
\$ 4,000.00	from #101-2500-317	(Capital Purchases under \$10,000)
	into #101-1240-415	(Attorneys, Indigent)
\$ 8,000.00	from #101-2500-400	(Purchased Services)
	into #101-1240-415	(Attorneys, Indigent)

RESOLUTION #17-1567  
OCTOBER 03, 2017  
PAGE 2

\$ 5,000.00	from #101-2500-820	(Health Insurance)
	into #101-1240-415	(Attorneys, Indigent)
\$ 1,000.00	from #101-2500-855	(Clothing personal equip)
	into #101-1240-415	(Attorneys, Indigent)
\$ 1,000.00	from #101-2500-910	(Other Expense)
	into #101-1240-415	(Attorneys, Indigent)

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 3<sup>rd</sup> day of October 2017.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

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

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

# Resolution

Number 17-1568

Adopted Date October 03, 2017

APPROVE APPROPRIATION ADJUSTMENT WITHIN JUVENILE COURT TITLE IV-E  
FUND #243

BE IT RESOLVED, to approve the following appropriation adjustment:

\$2,000.00	from	#243-1240-400	(Title IV-E – Purchase Services)
	into	#243-1240-317	(Title IV-E – Capital Purchases under \$10,000)


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 3<sup>rd</sup> day of October 2017.

BOARD OF COUNTY COMMISSIONERS

  
Tina Osborne, Clerk

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

# Resolution

Number 17-1569

Adopted Date October 03, 2017

APPROVE APPROPRIATION ADJUSTMENT WITHIN CHILDREN SERVICES FUND #273

BE IT RESOLVED, to approve the following appropriation adjustment to process a vacation leave payout for Amber Castro:

\$2,306.00      from    #273-5100-102      (Regular Salaries)  
                 into    #273-5100-882      (Accum. Vacation Payout)

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 3<sup>rd</sup> day of October 2017.


BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

jc/

cc:

Auditor   
Appropriation Adj. file  
Children Services (file)  
OMB

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

# Resolution

Number 17-1570

Adopted Date October 03, 2017

APPROVE APPROPRIATION ADJUSTMENT WITHIN HUMAN SERVICES FUND #203

BE IT RESOLVED, to approve the following appropriation adjustment:

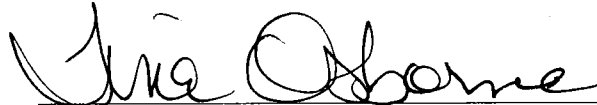
\$50,000.00 from #203-5310-102 (Regular Salaries)  
into #203-5310-749 (Children Services)

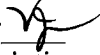
Mrs. Jones moved for adoption of the foregoing resolution being seconded by Mr. Young. Upon call of the roll, the following vote resulted:

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

Resolution adopted this 3<sup>rd</sup> day of October 2017.

BOARD OF COUNTY COMMISSIONERS

  
Tina Osborne, Clerk

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



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

# Resolution

Number 17-1571

Adopted Date October 03, 2017

## AUTHORIZE PAYMENT OF BILLS

BE IT RESOLVED, to authorize payment of bills as submitted on Batches #10/03/2017 001, #10/03/2017 002, #10/03/2017 003, #10/03/2017 004, #10/03/2017 005, #10/03/2017 006, and #10/03/2017 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:

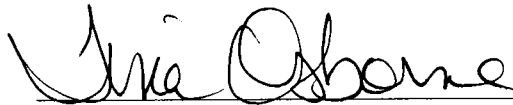
Mr. Grossmann – yea

Mr. Young – yea

Mrs. Jones – yea

Resolution adopted this 3<sup>rd</sup> day of October 2017.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: Auditor 

# Resolution

Number 17-1572

Adopted Date October 03, 2017

APPROVE AND ENTER INTO AN AGREEMENT WITH MODERN OFFICE METHODS

BE IT RESOLVED, to enter into an agreement with Modern Office Methods, regarding the purchase of the Ricoh MPC 6004ex copier; as 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 3<sup>rd</sup> day of October 2017.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: c/a—Modern Office Methods  
Commissioners' file  
OMB (file)  
E. Hartmann



CLIENT ORDER - TERMS AND CONDITIONS

- 1 ACCEPTANCE:** Modern Office Methods Inc. (Modern) hereby agrees to sell to the client identified on the attached Client Order and Client hereby agrees to buy from Modern the "Equipment" described on said agreement subject to the below listed terms and conditions. This order is expressly contingent upon acceptance by corporate officer of Modern Office Methods at its home office. Client hereby waives notice of acceptance. Modern marketing representatives are not authorized to make any modifications to this instrument.
- 2 DELIVERY:** The delivery date specified on the face hereof is approximate. In no event shall Modern be liable for any damages caused by delay in delivery, installation, or the furnishing of services.
- 3 CHARGES:** For delivery within 90 days of order, prices are those in effect at time of this executed agreement. Beyond 90 days. Prices are those in effect at time of delivery, unless Modern caused the delivery time to exceed 90 days.
- 4 INSTALLATION:** The Equipment shall be deemed installed and accepted by Client when it has been installed ready for use as proved by the operation of Modern's Field Engineering Test Routines. The "Installation Date" is the first day following the date Equipment is installed ready for use. Installation facilities, including space, electric power, cable troughs and the like will be provided by Client in accordance with Modern installation specifications and at Client's expense. The client at its own expense shall provide any special rigging or handling required upon installation. Client shall also pay installation charges.
- 5 TITLE/RISK:** Title shall remain in Modern until the entire purchase price and other charges are paid in full. Until title passes to client, Client agrees to maintain Equipment in good operating condition and assumes all risk of loss or damage. Client and any individual cosigner hereby grant to Modern a purchase money security interest in and to the Equipment. This Agreement or a reprographic copy hereof may be filed with any appropriate agency to protect or perfect Modern's rights hereunder. By its signature, Client hereby constitutes any officer or designated employee of Modern as Client's attorney-in-fact to execute and file a Uniform Commercial Code financing statement covering the Equipment and reflecting Modern's interests therein on the public records. Such power of attorney granted hereby is coupled with an interest and is irrevocable.

Tax Exempt  
part will  
Negate this

**6 TAXES:** Client shall pay all Federal, state and local sales, use, property, excise or other taxes imposed on or with respect to the Equipment, except taxes levied on Modern's net income.

**7 PAYMENT:** Client agrees to pay the net amount due within 10 days of receipt of the invoice.

**8 DEFAULT:** Should the Client fail to make any payment due hereunder, or be insolvent or be a party to or acquiesce in any bankruptcy or receivership proceeding or any similar action affecting the affairs or property of Client. Modern may enter upon the premises where the Equipment may be found and remove the Equipment, without prejudice to any other remedies. Modern may have and sell the Equipment, so acquired by Modern, upon commercially reasonable terms as Modern may elect and apply the proceeds thereof against the Client's obligations hereunder. ~~Client agrees to pay attorney fees, court costs, disbursements and other reasonable expenses incurred in collecting any charges under this Agreement.~~ KPA 9/18/17

**9 DELINQUENT PAYMENTS:** (a) Service Charge. Since it would be difficult or impossible to determine Modern's actual damages in the event of late Payments, if any Payment to Modern is not paid within 10 days of the date it is due, Client shall pay to Modern an amount equal to 5% of any such late Payment to compensate Modern for its expenses occasioned by such late payment. Modern and Client agree and acknowledge that such service charge shall not constitute a penalty. (b) Interest. Client shall also pay Modern interest on such late Payment at the highest rate permitted by applicable law, but not more than 1.5% per month. (c) Collection Costs. Client shall pay to Modern all costs of collection (including the fees of any collection agency to whom this Agreement may be referred) plus reasonable attorney's fees (which attorney's fees shall not be less than 25% of amounts due unless a lower amount is specified by applicable law). KPA 9/18/17

**10 MISCELLANEOUS:** (a) This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of the parties hereof. (b) The terms of this Agreement shall prevail notwithstanding any variance with the terms and conditions of any order or instrument submitted by Client.

**11 WARRANTY/LIMITATIONS OF LIABILITY:** Modern Office Methods Inc grants a 60-Day Money Back Guarantee, from date of delivery, on any office machine purchased, leased or rented. This gives you the opportunity to validate not only Modern's products but also the service and support provided. Upon installation, payment must be made according to Modern Office Methods regular terms. For 60 days use our product. If it does not perform as represented by Modern Office Methods in meeting your office requirements, notify us in writing. If we are unable to meet your requirements within 60 days, make the product available in the same condition in which you received it, Modern Office Methods will give you a full refund, less any shipping and installation charges, and less \$.02 for each black print made and \$.20 for each color print made.

Modern warrants that the Equipment, when installed, will be free from defects in material and workmanship for a period of sixty (60) days from the "Installation Date." Modern warrants that parts and service will be available for a period of five years from the date of this order for the units purchased herein, provided the equipment is in new production. For equipment not in new production, parts and service will be available for a period of five years from the date the equipment ceased to be in new production. Modern's warranty shall apply only to machines sold and used in the United States,

Modern's warranty does not cover damage to the Equipment caused by accident, misuse, acts of third parties, environmental conditions, any force of nature or for repairs by any other than Modern authorized service personnel, or any other causes beyond Modern's control, or by any alterations to the Equipment at Client's direction, or to consumable parts such as ribbons, printwheels or rubberized parts Modern shall not be required to make repairs or replace parts if impractical to do so because of Equipment connection to other devices, or the existence of safety hazards.

THERE ARE NO WARRANTIES ON THE EQUIPMENT WHICH EXTEND BEYOND THIS AGREEMENT, AND MODERN MAKES NO WARRANTY EXPRESS OR IMPLIED OF FITNESS FOR A PARTICULAR USE OR MERCHANTABILITY. MODERN SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES INCLUDING BUT NOT LIMITED TO LOSS OF PROFIT OR OTHER ECONOMIC LOSS.

**12 FORCE MAJEURE:** Modern will not be liable for any failure to perform if inability to obtain raw materials, parts or supplies at reasonable prices or through usual and regular sources or on a timely basis, interruption of transportation, government regulation, labor disputes, strikes, war, fire, flood, accident or other causes beyond Modern's control, makes it impracticable for Modern to perform.

**13 ENTIRE AGREEMENT:** This Agreement is intended as the complete and exclusive statement of the terms of the Agreement between the parties.

**14 GOVERNING LAW:** Client represents that the Equipment is being purchased hereunder for business purposes only and agrees that under no circumstances shall this Agreement be construed as a consumer contract. This Agreement shall be construed to be between merchants and shall be governed by the laws of the State of Ohio.



# Site Survey

v8.04.15

General		
Company <u>Warren County Office of Management &amp; Budget</u>	Contact <u>Erynn</u>	Order #
Address <u>406 Justice Dr</u>	Phone # <u>513-695-1947</u>	Sales Rep <u>Babinec</u>
City St Zip <u>Lebanon Oh 45036</u>	e-Mail	Date <u>9-6-17</u>

Delivery Information									
Model <u>MPC 6004 ex</u>	<input checked="" type="radio"/> 115v/15a	<input type="radio"/> 115v/20a	<input type="radio"/> 220v/20a	Steps <input type="checkbox"/>	Model	<input type="radio"/> 115v/15a	<input type="radio"/> 115v/20a	<input type="radio"/> 220v/20a	Steps <input type="checkbox"/>
Location	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Elevator <input type="checkbox"/>	Location	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Elevator <input type="checkbox"/>
IP Address	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Dock <input type="checkbox"/>	IP Address	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Dock <input type="checkbox"/>
Model	<input checked="" type="radio"/> 115v/15a	<input type="radio"/> 115v/20a	<input type="radio"/> 220v/20a	Steps <input type="checkbox"/>	Model	<input checked="" type="radio"/> 115v/15a	<input type="radio"/> 115v/20a	<input type="radio"/> 220v/20a	Steps <input type="checkbox"/>
Location	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Elevator <input type="checkbox"/>	Location	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Elevator <input type="checkbox"/>
IP Address	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Dock <input type="checkbox"/>	IP Address	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Dock <input type="checkbox"/>

Connectivity & Software			
IT Contact	<input type="checkbox"/> Hot Swap	<input type="checkbox"/> User Codes	<input checked="" type="checkbox"/> Scan-to-Email
IT Phone	<input type="checkbox"/> Demo Unit	<input type="checkbox"/> Desktop Fax	<input checked="" type="checkbox"/> Scan to Folder
IT Email	<input type="checkbox"/> Fax Forward	<input type="checkbox"/> PPDM	<input type="checkbox"/> PS for Macs
<input type="checkbox"/> Internal <input checked="" type="checkbox"/> Outsourced <input type="checkbox"/> None	<input type="checkbox"/> Fiery / Creo	<input type="checkbox"/> Spectrophotometer	
Who will be networking the equipment?	Is there a network drop available within 5 feet of the machine? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
<input checked="" type="checkbox"/> MOM <input type="checkbox"/> Client <input type="checkbox"/> Not Connected	Is there a fax line available within 5 feet of the machine? <input type="checkbox"/> Yes <input type="checkbox"/> No		

Modern Office Methods would like to install a Data Collection Agent (DCA) on your network so we can more effectively care for your equipment needs. This DCA will send basic MIB data to us which includes equipment information such as meter reads, models, serial numbers and toner levels. This information will allow us to gather your contracted meter data without interfering with the productivity of your employees and will assist us in monitoring the serviceability of your equipment.

DCA Already Installed  DCA Install Approved

*[Signature]*  
Signature Authorizes DCA Installation

**Network Services & Installation Rates Charge**

Includes hardware set-up/delivery, and installation of print drivers on up to 4 computers per device. Also includes remote support and one additional on-site visit (up to 4 hours) for PRINT, SCAN, and NETWORK FAX issues. Network Services support, renews annually and is billed with your Lease or Service Agreement. Support for customers who have declined these

**Connectivity Warranty**

Modern Office Methods warrants the connectivity for 30 days. In any instance, even within the 30-day warranty period, the client updates the operating system, upgrades the network server, and or purchases a new workstation, thus requiring additional service(s) connecting the Modern Office Methods device, this service will be billed at a rate of \$150.00 per hour with a 1 hour minimum.

**Client Responsibilities**

Data ports, network drops, network cables, USB/Firewire/Parallel cables, network switches, analog fax ports, fax cables and power receptacles are to be provided by the client.

- Provide a dedicated polarized electrical power outlet.
- Provide a dedicated analog fax line if faxing is required.
- Provide a dedicated active network port and proper cabling.
- Provide adequate space for the equipment meeting the manufacturer's specifications.
- Provide a network administrator on site or have administrator available by phone for installation support and training.

**Software Acknowledgement & Release**

Client hereby acknowledges that it has requested Modern Office Methods to install certain software or hardware products ("the products") on client's computer hardware, peripherals, network hardware, and network software ("the computer"). Client acknowledges that Modern Office Methods has no knowledge or control over the type of software currently on the client's computer or the environment in which it operates some software, including existing software which may contain configurations or algorithms which are incompatible with the products. Client acknowledges that because of these and other factors which are beyond the control of Modern Office Methods, there are risks associated with the installation or service of the products including, without limitations, the risk that the data on the computer may be damaged or deleted. Client acknowledges that it is advisable and the sole responsibility of the client, prior to installation or service of products, to back up all data contained on the computer which the client, in its sole discretion, deems necessary, including, without limitations, all directories, subdirectories and partitions. If any data is damaged or deleted, client is responsible for restoring such data to the computer. In consideration of Modern Office Methods agreeing to perform such installation, client agrees for itself, its employees, agents, successors and assigns from any and all claims, debts, costs, liabilities, expenses, damages, actions and causes of action of service, maintenance, function or use of the products and the actions of any employees or agents of Modern Office Methods related to the installation, maintenance, function, or use of the software or hardware.

Signature *[Signature]* Date 10/3/17

Network Installation Terms & Conditions Acceptance

Post-Installation Training		
Key Operator Contact <u>Erynn Hartman</u>	Phone # <u>513-695-1947</u>	e-Mail

Special Instructions Set up training with Erynn

# Machine Removal Information

## Hard Drive Security

- I request Modern Office Methods perform a **Quick Format** of the machine(s) indicated. I understand this procedure eliminates the path to find information on the hard drive, but does not clear the hard drive of all data. While it would be tremendously difficult, if someone has the appropriate tools it may be possible to get data from the hard drive, thus posing a potential security risk. There is no charge for this service.
- I request Modern Office Methods perform a **Secure Hard Drive Overwrite** meeting DoD Standard requirements. I understand that once overwritten, the data will not be recoverable. I agree to pay Modern Office Methods \$175 per hard drive they overwrite and understand that some devices have more than one hard drive. Modern Office Methods will provide an overwrite certificate(s) upon completion.
- I request Modern Office Methods **REMOVE** the hard drive(s) from the machine(s) indicated. (MOM will only perform this service on machines we sell or service.) I understand that hard drive removal may render the machine(s) inoperable and agree to hold MOM harmless for all loss of data and machine functionality. We will replace the hard drive with one that should make the machine operable, but, it will remain your responsibility that the machine operates properly. This may be important for any machine that is on a lease contract. I understand that some devices have more than one hard drive and agree to pay MOM \$300 per hard drive that is removed.

**Client agrees to hold Modern Office Methods, it's owners, employees & assigns harmless from any & all claims, including attorneys fees and costs. Client acknowledges its full responsibility for any damages and/or financial penalties which may be incurred.**

Client Signature: \_\_\_\_\_

Title: \_\_\_\_\_

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

HD Security Terms & Conditions Acceptance

## Client Asset Pick-up Authorization

- "Remove" & Transfer Ownership to MOM:** I request that Modern Office Methods (MOM) remove the asset(s) indicated below including all accessories. I acknowledge that we (client) own the equipment & are transferring ownership of the asset(s) wholly to Modern Office Methods. I understand that we will remain responsible for all current and future charges due on the asset(s) including, but not limited to, lease payments, lease buyouts, service invoices, etc. We will hold Modern Office Methods harmless for all charges due against the asset(s). We agree that the asset(s) will not be available for return once MOM receives the asset(s).
- Return to Leasing Company with RMA:** I request that Modern Office Methods (MOM) remove the asset(s) indicated below including all accessories and arrange to have the asset(s) returned to the leasing company per the leasing company's instructions. I acknowledge that we (Client) are responsible for all current and future charges due on the lease agreement(s) and will hold Modern Office Methods harmless for any and all additional charges incurred due to return delays, missing items/accessories, or damage that occurs to asset(s). Return shipping charges of \$500 per device will apply.
- "Store" in MOM Warehouse:** I request that Modern Office Methods (MOM) remove the asset(s) indicated below including all accessories and store the asset(s) in MOM's warehouse. I acknowledge that Modern Office Methods is not insuring the asset(s) and we (client) will hold MOM harmless for any loss or damage to the asset(s) that occurs outside of MOM's control. Storage charges to client will be billed at the rate of \$100 per month per device, plus a \$150 transportation fee each direction to and from the client's location. These fees are payable on the first day of each month the asset(s) are in MOM's custody and will continue until MOM returns the asset(s) or has been instructed in writing to dispose of the asset(s). We (MOM) will schedule your machine(s) to be returned at your requested dates, but you (Client) understand that it is your responsibility to request return of the asset(s) in writing within 30 days prior to your requested return date.

**Client agrees to hold Modern Office Methods, it's owners, employees & assigns harmless from any & all claims, including attorneys fees and costs. Client acknowledges its full responsibility for any damages and/or financial penalties which may be incurred.**

Print Name \_\_\_\_\_

Signature \_\_\_\_\_

Requested Return Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

### "Storage" Comment Information:

### Asset(s) To Be Picked Up

Model	Serial #	Location	<input type="checkbox"/> "Remove"	<input type="checkbox"/> "Return"	<input type="checkbox"/> "Store"
			<input type="checkbox"/> "Remove"	<input type="checkbox"/> "Return"	<input type="checkbox"/> "Store"
			<input type="checkbox"/> "Remove"	<input type="checkbox"/> "Return"	<input type="checkbox"/> "Store"
			<input type="checkbox"/> "Remove"	<input type="checkbox"/> "Return"	<input type="checkbox"/> "Store"
			<input type="checkbox"/> "Remove"	<input type="checkbox"/> "Return"	<input type="checkbox"/> "Store"

### Asset(s) To Be Relocated

Model	Serial #	Address	Contact	Phone

**Relocation Pricing:** Machine relocation within a facility in Zone 1 or 2 = \$100. Relocation to a different facility in Zone 1 or 2 = \$200. Add \$50 per each additional service zone & \$100 per machine for each additional person required for the move. After the first machine in a facility, each additional machine will be charged at \$50. The need for a DSE will be charged at \$150 / hour. Moving on stairs will require a written quote.

Additional Comments or Information For Assets To Be Picked Up or Relocated

# Resolution

Number 17-1573

Adopted Date October 03, 2017

APPROVE AND ENTER INTO MAINTENANCE AGREEMENT WITH MODERN OFFICE METHODS

BE IT RESOLVED, to approve and authorize the President of the Board to execute a Maintenance Agreement, for the copier located in the Commissioners Office, with Modern Office Methods; agreement 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:

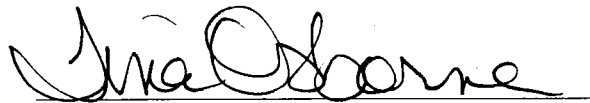
Mr. Grossmann – yea

Mr. Young – yea

Mrs. Jones – yea

Resolution adopted this 3<sup>rd</sup> day of October 2017.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: c/a—Modern Office Methods  
Commissioners' file  
OMB (file)  
E. Hartmann



# GUARANTEED MAINTENANCE AGREEMENT

Agreement # \_\_\_\_\_

Legal Name of Client

*Warren*  
**County of Office Management & Budget**

406 Justice Dr

of

Lebanon, Oh, 45036

Start Date From: / /	Expiration Date To: / /	Term: <u>60 Mos.</u>	Total Base Payment for Group \$ <u>279.9</u>
		x _____	_____
		Monthly	Quarterly      Annually

Meter Readings Billed

Quarterly

Billing

Breakdown: (Check One) Itemized

Consolidated  
W/Detail

# Machines Included

1

**Contract Type (Walk-Up Functionality):**

**Limited GMA Coverage:**  
 Includes: parts & Labor  
 Excludes: Drum, Developer,  
 Toner/Ink, Masters & Staples

**Regular GMA Coverage:**  
 Includes: Parts, Labor, Drum &  
 Developer  
 Excludes: Toner/Ink, Masters & Staples

**Total Care GMA Coverage:**  
 Includes: Parts, Labor, Drum,  
 Developer, Toner/Ink  
 Excludes: Masters & Staples

Base Item #:		Serial #:	Begin Meter	
Base GMA Rate Black:	0.0055	Base GMA Rate Color:	0.042	Black: <input type="checkbox"/>
Allowance Black:	15,000	Allowance Color:	4,700	Color: <input type="checkbox"/>
Overage Rate Black:	0.00550	Overage Rate Color:	0.00420	

Base Item #:		Serial #:	Begin Meter	
Base GMA Rate Black:		Base GMA Rate Color:		Black: <input type="checkbox"/>
Allowance Black:		Allowance Color:		Color: <input type="checkbox"/>
Overage Rate Black:		Overage Rate Color:		

Base Item #:		Serial #:	Begin Meter	
Base GMA Rate Black:		Base GMA Rate Color:		Black: <input type="checkbox"/>
Allowance Black:		Allowance Color:		Color: <input type="checkbox"/>
Overage Rate Black:		Overage Rate Color:		

Comments: \_\_\_\_\_

APPROVED AS TO FORM

*Keith W. Anderson*  
 Keith W. Anderson  
 Asst. Prosecuting Attorney

My signature on this form acknowledges acceptance of the complete terms and conditions for Maintenance Agreements attached (revised 4-21-11).

Customer Acceptance  
 MOM Acceptance

*[Signature]*

*[Signature]*

Date  
 Date

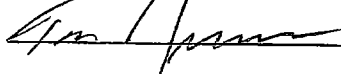
10/3/17  
9/11/17

Notice: This GMA Agreement is not binding on MOM until accepted by a MOM Corporate Officer.



- 1 **ACCEPTANCE:** This agreement shall become binding when it has been signed by the client and accepted by a MOM corporate officer, provided however, that if there are modifications to this Agreement, or pricing not standard with the authorized published price schedule, this Agreement is not valid until it has been accepted in writing by the signature of an authorized representative of MOM in Cincinnati, Ohio. In such a case, this is the sole and exclusive manner of acceptance. Any other promise or act, including a promise to perform service or the performance of service shall not constitute acceptance by MOM of this agreement.
- 2 **LIMITED WARRANTY:** If the Client elects not to take a Maintenance Contract, a Limited Warranty is given by MOM. The Limited Warranty provides maintenance coverage for a period of 90 days or the number of copies allowed under a quarterly, Standard Volume Maintenance Agreement, whichever comes first. Preventative Maintenance Kits are not included.
- 3 **METER CHARGES:** Charges in addition to the base rate for Guaranteed Maintenance, Client agrees to pay on a monthly or quarterly basis for all copies in excess of the number of copies per quarter included. The charge per copy is stated in the Overage Rate, space.
- 4 **GENERAL SCOPE OF COVERAGE:** This agreement covers both the labor and the material for adjustments, repairs and replacements of parts as necessitated by normal use of the equipment except as hereinafter provided. Damage to the equipment or its parts arising out of misuse, abuse, negligence, or cause beyond MOM's control, such as acts of God, as determined by the dealer are not covered. In addition, MOM may terminate this agreement in the event the equipment is modified, damaged, altered or serviced by personnel other than those employed by MOM, or if parts, accessories or components not authorized by MOM are fitted to the equipment.
- 5 **SERVICE CALLS:** Service calls under this agreement will be made during normal business hours at the installation address shown on the reverse side of this agreement. Travel and labor time for service calls after normal hours, on weekends and on holidays, if and when available, will be charged at overtime rates in effect at the time the service call is made.
- 6 **EXTENT OF LABOR SERVICES:** Labor performed during a service call includes lubrication and cleaning of the equipment and the adjustments, repair or replacement of parts described in Paragraph 7. Labor is not included on service calls that are placed specifically to perform operator functions as outlined in the operator guide, i.e.: toner cartridge replacement, fuser oil replenishment, or Photo Conductor Replacement. Labor incurred by a fault in the client's network is not included in this agreement unless the network is covered under a separate agreement.
- 7 **LIMITED COVERAGE - REPAIR AND REPLACEMENT OF PARTS:** All parts necessary to the operation of the equipment, with the exception of the parts listed below, and subject to the general scope of coverage, will be furnished free of charge during a service call included in the maintenance service provided by this agreement, Exceptions are:
- Plain Paper Copiers: Limited Coverage excludes Drums, Developers, Consumables; Limited coverage is available only on selected fax machines, low volume copiers, selected printers and shredders.
  - Full Coverage excludes Consumables; a separate charge is made for coverage to accessories.
  - Total Care Coverage (See Paragraph 20)
  - Facsimile Machines: EP cartridges, drum, and developer unit.
  - Fiery Print Controllers are considered to be a stand-alone appliance. Parts and labor for service on the Fiery are not included unless a specific contract is purchased in addition to the base unit.
- 8 **EXCLUSION TO MAINTENANCE SERVICES:** Repair of damage or increase in service time caused by use beyond Manufacturer's recommendations, or by use of the equipment for purposes other than those for which designed, the foregoing item excluded from maintenance service, if performed by MOM, will be charged to the Client at MOM's applicable time and material rates and terms then in effect.
- 9 **TERM:** This agreement shall become effective upon acceptance by MOM of the Guaranteed Maintenance Agreement and shall continue until the expiration date. It shall be automatically renewed for successive 12 month periods subject to the receipt by MOM of the maintenance charge in effect at the time of renewal, provided that the Client is not then in default.
- 10 **CHARGES:** The initial annual charge for maintenance under this agreement shall be the amount set forth on the reverse side hereof. The annual maintenance charge with respect to any renewal term will be the charge in effect at the time of renewal. Client agrees to pay the total of all charges for maintenance including applicable taxes during the initial term and any renewal term within 30 days of the date of MOM's invoice for such charges. Client understands that alterations, attachments or specification charges may require an increase in maintenance charges and agrees to pay such charges promptly when due.
- 11 **BREACH OR DEFAULT:** This agreement remains in effect for the stated contract period provided the Client pays for all charges due on maintenance (including meter charges), parts, supplies, lease/rental payments, and on the equipment provided by MOM.
- If the Client does not pay for all charges promptly when due, dealer may (A) refuse to service the equipment, (B) furnish service on a cash only basis at published Per Call rates or (C) initiate third party collection efforts. If equipment is moved to a new Dealer service zone, Dealer shall have the option to charge, and the Client agrees to pay, the difference in published maintenance charges between the current zone and the new zone, such charges to be assessed on a pro-rated basis. If equipment is moved beyond MOM's published service zones, Client agrees to pay a fair and reasonable up charge for continued maintenance under this agreement, taking into account the distance to Client's new location and MOM's published rates for service on a "Per Call" basis.
- 12 **AUTHORIZED SUPPLIES:** The systems represented by MOM are designed to give excellent performance with MOM Authorized supplies including MOM Authorized consumables. If the Client uses other than MOM authorized supplies, and as such supplies are defective or not acceptable for use on these machines and cause abnormally frequent maintenance charge service calls or service problems, then MOM may, at its option, terminate this agreement. In that event, the Client will be offered service on a "Per Call" basis at published rates. It is a condition of this agreement however, that the Client use only MOM authorized supplies.
- 13 **REFUNDS, CANCELLATION AND EXCHANGES:** This agreement remains in effect for the stated contract period. There is no refund for a contract cancelled before the expiration of the contract period. This no refund policy is in effect without regard to the time at which the contract is cancelled and without regard to the reasons for the cancellation. If the Client should elect to acquire a new or different system from MOM, MOM will exchange the dollar value of the unused portion of the contract for an equal dollar amount of guaranteed maintenance on the newly acquired system. This exchange is based upon the amount paid for the current contract and the published base price of the contract for the new equipment. This exchange can occur only with the purchase or lease of the new system from MOM, and provided the Client has no current outstanding or past due balances due to MOM.
- 14 **MONTHLY OR QUARTERLY BILLING OPTIONS:** This is an annual contract, however, Client may request billing of the contract on a quarterly or a monthly basis. Such a request is subject to the prior approval of MOM. Any request for quarterly billing is subject to an additional charge equal to 10% of the base contract amount. Requests for monthly billing are subject to an additional charge of 20% of the base contract amount. All monthly and quarterly billings must be paid upon receipt. Failure to pay within 30 days from invoice date will result in cancellation of the contract for nonpayment, and all calls charged on a Per Call basis beginning with the day following the last paid monthly or quarterly period. Minimum billing amount for monthly or quarterly billing is \$50.00 per month, \$150.00 per quarter.
- 15 **OVERAGES AND COST ADJUSTMENTS:** You agree to comply with any billing procedures designated by us, including notifying us of the meter reading at the end of each month. At the end of the first year of this Agreement and once each successive twelve month period, we may increase the base usage charge per copy and the per copy charge over the base minimum by a maximum of 15% of the existing charge.
- 16 **NO WARRANTY:** Other than the obligations set forth herein, MOM DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR USE, OR FITNESS FOR A PARTICULAR PURPOSE MOM SHALL NOT BE RESPONSIBLE FOR DIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO DAMAGES ARISING OUT OF THE USE OR PERFORMANCE OF THE EQUIPMENT OR THE LOSS OF USE OF THE EQUIPMENT.
- 17 **ATTACHMENTS OR PERIPHERALS:** MOM will not be responsible for the performance or maintenance of any supporting devices or peripherals added by the Client on to the equipment as described in this contract. This includes, but is not limited to Computers, printers, control devices, memory, upgrades, and Software. Further, damage or malfunction incurred as the result of the connection of an unauthorized item to the equipment described herein, would NOT be covered by this agreement and charged to the Client on a "Per Call" basis.
- 18 **POWER FLUCTUATIONS:** Service Calls determined by MOM to be the result of fluctuations in power to the system, and not protected by a power protection device approved by MOM, will not be covered by this agreement. Charges will be on a Per Call basis.
- 19 **TOTAL CARE VOLUME COMMITMENT:** The monthly copy volume commitment represents the minimum monthly volume commitment by the Client. The volume commitment times the applicable Per Copy Service Charge will be reflected on the service billing according to your plan's billing frequency. All bills will arrive 30-45 days in advance of the coverage period. A meter reading will be taken according to the meter reading frequency established for your plan. Copies in excess of the minimum will be billed at the applicable plan rate. You may not carry over a credit from any month/quarter during which you produce fewer copies than the monthly/quarterly minimum.
- 20 **TOTAL CARE CONSUMABLES:** Total Care Service includes full service, parts and labor, drum, developer, toner, and toner waste bag. Paper, staples, transparency film, and labels are not included in the plan but are available through MOM at 1-800-345-3888. The Client is responsible for ordering, as needed, and maintaining an adequate inventory, of consumable supplies. Freight on supplies will be prepaid and added to your invoice. Standard shipping is via UPS ground service. Any special shipping, including overnight delivery, can be arranged at an additional charge to the Client. No more than one quarter's average usage of supplies may be kept on hand at any time. A meter read and serial number will be requested at time of order. You agree to use consumable supplies ordered under this agreement only in connection with equipment subject to this agreement. From time to time, we shall review consumable supplies ordered by and shipped to you and the actual copy volume made on equipment covered by this agreement. In the event of a significant variance between the expected toner yield and the amount and/or type of consumable supplies ordered and the type and/or copy volume made on such equipment, we have the right to either: 1 Charge you an additional \$.0050 per copy for any variance in excess of 20 percent. Variance will be calculated using manufacturer's recommended yield. Request that you purchase additional supplies to account for the variance caused by your unique applications. If this agreement expires or is terminated, you shall promptly make all unused consumable supplies available for our pick-up. All supplies in your possession belong to Modern and will be made available to us if the agreement is canceled for any reason, including non-payment. Such returned consumable supplies will not be credited to your account.
- 21 **TOTAL CARE NEW MACHINE WARRANTY:** The 90-day new machine warranty is included in this program and is reflected in the first year's pricing structure.
- 22 **MISCELLANEOUS:** This Agreement shall be governed by and construed according to the laws of the State in which dealer is located applicable to agreements wholly negotiated, executed and performed in such State. It constitutes the entire agreement between the parties and may not be modified except in a writing signed by duly authorized officers of MOM and the Client.
- 23 **FINANCE CHARGES:** Client agrees to pay the net amount due by the due date printed on the invoice. Amounts past 30 days are subject to 1 1/2% per month finance charge.

Customer Acceptance



Date

10/3/17

# Resolution

Number 17-1574

Adopted Date October 03, 2017

APPROVE AN APPROPRIATION ADJUSTMENT WITHIN COMMISSIONERS FUND  
#101-1110

BE IT RESOLVED, to approve the following appropriation adjustment:


\$13,200.00 from #101-1110-400 (Commissioners – Purchased Services)  
into #101-1110-320 (Commissioners – Cap. Purchases \$10,000 & over)

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 3<sup>rd</sup> day of October 2017.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: Auditor   
Appropriation Adjustment file  
Commissioners file  
OMB

# Resolution

Number 17-1575

Adopted Date October 03, 2017

APPROVE APPROPRIATION ADJUSTMENT WITHIN COUNTY COURT FUND #253

BE IT RESOLVED, to approve the following appropriation adjustment within County Court Fund 253

\$ 15.00	from	#253-1280-210	(OFFICE SUPPLIES)
	into	#253-1280-102	(REGULAR SALARIES)

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 3<sup>rd</sup> day of October 2017.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

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

# Resolution

Number 17-1576

Adopted Date October 03, 2017

ACCEPT RESIGNATION OF CHRISTINE THOMPSON FROM THE WARREN COUNTY TRANSPORTATION IMPROVEMENT DISTRICT BOARD OF TRUSTEES AND APPOINT CHRIS POZZUTO TO THE UNEXPIRED TERM

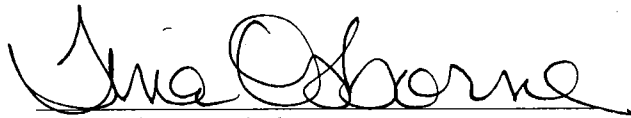
BE IT RESOLVED, to accept the resignation of Christine Thompson from the Warren County Transportation Improvement District Board of Trustees and appoint Chris Pozutto to her unexpired term; said term to expire December 31, 2018.

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 3<sup>rd</sup> day of October 2017.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: Engineer (Neil Tunison)  
Appointments file  
Laura Lander  
TID file  
Appointees

# Resolution

Number 17-1577

Adopted Date October 03, 2017

CANCEL REGULARLY SCHEDULED COMMISSIONERS' MEETING OF TUESDAY, OCTOBER 10, 2017, AND CHANGE THE LOCATION OF THE REGULARLY SCHEDULED MEETING OF THURSDAY, OCTOBER 12, 2017, TO THE DEERFIELD TOWNSHIP ADMINISTRATION BUILDING


BE IT RESOLVED, to cancel the regularly scheduled Commissioners' Meeting of Tuesday, October 10, 2017, and change the location of the regularly scheduled meeting of Thursday, October 12, 2017, to the Deerfield Township Administration Building located at 4900 Parkway Drive, Suite 180, Deerfield Township, Ohio 45040

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 3<sup>rd</sup> day of October 2017.

BOARD OF COUNTY COMMISSIONERS

  
Tina Osborne, Clerk

cc: Auditor   
All Departments  
Commissioners file  
Press