

Resolution

Number 18-1905

Adopted Date December 11, 2018

APPROVE LATERAL TRANSFER OF TRACI GUTHRIE, OFFICE ADMINISTRATOR,
FROM THE GARAGE TO FACILITIES MANAGEMENT

WHEREAS, the Director of Facilities Management has requested the lateral transfer of Ms. Guthrie to the Office Administrator position within Facilities Management; and

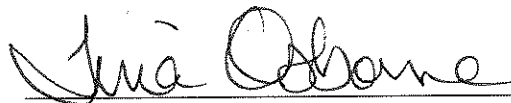
NOW THEREFORE BE IT RESOLVED, to approve the lateral transfer of Traci Guthrie, Office Administrator from the Garage to Facilities Management effective December 24, 2018.

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

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

Resolution adopted this 11th day of December 2018.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: Facilities Management (file)
Garage (file)
Traci Guthrie's Personnel file
OMB – Sue Spencer

Resolution

Number 18-1906

Adopted Date December 11, 2018

AUTHORIZE THE POSTING OF THE "OFFICE ADMINISTRATOR" POSITION WITHIN THE WARREN COUNTY GARAGE, IN ACCORDANCE WITH WARREN COUNTY PERSONNEL POLICY MANUAL, SECTION 2.02 (A)

WHEREAS, there exists an opening for the "Office Administrator" position within the Warren County Garage; and

NOW THEREFORE BE IT RESOLVED, to authorize the posting of the position of "Office Administrator" 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 December 12, 2018.

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

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

Resolution adopted this 11th day of December 2018.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: Garage (file)
OMB – Sue Spencer
Job Class #1193

Resolution

Number 18-1907

Adopted Date December 11, 2018

APPROVE LEAVE DONATION FOR KENNETH COLE, WITHIN THE WARREN COUNTY WATER AND SEWER DEPARTMENT

WHEREAS, the Sanitary Engineer has requested that, due to an illness, leave donation be approved for Kenneth Cole; and

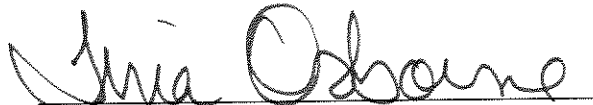
NOW THEREFORE BE IT RESOLVED, to approve leave donation for Kenneth Cole within the Warren County Water and Sewer Department, effective immediately.

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

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

Resolution adopted this 11th day of December 2018.

BOARD OF COUNTY COMMISSIONERS


Tina Osborne, Clerk

H/R

cc: Water and Sewer (file)
K. Cole's Personnel File
OMB – Sue Spencer
Tammy Whitaker

Resolution

Number 18-1908

Adopted Date December 11, 2018

APPROVE LEAVE DONATION FOR JACQUELINE HANKINS, WITHIN THE WARREN COUNTY BUILDING AND ZONING DEPARTMENT

WHEREAS, the Director of Building and Zoning has requested that, due to an illness, leave donation be approved for Jacqueline Hankins; and

NOW THEREFORE BE IT RESOLVED, to approve leave donation for Jacqueline Hankins within the Warren County Building and Zoning Department, effective immediately.

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

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

Resolution adopted this 11th day of December 2018.

BOARD OF COUNTY COMMISSIONERS


Tina Osborne, Clerk

H/R

cc: Building & Zoning (file)
J. Hankins' Personnel File
OMB – Sue Spencer
Tammy Whitaker

Resolution

Number 18-1909

Adopted Date December 11, 2018

DESIGNATE FAMILY AND MEDICAL LEAVE OF ABSENCE TO JACQUELINE HANKINS
WITHIN THE BUILDING AND ZONING DEPARTMENT

WHEREAS, it is necessary to designate a Family and Medical Leave of Absence for Jacqueline Hankins; and


NOW THEREFORE BE IT RESOLVED, to designate Family and Medical Leave of Absence for Jacqueline Hankins, not to exceed twelve (12) weeks; pending further documentation from physician.

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

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

Resolution adopted this 11th day of December 2018.

BOARD OF COUNTY COMMISSIONERS


Tina Osborne, Clerk

cc: Building and Zoning (file)
J. Hankins' FMLA file
OMB – Sue Spencer

*BOARD OF COUNTY COMMISSIONERS
WARREN COUNTY, OHIO*

Resolution

Number 18-1910

Adopted Date December 11, 2018

ACCEPT RESIGNATION OF BRENDAN POTTORF, CUSTODIAL WORKER I, WITHIN THE WARREN COUNTY FACILITIES MANAGEMENT DEPARTMENT EFFECTIVE DECEMBER 15, 2018

BE IT RESOLVED, to accept the resignation, of Brendan Pottorf, Custodial Worker I, within the Warren County Facilities Management Department effective December 15, 2018.

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

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

Resolution adopted this 11th day of December 2018.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: Facilities Management (file)
B. Pottorf Personnel File
OMB – Sue Spencer
Tammy Whitaker

Resolution

Number 18-1911

Adopted Date December 11, 2018

AUTHORIZE WARREN COUNTY TREASURER TO SIGN AN INSTITUTIONAL
SUITABILITY CERTIFICATE WITH KEY BANK

WHEREAS, Key Bank is requiring the Warren County Treasurer sign an Institutional Suitability Certificate relative to the portion of "bonds" Warren County is purchasing on the Franklin Regional Wastewater Treatment Plant Upgrade project; and

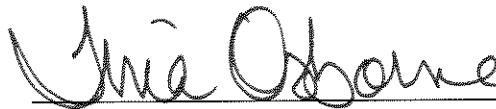
NOW THEREFORE BE IT RESOLVED, to authorize Barney Wright, Warren County Treasurer, to sign the Institutional Suitability Certificate with Key Bank; as attached hereto and made a part hereof.

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

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

Resolution adopted this 11th day of December 2018.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

Tz/

cc: Treasurer (file)



Account Number: _____

**INSTITUTIONAL SUITABILITY CERTIFICATE
AFFIRMATIVE INDICATION OF EXERCISE OF INDEPENDENT JUDGMENT
(Pursuant to FINRA Rule 2111)¹**

In connection with any recommended² transaction or investment strategy by a registered broker-dealer, the undersigned acknowledges on behalf of the Institution named below that:

- I. It is an Institutional Account as defined in FINRA Rule 4512(c)³;
- II. It (1) is capable of evaluating investment risks independently, both in general and with regard to all transactions and investment strategies involving a security or securities; and (2) will exercise independent judgment in evaluating the recommendations of any broker-dealer or its associated persons, unless it has otherwise notified the broker-dealer in writing;
- III. It will notify KeyBanc Capital Markets Inc. and each broker-dealer servicing the Institutional Account if anything in this Certificate ceases to be true;
- IV. It will notify KeyBanc Capital Markets Inc. and each Dealer servicing the Institutional Account if anything in this Certificate ceases to be true;
- V. This Certificate and the information contained herein may be shared with broker-dealers or third parties, including via a secure database or electronic platform established by KeyBanc Capital Markets Inc., and
- VI. He or she is authorized to sign on behalf of the Institutional Account named below.

By signing this Certificate, the undersigned affirms that the above statements are accurate but does not waive any rights afforded under U.S. federal or state securities laws, including without limitation, any rights under Section 10(b) of the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

INSTITUTIONAL TRADING AUTHORIZATION

Any one or more of the following designated persons is hereby authorized to submit orders and instructions either orally or in writing to KBCM on behalf of the Firm and KBCM may rely on this trading authorization in its entirety until KBCM receive notice in writing of any modification or revocation of such authority. Except as otherwise expressly communicated in writing by the Firm to KBCM, KBCM shall be entitled to assume that there are no limits on the authority of the persons so designated to act on behalf of the Firm under this application.

Name BARNEY WRIGHT	Position/Title TREASURER
Name	Position/Title
Name	Position/Title
Name	Position/Title

See attached for complete list of authorized persons.

NOTE: This Certificate shall apply with respect to all recommended transactions and investment strategies involving securities that are entered into by the "Institutional Account" named in this Certificate, whether for the account of such Institutional Account or for the account of any beneficial owner that has delegated decision making authority to such Institutional Account.

Institutional Account Name: WARREN COUNTY, OH	Address, City, State, Zip: 406 JUSTICE DR., LEBANON, OH 45030
Name of Authorized Signatory: BARNEY WRIGHT	U.S. Tax ID/EIN (if applicable): 31-600058
Title of Authorized Signatory: TREASURER	Telephone: 513.695.2310 Email Address: barney.wright@dcu.warren.oh.us
Signature of Authorized Signatory: 	Date: 12/11/18

¹ Available at <http://www.finra.org/Industry/Regulation/FINRARules/>.

² As defined in FINRA Rules.

³ The term "Institutional Account" means the account of: (1) a bank, savings and loan association, insurance company or registered investment company; (2) an investment adviser registered either with the SEC under Section 203 of the Investment Advisers Act or with a state securities commission (or any agency or office performing like functions); or (3) any other person (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least \$50 million as of the date of this Certificate (whether such assets are invested for such person's own account or under management for the account of others).

KeyBanc Capital Markets is a trade name under which corporate and investment banking products and services of KeyCorp and its subsidiaries, KeyBanc Capital Markets Inc., Member NYSE/FINRA/SIPC, and KeyBank National Association ("KeyBank N.A."), are marketed. Securities products and services are offered by KeyBanc Capital Markets Inc. and its licensed securities representatives, who may also be employees of KeyBank N.A. Banking products and services are offered by KeyBank N.A.

APPROVED AS TO FORM

Adam M. Nice
Asst. Prosecuting Attorney



BDULIC



Beneficial Ownership Identification Form

Customer Information	
Customer Name: <u>WARREN COUNTY OH</u>	Legal Entity Type*: <u>MUNICIPALITY</u>
Customer IPI:	Customer TIN: <u>31-6000058</u>
Current Address 1 (P.O. Boxes not acceptable): <u>406 JUSTICE DRIVE, TREASURER'S OFFICE</u>	
Current Address 2:	
City/State/Zip: <u>LEBANON OH 45030</u>	Country: <u>U.S.A.</u>

Exclusions	
Does the Customer qualify for one of the following exclusions? If yes, please check the appropriate box.	
UNITED STATES ORGANIZED ENTITY	
<input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Unincorporated Association <input type="checkbox"/> Publicly Traded <input type="checkbox"/> Majority-Owned (51%) by a U.S. Publicly Traded entity <input type="checkbox"/> Federal or State regulated Financial Institution <input type="checkbox"/> Bank or Savings and Loan holding company <input checked="" type="checkbox"/> Federal, State or Local government department or agency <input type="checkbox"/> Entity exercising governmental authority on behalf of a Federal, State or Local government or interstate compact <input type="checkbox"/> Trust (except a statutory trust) <input type="checkbox"/> State regulated Insurance Company <input type="checkbox"/> Securities Issuers (registered under the Securities Exchange Act)	<input type="checkbox"/> Investment Company (SEC registered) <input type="checkbox"/> Investment Adviser (SEC registered) <input type="checkbox"/> Exchange or Clearing Agency (registered under the Securities Exchange Act) <input type="checkbox"/> SEC registered entity <input type="checkbox"/> CFTC registered entity, including commodity pool operator, commodity trading advisor, retail foreign exchange dealer, swap dealer, or major swap participant <input type="checkbox"/> A public accounting firm (registered under the Sarbanes-Oxley Act) <input type="checkbox"/> Pooled Investment Vehicles operated or advised by a Federal or State regulated Financial Institution <input type="checkbox"/> Financial Market Utility
FOREIGN ORGANIZED ENTITY	
<input type="checkbox"/> Foreign Financial Institution <input type="checkbox"/> Foreign governmental department/agency/political subdivision <input type="checkbox"/> Legal entity that opens a USA PATRIOT Act Section 312 subject private banking account	

Certification		
Name and Title of natural person opening account:		
First: <u>BARNEY</u>	Middle:	Last: <u>WRIGHT</u>
Title: <u>TREASURER</u>		
I, <u>BARNEY WRIGHT</u> , hereby certify, to the best of my knowledge, that the information provided above is complete and correct.		
Signature: <u>[Signature]</u>	Date: <u>12/11/18</u>	

Beneficial Owner Id:

*Type of Legal Entity for which the account is being opened: Alliance, Association, Closely Held Corporation, Co-op, General Partnership, Government Entity: US, Government Entity: Non-US, International Business Corporation, Limited Liability Corporation, Limited Liability Partnership, Limited Partnership, Non Profit (i.e. 501c, 990), Private Corporation, Public Corporation, Sole Proprietorship, Subchapter S Corporation, Syndicate, Trust/Estate, Other

APPROVED AS TO FORM

[Signature]
Adam M. Nice

Asst. Prosecuting Attorney

Resolution

Number 18-1912

Adopted Date December 11, 2018

APPROVE AND AUTHORIZE WARREN COUNTY GRANTS DIRECTOR TO SIGN THE URBAN TRANSIT PROGRAM 2019 GRANT CONTRACT BY AND BETWEEN THE OHIO DEPARTMENT OF TRANSPORTATION AND THE WARREN COUNTY BOARD OF COMMISSIONERS

WHEREAS, Warren County has been awarded Grant Number 123-SUPT-19-0100 Ohio Department of Transportation under the Ohio Public Transportation Grant Program; and

BE IT RESOLVED, to approve and authorize the Grants Director to sign the Urban Transit Program 2019 Grant Contract # 123-SUPT-19-0100 with the Ohio Department of Transportation under the Ohio Public Transportation Grant Program, as attached and made a part hereof; and


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

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

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

Resolution adopted this 11th day of December 2018.

BOARD OF COUNTY COMMISSIONERS


Tina Osborne, Clerk

/sm

cc: C/A—ODOT
Transit (file)
ODOT



Ohio Department of Transportation

URBAN TRANSIT PROGRAM

2019 GRANT CONTRACT

BETWEEN THE

WARREN COUNTY BOARD OF COMMISSIONERS

AND THE

**STATE OF OHIO
DEPARTMENT OF TRANSPORTATION**

CONTRACT NO. 123-SUPT-19-0100

STATE OF OHIO, DEPARTMENT OF TRANSPORTATION
OFFICE OF TRANSIT
1980 W. BROAD ST., COLUMBUS, OH 43223
49 U.S.C. SECTION 5307 OPERATING/CAPITAL GRANT NO. 2019-UTP-GRF
CFDA # None

In consideration of the mutual covenants, promises, representations and warranties set forth herein, the State of Ohio, Department of Transportation ("ODOT") and the Warren County Board of Commissioners ("Grantee") agree as follows:

ARTICLE I DEFINITIONS

The following words and terms as used herein will have the following meanings unless the context or use indicates a different meaning:

Administrator: the Administrator of the Office of Transit.

Calendar Year (CY): 2019.

Certification of Data: the Applicant's annual submission of statistical and financial information which ODOT uses as a basis for allocations of grant funds.

Contract: this signed agreement between ODOT and the Grantee.

Criteria: the Urban Transit Program ("UTP") Criteria as authorized by Section 5501.07 (A) of the Ohio Revised Code and as revised from time to time.

Demand-Responsive: a door-to-door or point-to-point transportation service characterized by flexible routes and schedules designed to accommodate user demand.

Deputy Director: the Deputy Director of the Division of Planning.

Director: the Director of ODOT.

Fiscal Year (FY): the State of Ohio fiscal year, July 1 through June 30.

Fixed-Route: a transportation service where vehicles follow a fixed and predetermined time schedule and route with designated stops.

Grantee: the Warren County Board of Commissioners.

O.M.B.: the United States Office of Management and Budget.

O.R.C.: Ohio Revised Code.

Programs: a grant program authorized by Section 5501.07 of the Ohio Revised Code.

Project Contractor: an independent supplier of Public Transit Service, whether public, private or private nonprofit.

Public Transit Service: the portion of service provided which is eligible for grant funds and for which a fare is charged. It must be operated primarily for the general public over specifically designated routes or within a

designated geographic area no less frequently than once each week. The service may be either Fixed-Route or Demand-Responsive and the Grantee receives funds through the Urban Area Formula Program.

Public Transportation System: a public owned or operated transportation system using buses, rail vehicles or other surface conveyances to provide a transportation service to the general public on a regular and continuing basis.

Service Area: a geographic area which includes the municipality or municipalities in which Public Transit Service is provided.

Urban Area Formula Program: sections of the Federal Public Transportation Act of 2005 which authorize operating, planning and capital assistance for the provision of Public Transit Service.

ARTICLE II

SECTION 1. PURPOSE OF CONTRACT: The purpose of this Contract is to provide operating financial assistance from ODOT to the Grantee in accordance with the Criteria.

SECTION 2. SCOPE AND COST OF PROJECT: The Grant Funds obtained through this Contract will be applied toward the eligible Project Costs incurred for the provision of public transportation service within the Warren County Urbanized Area.

FTA Line Item Code	Description	Federal Share	State Share	Local Share	Total
300901	Operating (Federal Share 50%)	\$0	\$45,675	\$0	\$45,675
	Total:	\$0	\$45,675	\$0	\$45,675

The grant funds shall be applied toward the eligible expenses incurred during the time period of January 01, 2018 - December 31, 2018

SECTION 3. GRANT AMOUNT AND ODOT OBLIGATION: ODOT agrees to provide grant funds to the Grantee for the Projects listed above in the amount of Forty-Five Thousand Six Hundred And Seventy-Five Dollars (\$45,675). Legislative or administrative action may reduce Program funds available to ODOT for administration of this Contract. In the event such action occurs at any time before ODOT has made final payment under this Contract, ODOT shall be relieved of its obligation to pay the amount stated in the first sentence of this Section and will be required to pay only such amount as it may determine. Payment of grant funds is subject to an appropriation and certification in accordance with the requirements of O.R.C. Section 126.07.

SECTION 4. MILESTONE DATES: Milestone dates submitted in the Grantees application will be used to monitor project progress. Grantees not meeting milestone dates risk the withdrawal of Grant funds.

SECTION 5. METHOD OF PAYMENT TO GRANTEE:

Capital Reimbursement: ODOT will issue a payment upon receipt of a completed Capital Reimbursement Invoice. Capital Invoices must be submitted as costs are incurred. Vendor invoices must be included with the Capital Reimbursement Invoice to support the reported costs. All project billing must be completed as specified in the criteria. A fully executed contract must be returned to ODOT before any payments are issued.

Operating: Immediately upon receipt of a fully executed contract, ODOT will issue the first payment. ODOT will issue a second payment upon receipt and reconciliation of a complete combined first and second quarter's Operating Reimbursement Invoice. ODOT will issue a third payment upon receipt and reconciliation of a complete third quarter's Operating Reimbursement Invoice. ODOT will issue a fourth payment upon receipt and reconciliation of a complete fourth quarter's Operating Reimbursement Invoice. Final payment will be made upon receipt and reconciliation of a complete final Operating Reimbursement Invoice and final audit. All Operating Reimbursement Invoices must be received by May 30, 2020. If a final Operating Invoice is not received by May 30, 2020, the fourth quarter's Operating Reimbursement Invoice will be considered the final invoice and no further payments will be made. A fully executed contract must be returned to ODOT before any payments are issued.

SECTION 6. COMPLIANCE WITH FEDERAL, STATE AND LOCAL REQUIREMENTS: The Grantee shall fully comply with all federal, state and local laws, rules, regulations, executive orders, and other legal requirements as they apply to public transportation and this Contract. Grantee, as a term of the Contract, shall comply with the Civil Rights Act of 1964, the Federal Rehabilitation Act of 1973, any and all applicable Federal Executive Orders, any and all applicable Ohio Governor Executive Orders, and any and all other statutes, rules and regulations pertaining to non-discrimination and equal employment opportunity. Grantee further agrees that it is in compliance with the requirements of Ohio Administrative Code 123:1-49. Upon notice to the Grantee from ODOT the Grantee will be required in accordance with terms of this notice to comply with any changes in FTA drug and alcohol regulations and policies regarding bus drivers and other transit personnel in safety sensitive positions.

SECTION 7: EQUAL EMPLOYMENT OPPORTUNITY: In carrying out this Contract, grantee shall not discriminate against any employee or applicant for employment because of race, religion, color, sex (including pregnancy, gender identification and sexual orientation), national origin, ancestry, age, or disability as that term is defined in the American with Disabilities Act. Grantee shall ensure that applicants are hired and that employees are treated during employment without regard to their race, religion, color, sex (including pregnancy, gender identification and sexual orientation), national origin (ancestry), age (40 years old or older), disability, military status and veteran status and/or any other protected classes covered by any local, state and federal laws. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. In addition, the Grantee will not deny anyone the benefits of participation in any

federally funded program on account of race, color, or national origin.

Grantee agrees to post in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause, and in all solicitations or advertisements for employees placed by it, state that all qualified applicants shall receive consideration for employment without regard to race, religion, color, sex (including pregnancy, gender identification and sexual orientation), national origin (ancestry), age (40 years old or older), disability, military status and veteran status. Grantee shall incorporate this nondiscrimination requirement within all of its contracts for any of the work on the projects (other than subcontracts for standard commercial supplies or raw materials) and shall require all of its contractors to incorporate such requirements in all subcontracts for any part of such project work.

Grantee agrees to ensure that minority business enterprises, as such are defined in 49 CFR PART 23, will have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided in conjunction with this Contract.

SECTION 8. INDEPENDENCE OF GRANTEE: In no event shall the Grantee or any of its employees, agents, contractors, subcontractors, or Project Contractors be considered agents or employees of ODOT, the State, or US DOT. The Grantee agrees that none of its employees, agents, contractors, subcontractors, or Project Contractors will hold themselves out as, or claim to be, agents, officers, or employees of ODOT, the State, or US DOT and will not by reason of any relationship with ODOT or US DOT make any claim, demand, or application to or for any right or privilege applicable, but not limited to, rights and privileges concerning workers' compensation and occupational diseases coverage, unemployment compensation benefits, social security coverage, or retirement membership or credit.

SECTION 9. SALE, DISPOSITION OR ENCUMBRANCE OF PROJECT EQUIPMENT: Sale or disposition of Project Equipment shall be undertaken by the Grantee only after receiving ODOT's written approval. If applicable, upon disposition the Grantee shall refund to ODOT the Federal and the State share of the Fair Market Value of the Project Equipment that does not meet minimum disposition criteria as described in Chapter 9, Inventory and Disposition, of the Manual.

The Grantee shall not execute any mortgage, lien, assignment, or other legal or equitable claim upon any Project or Project Equipment unless such action is authorized in writing by the Administrator.

SECTION 10. REQUIRED INSURANCE COVERAGE: The Grantee shall purchase and maintain throughout the Project Life a comprehensive policy of insurance upon the Project Equipment. Said policy shall include collision, theft, and liability insurance. Collision and theft insurance shall be maintained upon the Project Equipment in an amount no less than the Federal and State participation rate of the fair market value. Liability insurance shall protect US DOT, ODOT, and the Grantee from claims for damages to property and bodily injury including death, which may arise from or in connection with operation of the Project Equipment by the Grantee or by anyone directly or indirectly associated with the Grantee. Unless the Grantee receives the prior written permission of the Administrator to carry a lower amount of insurance coverage, the minimum amount of liability insurance the Grantee shall maintain is \$500,000 per occurrence and \$500,000 in the aggregate.

If the Project Equipment is to be located in an area identified by the Secretary of the United States Department of Housing and

Urban Development as an area having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, 42 U.S.C. 4011 et. seq., the Grantee shall purchase flood insurance upon the Project Equipment in an amount which is equal to the Federal and State shares of its Fair Market Value based on the original Federal and State participation rates.

SECTION 11. OHIO ETHICS LAW: Grantee agrees that it is currently in compliance and will continue to adhere to the requirements of Ohio Ethics law as provided by Section 102.03 and 102.04 of the Ohio Revised Code.

SECTION 12. GOVERNING THE EXPENDITURE OF PUBLIC FUNDS ON OFFSHORE SERVICES: The Grantee affirms to have read and understands Executive Order 2011-12K and shall abide by those requirements in the performance of this Contract. Notwithstanding any other terms of this Contract, ODOT reserves the right to recover any funds paid for services the Grantee performs outside of the United States for which it did not receive a waiver. The State does not waive any other rights and remedies provided ODOT in this Contract.

The Grantee agrees to complete the attached Exhibit I, Executive Order 2011-12K Affirmation and Disclosure Form, which is incorporated and becomes a part of this Contract.

SECTION 13. OHIO ELECTIONS LAW: Grantee affirms that, as applicable to it, no party listed in Division (I) or (J) of Section 3517.13 of the Revised Code or spouse of such party has made, as an individual, within the two previous calendar years, one or more contributions totaling in excess of \$1,000.00 to the Governor or to his campaign committees.

SECTION 14. TRADE: Pursuant to the federal Export Administration Act and O.R.C. 9.76(B), Grantee warrants that it is not boycotting any jurisdiction with whom the United States and the State of Ohio can enjoy open trade, including Israel, and will not do so during the term of this Contract.

The State of Ohio does not acquire supplies or services that cannot be imported lawfully into the United States. The Grantee certifies that it, its Contractors, subcontractors, and any agent of the Contractor or its subcontractors, acquire any supplies or services in accordance with all trade control laws, regulations or orders of the United States, including the prohibited source regulations set forth in subpart 25.7, Prohibited Sources, of the Federal Acquisition Regulation and any sanctions administered or enforced by the U.S. Department of Treasury's Office of Foreign Assets Control. A list of those sanctions by country can be found at . A list of those sanctions by country can be found at <https://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>. These sanctions generally preclude acquiring any supplies or services that originate from sources within, or that were located in or transported from or through Cuba, Iran, Libya, North Korea, Syria, or the Crimea region of Ukraine.

SECTION 15. LOBBYING: Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, PL 104-65 (2 U.S.C. §1601, et seq.). GRANTEE agrees that it will not use any funds for Lobbying, 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S. C. 1352. Each tier shall comply with Federal statutory provisions or the extent applicable prohibiting the use of Federal assistance funds for activities designed to influence congress to a State legislature

on legislation or appropriations, except through proper official channels. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

SECTION 16. DRUG-FREE WORKPLACE: The Grantee agrees to comply with all applicable state and federal laws regarding a drug-free workplace. The Grantee shall make a good faith effort to ensure that all employees, while working on state property, will not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.

SECTION 17. SERVICE CHANGES: The Grantee shall submit to the Administrator a report of any significant trends or developments during the period covered by the grant which have occurred as a result of the Program.

SECTION 18. REQUIRED INFORMATION AND DOCUMENTATION: The Grantee will submit copies of all documents relating to this Contract, including financial reports, to the Administrator on a continuing basis.

The Grantee shall provide documentation to ODOT to establish that the cognizant metropolitan planning organization has certified that a comprehensive integrated regional transportation plan has been developed for the Grantee's geographical area. The Project will be both consistent with, and justified by, said plan.

The Grantee shall submit to ODOT a copy of its:

Final FTA triennial review report within the last three years and a copy of the closeout letter from FTA within 30 days after receipt;

Statistics data in BlackCat report by ODOT established due date;

Inventory in BlackCat update by ODOT established due date;

Financials Data in BlackCat data report by established due date, where required.

The Grantee shall submit all other information as requested by ODOT or its agents.

SECTION 19. PROJECT ADMINISTRATION: An Audit shall be performed on each project in accordance with U.S. Department of Transportation ("US DOT") audit requirements. The audit shall account for all Project costs originally budgeted in SECTION 2 of this Contract.

If the Audit reveals an overpayment of grant funds, and ODOT requests return of the overpayment, the Grantee shall return the overpayment to ODOT not later than forty-five days after completion of the audit.

The Grantee shall notify ODOT if the Grantee is requested to refund a portion of the US DOT grant funds for any reason.

The Grantee shall permit ODOT or any of its agents to inspect offices, records, books, operations and facilities of the Grantee and of all Project Contractors pertaining to the Project.

If Grantee receives grant funds to be distributed to two or more Project Contractors, the Grantee shall distribute the grant funds on the basis of the grant formula provided in the Criteria unless prior written approval is obtained from the Administrator to allocate the grant funds by a different formula.

SECTION 20. UNRESOLVED RECOVERY: No state agency and no political subdivision shall award a contract for goods, services, or construction, paid for in whole or in part with grant funds, to a person to whom a finding for recovery has been issued by the Auditor of State, if the finding for recovery is unresolved as defined by the Attorney General.

SECTION 21. QUALIFICATIONS TO DO BUSINESS: Grantee affirms that it has all of the approvals, licenses, or other qualifications needed to conduct business in Ohio and that all are current. If at any time during the term of this Agreement Grantee for any reason, becomes disqualified from conducting business in the State of Ohio, Grantee will immediately notify the Attorney General in writing and will immediately cease performance of the Work.

SECTION 22. CHANGE IN CONDITIONS OR LAW AFFECTING PERFORMANCE: The Grantee shall immediately notify ODOT of any change in conditions or local law or of any other event which may significantly affect its ability to perform the Project in accordance with the provisions of this Contract.

SECTION 23. DEFAULT: Default in connection with this Contract or any other Grant Contract entered into by ODOT and the Grantee, whether or not payment of grant funds has been fully or partially made, may result in ODOT at its option declining to make any further payments to the Grantee and requiring reimbursement from the Grantee of all funds received under this Contract or such other action as ODOT at its option shall take.

Whenever any event of default has occurred, ODOT may: decline to make any further payments under this Contract to the Grantee, and require reimbursement from the Grantee of all or any portion of the grant funds for any period of time that the Grantee has been in default.

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 Contract 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 Grantee 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.

SECTION 24. NO ADDITIONAL WAIVER IMPLIED: If any term, provisions or condition contained in this Contract is breached by either the Grantee or ODOT and thereafter such breach is waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

SECTION 25. SEVERABILITY: If any provision of this Contract is held to be invalid or unenforceable by a court having the requisite jurisdiction, such holding shall not affect the validity or enforceability of the remainder of this Contract. All provisions of this Contract shall be deemed severable.

SECTION 26. REPRESENTATIONS AND WARRANTIES MADE BY GRANTEE: The Grantee hereby represents and warrants that it is a municipal corporation, a county or a county transit board, regional transit authority or regional transit commission, established pursuant to Chapter 306 of the Ohio Revised Code, and that it has full power and authority to enter into this Contract and to perform its obligations hereunder.

The Grantee hereby restates and confirms the Standard Assurances and all other statements, representations, covenants and Contracts contained in the Grantee's application for grant funds issued pursuant to this Contract.

The Grantee hereby represents and warrants that the amount shown in SECTION 2 of this Contract as the total project cost and the eligible expenses are the total project cost and eligible expenses, respectively.

SECTION 27. PROGRAM CRITERIA: the current Criteria for the Urban Transit Program as determined by ODOT are incorporated into this Contract in their entirety, and ODOT shall determine the applicability of particular criteria and definitions to this Contract.

SECTION 28. GOVERNING LAW: This Contract and any claims arising out of this Contract shall be governed by the laws of the State of Ohio. Any provision of this Contract prohibited by the laws of Ohio shall be deemed void and of no effect. Any litigation arising out of or relating in any way to this Contract or the performance thereunder shall be brought only in the courts of Ohio, and the GRANTEE hereby irrevocably consents to such jurisdiction. To the extent that ODOT is a party to any litigation arising out of or relating in any way to this Contract or the performance thereunder, such an action shall be brought only in a court of competent jurisdiction in Franklin County, Ohio.

SECTION 29. OFFER; EFFECTIVE DATE: When transmitted by ODOT to the Grantee, this document shall constitute an offer which shall expire if it is not accepted, executed and returned to ODOT by the Grantee within thirty days of such transmittal, unless an extension is granted in writing by the Deputy Director at the request of the Grantee. This Contract shall become effective upon its execution by ODOT and the Grantee, and the obligations of the parties hereunder shall then begin.

SECTION 30. SIGNATURES: Any person executing this Contract in a representative capacity hereby warrants that he/she has been duly authorized by his/her principal to execute this Contract on such principal's behalf.

Any party hereto may deliver a copy of its counterpart signature page to this Contract via fax or e-mail. Each party hereto shall be entitled to rely upon a facsimile signature of any other party delivered in such a manner as if such signature were an original.

The parties have executed this Contract as of the day and year last written below.

FOR THE GRANTEE

By: _____

Print Name: _____

Title: _____

Date: _____

Approved as to Legal Form:

STATE OF OHIO DEPARTMENT OF TRANSPORTATION:

By: _____

Jerry Wray, Director

Date: _____

EXHIBIT I
STATE OF OHIO
DEPARTMENT OF TRANSPORTATION

Standard Affirmation and Disclosure Form
EXECUTIVE ORDER 2011-12K
Governing the Expenditure of Public Funds on Offshore Services

CONTRACTOR/SUBCONTRACTOR AFFIRMATION AND DISCLOSURE

By the signature affixed to this response, the CONTRACTOR/SUBCONTRACTOR affirms, understands and will abide by the requirements of Executive Order 2011-12K issued by Ohio Governor John Kasich. If awarded a contract, the CONTRACTOR/SUBCONTRACTOR becomes the Contractor and affirms that both the Contractor and any of its subcontractors shall perform no services requested under this Contract outside of the United States. The Executive Order is attached and is available at the following website: (<http://governor.ohio.gov/MediaRoom/ExecutiveOrders.aspx>).

The CONTRACTOR/SUBCONTRACTOR shall provide all the name(s) and location(s) where services under this Contract will be performed in the spaces provided below or by attachment. Failure to provide this information as part of the response will deem the CONTRACTOR/SUBCONTRACTOR not responsive the contract will not be executed. If the CONTRACTOR/SUBCONTRACTOR will not be using subcontractors, indicate "Not Applicable" in the appropriate spaces.

1. Principal location of business of Contractor:

_____ (Address) _____ (City, State, Zip)

Name/Principal location of business of subcontractor(s):

_____ (Name) _____ (Address, City, State, Zip)

_____ (Name) _____ (Address, City, State, Zip)

2. Location where services will be performed by Contractor:

_____ (Address) _____ (City, State, Zip)

Name/Location where services will be performed by subcontractor(s):

_____ (Name) _____ (Address, City, State, Zip)

3. Location where state data will be stored, accessed, tested, maintained or backed-up, by Contractor:

(Address) (Address, City, State, Zip)

Name/Location(s) where state data will be stored, accessed, tested, maintained or backed-up by subcontractor(s):

(Name) (Address, City, State, Zip)

(Name) (Address, City, State, Zip)

4. Location where services to be performed will be changed or shifted by Contractor:

(Address) (Address, City, State, Zip)

Name/Location(s) where services will be changed or shifted to be performed by subcontractor(s):

(Name) (Address, City, State, Zip)

(Name) (Address, City, State, Zip)

(Name) (Address, City, State, Zip)

Resolution

Number 18-1913

Adopted Date December 11, 2018

APPOINT COMMITTEE TO REVIEW ENGINEERING QUALIFICATIONS FOR THE PROCUREMENT OF PROFESSIONAL ENGINEERING SERVICES RELATED TO THE DESIGN OF IMPROVEMENTS TO THE LOWER LITTLE MIAMI WASTEWATER TREATMENT PLANT

WHEREAS, Sections 153.65-71 of the Ohio Revised Code identifies the requirements and procedures for procuring the services of a consulting engineering firm for the development of studies, plans, specifications, and bid documents; and

WHEREAS, with the adoption of Resolution No. 18-1634 on October 23, 2018 the Warren County Board of County Commissioners approved the issuance of a request for qualifications to interested consulting firms for improvements to the Lower Little Miami Wastewater Treatment Plant; and

WHEREAS, by 4:30 PM, Friday, November 30th, the Water & Sewer Department received ten sealed qualification submittals for the aforementioned project; and

WHEREAS, the County Sanitary Engineer requests this Board appoint a committee comprised of three (3) to five (5) members to review the submittals, with the size of committee to be determined based on the availability of the members; and

WHEREAS; the County Sanitary Engineer recommends said committee be comprised of the Superintendent of Wastewater Treatment, the Chief Wastewater Operator for the South Facilities, Deputy Sanitary Engineer, Sanitary Engineer, and Water & Sewer Staff Engineer; and

WHEREAS, the committee will evaluate the submittals and present recommendations to the Warren County Board of Commissioners at its conclusion, in accordance with the process outlined in the published Request for Qualifications; and


NOW THEREFORE BE IT RESOLVED, to appoint the committee to review engineering qualifications for the procurement of professional engineering services related to the design of improvements to the Lower Little Miami Wastewater Treatment Plant.

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

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

Resolution adopted this 11th day of December 2018.

BOARD OF COUNTY COMMISSIONERS


Tina Osborne, Clerk

cc: Water/Sewer (file)
Project File

Resolution

Number 18-1914

Adopted Date December 11, 2018

AUTHORIZE AMENDMENT NO. 1 TO THE ENGINEERING AGREEMENT WITH JONES WARNER CONSULTANTS, INC., INCREASING PURCHASE ORDER NO. 22618 FOR THE LOWER SPRINGBORO ROAD WATERLINE IMPROVEMENTS PROJECT, SUBFUND NO. 583-3206

WHEREAS, Warren County and Jones Warner Consultants, Inc. entered into an Engineering Agreement on September 12, 2017 for professional engineering services for the preparation of construction drawings, contract documents and specification, and surveying services during the design and construction of the Lower Springboro Road Waterline Improvements Project; and

WHEREAS, it is the desire of this Board to amend said Engineering Agreement to allow for additional professional engineering services including the design of a pressure reducing valve vault, guardrail and asphalt roadway improvements; and

NOW THEREFORE BE IT RESOLVED, to approve Amendment No. 1 increasing Purchase Order No. 22618 to Jones Warner Consultants, Inc. in the amount of \$8,000 creating a new contract price of \$133,482. Said Amendment, attached hereto and made a part hereof, shall be subject to the following conditions:

1. The scope of services shall be as stipulated in "November 1, 2018 Additional Fee Proposal" attached hereto and made a part hereof.
2. Compensation for the additional services shall be in accordance with the September 12, 2017 Engineering Contract, total additional compensation not to exceed \$8,000.

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

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

Resolution adopted this 11th day of December 2018.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: c/a—Jones Warner Consultants, Inc.
Water/Sewer (file)
Project file

**AMENDMENT NO. 1
ENGINEERING AGREEMENT**

THIS AMENDMENT NO. 1, effective on the date last executed by the Parties hereto, by and between the WARREN COUNTY BOARD OF COUNTY COMMISSIONERS, on behalf of WARREN COUNTY, OHIO (hereinafter "COUNTY") and Jones Warner Consultants, Inc., 8401 Claude Thomas Road, Suite 51, Franklin, OH 45005 (hereinafter "CONSULTANT").

WHEREAS, Warren County and Jones Warner Consultants, Inc. entered into an Engineering Agreement on September 12, 2017 for professional engineering services for the preparation of construction drawings, contract documents and specification, and surveying services during the design and construction of the Lower Springboro Road Waterline Improvements Project; and

WHEREAS, additional services related to the original project were determined to be necessary or beneficial to the COUNTY and were identified as Supplemental Services by said Agreement; and

WHEREAS, it is the desire of this Board to amend said Engineering Agreement to allow for additional professional engineering services including the design of a pressure reducing valve vault, guardrail and asphalt roadway improvements; and

NOW, THEREFORE, IT IS AGREED by and between the COUNTY and the CONSULTANT that the Lower Springboro Road Waterline Improvements Project Agreement is hereby amended as follows:

SCOPE OF SERVICES

The contractual scope shall be modified as identified in the CONSULTANT's letter dated, November 1, 2018, attached hereto and made a part hereof.

COUNTY RESPONSIBILITIES

The COUNTY shall supply the following data/additional services to the CONSULTANT:

1. Provide full information as to the requirements of the project.
2. Assist CONSULTANT by placing at their disposal all available information pertinent to the project.
3. Examine all studies, reports, sketches, drawings, proposals and other documents presented by the CONSULTANT, obtain advice of an attorney, insurance counselor and other consultants as deemed appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the service of the CONSULTANT.

SCHEDULE

The CONSULTANT'S additional services shall commence upon the execution of the Amendment by both the CONSULTANT and the COUNTY. All tasks shall be completed in accordance with the September 12, 2017.

COMPENSATION

1. The CONSULTANT's fee for all services performed pursuant to this Amendment shall be on a "hourly cost-times-factor" basis for all labor incurred by the CONSULTANT, in accordance with the September 12, 2017 Agreement.
2. Based on the scope of work as described herein, total compensation for all services performed under this Amendment, and all direct reimbursable costs, shall not exceed \$8,000.
3. Payment of compensation shall be made to the CONSULTANT within thirty (30) days after the receipt of an invoice from the CONSULTANT.

TERMS & CONDITIONS


Except as provided herein, the September 12, 2017 Engineering Agreement shall remain binding and in force and effect in all other aspects. In the event any conflict or dispute arises between the September 12, 2017 Engineering Agreement and this Amendment No. 1, such conflict or dispute shall be resolved in accordance with the amended obligations set forth in this Amendment No. 1.

[the remainder of this page is intentionally left blank]

CONSULTANT:

IN EXECUTION WHEREOF, Jones Warner Consultants, Inc., has caused this Agreement to be executed by T. Shawn Campbell., its President, on the date stated, pursuant to a resolution authorizing the same.

JONES WARNER CONSULTANTS, Inc.

SIGNATURE: 

NAME: T. Shawn Campbell

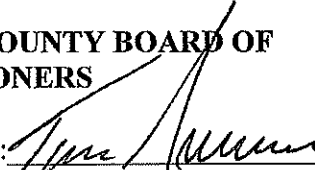
TITLE: President

DATE: 11-29-18

COUNTY:

IN EXECUTION WHEREOF, the Warren County Board of Commissioners has caused this Agreement to be executed by Tom Grossmann, its President on the date stated below, pursuant to Board Resolution No. 18-1914, dated 12/11/18.

WARREN COUNTY BOARD OF COMMISSIONERS

SIGNATURE: 

NAME: Tom Grossmann

TITLE: President

DATE: 12/11/18

Approved as to form:

DAVID P. FORNSHELL,
PROSECUTING ATTORNEY
WARREN COUNTY, OHIO



By: Adam Nice, Asst. Prosecutor

Corporate Headquarters

8401 Claude Thomas Road, Suite 51
Franklin, OH 45005

P: 937.704.9868

F: 937.704.9949



JONES-WARNER CONSULTANTS, INC.
CIVIL ENGINEERING, SURVEYING, AND CONSULTING SERVICES

Toll-Free: 1-855-704-5924

JWCI@JonesWarner.com

JonesWarner.com

November 1, 2018

Warren County Water & Sewer Department
406 Justice Drive
Lebanon, Ohio 45036
Attention: Chris Brausch, P.E., Sanitary Engineer

Re: Additional Fee Proposal – East Lower Springboro Road Water Main Replacement Extension

Dear Mr. Brausch:

We hope you are happy with the design outcome of the above project. This has been an interesting and fun project for JWCI and we have enjoyed working directly with you on this project. We are happy with the bid you received for Phase 1 and hope for a very similar low bid on Phase 2 & 3.

As you are aware JWCI performed some additional design services that were outside of our original scope. Those include additional sketches and exhibits for easement negotiations, the design of a pressure reducing vault (PRV) and addressing miscellaneous requests with regards to design needs for permitting assistance. The time spent on these services equates to \$8,000.00. JWCI respectfully requests an increase to our contract in the amount of \$8,000.00 to cover these additional design services. Upon completion of construction, JWCI will finalize the as-builts from contractor and inspector notes and field verification of hydrants, valves and other usual appurtenances.

Feel free to call and discuss this request further.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Shawn Campbell". The signature is written in a cursive, flowing style.

T. Shawn Campbell, President

Resolution

Number 18-1915

Adopted Date December 11, 2018

APPROVE AN AMENDMENT TO THE ENGINEERING CONTRACT WITH STRAND ASSOCIATES, INC. ON BEHALF OF THE WARREN COUNTY ENGINEER'S OFFICE

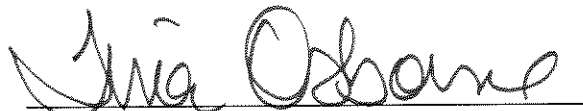
BE IT RESOLVED, to enter into an amendment to the consulting services contract approved by Resolution #18-0163, dated February 8, 2018, with Strand Associates, Inc., 615 Elsinore Place, Suite 320, Cincinnati, Ohio for the Lytle-Five Points-Bunnell Hill Road Roundabout Project; as attached hereto and made a part hereof.

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

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

Resolution adopted this 11th day of December 2018.

BOARD OF COUNTY COMMISSIONERS


Tina Osborne, Clerk

cc: c/a—Strand Associates, Inc.
Engineer (file)

**AMENDMENT NO. 1 TO
CONSULTING SERVICES CONTRACT FOR
LYTLE-FIVE POINTS ROAD AND BUNNELL HILL ROAD INTERSECTION
IMPROVEMENT PROJECT**

THE AGREEMENT dated February 8, 2018 between the Warren County Board of Commissioners, 406 Justice Drive, Lebanon, Ohio 45036 hereinafter referred to as the "OWNER," on behalf of the Warren County Engineer, hereinafter referred to as the "COUNTY ENGINEER" and Strand Associates, Inc., 615 Elsinore Place, Suite 320 Cincinnati, OH 45202, a Corporation organized, duly licensed and existing under the laws of the State of Ohio, hereinafter referred to as the "ENGINEER," is hereby amended to provide for Services to be performed by ENGINEER as described in Exhibit 1 attached hereto and incorporated herein by reference.

OWNER shall pay ENGINEER, for the Services satisfactorily provided by ENGINEER as described in Exhibit 1, in the amounts described in Exhibit 1, the total fee shall not exceed **\$ 29,350.00**

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

All terms of the original Agreement between the parties not specifically amended hereby shall remain in full force and effect.

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.

Execution by the Parties :

ENGINEER :

IN EXECUTION WHEREOF, Strand Associates, Inc., a Wisconsin corporation for profit, has caused this Agreement to be executed on the date stated below by Matthew S. Richards whose title is Corporate Secretary, pursuant to a corporate Resolution authorizing such act.

SIGNATURE: Matthew S. Richards
PRINTED NAME: Matthew S. Richards
TITLE: Corporate Secretary
DATE: 11/16/10

OWNER:

IN EXECUTION WHEREOF, upon written recommendation of the Warren County Engineer, the Warren County Board of County Commissioners has caused this Agreement to be executed on the date stated below by Tom Grossmann, its President, pursuant to Resolution No. 18-1915 dated 12/11/10.

**WARREN COUNTY
BOARD OF COUNTY COMMISSIONERS**

SIGNATURE: Tom Grossmann
PRINTED NAME: Tom Grossmann
TITLE: President
DATE: 12/11/10

RECOMMENDED BY:

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

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

APPROVED AS TO FORM:

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

By: David P. Fornshell
Assistant Prosecuting Attorney

Amendment No. 1 to Exhibit 1

Scope of Services Lytle-Five Points Road (CR 46) and Bunnell Hill Road (TR 128) Roundabout

Strand Associates, Inc.[®] (ENGINEER) will provide the following services to the Warren County Engineer (COUNTY ENGINEER).

1. Design water line relocations required as a part of the Lytle-Five Points Road and Bunnell Hill Road roundabout. Design will follow the Standard Details of the Warren County Water and Sewer Department (WCWS), amended through Resolution Number 18-0585 adopted on April 3, 2018, and the current version of the Ohio Department of Transportation (ODOT) Construction and Materials Specifications (CMS). Restrained joint pipe will be specified for all replacement water lines. Anticipated design elements include the following:
 - a. Approximately 325 feet of 16-inch water line along Lytle-Five Points Road
 - b. Approximately 175 feet of 8-inch water line along Bunnell Hill Road
 - c. Approximately 300 feet of 16-inch water line along Bunnell Hill Road
 - d. Five water services to be relocated or reconnected
2. Update 50 percent design drawings to show water line relocations. Submit design drawings to COUNTY ENGINEER and WCWS in PDF format. Proposed water lines, services, and appurtenances will be shown on separate plan and profile sheets, not combined with the roadway plan and profile sheets. The following drawings will be included:
 - a. Water line plan and profile sheets
3. Submit design drawings at 90 percent stage to COUNTY ENGINEER and WCWS in PDF format. The following drawings will be included:
 - a. Water line notes sheet with applicable WCWS notes
 - b. Water line quantity summary sheet following ODOT CMS
 - c. Water line details sheet with applicable WCWS Standard Details

- d. Water line plan and profile sheets
4. Prepare an opinion of probable construction cost (OPCC) in Microsoft Excel format, including line item description, quantity, unit price, and final cost with a contingency.
5. Attend two project meetings.
6. If written authorization is provided in advance by WCWS, ENGINEER shall prepare up to ten easement exhibits on 8.5-inch x 11-inch sheets as needed. These services are referred to hereinafter as Additional Services.
7. Items not included are as follows:
 - a. Water distribution system modeling or other calculations of system hydraulics.
 - b. Water Supply Data Sheet (WSDS) documents and Ohio Environmental Protection Agency (OEPA) submittal.
 - c. Notice of Intent (NOI)/Storm Water Pollution Prevention Plan.
 - d. Specifications including contracting requirements and general requirements. These shall be prepared by COUNTY ENGINEER in coordination with WCWS.
 - e. Bidding-related services.
 - f. Construction oversight services.
 - g. As-built drawings.
 - h. Maintenance of traffic drawings. A full closure with detoured traffic is anticipated during construction.

Schedule

ENGINEER will provide all deliverables as listed in the Scope of Services on or before March 1, 2019.

Compensation

COUNTY ENGINEER shall compensate ENGINEER for authorized services listed in this Amendment a lump sum of \$16,350.00, not including Additional Services. If Additional Services are authorized in writing,

COUNTY ENGINEER shall compensate ENGINEER \$1,300 for each easement exhibit, for up to 10 exhibits.

*BOARD OF COUNTY COMMISSIONERS
WARREN COUNTY, OHIO*

Resolution

Number 18-1916

Adopted Date December 11, 2018

DECLARE VARIOUS ITEMS WITHIN COUNTY COURT, ENGINEER'S OFFICE, FACILITIES MANAGEMENT, JUVENILE COURT, SHERIFF'S OFFICE, TELECOMMUNICATIONS, AS SURPLUS AND AUTHORIZE THE DISPOSAL OF SAID ITEMS


BE IT RESOLVED, to authorize disposal of various items from County Court, Engineers Office, Facilities Management, Juvenile Court, Sheriff's Office, Telecommunications in accordance with the Ohio Revised Code; list of said items attached hereto and made a part hereof.

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

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

Resolution adopted this 11th day of December 2018.

BOARD OF COUNTY COMMISSIONERS


Tina Osborne, Clerk

/jm

cc: 2018 Auction file
Facilities Management (file)
Brenda Quillen, Auditor's Office

Warren County Facilities Management

GovDeals #

CCT18006

430 South East Street
513-695-1463

Michael D. Shadoan
Director

GovDeals Item Inspection Form

County Court

Date:

Nov 30, 2018

006

BLACK, MESH, SWIVEL BACK CHAIR



Select Item Type

Single Item

Category Furniture/Furnishings

Brand

Model #

Serial #

Date Removed From Service 8/30/18

Did Item Work When Removed?

Yes

No

Unknown

Additional Comments

THE CHAIR IS IN GOOD WORKING CONDITION, HAS A TORN ARM AND HAS BEEN TAPE WITH ELECTRICAL TAPE

(Click above to add additional picture)

(Click above to add additional picture)

(Click above to add additional picture)

Name: CONNIE VAN HOOK

Title: CHIEF DEPUTY CLERK

Phone Number 513-695-2465

Location of Item: 822 MEMORIAL DRIVE, LEBANON OHIO, 45036

IMPORTANT: Please print this form off and tape it to the item(s) you are listing (excluding vehicles).
Check your listing for accuracy, click the button below to submit by email. *Note: This is the only way auction items will be accepted.*

Warren County Facilities Management

GovDeals #

CCT18108

430 South East Street
513-695-1463

Michael D. Shadoan
Director

GovDeals Item Inspection Form

County Court

Date:

Nov 28, 2018

108

HP monitor



Select Item Type

Single Item

Category Computers, Parts and Supplies

Brand HP

Model # 1755

Serial # CNK6250TQS

Date Removed From Service 11/1/18

Did Item Work When Removed?

Yes

No

Unknown

Additional Comments

BAD BACKLIGHT

(Click above to add additional picture)

(Click above to add additional picture)

(Click above to add additional picture)

Name: MELISSA MOUBRAY

Title: COURT ADMIN

Phone Number 695-2411

Location of Item: WARREN COUNTY COURT

IMPORTANT: Please print this form off and tape it to the item(s) you are listing (excluding vehicles).
Check your listing for accuracy, click the button below to submit by email. *Note: This is the only way auction items will be accepted.*

Warren County Facilities Management

GovDeals#

CCT18109

430 South East Street
513-695-1463

Michael D. Shadoan
Director

GovDeals Item Inspection Form

County Court

Date:

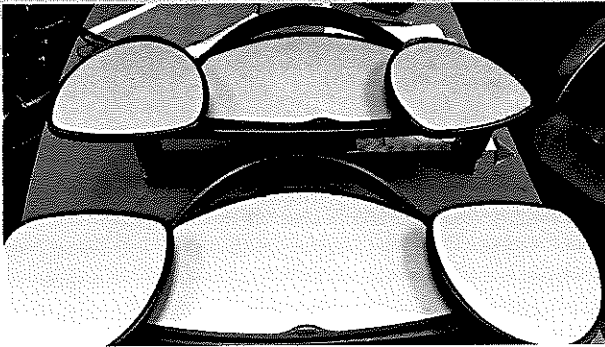
Nov 28, 2018

109

OFFICE SUPPLIES

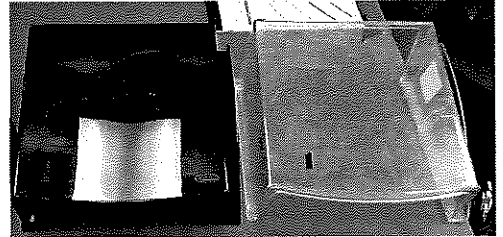
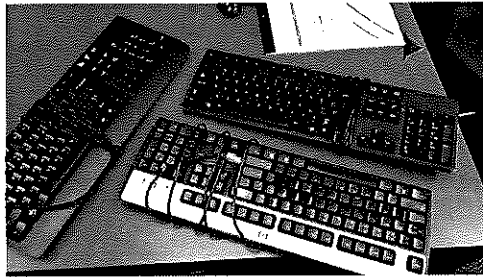
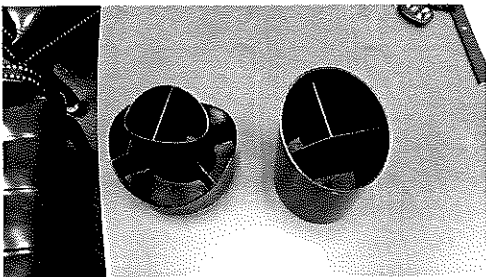
Select Item Type

Lot of Multiple Items



Qty	Brand	Model	Working Condition Y/N	Description
2			Y	MONITOR STANDS
2			Y	TELEPHONE STANDS
2			?	KEYBOARDS
1	HP		?	KEYBOARD
2	LENOVO			PEN CADDIES

Additional Comments



(Click above to add additional picture)

(Click above to add additional picture)

(Click above to add additional picture)

Name: Jeff Pendleton

Title: Assistant Bridge Design

Phone Number 513-713-3311

Location of Item: Corwin House, 210 W. Main St., Lebanon OH 45036

IMPORTANT: Please print this form off and tape it to the item(s) you are listing (excluding vehicles).
Check your listing for accuracy, click the button below to submit by email. *Note: This is the only way auction items will be accepted.*

430 South East Street
513-695-1463

Michael D. Shadoan
Director

GovDeals Item Inspection Form

Engineer

Date:

Nov 1, 2018

002

HP\Compaq dc7100CMT minitower & HP printer.



Select Item Type

Lot of Multiple Items

Qty	Brand	Model	Working Condition Y/N	Description
1	HP/Compaq	dc7100CMT	Y	HP\Compaq dc7100CMT ID #18067
1	HP	P1102W	Y	HP Monochrome LaserJet P1102w ID #22531

Additional Comments

(1) HP\Compaq dc7100CMT, and (1) HP Monochrome LaserJet P1102w printer. Both units were operational until taken out of service. HDD has been removed.

(Click above to add additional picture)

(Click above to add additional picture)

(Click above to add additional picture)

Name: Jeff Pendleton

Title: Assistant Bridge Design

Phone Number 513-713-3311

Location of Item: Corwin House, 210 W. Main St., Lebanon OH 45036

IMPORTANT: Please print this form off and tape it to the item(s) you are listing (excluding vehicles).
Check your listing for accuracy, click the button below to submit by email. *Note: This is the only way auction items will be accepted.*

Warren County Facilities Management

GovDeals #

ENG18003

430 South East Street
513-695-1463

Michael D. Shadoan
Director

GovDeals Item Inspection Form

Engineer

Date:

Nov 1, 2018

003

Hanging Plan Drawing Rolling Cart & hangers.



Select Item Type

Lot of Multiple Items

Qty	Brand	Model	Working Condition Y/N	Description
1	Mayline	-	Y	Vertical Hanging Plan Drawing Rolling Cart
12	Mayline	-	Y	12) Clamps
12	Mayline	-	Y	12) 44" hangers

Additional Comments

(1) Vertical Hanging Plan Drawing Rolling Cart, 12 hangers & clamps. Units were operational when taken out of service.

(Click above to add additional picture)

(Click above to add additional picture)

(Click above to add additional picture)

Name: Jeff Pendleton

Title: Assistant Bridge Design

Phone Number 513-713-3311

Location of Item: Corwin House, 210 W. Main St., Lebanon OH 45036

IMPORTANT: Please print this form off and tape it to the item(s) you are listing (excluding vehicles).
Check your listing for accuracy, click the button below to submit by email. *Note: This is the only way auction items will be accepted.*

430 South East Street
513-695-1463

Michael D. Shadoan
Director

GovDeals Item Inspection Form

Engineer

Date

004

Miscellaneous keyboards



Select Item Type

Single Item

Category Computers, Parts and Supplies

Brand Miscellaneous

Model # Miscellaneous

Serial # Unkown

Date Removed From Service 1/1/18

Did Item Work When Removed?

Yes

No

Unknown

Additional Comments

Lot sale of 19 assorted wired and wireless keyboards, and one (1) printing calculator. Condition unknown.

(Click above to add additional picture)

(Click above to add additional picture)

(Click above to add additional picture)

Name: Jeff Pendleton

Title: Asst. Bridge Design

Phone Number 513.695.3311

Location of Item: 210 W. Main St., Lebanon, OH 45036

IMPORTANT: Please print this form off and tape it to the item(s) you are listing (excluding vehicles).
Check your listing for accuracy, click the button below to submit by email. *Note: This is the only way auction items will be accepted.*

Warren County Facilities Management

GovDeals #

ENG18005

430 South East Street
513-695-1463

Michael D. Shadoan
Director

GovDeals Item Inspection Form

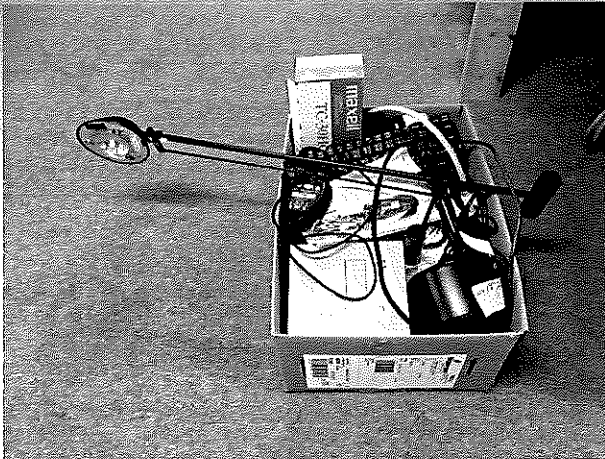
Engineer

Date:

Nov 14, 2018

005

Miscellaneous computer parts



Select Item Type

Single Item

Category Computers, Parts and Supplies

Brand Miscellaneous

Model # Unknown

Serial # Unknown

Date Removed From Service 1/1/18

Did Item Work When Removed?

Yes

No

Unknown

Additional Comments

Lot sale of miscellaneous computer parts

(Click above to add additional picture)

(Click above to add additional picture)

(Click above to add additional picture)

Name: Jeff Pendleton

Title: Asst. Bridge Design

Phone Number 513-695.3311

Location of Item: 210 W. Main St., Lebanon, OH 45036

IMPORTANT: Please print this form off and tape it to the item(s) you are listing (excluding vehicles).
Check your listing for accuracy, click the button below to submit by email. *Note: This is the only way auction items will be accepted.*

Warren County Facilities Management

GovDeals

ENG18006

430 South East Street
513-695-1463

Michael D. Shadoan
Director

GovDeals Item Inspection Form

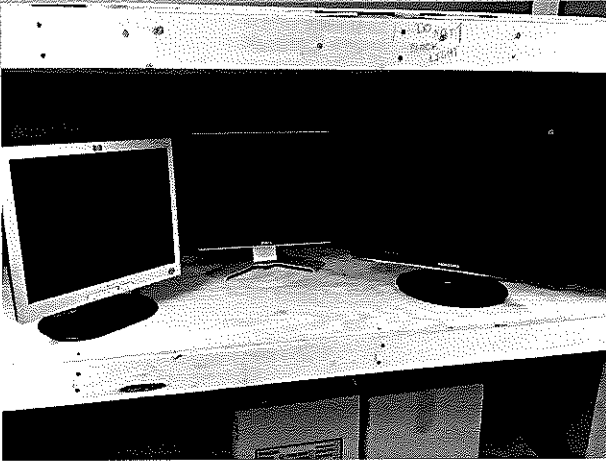
Engineer

Date:

Nov 14, 2018

006

Lot sale of 3 LCD monitors.



Select Item Type

Lot of Multiple Items

Qty.	Brand	Model	Working Condition Y/N	Description
1	HP	L1702 TFT	Unknown	HP LCD monitor - 17", ID #28076
1	DELL	1707FP	Unknown	DELL LCD monitor - 17" ID #21110
1	Samsung	2253BW	Unknown	Samsung LCD monitor - 22" ID #28070

Additional Comments

Lot sale of three (3) assorted LCD monitors, power cords not included. Condition unknown.

(Click above to add additional picture)

(Click above to add additional picture)

(Click above to add additional picture)

Name: Jeff Pendleton

Title: Asst. Bridge Design

Phone Number 513.695.3311

Location of Item: 210 W. Main St., Lebanon, OH 45036

IMPORTANT: Please print this form off and tape it to the item(s) you are listing (excluding vehicles).
Check your listing for accuracy, click the button below to submit by email. *Note: This is the only way auction items will be accepted.*

430 South East Street
513-695-1463

Michael D. Shadoan
Director

GovDeals Item Inspection Form

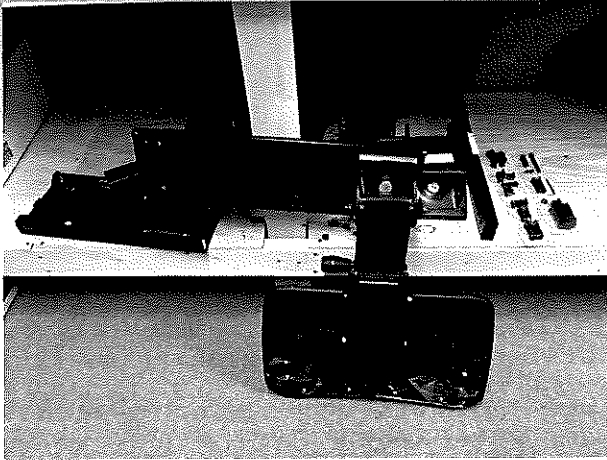
Engineer

Date:

Nov 14, 2018

007

Retractable/sliding under-desk tray for office desk.



Select Item Type

Single Item

Category

Office Equipment/Supplies

Brand

Unknown

Model #

Unknown

Serial #

Unknown

Date Removed From Service

1/1/18

Did Item Work When Removed?

Yes

No

Unknown

Additional Comments

Lot sale of retractable/sliding under-desk tray for office desk.

(Click above to add additional picture)

(Click above to add additional picture)

(Click above to add additional picture)

Name: Jeff Pendleton

Title: Asst. Bridge Design

Phone Number 513.695.3311

Location of Item: 210 W. Main St., Lebanon, OH 45036

IMPORTANT: Please print this form off and tape it to the item(s) you are listing (excluding vehicles).
Check your listing for accuracy, click the button below to submit by email. *Note: This is the only way auction items will be accepted.*

430 South East Street
513-695-1463

Michael D. Shadoan
Director

GovDeals Item Inspection Form

Engineer

Date:

Nov 14, 2018

008

Lot sale of two (2) UPS battery backups.



Select Item Type

Lot of Multiple Items

Qty	Brand	Model	Working Condition Y/N	Description
1	APC	RS1200	Y	APC model RS1200 battery backup ID #22501, SN #BB0832015686
1	APC	RS1200	Y	APC model RS1200 battery backup ID #22503 SN #BB0833011499

Additional Comments

Lot sale of two (2) UPS battery backups. Batteries have been removed & units were in working condition when removed from service.

(Click above to add additional picture)

(Click above to add additional picture)

(Click above to add additional picture)

Name: Jeff Pendleton

Title: Asst. Bridge Design

Phone Number 513.695.3311

Location of Item: 210 W. Main St., Lebanon, OH 45036

IMPORTANT: Please print this form off and tape it to the item(s) you are listing (excluding vehicles).
Check your listing for accuracy, click the button below to submit by email. *Note: This is the only way auction items will be accepted.*

Warren County Facilities Management

GovDeals #

FAC18066

430 South East Street
513-695-1463

Michael D. Shadoan
Director

GovDeals Item Inspection Form

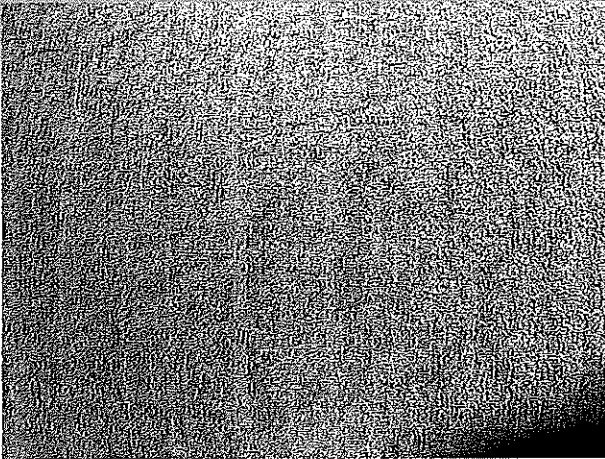
Facilities Management

Date:

Dec 4, 2018

066

CARPET TILE AND ROLLS



Select Item Type

Lot of Multiple Items

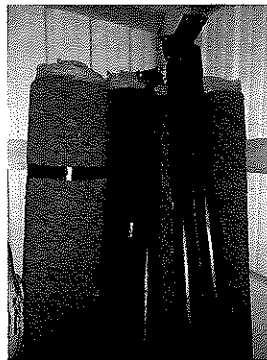
Qty	Brand	Model	Working Condition Y/N	Description
51	J+J		Y	24x24 carpet tile
1	UNKNOWN	-	Y	TAN WITH RED TINTED CARPET ROLL
1	UNKNOWN	-	Y	GREEN CARPET ROLL
2	UNKNOWN	-	Y	BLUE TINTED COLOR CARPET ROLL

Additional Comments

Approximate 51 carpet tile boxes which contain 4 per box. style:7904m, color 1634, back 6m
The rolled carpets lengths are unknown.



(Click above to add additional picture)



(Click above to add additional picture)

(Click above to add additional picture)

Name: Sam Roberts

Title: Associate Architect

Phone Number 513-695-3125

Location of Item: 430 Justice drive, Lebanon, OH 45036 - VA barn

IMPORTANT: Please print this form off and tape it to the item(s) you are listing (excluding vehicles).
Check your listing for accuracy, click the button below to submit by email. Note: This is the only way auction items will be accepted.

430 South East Street
513-695-1463

Michael D. Shadoan
Director

GovDeals Item Inspection Form

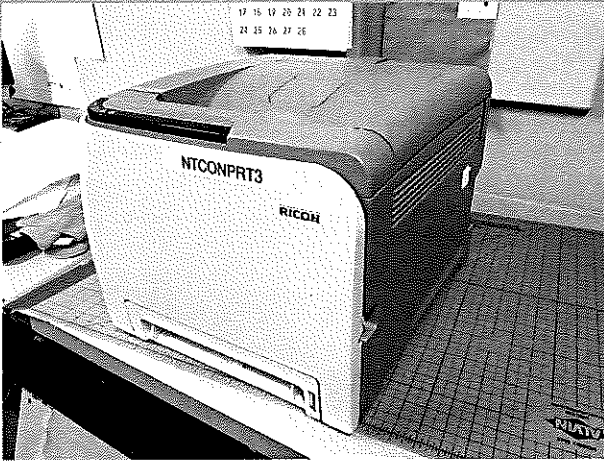
Facilities Management

Date:

Dec 4, 2018

067

PRINTERS AND SUPPLIES



Select Item Type

Lot of Multiple Items

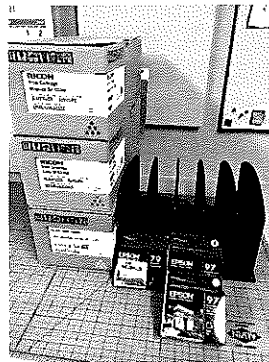
Qty	Brand	Model	Working Condition Y/N	Description
1	RICOH	-	N	MODEL: AFICIO SP C221N/PRINTER, S#
1	EPSON	-	UNK	MODEL: EPSON WORKFORCE 610- FAX, SCANNER, PRINTER
3	RICOH	-	Y	INK CARTRIDGES-YELLOW,MAGENTA,CYAN
3	EPSON	-	Y	INK CARTRIDGES: 2 OF EPSON IN 97 AND 1 EPSON 79
1	UNK	-	Y	BANNER HOLDER
1	UNK	-	Y	METAL MESH DESK TOP FILE FOLDER HOLDER.
1	CLIPPER	76 E	Y	SMALL JET SET CART CARRIER. HOLDS UP TO 155 LBS

Additional Comments

2 @ EPSON STYLUS NX510,515/ WORKFORCE 40, 600, 610, 615 INK CARTRIDGE. 1 @ EPSON STYLUS PHOTO 1400/ ARTISAN 1430 RICOH



(Click above to add additional picture)



(Click above to add additional picture)



(Click above to add additional picture)

Name: Sam Roberts

Title: Associate Architect

Phone Number 513-695-3125

Location of Item: 430 Justice Drive, Lebanon OH 45036

IMPORTANT: Please print this form off and tape it to the item(s) you are listing (excluding vehicles).
Check your listing for accuracy, click the button below to submit by email. *Note: This is the only way auction items will be accepted.*

430 South East Street
513-695-1463

Michael D. Shadoan
Director

GovDeals Item Inspection Form

Facilities Management

Date:

Dec 4, 2018

068

Dyson DC44 Animal Vacuum parts



Select Item Type

Single Item

Category Janitorial Equipment

Brand Dyson

Model # DC 44 animal

Serial # Unkown

Date Removed From Service 1/1/18

Did Item Work When Removed?

Yes

No

Unknown

Additional Comments

four Dyson shafts tubes, four Dyson vacuum heads and three Dyson DC44 animal cordless body and rechargeable Li-Ion battery. no chargers

(Click above to add additional picture)

(Click above to add additional picture)

(Click above to add additional picture)

Name: Jeff Pendleton

Title: Assistant Bridge Design

Phone Number 513-713-3311

Location of Item: Corwin House, 210 W. Main St., Lebanon OH 45036

IMPORTANT: Please print this form off and tape it to the item(s) you are listing (excluding vehicles).
Check your listing for accuracy, click the button below to submit by email. *Note: This is the only way auction items will be accepted.*

Warren County Facilities Management

430 South East Street
513-695-1463

GovDeals #

FAC18069

Michael D. Shadoan
Director

GovDeals Item Inspection Form

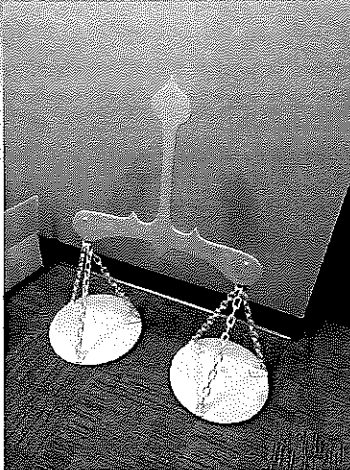
Facilities Management

Date:

Dec 4, 2018

069

SCALE OF JUSTICE



Select Item Type

Single Item

Category

Fine Art

Brand

Unkown

Model #

Unkown

Serial #

Unkown

Date Removed From Service

1/1/18

Did Item Work When Removed?

Yes

No

Unknown

Additional Comments

The scale of justice was fabricated for the Lady of Justice above old court house.

(Click above to add additional picture)

(Click above to add additional picture)

(Click above to add additional picture)

Name: Jeff Pendleton

Title: Assistant Bridge Design

Phone Number 513-713-3311

Location of Item: Corwin House, 210 W. Main St., Lebanon OH 45036

IMPORTANT: Please print this form off and tape it to the item(s) you are listing (excluding vehicles).
Check your listing for accuracy, click the button below to submit by email. *Note: This is the only way auction items will be accepted.*

GovDeals Item Inspection Form

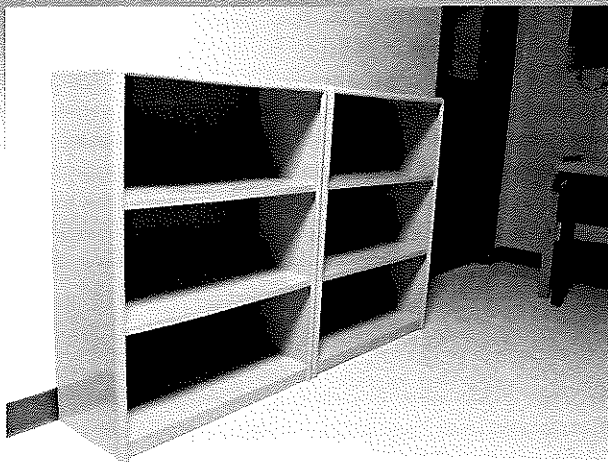
Juvenile

Date:

Nov 19, 2018

023

(2) Lt Green Bookcases



Select Item Type

Single Item

Category Office Equipment/Supplies

Brand

Model #

Serial #

Date Removed From Service 11/1/18

Did Item Work When Removed?

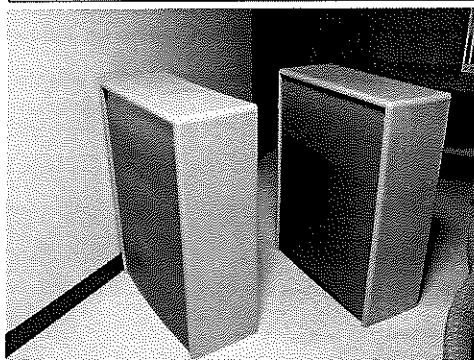
Yes

No

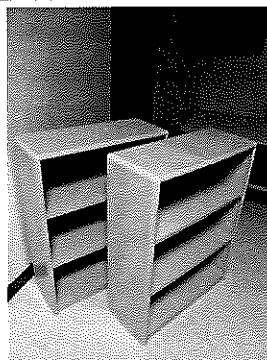
Unknown

Additional Comments

(2) Bookcases - Used with scratches, marks, and dents.



(Click above to add additional picture)



(Click above to add additional picture)

(Click above to add additional picture)

Name: Stephen Johnson

Title: Corrections Officer

Phone Number (513) 695-1392

Location of Item: Juvenile Storage - Silver Street Annex

IMPORTANT: Please print this form off and tape it to the item(s) you are listing (excluding vehicles).
Check your listing for accuracy, click the button below to submit by email. *Note: This is the only way auction items will be accepted.*

Warren County Facilities Management

430 South East Street
513-695-1463

GovDeals #

JUV18024

Michael D. Shadoan
Director

GovDeals Item Inspection Form

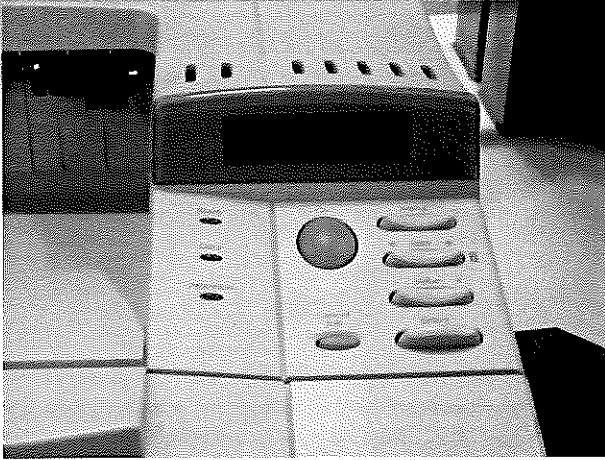
Juvenile

Date:

Nov 19, 2018

024

HP LaserJet 4050N Printer



Select Item Type

Single Item

Category Computers, Parts and Supplies

Brand HP

Model # 4050N

Serial #

Date Removed From Service 10/25/18

Did Item Work When Removed?

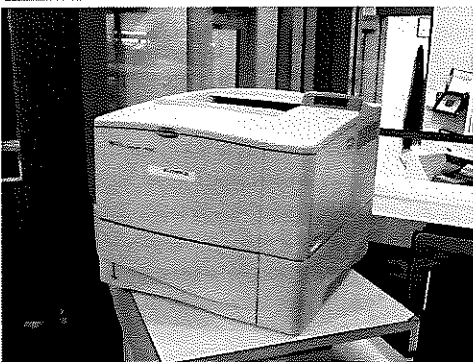
Yes

No

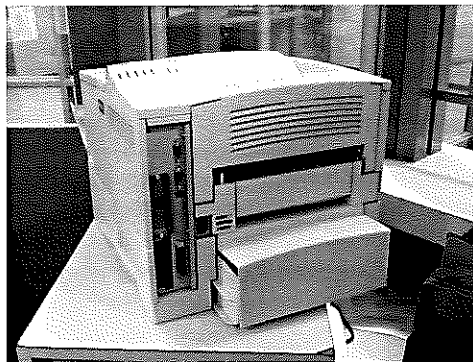
Unknown

Additional Comments

HP LaserJet 4050N Printer - Does not work - Unknown problem



(Click above to add additional picture)



(Click above to add additional picture)

(Click above to add additional picture)

Name: Stephen Johnson

Title: Corrections Officer

Phone Number (513) 695-1392

Location of Item: Juvenile Storage - Silver Street Annex

IMPORTANT: Please print this form off and tape it to the item(s) you are listing (excluding vehicles).
Check your listing for accuracy, click the button below to submit by email. *Note: This is the only way auction items will be accepted.*

430 South East Street
513-695-1463

Michael D. Shadoan
Director

GovDeals Item Inspection Form

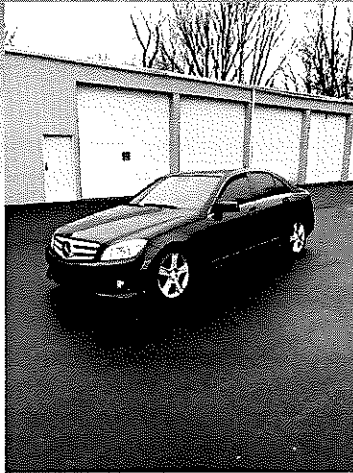
Sheriff

Date:

Nov 19, 2018

113

2010 Mercedes C300



Select Item Type

Vehicle

Vin #

WDDGF8BB8AF482134

Title restriction?

Yes No

Odometer Reading

74814

Yes

Accurate?

No Unknown

Year

2010

Make

Model

C300

Does it Start?

Yes No With Boost

Does it run?

Yes No

Color

BLACK

Exterior Condition?

Good Minor Dents, Dings
Scratches or rust Sever dents, Dings
Scratches or Rust

Interior

Cloth Leather Other

Interior Condition?

Good Fair Poor

Additional Comments

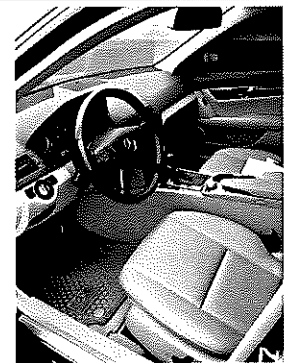
2010 Mercedes C300. 3.0l V6 gasoline engine. Automatic transmission. AWD. Tan leather interior and in good shape. A/C, Cruise Control, Tilt Steering, Power Mirrors, Power Windows, Power Locks, Power Seats. Vehicle was never in service so overall vehicle condition is unknown. *Rebuilt Title/Odometer Discrepancy*



(Click above to add additional picture)



(Click above to add additional picture)



(Click above to add additional picture)

Name: Nicki Bishop

Title: WCSO - Fiscal

Phone Number x1285

Location of Item: 1433 West Main Street Lebanon Ohio 45036

IMPORTANT: Please print this form off and tape it to the item(s) you are listing (excluding vehicles).
Check your listing for accuracy, click the button below to submit by email. Note: This is the only way auction items will be accepted.

Warren County Facilities Management

GovDeals #

TEL18009

430 South East Street
513-695-1463

Michael D. Shadoan
Director

GovDeals Item Inspection Form

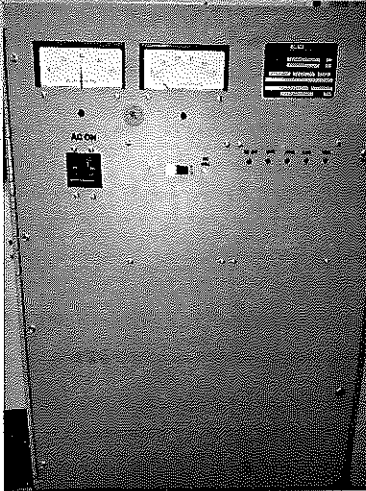
Telecommunications

Date:

Dec 5, 2018

009

CD Power System



Select Item Type

Single Item

Category

Communication/Electronic Equipment

Brand

CD Power System

Model #

ART48AC50E

Serial #

ESU8806166

Date Removed From Service

12/5/2018

Did Item Work When Removed?

Yes

No

Unknown

Additional Comments

AS IS Heavy

(Click above to add additional picture)

(Click above to add additional picture)

(Click above to add additional picture)

Name: Becky Trovillo

Title: Admin. Support

Phone Number 513-695-2494

Location of Item: 500 Justice Dr., Telecom, Lebanon, Ohio 45036

IMPORTANT: Please print this form off and tape it to the item(s) you are listing (excluding vehicles).
Check your listing for accuracy, click the button below to submit by email. *Note: This is the only way auction items will be accepted.*

Warren County Facilities Management

GovDeals #

TEL18010

430 South East Street
513-695-1463

Michael D. Shadoan
Director

GovDeals Item Inspection Form

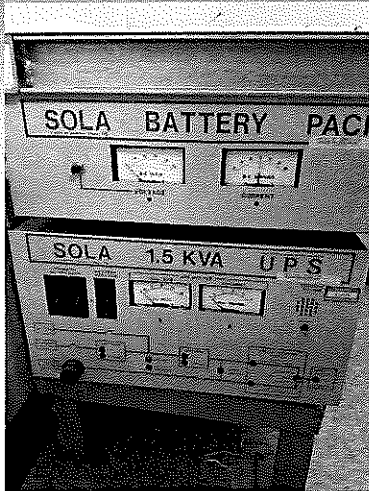
Telecommunications

Date:

Dec 5, 2018

010

Sola



Select Item Type

Lot of Multiple Items

Qty	Brand	Model	Working Condition Y/N	Description
1	Sola		UNK	Model # 056-01-10112-1501 UPS - 74085A2
1	Sola		UNK	Model # 912-00-04809-0210 Battery Pack - 88E23

Additional Comments

AS IS

(Click above to add additional picture)

(Click above to add additional picture)

(Click above to add additional picture)

Name: Becky Trovillo

Title: Admin. Support

Phone Number 513-695-2494

Location of Item: 500 Justice Dr., Telecom, Lebanon, Ohio 45036

IMPORTANT: Please print this form off and tape it to the item(s) you are listing (excluding vehicles).
Check your listing for accuracy, click the button below to submit by email. *Note: This is the only way auction items will be accepted.*

Warren County Facilities Management

GovDeals #

TEL18011

430 South East Street
513-695-1463

Michael D. Shadoan
Director

GovDeals Item Inspection Form

Telecommunications

Date:

Dec 5, 2018

011

n Lite Microwaves



Select Item Type

Lot of Multiple Items

Qty	Brand	Model	Working Condition Y/N	Description
2	NEC	Microwave	UNK	4768, 4769, 4770, 4771
2	NEC	Rack Equip.	UNK	4574, 4575

Additional Comments

As is
10GHz Frequency Band

(Click above to add additional picture)

(Click above to add additional picture)

(Click above to add additional picture)

Name: Becky Trovillo

Title: Admin. Support

Phone Number 513-695-2494

Location of Item: 500 Justice Dr., Telecom, Lebanon, Ohio 45036

IMPORTANT: Please print this form off and tape it to the item(s) you are listing (excluding vehicles).
Check your listing for accuracy, click the button below to submit by email. *Note: This is the only way auction items will be accepted.*

430 South East Street
513-695-1463

Michael D. Shadoan
Director

GovDeals Item Inspection Form

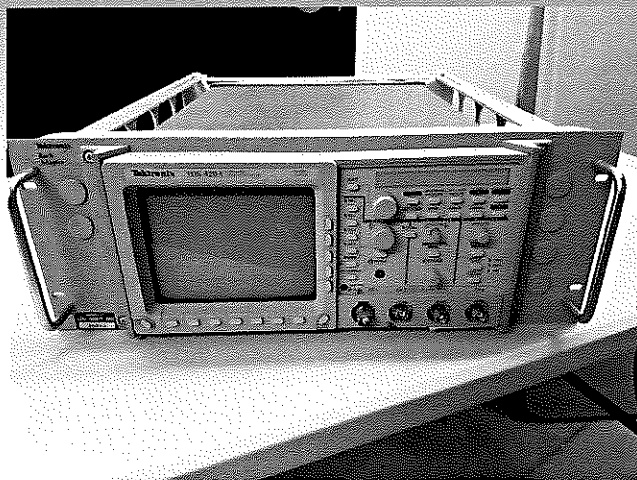
Telecommunications

Date:

Dec 5, 2018

012

Digital Oscilloscope



Select Item Type

Single Item

Category

Communication/Electronic Equipment

Brand

Tektronix

Model #

TDS 420A

Serial #

B040260

Date Removed From Service

12/05/2018

Did Item Work When Removed?

Yes

No

Unknown

Additional Comments

As Is

(Click above to add additional picture)

(Click above to add additional picture)

(Click above to add additional picture)

Name: Becky Trovillo

Title: Admin. Support

Phone Number 513-695-2494

Location of Item: 500 Justice Dr., Telecom. Lebanon, Ohio 45036

IMPORTANT: Please print this form off and tape it to the item(s) you are listing (excluding vehicles).
Check your listing for accuracy, click the button below to submit by email. *Note: This is the only way auction items will be accepted.*

430 South East Street
513-695-1463

Michael D. Shadoan
Director

GovDeals Item Inspection Form

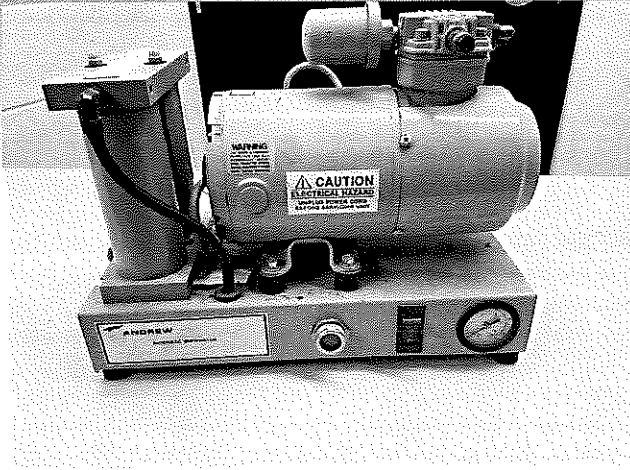
Telecommunications

Date:

Dec 5, 2018

013

Automatic Dehydrator



Select Item Type

Single Item

Category

Communication/Electronic Equipment

Brand

Andrew

Model #

50000-0128

Serial #

708ADC103A

Date Removed From Service

12/5/18

Did Item Work When Removed?

Yes

No

Unknown

Additional Comments

As Is

(Click above to add additional picture)

(Click above to add additional picture)

(Click above to add additional picture)

Name: Becky Trovillo

Title: Admin. Support

Phone Number 513-695-2494

Location of Item: 500 Justice Dr., Telecom. Lebanon, Ohio 45036

IMPORTANT: Please print this form off and tape it to the item(s) you are listing (excluding vehicles).
Check your listing for accuracy, click the button below to submit by email. Note: This is the only way auction items will be accepted.

430 South East Street
513-695-1463

Michael D. Shadoan
Director

GovDeals Item Inspection Form

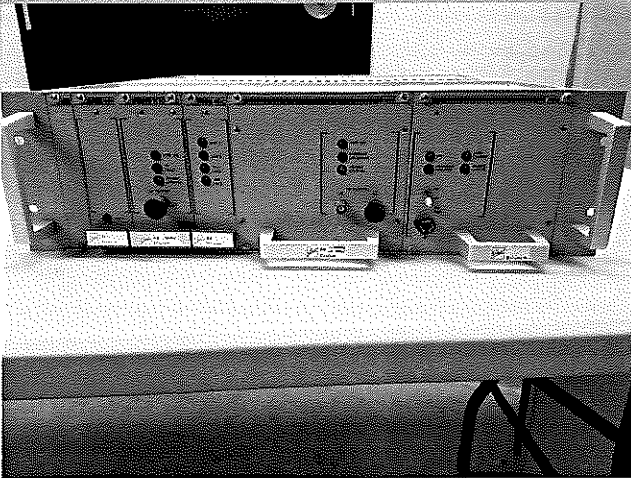
Telecommunications

Date:

Dec 5, 2018

014

Rubidium Clock



Select Item Type

Single Item

Category

Communication/Electronic Equipment

Brand

Modular System

Model #

EFRATOM 808-400-14

Serial #

734

Date Removed From Service

12/5/18

Did Item Work When Removed?

Yes

No

Unknown

Additional Comments

AS IS

(Click above to add additional picture)

(Click above to add additional picture)

(Click above to add additional picture)

Name: Becky Trovillo

Title: Admin. Support

Phone Number 513-695-2494

Location of Item: 500 Justice Dr. Telecom, Lebanon, Ohio 45036

IMPORTANT: Please print this form off and tape it to the item(s) you are listing (excluding vehicles).
Check your listing for accuracy, click the button below to submit by email. Note: This is the only way auction items will be accepted.

*BOARD OF COUNTY COMMISSIONERS
WARREN COUNTY, OHIO*

Resolution

Number 18-1917

Adopted Date December 11, 2018

ACKNOWLEDGE APPROVAL OF FINANCIAL TRANSACTION

WHEREAS, pursuant to Resolution #10-0948, this Board authorized approval of necessary financial documents in their absence by the County Administrator, Deputy County Administrator or Clerk of Commissioners; and

WHEREAS, it is necessary to accept and amended certificate and approve a supplemental appropriation in order to make a timely payment; and

NOW THEREFORE BE IT RESOLVED, to acknowledge approval of financial transactions as attached hereto and made a part hereof.

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

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

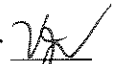
Resolution adopted this 11th day of December 2018.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

/tao

cc: Auditor 
Supplemental Appropriation file
Amended Certificate file
Commissioners file
OMB

ACCEPT AMENDED CERTIFICATE, AND APPROVE A SUPPLEMENTAL
APPROPRIATION INTO COMMISSIONER LODGING TAX ADDITIONAL 1% 231

WHEREAS, the Commissioners' Office has indicated they have received additional revenue in the amount of \$42,693.66 in Lodging Tax Additional 1% Fund 231; and

WHEREAS, in order to expend said funds an amended certificate and supplemental appropriation are necessary; and

NOW THEREFORE BE IT RESOLVED, to accept the amended certificate in the amount of \$42,593.66 from the Warren County Budget Commission (attached) and approve the following supplemental appropriation adjustment within Commissioners Lodging Tax Additional 1% Fund 231:

Supplemental Appropriation Adjustment
\$43,005.15 into 231-0999-750 Distribution of funds

M moved for adoption of the foregoing resolution being seconded by M. Upon call of the roll, the following vote resulted:

M
M
M

Resolution adopted this day of December 2018.

BOARD OF COUNTY COMMISSIONERS

Tina Osborne, Clerk

cc: Auditor _____
Commissioners (file)
OMB

Tiffany Zindel
12-5-18

* to be ratified 12-11-18 by BOCC

AMENDED OFFICIAL CERTIFICATE OF ESTIMATED RESOURCES

Rev. Code, Sec 5705.36

Office of Budget Commission, County of Warren, Lebanon, Ohio, December 5, 2018

To the TAXING AUTHORITY of Warren County Commissioners

The following is the amended certificate of estimated resources for the fiscal year beginning January 1st, 2018, as revised by the Budget Commission of said county, which shall govern the total of appropriations made at any time during such fiscal year.

FUND TYPE - Special Revenue	Jan. 1st, 2018	Taxes	Other Sources	Total
Lodging Tax Addl 1%	\$89,413.99	\$0.00	\$842,693.66	\$932,107.65
Fund 231				
TOTAL	\$89,413.99	\$0.00	\$842,693.66	\$932,107.65

_____)
)
 _____) Budget
) Commission
 _____)

*BOARD OF COUNTY COMMISSIONERS
WARREN COUNTY, OHIO*

Resolution

Number 18-1918

Adopted Date December 11, 2018

ACKNOWLEDGE PAYMENT OF BILLS

BE IT RESOLVED, to acknowledge payment of bills as submitted on #12/06/2018 001, #12/06/2018 002, #12/06/2018 003, #12/06/2018 004, #12/04/2018 006, #12/11/2018 001, #12/11/2018 002, #12/11/2018 003, #12/11/2018 004, #12/11/2018 005, #12/11/2018 006, #12/11/2018 007, #12/11/2018 008 and #12/11/2018 009; said batches are attached hereto and made a part hereof.

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


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

Resolution adopted this 11th day of December 2018.

BOARD OF COUNTY COMMISSIONERS


Tina Osborne, Clerk

kh

cc: Auditor 

Resolution

Number 18-1919

Adopted Date December 11, 2018

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	\$ 1,250.00
Veterans	\$ 1,413.00
Veterans	\$ 2,947.00
Veterans	\$ 5,190.00
Veterans	\$ 6,270.33
Board of Elections	\$17,819.55


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

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

Resolution adopted this 11th day of December 2018.

BOARD OF COUNTY COMMISSIONERS


Tina Osborne, Clerk

cc: Auditor 
Veterans (file)
Board of Elections (file)

Resolution

Number 18-1920

Adopted Date December 11, 2018

APPROVE VARIOUS REFUNDS

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

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

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

Resolution adopted this 11th day of December 2018.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: Auditor 
Refunds file

Resolution

Number 18-1921

Adopted Date December 11, 2018

APPROVE A SUBDIVISION PUBLIC IMPROVEMENT PERFORMANCE AND MAINTENANCE SECURITY AGREEMENT RELEASE WITH GRAND COMMUNITIES, LTD. FOR SHAKER RUN, SECTION FOUR, PHASE E SITUATED IN TURTLECREEK TOWNSHIP

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

SECURITY AGREEMENT RELEASE

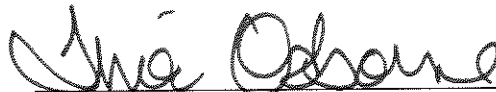
Bond Number	:	15-007 (W/S)
Development	:	Shaker Run, Section Four, Phase E
Developer	:	Grand Communities, Ltd.
Township	:	Turtlecreek
Amount	:	\$14,035.10
Surety Company	:	Westchester Fire Insurance Co. (K09244499)

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

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

Resolution adopted this 11th day of December 2018.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cgb

cc: Grand Communities, Ltd., Attn: Dave Stroup, 3940 Olympic Blvd., Suite 100, Erlanger KY 41018
Westchester Fire Insurance Co., 542 West Monroe Street, Suite 700, Chicago IL 60661
Water/Sewer (file)
Bond Agreement file

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

Resolution

Number 18-1922

Adopted Date December 11, 2018

APPROVE BOND RELEASE FOR SORAYA FARMS LLC FOR COMPLETION OF IMPROVEMENTS IN SORAYA FARMS SECTION 4 SITUATED IN CLEARCREEK TOWNSHIP

BE IT RESOLVED to approve the following bond release upon recommendation of the Warren County Soil and Water Conservation District:

EROSION CONTROL PERFORMANCE BOND RELEASE

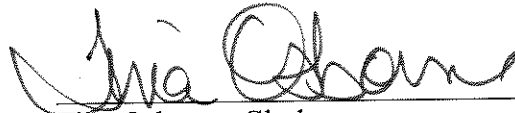
Bond Number	:	N/A
Development	:	Soraya Farms Section 4
Developer	:	Soraya Farms LLC
Township	:	Clearcreek
Amount	:	\$27,917.50
Surety Company	:	First Financial Bank (LOC 820111877)

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

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

Resolution adopted this 11th day of December 2018.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: Developer
Surety Co.
Soil & Water (file)
Bond Agreement file

Resolution

Number 18-1923

Adopted Date December 11, 2018

APPROVE BOND RELEASE FOR SORAYA FARMS LLC FOR COMPLETION OF IMPROVEMENTS IN SORAYA FARMS LIFESTYLE COMMUNITY, PHASE 4 SITUATED IN CLEARCREEK TOWNSHIP

BE IT RESOLVED to approve the following bond release upon recommendation of the Warren County Soil and Water Conservation District:

EROSION CONTROL PERFORMANCE BOND RELEASE

Bond Number	:	N/A
Development	:	Soraya Farms Lifestyle Community, Phase 4
Developer	:	Soraya Farms LLC
Township	:	Clearcreek
Amount	:	\$5,200.00
Surety Company	:	First Financial Bank (LOC 820113582)

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

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

Resolution adopted this 11th day of December 2018.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: Developer
Surety Co.
Soil & Water (file)
Bond Agreement file

*BOARD OF COUNTY COMMISSIONERS
WARREN COUNTY, OHIO*

Resolution

Number 18-1924

Adopted Date December 11, 2018

APPROVE APPROPRIATION DECREASE IN PASS THROUGH GRANTS FUND #261

WHEREAS, the Auditor's Office is completing an Amended Certificate of Receipts for Fund #261 for funds that were anticipated, but not received in calendar year 2018; and

WHEREAS, the appropriation for Fund #261 must be reduced in the amount below; and

BE IT RESOLVED, it is necessary to approve the following appropriation decrease:

\$ 18,522.59 from #261-2000-712 (Pass Through – Drug Task Force)

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


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

Resolution adopted this 11th day of December 2018.

BOARD OF COUNTY COMMISSIONERS


Tina Osborne, Clerk

/sm

cc: Auditor 
Appropriation Decrease file
OGA (file)

Resolution

Number 18-1925

Adopted Date December 11, 2018

APPROVE APPROPRIATION DECREASES WITHIN WARREN COUNTY SHERIFF'S
OFFICE FUND #292

WHEREAS, the Auditor's Office is completing an Amended Certificate of Receipts for Fund #292 for funds that were anticipated, but not received in calendar year 2018; and

WHEREAS, the appropriation for Fund #292 must be reduced in the amount below; and

BE IT RESOLVED, it is necessary to approve the following appropriation decreases:

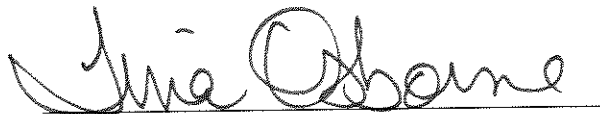
\$48,595.13	from #292-2222-114	(Overtime)
\$3,195.00	from #292-2222-210	(Materials & Supplies)
\$8.00	from #292-2222-317	(Non Capital Purchases)
\$11,598.00	from #292-2222-811	(PERS)
\$927.00	from #292-2222-871	(Medicare)

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

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

Resolution adopted this 11th day of December 2018.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: Auditor 
Appropriation Adjustment file
Sheriff's Office (file)

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

Resolution

Number 18-1926

Adopted Date December 11, 2018

APPROVE A CASH ADVANCE FROM COUNTY MOTOR VEHICLE FUND 202 INTO
KING AVENUE BRIDGE PROJECT FUND 437

WHEREAS, Neil Tunison, Warren County Engineer and appointing authority for the King
Avenue Bridge Project has requested a cash advance until monies are received from fund 202;
and

NOW THEREFORE BE IT RESOLVED, to approve the following cash advance:

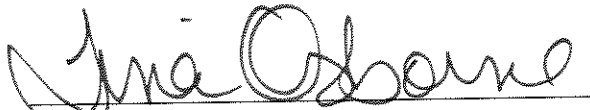
\$270,258.00 from #202-5555-666 (Advances of Cash Out)
into #437-5555-555 (Cash Advance In)


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

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

Resolution adopted this 11th day of December 2018.

BOARD OF COUNTY COMMISSIONERS


Tina Osborne, Clerk

cc: Auditor 
Cash Advance File
Engineer (file)

Resolution

Number 18-1927

Adopted Date December 11, 2018

APPROVE A CASH ADVANCE FROM ENGINEER'S FUND #202 INTO FUND #450 AND #454 AND CASH ADVANCE REPAYMENTS FROM FUNDS # 450 AND #454 INTO FUND #202

WHEREAS, Neil Tunison, Warren County Engineer and appointing authority for the projects has requested a cash advance until monies are received from other sources; and

WHEREAS, repayment of a cash advance is due from Fund #450 and #454; and

NOW THEREFORE BE IT RESOLVED, to approve the following cash advance and cash advance repayments:


\$26,825.000	from	#202-5555-666	(Advances of Cash Out)
	into	#450-5555-555	(Advances of Cash In)
\$26,825.00	from	#450-5555-666	(Advances of Cash Out)
	into	#202-5555-555	(Advances of Cash In)
\$40,000.00	from	#202-5555-666	(Advances of Cash Out)
	into	#454-5555-555	(Advances of Cash In)
\$40,000.00	from	#454-5555-666	(Advances of Cash Out)
	into	#202-5555-555	(Advances of Cash In)

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

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

Resolution adopted this 11th day of December 2018.

BOARD OF COUNTY COMMISSIONERS


Tina Osborne, Clerk

cc: Auditor *YV*
Cash Advance File
Engineer (file)

Resolution

Number 18-1928

Adopted Date December 11, 2018

APPROVE SUPPLEMENTAL APPROPRIATIONS INTO MASON MUNICIPAL COURT
FUND #101-1273

BE IT RESOLVED, to approve the following supplemental appropriations:


\$4,500.00	into	#101-1273-102	(Mason Municipal Ct. – Salaries)
\$ 500.00	into	#101-1273-142	(Mason Municipal Ct. – Acting Judges)
\$2,500.00	into	#101-1273-811	(Mason Municipal Ct. – PERS)
\$ 500.00	into	#101-1273-871	(Mason Municipal Ct. – Medicare)


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

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

Resolution adopted this 11th day of December 2018.

BOARD OF COUNTY COMMISSIONERS


Tina Osborne, Clerk

cc: Auditor 
Supplemental App. file
Mason Municipal Court (file)
OMB

*BOARD OF COUNTY COMMISSIONERS
WARREN COUNTY, OHIO*

Resolution

Number 18-1929

Adopted Date December 11, 2018

APPROVE SUPPLEMENTAL APPROPRIATION INTO CLERK OF COURTS
CERTIFICATE OF TITLE ADMINISTRATION FUND #250

BE IT RESOLVED, to approve the following supplemental appropriation:

\$2,460.20 into #250-1260-882 (Accum. Vacation - Payout)


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

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

Resolution adopted this 11th day of December 2018.

BOARD OF COUNTY COMMISSIONERS


Tina Osborne, Clerk

cc: Auditor 
Supplemental App. file
Clerk of Courts (file)

Resolution

Number 18-1930

Adopted Date December 11, 2018

APPROVE SUPPLEMENTAL APPROPRIATION IN COUNTY WIDE FINANCIAL
SOFTWARE FUND 401

BE IT RESOLVED, to approve the following supplemental appropriation:


1,375.00 into # 401-1120-820 (Health Insurance)


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

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

Resolution adopted this 11th day of December 2018.

BOARD OF COUNTY COMMISSIONERS


Tina Osborne, Clerk

cc: Auditor (file) 
Supplemental App. file

Resolution

Number 18-1931

Adopted Date December 11, 2018

APPROVE SUPPLEMENTAL APPROPRIATION INTO FUND #479 AIRPORT CONSTRUCTION

WHEREAS, in order to award bids for the taxiway ramp paving repairs project, a supplemental appropriation is necessary; and

BE IT RESOLVED, to approve the following supplemental appropriation:


\$23,875.00 into #479-3850-320 (Airport Construction – Capital)

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


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

Resolution adopted this 11th day of December 2018.

BOARD OF COUNTY COMMISSIONERS


Tina Osborne, Clerk

tz/

cc: Auditor 
Supplemental Appropriation file
Airport (file)
OMB

Resolution

Number 18-1932

Adopted Date December 11, 2018

APPROVE SUPPLEMENTAL APPROPRIATION INTO WATER REVENUE FUND 510

WHEREAS, the Water and Sewer Department purchases water; and

WHEREAS, a supplemental appropriation is necessary to accommodate said transaction; and

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

\$ 80,000.00 into #510-3200-3200-430 (Utilities)

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

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

Resolution adopted this 11th day of December 2018.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

las

cc: Auditor VJ
Supplemental App. file
Water/Sewer (file)

Resolution

Number 18-1933

Adopted Date December 11, 2018

APPROVE APPROPRIATION ADJUSTMENTS WITHIN SHERIFF'S OFFICE FUNDS #101-2210, #101-2211 AND #630

BE IT RESOLVED, to approve the following appropriation adjustments:

\$20,000.00	from #101-2210-114	(Overtime)
	into #101-2210-102	(Regular Salaries)
\$1,000.00	from #101-2211-820	(Health Ins)
	into #101-2211-114	(Overtime)
\$15,000.00	from #630-2258-114	(Overtime)
	into #630-2258-102	(Regular Salaries)
\$3,000.00	from #630-2258-114	(Overtime)
	into #630-2258-820	(Health Ins)

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

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

Resolution adopted this 11th day of December 2018.

BOARD OF COUNTY COMMISSIONERS


Tina Osborne, Clerk

cc: Auditor VJ
Appropriation Adjustment file
Sheriff's Office (file)

Resolution

Number 18-1934

Adopted Date December 11, 2018

APPROVE APPROPRIATION ADJUSTMENT WITHIN TELECOMMUNICATIONS
DEPARTMENT FUND #101-2810

BE IT RESOLVED, to approve the following appropriation adjustment:


\$17,064.30 from #101-2810-320 (Capital Purchases)
into #101-2810-400 (Purchased Services)


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

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

Resolution adopted this 11th day of December 2018.

BOARD OF COUNTY COMMISSIONERS


Tina Osborne, Clerk

cc: Auditor 
Appropriation Adj. file
Telecom (file)

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

Resolution

Number 18-1935

Adopted Date December 11, 2018

APPROVE APPROPRIATION ADJUSTMENTS FROM TELECOMMUNICATIONS
DEPARTMENT FUND #101-2810 INTO #101-2810 AND #101-2812

BE IT RESOLVED, to approve the following appropriation adjustments:

\$23,000.00	from #101-2810-317	(Non Capital Purchases)
	into #101-2810-102	(Reg. Salaries)
\$ 4,000.00	from #101-2810-317	(Non Capital Purchases)
	into #101-2812-102	(Reg. Salaries)
\$3,400.00	from #101-2810-320	(Capital Purchases)
	into #101-2810-811	(PERS)
\$ 2,600.00	from #101-2810-320	(Capital Purchases)
	into #101-2812-811	(PERS)
\$3,700.00	from #101-2810-820	(Health)
	into #101-2812-820	(Health)

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


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

Resolution adopted this 11th day of December 2018.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: Auditor 
Appropriation Adj. file
Telecom (file)

Resolution

Number 18-1936

Adopted Date December 11, 2018

APPROVE APPROPRIATION ADJUSTMENTS FROM BOARD OF ELECTIONS FUND
#101-1301 TO #101-1300

BE IT RESOLVED, to approve the following appropriation adjustments:

\$4,500.00	from	#101-1301-151	(Poll Workers)
	into	#101-1300-820	(Health Insurance)
\$5,000.00	from	#101-1301-151	(Poll Workers)
	into	#101-1300-400	(Purchased Services)

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

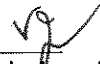
Mrs. Jones – absent
Mr. Grossmann- yea
Mr. Young – yea

Resolution adopted this 11th day of December 2018.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: Auditor 
Appropriation Adj. file
Board of Elections (file)

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

Resolution

Number 18-1937

Adopted Date December 11, 2018

APPROVE APPROPRIATION ADJUSTMENTS WITHIN DOG AND KENNEL FUND #206

BE IT RESOLVED, to approve the following appropriation adjustments:

\$600.00 from #206-2700-430 (Utilities - General)
 into #206-2700-114 (Overtime)


\$ 50.00 from #206-2700-430 (Utilities - General)
 into #206-2700-400 (Purchased Services)

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

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

Resolution adopted this 11th day of December 2018.

BOARD OF COUNTY COMMISSIONERS


Tina Osborne, Clerk

cc: Auditor vs
Appropriation Adj. File
Dog & Kennel (file)

*BOARD OF COUNTY COMMISSIONERS
WARREN COUNTY, OHIO*

Resolution

Number 18-1938

Adopted Date December 11, 2018

APPROVE AN APPROPRIATION ADJUSTMENT WITHIN PROSECUTOR'S OFFICE
FUND #245

BE IT RESOLVED, to approve the following appropriation adjustment:

\$274.79	from	#245-2450-102	(Regular Salaries)
	into	#245-2450-950	(Refunds)

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


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

Resolution adopted this 11th day of December 2018.

BOARD OF COUNTY COMMISSIONERS


Tina Osborne, Clerk

CSM/

cc: Auditor 
Appropriation Adjustment file
Prosecutor (file)

*BOARD OF COUNTY COMMISSIONERS
WARREN COUNTY, OHIO*

Resolution

Number 18-1939

Adopted Date December 11, 2018

APPROVE APPROPRIATION ADJUSTMENT WITHIN RECLAIM GRANT FUND #247

BE IT RESOLVED, to approve the following appropriation adjustment:

\$1,000.00 from #247-1242-400 (Purchase Services)
into #247-1242-820 (Health Insurance)


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

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

Resolution adopted this 11th day of December 2018.

BOARD OF COUNTY COMMISSIONERS


Tina Osborne, Clerk

cc: Auditor 
Appropriation Adj. file
Juvenile (file)

BOARD OF COUNTY COMMISSIONERS
WARREN COUNTY, OHIO

Resolution

Number 18-1940

Adopted Date December 11, 2018

APPROVE APPROPRIATION ADJUSTMENT WITHIN CHILDREN SERVICES FUND #273

BE IT RESOLVED, to approve the following appropriation adjustment:

\$ 2,000.00	from	#273-5100-446	(Child Placement)
	into	#273-5100-850	(Training/Education)
\$10,000.00	from	#273-5100-820	(Health & Life Insurance)
	into	#273-5100-910	(Other Expense)

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


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

Resolution adopted this 11th day of December 2018.

BOARD OF COUNTY COMMISSIONERS


Tina Osborne, Clerk

jc/

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

Resolution

Number 18-1941

Adopted Date December 11, 2018

APPROVE APPROPRIATION ADJUSTMENTS WITHIN THE WATER REVENUE FUND
NO. 510

WHEREAS, the Water and Sewer department incurs costs for capital purchases; and

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

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

\$10,000.00 from #510-3200-3200-102 (Salaries)
into #510-3200-3200-320 (Capital Purchases)

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

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

Resolution adopted this 11th day of December 2018.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

las

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

BOARD OF COUNTY COMMISSIONERS
WARREN COUNTY, OHIO

Resolution

Number 18-1942

Adopted Date December 11, 2018

APPROVE APPROPRIATION ADJUSTMENTS WITHIN ENGINEER'S OFFICE FUND
#202

BE IT RESOLVED, to approve the following appropriation adjustments:

\$ 26.00	from #202-3110-102	(Engineer-Regular Salaries)
	into #202-3110-101	(Engineer-Elected Official)
\$100.00	from #202-3110-102	(Engineer-Regular Salaries)
	into #202-3110-820	(Engineer-Health Ins)

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


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

Resolution adopted this 11th day of December 2018.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: Auditor 
Appropriation Adj. file
Engineer (file)

Resolution

Number 18-1943

Adopted Date December 11, 2018

SET FINAL HEARING CONCERNING THE VACATION OF A PORTION OF PINNACLE LANE IN DEERFIELD TOWNSHIP

WHEREAS, pursuant to R.C. §5553.045(B) A board of township trustees may petition the board of county commissioners to vacate a township road or a portion of a township road by passing a resolution that requests the vacation of the road or portion and includes a description of the general route and termini of the road or portion; and

WHEREAS, a copy of a resolution adopted by the Deerfield Township Trustees requesting the vacation of a portion of Pinnacle Lane in Deerfield Township has been filed with this Board and it is necessary to schedule a public hearing to consider said request; and

NOW THEREFORE BE IT RESOLVED that this Board does hereby fix the 8th day of January 2019, at 9:15 a.m. as the date and time for the final hearing for determining whether to approve or disapprove the vacation of the right-of-way of a part of Pinnacle Lane in Deerfield Township, Warren County, to be held at the Meeting Room of the Board of County Commissioners in the Warren County Administration Building, 406 Justice Drive, Lebanon, Ohio.

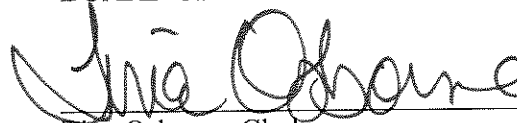
BE IT FURTHER RESOLVED that the Clerk of this Board immediately notify the abutting property owners of the time and place of said final hearing; and, that notice be published in the Today's Pulse Warren County newspaper giving notice to the general public of the purpose, date and time of the final hearing; and,

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

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

Resolution adopted this 11th day of December 2018.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

to

cc: Deerfield Township (erein@deerfieldtwp.com) (bhigh@deerfieldtwp.com)
Neil Tunison, Engineer
Kurt Weber
Bob Fox
Bruce McGary
Vacation file

Resolution

Number 18-1944

Adopted Date December 11, 2018

CONTINUE PUBLIC HEARINGS #2 TO CONSIDER THE ADOPTION OF WARREN COUNTY RULES AND REGULATIONS FOR THE DESIGN OF STORM SEWER AND STORMWATER MANAGEMENT SYSTEMS

BE IT RESOLVED, to continue public hearing #2 relative to the adoption of Stormwater Regulations in Warren County in accordance with Ohio Revised Code Section 307.37; said public hearing to be continued to January 15, 2019, at 10:00 a.m. in the Commissioners' Meeting Room; and

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

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

Resolution adopted this 11th day of December 2018.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: Engineer (file)
Stormwater Regulation Public Hearing file

Resolution

Number 18-1945

Adopted Date December 11, 2018

AUTHORIZING ASSIGNMENT OF CONTRACTS FOR THE WARREN COUNTY FAIRGROUNDS EVENT CENTER TO THE WARREN COUNTY PORT AUTHORITY, AND EXECUTION OF LEASE AMENDMENT NO. 3 OF THE FAIRGROUNDS LEASE, AND EXECUTION OF GROUND LEASE TO WARREN COUNTY PORT AUTHORITY

WHEREAS, on or about April 18, 2017, by Resolution No. 17-0601, the Warren County Board of Commissioners (hereinafter “the Board”) authorized and entered into a contract for design professional services with McGill Smith Punshon, Inc. (hereinafter “MSP”) for design of a new Warren County Fairgrounds Event Center (hereinafter “the Project”); and

WHEREAS, on or about October 2, 2017, by Resolution No. 17-1537, the Board authorized and entered into a contract for construction manager at risk services with Conger Construction Group, Inc. (hereinafter “Conger”) for preconstruction and construction services on the Project; and

WHEREAS, after diligent efforts by all interested parties it is apparent that the completion of the Project is no longer economically feasible for the Board considering rising construction costs and costs of unforeseen but necessary site improvements; and

WHEREAS, the Project has been identified by the Warren County Port Authority (hereinafter Port Authority) as an important economic development opportunity for the surrounding area and the Port Authority wishes to complete the Project; and

WHEREAS, the Board has offered and Port Authority has accepted an assignment and assumption of the agreement between the Board and MSP and the agreement between the Board and Conger; MSP and Conger have both agreed to the respective assignments in order to complete the Project; and

WHEREAS, to complete the Project, the Board must reduce the leased premises currently leased by the Agricultural Society of Warren County so that land may be leased and developed by the Port Authority; and

WHEREAS, the Agricultural Society of Warren County agrees to such a reduction as the Project will improve the overall site conditions and greatly benefit the Agricultural Society and its ongoing use of the Warren County Fairgrounds; and

WHEREAS, the Board must enter into a ground lease with the Port Authority so that Port Authority may assume the development of the Warren County Fairgrounds Event Center and related site improvements, and the Port Authority has agreed to the same; and

NOW THEREFORE BE IT RESOLVED, to authorize execution of the following four documents related to assigning the Project to the Port:

- 1.) Assignment Agreement for Architect Agreement (attached hereto)
- 2.) Assignment Agreement for Construction Manager at Risk Agreement (attached hereto)
- 3.) Lease Amendment No. 3 (attached hereto), between the Board and the Agricultural Society of Warren County
- 4.) Ground Lease (Fairgrounds Event Center Project) between The Board of Commissioners of Warren County, Ohio and Warren County Port Authority (attached hereto)

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

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

Resolution adopted this 11th day of December 2018.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: c/a—McGill Smith & Punshon
c/a—Conger Construction Group
c/a—Warren Co. Agricultural Society
c/a—Warren County Port Authority
Port Authority (file)
Agricultural Society (file)
Project File
Martin Russell
Matt Schnipke

**GROUND LEASE
(FAIRGROUNDS EVENT CENTER PROJECT)**

between

THE BOARD OF COMMISSIONERS OF WARREN COUNTY, OHIO

and

WARREN COUNTY PORT AUTHORITY

Dated as of
12/11, 2018

Bricker & Eckler LLP
Authority Counsel

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EXHIBIT A PROJECT SITE

EXHIBIT B THE PROJECT

GROUND LEASE

THIS GROUND LEASE (“Ground Lease”) is made and entered into as of _____, 2018 (the “Effective Date”) by and between THE BOARD OF COMMISSIONERS OF WARREN COUNTY, OHIO, a county and political subdivision of the state of Ohio having an address of 406 Justice Drive, Lebanon, Ohio 45036 (sometimes hereinafter referred to as “Ground Lessor”), and the WARREN COUNTY PORT AUTHORITY, a port authority and body corporate and politic organized and existing under the Constitution and laws of the State of Ohio, having an address of 406 Justice Drive, Suite 301, Lebanon, Ohio 45036 (hereinafter referred to as “Ground Lessee”).

WITNESSETH:

WHEREAS, Ground Lessee, consistent with the authority granted to it under Article VIII, Section 13 of the Ohio Constitution, and Resolution No. 2018-___ passed by the Board of Directors of the Warren County Port Authority (the “Board of Directors”) on _____, 2018 (as the same may be amended, the “Legislation”), is authorized and intends to lease a part of the real property within the City of Lebanon, Warren County Ohio, Ohio, located at 665 N. Broadway, Lebanon, Ohio, being an approximately _____ acre tract of land depicted or outlined on Exhibit A to this Ground Lease (collectively the “Project Site”) in order to facilitate the acquisition, construction, equipping, development, improvement, and installation of an approximately 16,143 square foot single story event center containing large event space, administrative areas, kitchen, and related site improvements, including storm water detention facilities (the “Project”) to be located at the Project Site; and

WHEREAS, to cause the operation of the Project, the Warren County Port Authority, as lessor, and the Agricultural Society of Warren County, Ohio (sometimes hereinafter referred to as “ASWC”) or its permitted successors and assigns, as lessee, have entered into a Project Lease, dated as of _____, 2018 (the “Project Lease”), wherein the Ground Lessee agrees to lease the Project and the Project Site to ASWC or its permitted successors and assigns and ASWC or its permitted successors and assigns agrees to operate and maintain the Project upon completion of construction; and

WHEREAS, in consideration of its receipt of the rent contained herein, Ground Lessor has indicated that it is willing to lease the Project Site to Ground Lessee for the purposes set forth in the Legislation and Ground Lessee desires to take, rent, and lease the Project Site from Ground Lessor all subject to and upon the terms, provisions and conditions hereinafter set forth; and

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, and in and for the covenants, agreements, representations, and warranties hereinafter set forth, Ground Lessor and Ground Lessee hereby covenant, agree, represent, and warrant as follows:

SECTION 1. PROJECT SITE.

Ground Lessor for and in consideration of the rents, covenants and conditions herein contained to be kept, performed and observed by Ground Lessee, does lease and demise to Ground Lessee, and Ground Lessee does rent and accept from Ground Lessor, the Project Site, together with all easements, rights and appurtenances relating thereto.

SECTION 2. USE

During the Term (as defined in Section 4 hereof) Ground Lessee may use, or permit the use of, the Project Site for any lawful purpose consistent with the Legislation and this Ground Lease, subject, however, to the Project Lease.

SECTION 3. GROUND LESSOR'S REPRESENTATIONS.

(a) Title. Ground Lessor hereby represents that Warren County is the owner in fee simple absolute of the Project Site, subject to the covenants, real estate taxes, service payments in lieu of taxes, and assessments, if any, which are a lien but not yet due and payable, conditions, restrictions, easements and other matters of record (the "Permitted Encumbrances").

(b) Warranty of Quiet Enjoyment. Ground Lessor covenants and agrees that it has full right, power and authority to execute and perform this Ground Lease and grant the estate demised herein, and that Ground Lessee, in consideration of its full payment of the Rent (as defined in Section 5 hereof), the receipt of which is hereby acknowledged, shall be entitled to lawfully and quietly hold, occupy and enjoy the Project Site during the Term (as defined in Section 4 hereof) of this Ground Lease without any hindrance, interference or molestation by Ground Lessor or any person claiming by, through or under Ground Lessor, subject, however, to the Project Lease.

SECTION 4. GROUND LEASE TERM.

(a) Lease Term. The term of this Ground Lease shall commence on the Effective Date hereof and shall expire on the date occurring ~~three~~ three (3) years after the Effective Date; provided, that this Ground Lease is subject to earlier termination on (i) the date on which Ground Lessor or Ground Lessee elects to terminate this Ground Lease under the circumstances set forth in Section 4(b) hereof, (ii) the date on which Ground Lessor elects to terminate this Ground Lease under the circumstances set forth in Section 10(b) hereof, (iii) the date on which Ground Lessee elects to terminate this Ground Lease under the circumstances set forth in Sections 9(b), 9(c), or 10(a) hereof, or (iv) the date on which the Project Lease actually terminates (the "Term"). Upon expiration of the Term, Ground Lessee shall peacefully surrender the Project Site and the Project thereon to Ground Lessor.

(b) At any time during the Term of this Ground Lease after the date on which the initial term of the Project Lease has expired, Ground Lessor and Ground Lessee shall each have the option to terminate this Ground Lease effective upon (i) written notice from the terminating party to the other party, (ii) payment by Ground Lessor to Ground Lessee of a termination fee equal to One Dollar (\$1.00), and (iii) at the sole cost and expense of Ground Lessor, the execution all instruments and documents, the payment of all recording fees, transfer fees, or other fees, including the reasonable attorneys' fees and expenses of the Ground Lessee, and the taking of any other actions necessary to complete the transfer of the estate created by this Ground Lease from Ground Lessee to Ground Lessor.

(c) Holdover. The parties agree that any holding over by Ground Lessee beyond the expiration of the Term of this Ground Lease shall be a tenancy at will, which tenancy shall terminate immediately upon written notice of termination by Ground Lessor.

SECTION 5. RENT; TAXES; CLOSING DELIVERABLES.

(a) Rent. Subject to paragraph 5(b) below, Ground Lessee shall pay to Ground Lessor rent in the amount of the One Dollar (\$1.00) for each year during the Term as rent ("Rent") for the Project Site, the sufficiency of which is hereby acknowledged by Ground Lessor. Such Rent shall be due and payable to Ground Lessor on each anniversary of the Effective Date of this Ground Lease.

(b) Taxes. Notwithstanding anything to the contrary in this Ground Lease, from and after the Effective Date, Ground Lessee agrees to cause to be paid any and all real property taxes, service payments in lieu of taxes, and assessments, and all property taxes on personal property located on the Project Site ("Taxes") that become due and payable upon or against the Project Site and all improvements thereon, including the Project, during the Term, if any. Ground Lessee shall not be required to pay, or cause to be paid, any franchise, estate, inheritance, succession, capital levy or transfer tax of Ground Lessor, or any income, excess profits or revenue tax or any other similar tax, assessment, charge or levy and all such taxes, assessments, charges, and levies shall be payable by Ground Lessor.

(c) Contest of Taxes. Ground Lessor reserves the right to contest the amount or validity of any Taxes or other impositions by appropriate legal proceedings. Ground Lessee shall, upon request, join in any such proceedings if Ground Lessor determines that it shall be necessary or appropriate for Ground Lessee to do so in order for Ground Lessor to prosecute such proceedings properly, and in such event Ground Lessor shall pay all costs and expenses incurred by Ground Lessee in connection therewith.

(d) Application for Tax Exemption. Ground Lessor reserves the right to apply for an exemption from real property taxation with respect to the Project. Ground Lessor and Ground Lessee agree to and shall cooperate with each other and execute such further documents and

provide such further information as may be reasonably required in connection with the filing and processing of any such applications.

SECTION 6. CONSTRUCTION AND USE OF PROJECT.

(a) Ground Lessee's Right to Construct Project. The "Project" initially includes an approximately 16,143 square foot event center building to be constructed on the Project Site. Ground Lessee shall have the right as necessary, at any time and from time to time during the Term of this Ground Lease, to cause to be constructed the Project for the purposes described herein and in the Legislation. All construction of the Project shall be in compliance with the laws, ordinances, and other governmental requirements applicable to the Project Site, such compliance shall be the responsibility of Ground Lessee.

(b) Easements and Dedications. In order to provide for the orderly development of the Project Site it may be necessary, desirable or required that street, water, sewage drainage, gas, power line and other easements and similar rights be granted in favor of Ground Lessee or a utility over or within portions of the Project Site. Ground Lessor and Ground Lessee shall upon request of the other, join together in executing and delivering such documents from time to time and throughout the Term of this Ground Lease as may be appropriate, necessary or required by the several governmental agencies, public utilities and companies for the purpose of granting such easements in favor of Ground Lessee or utility companies or suppliers over the Project Site; provided, however, Ground Lessor, may in its sole discretion refuse to grant such easements to third parties other than utility companies or suppliers; and provided, further, that such easements are in a form and content reasonably acceptable to Ground Lessor.

SECTION 7. OWNERSHIP OF PROJECT AND FIXTURES; REMOVAL.

It is expressly understood and agreed that, subject to the terms and conditions of this Ground Lease, any and all buildings, improvements, fixtures, machinery and equipment of any nature whatsoever at any time constructed, placed or maintained upon any part of the Project Site by Ground Lessee shall be and remain the property of Ground Lessee at all times during the Term of the Ground Lease. Notwithstanding the foregoing, to the extent that a sublessee, manager or licensee has the right to use all or a portion of the Project Site, said party shall have the right to remove any personal property which they have placed in the Project Site at the expiration of the sublease term or the earlier termination of this Ground Lease as provided herein. Notwithstanding the foregoing, at the end of the Term, Ground Lessee shall have no obligation to remove any personal property or any other part of the Project from the Project Site, the Project Site shall revert to Ground Lessor, and the Project shall thereafter become the property of Ground Lessor. The Ground Lessor agrees and acknowledges that the Ground Lessee has no obligation to maintain the Project, to undertake any capital repairs, or to expend funds in connection with the Project, upon the termination of the Ground Lease.

SECTION 8. MECHANICS' LIENS.

(a) Prohibition of Liens on Fee or Leasehold Interest. Ground Lessee shall not suffer or permit any mechanics' liens, materialmen's or other liens to be filed against the leasehold interest created hereby, or the fee interest of the land constituting the Project Site pursuant to any obligation, contract or agreement to which Ground Lessee is a party. Except for this Ground Lease, and other Permitted Encumbrances, Ground Lessor shall not cause to be filed any mortgage lien, mechanics' lien, restriction or other lien or encumbrance against the leasehold or the fee interest of the land constituting the Project Site that shall be superior to the interest of Ground Lessee herein.

(b) Removal of Mechanics' Liens. If any mechanics' liens or materialmen's liens are recorded against Ground Lessor's fee interest in the Project Site, Ground Lessee shall cause the same to be removed within sixty (60) days at the expense of Ground Lessee. In the event that Ground Lessee shall fail to remove any such lien(s) in the manner herein provided, then Ground Lessor may, but shall not be obligated to, take such action or actions as it deems appropriate to cause the removal of such lien(s).

SECTION 9. RESERVED.

SECTION 10. DEFAULTS; REMEDIES.

(a) If Ground Lessor defaults under this Ground Lease and such default continues following notice and a reasonable opportunity for Ground Lessor to cure the same as provided in this Section 10 or if ASWC or its permitted successors and assigns defaults under the Project Lease and such default continues following notice and a reasonable opportunity for ASWC or its permitted successors and assigns to cure the same as provided in the Project Lease, Ground Lessee shall have the right to terminate this Ground Lease by written notice to Ground Lessor, and this Ground Lease shall terminate upon (i) payment by Ground Lessor to Ground Lessee of the sum of the remaining annual rent due to Ground Lessee, as lessor under the Project Lease, from ASWC or its permitted successors and assigns, as lessee under the Project Lease, and, (ii) payment by Ground Lessor to Ground Lessee of a termination fee of One Dollar (\$1.00). and (iii) execution and recording by Ground Lessor in the office of the Warren County Recorder of an affidavit on facts relating to title attesting to the termination of the Lease and release of the parties of all its duties and obligations under the Lease.

(b) If Ground Lessee defaults under this Ground Lease and such default continues following notice and a reasonable opportunity for Ground Lessee to cure the same as provided in this Section 10 or if Ground Lessee defaults under the Project Lease and such default continues following notice and a reasonable opportunity for Ground Lessee to cure the same as provided in the Project Lease, Ground Lessor shall have the right to terminate this Ground Lease by written notice to Ground Lessee, and this Ground Lease shall terminate upon (i) payment by Ground

Lessor to Ground Lessee of a termination fee of One Dollar (\$1.00), and (ii) execution and recording by Ground Lessor in the office of the Warren County Recorder of an affidavit on facts relating to title attesting to the termination of the Lease and release of the parties of all its duties and obligations under the Lease.

(c) Except as otherwise provided herein, in the event of any default with respect to or breach of this Ground Lease, or any of its terms or conditions by either party hereto, or any successor to such party, such party shall, upon written notice from the other, proceed to cure or remedy such default or breach and in any event, shall effect such cure or remedy within thirty (30) days after receipt of such notice. In case such action is not taken or diligently pursued, or the default shall not be cured or remedied within the period set forth above, the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the party in default or breach of its obligations.

(d) Each right and remedy provided for in this Ground Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Ground Lease or now or hereafter existing at law or in equity or by statute or by agreement or otherwise, and the exercise or beginning of the exercise by Ground Lessor or Ground Lessee of any one or more of the rights or remedies provided for in this Ground Lease or now or hereafter existing at law or in equity or by statute or by agreement or otherwise shall not preclude the simultaneous or later exercise by the party in question of any or all other rights or remedies provided for in this Ground Lease or now or hereafter existing at law or in equity or by statute or by agreement or otherwise.

SECTION 11. SURRENDER.

Ground Lessee shall deliver up and surrender to Ground Lessor possession of the Project Site upon the expiration of this Ground Lease, or its termination for any reason and upon such expiration and termination, the title to the Project on the Project Site shall revert to Ground Lessor without further action by Ground Lessee. Notwithstanding the foregoing, Ground Lessee agrees to deliver to Ground Lessor physical possession of and title to, by statutory form quit claim deed, bill of sale, and assignments of warranties for the Project located on the Project Site upon the termination of this Ground Lease, as is, and subject to the effects of time, ordinary wear and tear, damage, destruction, and taking by eminent domain. The obligations of the Ground Lessee under this Section 11 shall survive the termination of this Ground Lease.

SECTION 12. SUBLETTING AND ASSIGNMENT.

(a) Subletting. During the Term of this Ground Lease, Ground Lessee shall not be entitled to sublet the Project Site to any person without Ground Lessor's prior written consent in each instance. Notwithstanding the foregoing, Ground Lessee shall be entitled to sublease the Project Site to ASWC subject, however, to Ground Lessor approving the terms of the sublease.

No sublease agreement shall be self-executing and no term of a sublease may exceed the Term provided for in this Lease.

(b) Assignment by Ground Lessee. During the Term of this Ground Lease, Ground Lessee shall not be entitled to assign its rights under this Ground Lease to any person or entity without Ground Lessor's prior written consent in each instance. Notwithstanding the foregoing, Ground Lessee may assign its rights under this Ground Lease to ASWC subject, however, to Ground Lessor approving the terms of the assignment.

(c) Assignment by Ground Lessor. During the Term of this Ground Lease, Ground Lessor shall be entitled to assign its rights and obligations under this Ground Lease to a purchaser of the Project Site.

SECTION 13. NON-MERGER.

There shall be no merger of this Ground Lease, or of the leasehold estate created by this Ground Lease, with the fee estate in the Project Site by reason of the fact that this Ground Lease, the leasehold estate created by this Ground Lease, or any interest in this Ground Lease or in any such leasehold estate, may be held, directly or indirectly, by or for the account of any person who shall own the fee estate in the Project Site or any interest in such fee estate. No such merger shall occur unless and until all persons at the time having an interest in the fee estate in the Project Site and all persons having an interest in this Ground Lease, or in the leasehold estate created by this Ground Lease, shall join in a written instrument consenting to and effecting such merger and shall duly record the same.

SECTION 14. GOVERNING LAW AND VENUE.

This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, without reference to principles of conflicts of law. The venue for any and all claims, disputes, interpretations, and litigation of any kind arising out of this Agreement, shall exclusively be in Warren County, Ohio Court of Common Pleas (unless both Parties mutually agree in writing to alternate dispute resolution), and the parties do further waive any right to bring or remove such matters in or to any other state or federal court.

SECTION 15. ESTOPPEL CERTIFICATES.

Either party shall at any time, upon not less than thirty (30) days prior written notice by the other party, execute, acknowledge and deliver to such party a statement in writing certifying that this Ground Lease is unmodified and in full force and effect (or if there has been any modification thereof that the same is in full force and effect as modified and stating the modification or modifications and, to the knowledge of the party providing the certification, that there are no defaults existing, or if there is any claimed default stating the nature and extent thereof), and stating the dates on which the Rent and Taxes have been paid; provided, that such

statements may not be requested more frequently than once each year unless the party from which the statement is being requested is in default under this Ground Lease or under the Project Lease. It is expressly understood and agreed that any such statement delivered pursuant to this Section 15 may be relied upon by any prospective assignee of the leasehold estate of Ground Lessee, or any prospective purchaser of the estate of Ground Lessor, or any lender or prospective assignee of any lender on the security of the Project Site or the fee estate or any part thereof.

SECTION 16. GENERAL PROVISIONS.

(a) Provisions Run with the Land. All of the provisions of this Ground Lease shall be deemed as running with the land.

(b) No Waiver of Breach. No failure by either Ground Lessor or Ground Lessee to insist upon the strict performance by the other of any covenant, agreement, term or condition of this Ground Lease or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No waiver of any breach shall affect or alter this Ground Lease but each and every covenant, condition, agreement and term of this Ground Lease shall continue in full force and effect with respect to any other then existing or subsequent breach.

(c) Time of the Essence. Time is of the essence of this Ground Lease and of each provision.

(d) Computation of Time. The time in which any act provided by this Ground Lease is to be done is computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or legal holiday, and then it is also excluded.

(e) Unavoidable Delay – Force Majeure. If either party shall be delayed or prevented from the performance of any act required by this Ground Lease by reason of acts of war, acts of God, strikes, lockouts, labor troubles, inability to procure materials, restrictive governmental laws, or regulations or other cause, without fault and beyond the reasonable control of the party obligated (financial inability excepted), performance of such act shall be excused for the period of the delay; and the period for the performance of any such be extended for a period equivalent to the period of such delay; provided, however, nothing in this Section 16(e) shall excuse Ground Lessor from the prompt payment of Taxes as provided in Section 5(b) hereof, except as may be expressly provided elsewhere in this Ground Lease.

(f) Successors in Interest. All of the terms, covenants, conditions, and restrictions in this Ground Lease shall inure to the benefit of and shall be binding upon the successors in interest of Ground Lessor and Ground Lessee and their permitted transferees, subtenants, licensees and assigns.

(g) Entire Agreement. This Ground Lease, together with the Project Lease, contains the entire agreement of the parties with respect to the matters covered by this Ground Lease and no other agreement, statement or promise made by any party or to any employee, officer or agent of any party which is not contained in this Ground Lease shall be binding or valid.

(h) Partial Invalidity. If any term, covenant, condition or provision of this Ground Lease is held by a court of competent jurisdiction to be invalid, void or enforceable, the remainder of the provisions herein shall remain in full force and effect and shall in no way be affected impaired or invalidated.

(i) Relationship of Parties. Nothing contained in this Ground Lease shall be deemed or construed by the parties or by any third person to create the relationship of principal and agent or of partnership or of joint venture or of any association between Ground Lessor and Ground Lessee, and nothing herein shall be deemed to create any relationship between Ground Lessor and Ground Lessee other than the relationship of Ground Lessor and Ground Lessee.

(j) Interpretation and Definitions. The language in all parts of this Ground Lease shall in all cases be simply construed according to its fair meaning and not strictly for or against Ground Lessor or Ground Lessee. Unless otherwise provided in this Ground Lease, or unless the context otherwise requires, the following definitions and rules of construction shall apply to this Ground Lease:

(i) Number and Gender. In this Ground Lease the neuter gender includes the neuter Gender feminine and masculine and the singular number includes the plural and the word "Person" includes a corporation, limited liability company, partnership, governmental agency, firm or association wherever the context so requires; and

(ii) Mandatory and Permissive. "Shall," "will" and "agrees" are mandatory; "may" is permissive.

(k) Captions. Captions of the sections and paragraphs of this Ground Lease are for convenience and reference only and the words contained herein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Ground Lease.

(l) Parties. The parties are Ground Lessor and Ground Lessee named in this Ground Lease.

(m) Modification. This Ground Lease is not subject to modification except in writing signed by Ground Lessor and Ground Lessee.

(n) Notices – Method and Time. All notices, demands or requests from one party to another shall be either (i) personally delivered or (ii) delivered by depositing in the U.S. mail, certified or registered, postage prepaid, or (iii) delivered by depositing with a private nationally registered overnight courier service, delivery fees prepaid to the addressee at the address first set forth in the first paragraph of this Ground Lease or at such other address as any party from time to time designates in writing to the other.

(o) Broker's Commissions. Each of the parties represents and warrants that there are no claims for broker's commissions or finder's fee in connection with the execution of this Ground Lease.

(p) Extent of Covenants; No Personal Liability. All covenants, stipulations, obligations and agreements of Ground Lessor and Ground Lessee contained herein are deemed to be and shall be the covenants, stipulations and obligations and agreements of Ground Lessor and Ground Lessee to the full extent authorized by and permitted by the laws of the State of Ohio. No covenant, stipulation, obligation or agreement of the parties hereto shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future member, officer, agent or employee of Ground Lessor, Ground Lessee, the Board of Directors of the Ground Lessee in other than that person's official capacity. Neither the Board of Directors of Ground Lessee, nor any official executing this Ground Lease shall be subject to any personal liability or accountability by reason of such execution.

(q) Counterparts. This Ground Lease 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.

(r) Ground Lessee's Obligations Limited. Notwithstanding any other provision of this Ground Lease none of the obligations of Ground Lessee created by and no requirement imposed on Ground Lessee created by or arising out of this Ground Lease (including, without limitation, any obligation under Section 8(b) hereof) shall ever constitute a general debt of Ground Lessee or give rise to any general pecuniary liability of Ground Lessee. The obligations of and requirements imposed on Ground Lessee hereunder shall be payable solely and exclusively from amounts, if any, available to Ground Lessee under the Project Lease with respect to the Project Site (collectively, the "Special Revenues") and Ground Lessee shall not be obligated to satisfy such obligations or requirements from any other source. Neither Ground Lessor nor any other person shall have the right or claim to any payment from or to any revenue of Ground Lessee except from the Special Revenues, and only to the extent provided herein.

[Balance of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have executed this Ground Lease as of the day and year first above set forth.

GROUND LESSOR:

THE BOARD OF COMMISSIONERS OF WARREN COUNTY, OHIO

By: [Signature]
Name: _____
Title: President/Vice-President

STATE OF OHIO)
) SS:
COUNTY OF WARREN)

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above named Tom Grossmann the President, of the Board of Commissioners of Warren County, Ohio, who acknowledged that he/she did sign the foregoing instrument and the same is his/her free act and deed pursuant to a Resolution authorizing such act and the free act of said County.

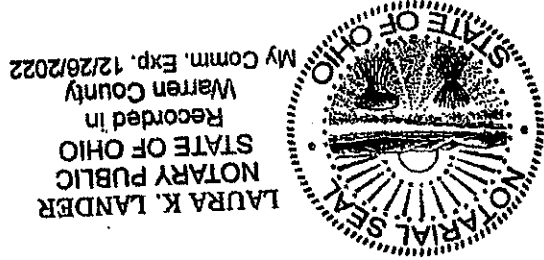
IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 11 day of Dec, 2018.

[Signature]

Notary Public

APPROVED AS TO FORM FOR THE BOARD OF COUNTY COMMISSIONERS OF WARREN COUNTY, OHIO:

[Signature] Asst. Prosecutor
WARREN COUNTY PROSECUTOR



[Signature Page to Ground Lease]

GROUND LESSEE:

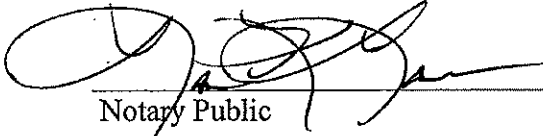
WARREN COUNTY PORT AUTHORITY

By: 
Martin Russell, Executive Director

STATE OF OHIO)
) SS:
COUNTY OF WARREN)

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above named WARREN COUNTY PORT AUTHORITY by Martin Russell, its Executive Director, who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed as such officer and of said Authority and his personally as such officer.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 11 day of December 2018.


Notary Public

This Instrument was prepared by
M. Shannon Martin, Esq.
Bricker & Eckler LLP
312 N. Patterson Blvd., Suite 200
Dayton, Ohio 45402
(937) 224-5300

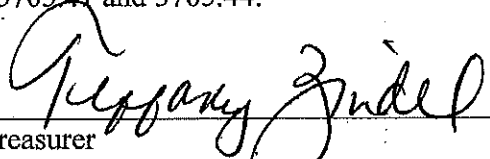


LAURA K. LANDER
NOTARY PUBLIC
STATE OF OHIO
Recorded in
Warren County
My Comm. Exp. 12/26/2022

[Port Authority Signature Page to Ground Lease]

AUTHORITY FISCAL OFFICER'S CERTIFICATE

The undersigned, fiscal officer of the Warren County Port Authority, hereby certifies that the moneys required to meet the obligations of the Authority during the year 2018 under the Ground Lease have been lawfully appropriated by the Board of Directors of the Authority for such purposes and are in the treasury of the Authority or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Ohio Revised Code Sections 5705.41 and 5705.44.



Treasurer
Warren County Port Authority

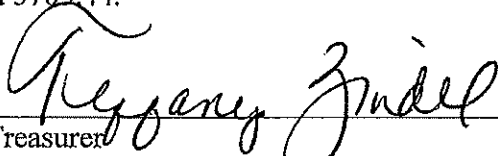
Dated: Dec. 11, 2018

[Ground Lease – Authority Fiscal Officer's Certificate]

EXHIBIT B

AUTHORITY FISCAL OFFICER'S CERTIFICATE

The undersigned, fiscal officer of the Warren County Port Authority, hereby certifies that the moneys required to meet the obligations of the Authority during the year 2018 under this instrument have been lawfully appropriated by the Board of Directors of the Authority for such purposes and are in the treasury of the Authority or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Ohio Revised Code Sections 5705.41 and 5705.44.



Treasurer
Warren County Port Authority

Dated: 12/11, 2018

Exhibit A

**Assignment Agreement
for Architect Agreement**

Recitals

- A. This Assignment Agreement (the Assignment) is made effective as of the date it is executed by the Warren County Port Authority, and is being granted by the **Warren County Board of County Commissioners** (the County) to **Warren County Port Authority** (the Port Authority) and acknowledged and agreed to by **McGill Smith Punshon, Inc.** (the Architect). The County, Port Authority, and Architect are collectively referred to as the Parties.
- B. Pursuant to Warren County Board of County Commissioners' Resolution Number 17-0601, dated April 18, 2017 the County previously authorized and entered into a contract for design professional services with McGill Smith Punshon, Inc., effective March 7, 2017, attached hereto as **Attachment 1** (the Architect Agreement) for the design of the new Warren County Fairgrounds Event Center (the Project).
- C. The Architect was selected by the County following the qualification-based selection process outlined in Ohio Revised Code Sections 153.65 through 153.71, as the most qualified professional to provide services for the Project.
- D. Due to rising construction costs and unforeseen but necessary improvements required to be made on the parcel of land relevant to the Project, it is not economically feasible for the County to continue the Project.
- E. The Port Authority has identified the Project as an important economic development opportunity for the surrounding area and wishes to acquire by lease the relevant real property and to assume the County's rights, interests and obligations under the Architect Agreement, and the County wishes to assign such rights, interests and obligations to the Port Authority, all as more specifically described herein.
- F. Pursuant to the Warren County Port Authority's Resolution Number 2018-26, the Port Authority is authorized to take an assignment of the Architect Agreement from the County.
- G. Pursuant to the terms of the Architect Agreement, the rights and responsibilities granted to the County therein may not be assigned without the written consent of the Architect.
- H. Architect wishes to consent to such assignment and assumption of the rights, interests and obligations of the County as set forth herein, and joins herein for that purpose and for the purpose of ratifying and affirming its obligations to the Port Authority, as the successor in interest to the County, under the Architect Agreement.

In consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged:

Statement of Assignment

1. **Assignment.** The County assigns, transfers, and sets over to the Port Authority all of its rights, obligations, and interests in the Architect Agreement identified above, together with all rights arising under or by virtue of the Architect Agreement. All references to the "Owner" in the Architect Agreement are hereby deemed to refer to the Port Authority. This assignment includes, but is not limited to, the Owner's nonexclusive license for the Architect's Instruments of Service, set forth in Article 7 of the Architect Agreement. The Port Authority accepts this assignment and assumes and agrees to perform all of the obligations of the Owner arising or accruing under the Architect Agreement, from the date of and subject to the terms of this Assignment Agreement.
 - a. The Architect shall provide the Port Authority with revised certificates of insurance, with the Port Authority named as an additional insured, pursuant to Paragraph 2.6.6.

2. **Compensation.** The Architect's compensation for its Basic Services under the Architect Agreement is \$195,000, of which the County has paid The County has also paid \$6,923.79 for \$7,500.00 worth of approved Additional Services.

There is an outstanding invoice from the Architect for \$576.21 for Basic Services, which the Owner will pay to the Architect.

The Port Authority is responsible to pay the Architect the remaining \$576.21 for the Architect's approved Additional Services, in accordance with Paragraph 11.5 of the Architect Agreement. The Port Authority is also responsible to pay the Architect for any Additional Services authorized by the Port Authority in writing and pursuant to the Architect Agreement.

3. **Cooperation.** The County and the Architect will fully and without reservation share with the Port Authority all information and records relating to the Architect Agreement.

4. **Third Party Beneficiary.** The County is an intended third-party beneficiary of the assigned Architect Agreement.

5. **Miscellaneous.** The above recitals are incorporated herein by this reference. No agreement shall be effective to change, modify or terminate this Assignment in whole or in part unless such is in writing and signed by the Parties. This Assignment shall be governed, construed, interpreted and enforced in accordance with the laws of the State of Ohio.

6. **Binding Effect.** This Assignment shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and assigns.

7. **Notices.** Architect agrees that any notice or other communication pertaining to the Architect Agreement shall be provided to the Port Authority. For purposes thereof, the Port Authority's notice address is as follows:

Warren County Port Authority
Attention: Executive Director
406 Justice Drive
Lebanon, Ohio 45036

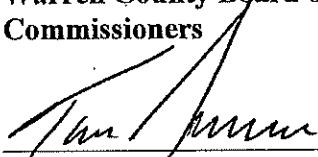
With a copy to:
J. Caleb Bell, Esq.
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215

8. **Counterparts.** This Assignment may be executed in one instrument or in separate counterparts, the aggregate of which shall constitute an integrated, fully executed version hereof; Each person executing this Assignment represents and warrants that s/he has the capacity and authority to execute this instrument on behalf of the entity for which s/he is acting and to bind such party hereto.

Except as stated herein, this Assignment Agreement shall not alter any part of the Architect Agreement between the Owner and Architect for the Project.

IN WITNESS WHEREOF, this Assignment is agreed-upon and executed by an authorized agent of:

**Warren County Board of County
Commissioners**



Signature

Tom Grossmann

Printed Name

President

Title

12/11/18

Date

Warren County Port Authority



Signature

Martin Russell

Printed Name

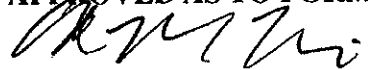
Executive Director

Title

12/10/18

Date

APPROVED AS TO FORM



Adam M. Nice
Asst. Prosecuting Attorney

McGill Smith Punshon, Inc. hereby acknowledges, consents, and agrees to this Assignment including, but not limited to the assignment of the license for the Instruments of Service:


Signature

RANDAL MERRILL
Printed Name

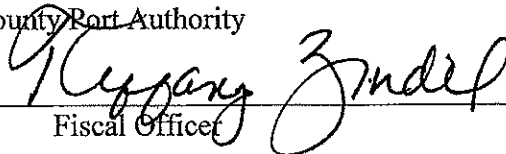
VICE PRESIDENT OF ARCHITECTURE
Title

12/4/18
Date

**SECTION 5705.41
CERTIFICATE OF AVAILABILITY OF FUNDS**

The undersigned, Fiscal Officer of the Warren County Port Authority, located in Warren County, Ohio, hereby certifies in connection with the Agreement to which this Certificate is attached that the amount required to meet the obligations under the contract, obligation, or expenditure for the services described in the attached agreement, has been lawfully appropriated for the purpose, and is in the treasury or in process of collection to the credit of an appropriate fund, free from any outstanding obligation or encumbrance.

IN WITNESS WHEREOF, I have hereunto set my hand this 11 day of December 2018.

Warren County Port Authority
By: 
Fiscal Officer

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

Resolution

Number 17-0601

Adopted Date April 18, 2017

APPROVE AND ENTER INTO AGREEMENT WITH MCGILL SMITH PUNSHON, INC. RELATIVE TO ARCHITECTURAL AND ENGINEERING DESIGN SERVICES FOR A NEW EVENT CENTER AT THE WARREN COUNTY FAIRGROUNDS

WHEREAS, pursuant to Resolution #17-0363, this Board approved a notice of intent to enter into an agreement with McGill, Smith Punshon, Inc. following the issuance of a Request for Qualifications pursuant to Ohio Revised Code Section 153.65-71; and

NOW THEREFORE BE IT RESOLVED, to approve and enter into an architectural and engineering design services agreement with McGill Smith Punshon, Inc. relative to a new event center at the Warren County Fairgrounds; copy of said agreement attached hereto and made a part hereof.

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

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

Resolution adopted this 18th day of April 2017.

BOARD OF COUNTY COMMISSIONERS


Tina Osborne, Clerk

tao/

cc: C/A—McGill Smith Punshon, Inc.
Warren County Agricultural Society (file)

AIA® Document B133™ – 2014

Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition

AGREEMENT made as of the 7th day of March in the year 2017
(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address and other information)

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

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

McGill Smith Punshon, Inc.
3700 Park 42 Drive
Suite 190B
Cincinnati, Ohio 452241
Telephone Number: 513-759-0004
Fax Number: 513-563-7099

for the following Project:
(Name, location and detailed description)
Warren County Fair Grounds Event Center
665 North Broadway Ave.
Lebanon, Ohio 45036

The architect was selected by the Owner, following the qualification-based selection process outlined in Ohio Revised Code Sections 153.65 through 153.71, as the most qualified design professional to provide services for the Project. The Owner reserves the right to add additional scope and services as further improvements are identified and funds are available.

The Construction Manager (if known):
(Name, legal status, address and other information)

To be determined

The Owner and Architect agree as follows.

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.

This document is intended to be used in conjunction with AIA Documents A201™-2007, General Conditions of the Contract for Construction; 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; and A134™-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 without a Guaranteed Maximum Price. AIA Document A201™-2007 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.

AIA Document B133™ – 2014. Copyright © 2014 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 10:36:29 on 04/13/2017 under Order No.8592693388 which expires on 03/17/2018, and is not for resale.

User Notes:

(1313108856)

TABLE OF ARTICLES

1	INITIAL INFORMATION
2	ARCHITECT'S RESPONSIBILITIES
3	SCOPE OF ARCHITECT'S BASIC SERVICES
4	ADDITIONAL SERVICES
5	OWNER'S RESPONSIBILITIES
6	COST OF THE WORK
7	COPYRIGHTS AND LICENSES
8	CLAIMS AND DISPUTES
9	TERMINATION OR SUSPENSION
10	MISCELLANEOUS PROVISIONS
11	COMPENSATION
12	SPECIAL TERMS AND CONDITIONS
13	SCOPE OF THE AGREEMENT

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable," "unknown at time of execution," or "to be determined later by mutual agreement.")

§ 1.1.1 The Owner's program for the Project:

(Identify documentation or state the manner in which the program will be developed.)

The Architect shall assist the Owner in the development of the Owner's program of needs and shall provide a written document defining the program of needs for the Owner to review and approve.

§ 1.1.2 The Project's physical characteristics:

(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

+/- 20,000 SF Event center constructed on the site of an existing grandstand building on property owned by Warren County. The building will utilize a pre-engineered metal frame structure, and contain open areas for assembly use, along with support spaces such as a kitchen, rest rooms, offices, lobby, storage and mechanical rooms.

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:

(Provide total and, if known, a line item breakdown.)

Owner's maximum budget for the Project is (Stated Cost Limitation) is \$3,000,000.00 This Stated Cost Limitation for the Project includes professional fees, such as Architect's 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.

§ 1.1.4 The Owner's anticipated design and construction schedule:

.1 Design phase milestone dates, if any:

March – August 2017

Int.

2 Commencement of construction:

September 2017 – May 2018

3 Substantial Completion date or milestone dates:

(Paragraphs deleted) June 2018

§ 1.1.5 The Owner intends to retain a Construction Manager at Risk pursuant to the following agreement, all references to "Contractor" or "General Contractor" herein shall be deemed to refer to the "Construction Manager at Risk":

(Indicate agreement type.)

- [X] 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.

§ 1.1.6 The Owner's requirements for accelerated or fast-track scheduling or phased construction are set forth below:
(List number and type of bid/procurement packages.)

To be determined

§ 1.1.7 Other Project information:

(Identify special characteristics or needs of the Project not provided elsewhere, such as the Owner's sustainable objective, if any, or historic preservation requirements.)

Building is to be constructed on the site of a building to be demolished by contractor whose work is not covered under this contract.

§ 1.1.8 The Owner identifies the following representative in accordance with Section 5.5:

(List name, address and other information.)

Warren County Board of County Commissioners Attn: Tiffany Zindel, County Administrator
406 Justice Drive
Lebanon, Ohio 45036
Phone 513-695-1250

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:

(List name, address and other information.)

Warren County Agricultural Society Board of Directors
Attn: Gene Steiner
PO Box 58
Lebanon, Ohio 45036

Warren County Agricultural Society
Board of Directors
Attn: Rebecca Osborne
PO Box 58
Lebanon, Ohio 45036

§ 1.1.10 The Owner will retain the following consultants:

(List name, legal status, address and other information.)

1 Construction Manager:

(The Construction Manager is identified on the cover page. If a Construction Manager has not been retained as of the date of this Agreement, state the anticipated date of retention. If the Architect is to assist the Owner in selecting the Construction Manager, complete Section 4.1.1)

Init.

To be Determined

- .2 Cost Consultant (if in addition to the Construction Manager):
(If a Cost Consultant is retained, appropriate references to the Cost Consultant should be inserted in Sections 3.3.6, 3.3.7, 3.4.2, 3.4.3, 3.5.4, 3.5.5, 5.4, 6.3, 6.3.1, 6.4 and 11.6.)
To be Determined
- .3 Land Surveyor:
To be Determined
- .4 Geotechnical Engineer:
To be Determined
- .5 Civil Engineer:
McGill Smith Punshon Inc. – See Article 4 - Additional Services
- .6 Other consultants:
To be Determined

§ 1.1.11 The Architect identifies the following representative in accordance with Section 2.3:
(List name, address and other information.)
Randal G. Merrill, A.L.A., Vice President of Architecture
McGill Smith Punshon, Inc
3700 Park 42 Drive, Suite 190B, Cincinnati, Ohio 45241

§ 1.1.12 The Architect will retain the consultants identified in Sections 1.1.12.1 and 1.1.12.2:
(List name, legal status, address and other information.)

§ 1.1.12.1 Consultants retained under Basic Services:

- .1 Structural Engineer:
GOP Limited
644 Linn St #936, Cincinnati, OH 45203
- .2 Mechanical Engineer:
KLH Engineers
1538 Alexandria Pike # 11, Fort Thomas, KY 41075
- .3 Electrical Engineer:
KLH Engineers
1538 Alexandria Pike # 11, Fort Thomas, KY 41075

§ 1.1.12.2 Consultants retained under Additional Services:

KLH – Telecom / Data Design
KBR – Kitchen Consultant
MSP – Civil Engineering
MSP – Landscape Architecture

§ 1.1.13 Other Initial Information on which the Agreement is based:
NA

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

§ 1.3 In the event of any inconsistency, the provisions of this Agreement shall control over any purchase order, proposal, exhibit, or separate terms and conditions. In the event of inconsistencies within or between parts of the Contract Documents, or between the Contract Documents and applicable standards, codes, and ordinances, the

Init.

Architect shall (i) provide the better quality or greater quantity of Work; or (ii) comply with the more stringent requirements.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement. Architect will provide all professional services necessary for the complete design and documentation of the Project for the Basic Fee stated in Section 11.1 as well as the Additional Scope of Services fee stated in 11.2; the only exception for which the parties will negotiate any additional compensation will be for the cost of architectural/engineering or consulting services that become necessary as a result of an Owner-requested change in the Project scope affecting the Architect. Absent events beyond its control, the Architect will perform its services in accordance with the schedule established for the Project and approved by the Owner as provided in the following section.

§ 2.1.1 The Architect shall review laws, codes, and regulations applicable to the Architect's services. The Architect shall respond in the design requirements imposed by governmental authorities having jurisdiction over the Project and shall perform Architect's services in conformance with all such laws, codes, and regulations.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.2.1 In providing services under this Agreement, the Architect will exercise usual and customary professional care to comply with all applicable federal, state, and local laws, regulations, and orders, including the accessibility guidelines contained in the Americans with Disabilities Act as codified in the Ohio Building Code, in effect at the time of submission of the Contract Documents to the governing building authority. The Architect agrees that it will use reasonable care so that the Plans and Specifications and improvements, if built in accordance with them, will conform to currently applicable statutes, regulations, ordinances, and orders, except to the extent that the Architect has advised the Owner in writing that there is an ambiguity or an interpretation by a code official contrary to that by the Architect or that a variance shall be necessary. The Architect is not responsible for compliance by any contractor with currently applicable statutes, regulations, ordinances, and orders.

§ 2.3 The Architect shall provide its services in conjunction with the services of a Construction Manager as described in the agreement identified in Section 1.1.5. The Architect shall not be responsible for actions taken by the Construction Manager.

§ 2.4 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.5 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.6 Insurance. The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost as set forth in Section 11.8.3.

§ 2.6.1 Commercial General Liability

The Architect shall carry Comprehensive General Liability coverage with limits of \$1,000,000 Per Occurrence, \$2,000,000 / Aggregate with no interruption of coverage during the entire term of this Agreement. [See Attached Insurance Exhibit]

§ 2.6.2 Automobile Liability

The Architect shall carry Automobile coverage with limits of \$1,000,000 Per Occurrence / Aggregate with no interruption of coverage during the entire term of this Agreement. [See Attached Insurance Exhibit]

§ 2.6.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess liability insurance, provided such primary and excess insurance policies result in the same or greater coverage as those required under Sections 2.6.1 and 2.6.2.

§ 2.6.4 Workers' Compensation at statutory limits and Employers Liability

The Architect shall carry Workers Compensation as required by law and Employers' Liability Insurance with limits of \$1,000,000 per Occurrence / Aggregate with no interruption of coverage during the entire term of this Agreement. [See Attached Insurance Exhibit]

§ 2.6.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services

The Architect shall carry Professional Liability coverage with limits of \$1,000,000 Per Occurrence, \$2,000,000 / Aggregate with no interruption of coverage during the entire term of this Agreement. [See Attached Insurance Exhibit]

§ 2.6.6 The Owner shall be an additional insured on the Architect's primary and excess insurance policies for Commercial General Liability and Automobile Liability. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations. No policy of Commercial General Liability or Professional Liability coverage that provides only excess coverage for an additional insured is permitted.

§ 2.6.6.1 The Architect further agrees that if any Commercial General Liability or Professional Liability coverage is on a "claims made" basis, the policy provide that in the event this Agreement is terminated, the Architect shall continue such policy in effect for the period of any statute or statutes of limitation applicable to claims thereby insured, notwithstanding the termination of the Agreement.

§ 2.6.7 The Architect shall provide to the Owner certificates of insurance evidencing compliance with the requirements in this Section 2.6. The certificates will show the Owner as additional insureds on the Commercial General Liability, Automobile Liability, and any excess policies.

§2.6.7.1 The Architect shall provide thirty (30) days notice of cancellation or non-renewal of insurance to Owner. The certificates of insurance provided pursuant to Paragraph 2.6.7 shall provide that the insurer notify Owner in writing should any of the above described policies be canceled before the expiration date thereof, to be mailed by the insurer to the owner not less than 30 days prior to said cancellation date, ten (10) days in the event of cancellation for non-payment of premium. The Architect shall also deliver to Owner, at least 15 days prior to the expiration date of each policy or policies (or any renewal policy or policies), certificates for the renewal policies of the insurance coverage required herein. Cancellation or non-renewal of insurance shall be grounds to terminate this Agreement.

§ 2.7 The Architect's design for the Project will be consistent with the Owner's planned objectives and criteria, as communicated by the Owner, for both functions to be accomplished by the construction and improvements and the Owners maximum budget or "Stated Cost Limitation" for the Project. The Owner's planned objectives and criteria shall coordinated with the Architect and Construction Manager and finalized by the competition of the Schematic Design Phase. If, beyond the Schematic Design Phase, the Architect's design is not consistent with the Owner's planned objectives and criteria, the Architect will notify the Owner in writing of the differences between the design and the Owner's planned objectives and criteria in sufficient time so that the differences can be resolved to the Owner's satisfaction at the Architect's expense. The design of each part or phase of the Project and the Plans and Specifications for each part of phase of the Project are subject to approval by the Owner. If the Owner's finalized planned objectives and criteria are adjusted or modified by the Owner, beyond the Schematic Design Phase, the Architect has the opportunity to evaluate such adjustments or modifications to establish additional services and fees required to implement changes to the instruments of service.

§ 2.8 The Architect will respond to inquiries from the Owner or the Owner's representative within five (5) business days from the date of receipt of the inquiry. Each response will address the questions raised in the inquiry and, if requested, will be in writing; provided, however, that if five (5) business days is not an adequate period of time under the circumstances to prepare the response, the period for the response will be extended to give the Architect a

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reasonable amount of time to respond. If a decision or approval is required by the Owner under this Agreement, the Owner will have at least five (5) business days written notice in advance that its decision or approval is required and will be furnished with sufficient information from which a decision or approval can be made, provided, however, that if the five-day period is insufficient under the circumstances, the period for the response will be extended to give the Owner a reasonable period of time to respond.

§ 2.9 Consistent with the standard of care for a design professional in the State of Ohio (referred to as the "Standard of Care"), the Architect will endeavor to anticipate problems related to zoning, building permits, availability of utilities, equipment and material shortages, and supplier delays.

§ 2.9.1 If the Architect becomes aware of any problems and disputes the Architect will report to the Owner such known problems and disputes on the Project and will assist the Owner in addressing the problem or dispute. The information provided should include a description of any problem or dispute relating to the Project; the status of any identified problem or dispute; the date first noted; action taken; responsible persons in the opinion of the Architect (if such persons have been identified); and recommended and final resolution. Upon the Owner's request, the Architect will provide the Owner's legal counsel with a copy of such reports marked "confidential" so that the Owner's counsel may provide legal advice to the Owner concerning the problem or dispute.

§ 2.9.2 All communications between the Owner's legal counsel and the Architect, while the Architect is acting as the consultant for the 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 the 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, shall be placed by the Architect in a separate file folder marked "Privileged and Confidential" and shall not be disclosed to any person other than the Architect's own legal counsel without the express written permission of the Owner. This Paragraph 2.9.2 is intended to protect the confidentiality of the Owner's communications with its counsel when the Architect comes into possession of such information in its capacity as agent of the Owner in the performance of its duties under this Agreement in the event of a dispute between the Owner and a third party. This section is not intended to impede communications between the Architect on a claim or dispute related to the Project.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner and the Construction Manager, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner, the Construction Manager, and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner, the Construction Manager, and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit to the Owner and the Construction Manager a schedule of the Architect's services for inclusion in the Project schedule prepared by the Construction Manager. The schedule of the Architect's services shall include design milestone dates, anticipated dates when cost estimates or design reviews may occur, and allowances for periods of time required (1) for the Owner's review, (2) for the Construction Manager's review, (3) for the performance of the Construction Manager's Preconstruction Phase services, (4) for the performance of the Owner's consultants, and (5) for approval of submissions by authorities having jurisdiction over the Project.

§ 3.1.4 The Architect shall submit information to the Construction Manager and participate in developing and revising the Project schedule as it relates to the Architect's services. The Architect shall review and approve, or take

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other appropriate action upon, the portion of the Project schedule relating to the performance of the Architect's services.

§ 3.1.5 Once the Owner, Construction Manager, and Architect agree to the time limits established by the Project schedule, the Owner and Architect shall not exceed them, except for reasonable cause.

§ 3.1.6 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming work, made without the Architect's approval.

§ 3.1.7 The Architect shall, at appropriate times, in coordination with the Construction Manager, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.8 The Architect shall assist the Owner and Construction Manager in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.2 Evaluation of the Construction Manager's Guaranteed Maximum Price Proposal or Control Estimate

§ 3.2.1 Prior to the Owner's acceptance of the Guaranteed Maximum Price proposal or Control Estimate, as applicable, the Architect shall consider the Construction Manager's requests for substitutions and, upon written request of the Construction Manager, provide clarification or interpretations pertaining to the Drawings, Specifications, and other documents submitted by the Architect. The Architect and Construction Manager shall include the Owner on all communications related to substitution requests, clarifications, and interpretations.

§ 3.2.2 During one of the design phases, the Owner will receive a Guaranteed Maximum Price proposal or Control Estimate, as appropriate, from the Construction Manager. The Architect shall assist the Owner in reviewing the Construction Manager's proposal or estimate. The Architect's review is not for the purpose of discovering errors, omissions, or inconsistencies; for the assumption of any responsibility for the Construction Manager's proposed means, methods, sequences, techniques, or procedures; or for the verification of any estimates of cost or estimated cost proposals. In the event that the Architect discovers any inconsistencies or inaccuracies in the information presented, the Architect shall promptly notify the Owner and Construction Manager.

§ 3.2.3 Upon authorization by the Owner, and subject to Section 4.3.1.15, the Architect shall update the Drawings, Specifications, and other documents to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment or Control Estimate.

§ 3.3 Schematic Design Phase Services

§ 3.3.1 The Architect shall review the program and other information furnished by the Owner and Construction Manager, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.3.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.3.3 The Architect shall present its preliminary evaluation to the Owner and Construction Manager and shall discuss with the Owner and Construction Manager alternative approaches to design and construction of the Project, including the feasibility of incorporating sustainable design approaches, and consideration of the implementation of the Owner's sustainable objective, if any. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.3.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present to the Owner and Construction Manager, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.3.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval and the Construction Manager's review. The Schematic Design Documents

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shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.3.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, implications of sustainable code requirements enacted in the relevant jurisdiction, if any, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other sustainable design services under Article 4.

§ 3.3.5.2 The Architect shall consider with the Owner and the Construction Manager the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics in developing a design for the Project that is consistent with the Owner's schedule and budget for the Cost of the Work.

§ 3.3.6 The Architect shall submit the Schematic Design Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Schematic Design Documents.

§ 3.3.7 Upon receipt of the Construction Manager's review comments and cost estimate at the conclusion of the Schematic Design Phase, the Architect shall take action as required under Section 6.4, identify agreed upon adjustments to the Project's size, quality, or budget, and request the Owner's approval of the Schematic Design Documents. If revisions to the Schematic Design Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate the required revisions in the Design Development Phase.

§ 3.3.8 In the further development of the Drawings and Specifications during this and subsequent phases of design, the Architect shall be entitled to rely on the accuracy of the estimates of the Cost of the Work, which are to be provided by the Construction Manager under the Construction Manager's agreement with the Owner.

§ 3.4 Design Development Phase Services

§ 3.4.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work pursuant to Section 5.4, the Architect shall prepare Design Development Documents for the Owner's approval and Construction Manager's review. The Design Development Documents shall be based upon information provided, and estimates prepared by, the Construction Manager and shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.4.2 Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Design Development Documents.

§ 3.4.3 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Design Development Phase, the Architect shall take action as required under Sections 6.5 and 6.6 and request the Owner's approval of the Design Development Documents.

§ 3.5 Construction Documents Phase Services

§ 3.5.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval and the Construction Manager's review. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Construction Manager will provide additional information, including Shop Drawings,

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Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.5.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project and will assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.5.3 During the development of the Construction Documents, if requested by the Owner, the Architect shall assist the Owner and Construction Manager in the development and preparation of (1) the Conditions of the Contract for Construction (General, Supplementary and other Conditions) and (2) a project manual that includes the Conditions of the Contract for Construction and Specifications and may include sample forms.

§ 3.5.4 Prior to the conclusion of the Construction Documents Phase, the Architect shall submit the Construction Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Construction Documents.

§ 3.5.5 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Construction Documents Phase, the Architect shall take action as required under Section 6.7 and obtain the Owner's approval of the Construction Documents.

§ 3.5.6 The Architect is responsible for timely submittal of plans to the local authority(ies) having jurisdiction over the Project to support plan review and the building permit process by these authority(ies).

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Construction Manager as set forth below and in AIA Document A201™-2007, General Conditions of the Contract for Construction. If the Owner and Construction Manager modify AIA Document A201-2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services commences upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Owner's approval of the Construction Manager's Control Estimate, or the Owner's issuance of a Notice to Proceed to the Construction Manager. Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.1.3 The Architect shall advise and consult with the Owner and Construction Manager during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Construction Manager's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Construction Manager or of any other persons or entities performing portions of the Work.

§ 3.6.1.4 Coordination of Responsibilities Regarding Underground Utility Facilities. The Architect shall be responsible to coordinate with Warren County Agricultural Society [hereinafter "Lessee"] to determine the locations of underground utility facilities, and these locations will be provided to the Owner and the Architect by the surveyor employed by the Lessee. Owner shall not be responsible for the cost of Surveyor. The Architect, on behalf of and in the name of the Owner and at the Owner's expense, will assist the Owner to give the notices required to be given by the Owner under Section 153.64(B) of the Ohio Revised Code. The Architect will include in the Drawings and Specifications the identity and location of existing underground utility facilities located in the construction area of the Project as provided by the Surveyor and/or owner of the utility facility.

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§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. The Architect shall make a written report for each day the Architect visits the site to evaluate the work and provide the written report to the Owner. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report in writing to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Construction Manager, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Construction Manager. The Architect's response to such requests shall be made in writing within any time limits agreed upon herein or otherwise with reasonable promptness. The Architect will keep a record of all such interpretations that includes information such as the date of each request for interpretation, the person making the request, the date of the Architect's response, and a summary of the response. The Architect will keep all correspondence and documentation related to such requests organized in a systematic manner and will make such documentation available to the Owner upon the Owner's request.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Construction Manager, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Construction Manager designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201-2007, the Architect shall render initial decisions on Claims between the Owner and Construction Manager as provided in the Contract Documents.

§ 3.6.2.6 The Architect shall give prompt written notice to the Owner if the Architect becomes aware of any fault, defect, error, omission, or inconsistency in the Project or in the Contract Documents.

§ 3.6.3 Certificates for Payment to Construction Manager

§ 3.6.3.1 The Architect shall review and certify the amounts due the Construction Manager and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Construction Manager's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Construction

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Manager's right to payment, or (4) ascertained how or for what purpose the Construction Manager has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.3.4 Consistent with the Standard of Care, the Architect will advise the Owner in writing, which writing may consist of notations in job progress meetings, at the time of delivery of each Certificate for Payment of any known defects or problems with respect to the Work, which can be reasonably observed in the course of the Architect's observations, given the stage of completion of the Work. Architect shall decline to certify any payment application to the extent the Contractor has not submitted any waivers of claim under the Ohio Mechanic's Lien laws or other documents required by the Contract Documents for labor and/or materials listed on the attachment to the Contractor's previous Application for Payment or other documents required by the Contract Documents.

§ 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Construction Manager's submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule 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.

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Construction Manager'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. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Construction Manager's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Construction Manager to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review shop drawings and other submittals related to the Work designed or certified by the design professional retained by the Construction Manager that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Construction Manager in accordance with the requirements of the Contract Documents.

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect may authorize 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 or an extension of the Contract Time. Subject to the provisions of Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work. A change order record shall be maintained by the Architect and show the status of each change order, identify known issues that could potentially be the basis for a change order, and include the name of the contractor, the subject of the change order, the dates of

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approval, the estimated cost of the change order (if not approved), the number of days additional time requested by the contractor for the Work, and the number of days approved by the Architect and Owner to accomplish the Work. The Architect will furnish an updated copy of the change order record to the owner upon request.

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Construction Manager and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Construction Manager; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents. To the extent the Contractor has not completed its Work or there are defects or non-conforming Work following the date for Substantial Completion, the Architect in its role as a design professional will work with the Owner to pursue the Contractor to complete its Work and correct any defective or non-conforming Work; however, the Architect is not a guarantor that the Contractor will complete its Work. The Architect will receive and review for compliance with the Contract Documents written guarantees and related documents required by the Contract Documents to be assembled by the Contractor and will issue when so warranted a Final Certificate of Payment.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Construction Manager of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Construction Manager, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Construction Manager: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Construction Manager under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. *(Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)*

Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Assistance with selection of the Construction Manager	Architect	See Below
§ 4.1.2 Programming (B202™-2009)	Architect	See Below
<i>(Rows deleted)</i>		
§ 4.1.3 Civil engineering	Civil Engineer	See Below
§ 4.1.4 Landscape design	Landscape Architect	See Below
§ 4.1.5 Architectural Interior Design (B252™-2007)	Architect	See Below
<i>(Row deleted)</i>		
§ 4.1.12 Detailed cost estimating	Construction	See Below

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§ 4.1.14	Conformed construction documents	Architect See Below
<i>(Row deleted)</i>		
§ 4.1.16	As-Constructed Record drawings	Not Provided See Below
§ 4.1.17	Post occupancy evaluation	Architect See Below
<i>(Rows deleted)</i>		
§ 4.1.20	Coordination of Owner's consultants	Architect See Below
§ 4.1.21	Telecommunications/data design	Architect See Below
<i>(Row deleted)</i>		
§ 4.1.23	Commissioning (B211™-2007)	Not Provided
§ 4.1.24	Extensive sustainable design services	Not Provided
§ 4.1.25	LEED® Certification (B214™-2012)	Not Provided
§ 4.1.26	Historic Preservation (B205™-2007)	Not Provided
§ 4.1.27	Furniture, Furnishings, and Equipment Design (B253™-2007)	Not Provided
§ 4.1.27	Kitchen Planning and Design	Architect See Below

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Architect's responsibility, if not further described in an exhibit attached to this document.

Assistance with selection of the Construction Manager

At an appropriate time agreed to by the Owner the Architect, the Architect shall assist the owner in the selection of the Construction Manager for the project. Fees for this work are included in Basic Services and shall include the following:

- .1 Assist owner in selecting Construction Managers for RFQ invitations.
- .2 Assistance with the Preparation of the RFQ for Construction Managers.
- .3 Review RFQ submission and provide owner with response and recommendations
- .4 Facilitate and Attend Construction Manager RFQ interviews if required.
- .5 Assist owner in making final CM Selections.
- .6 Assist Owner in preparing draft AIA Documents A133 Owner/Construction Manager as Constructor Agreement – Cost of Work Plus Fee with GMP and A133 Exhibit A.

Programming

The architect shall attend one meeting with the owner to review the project requirements and determine the building and site programming. The architect will then provide the owner with a written summary of determined program requires for the owner's review, and based on owner feedback, provide one revision of the written program summary for final approval. Fee included in basic services.

Civil Engineering

Civil engineering will be provided by MSP and shall be limited the area surrounding the proposed building, and only include those services required to prepare construction drawings related to the building of the new event center. All utilizes required by the new event center are assumed to connect to existing utilities already serving the current grandstand building. Storm water calculations and design for new storm water detention or other such features are excluded.

Landscape Design

Landscape Design will be provided by MSP and shall be limited the area surrounding the proposed building, and only include those services required to prepare construction drawings related to the building of the new event center. All site lighting is assumed to be provided by building mounted lights. No pole mounted site lighting design is provided.

Architectural Interior Design

Interior Design will be provided by MSP under this contract and shall be limited the area of the proposed building, and only include those services required to prepare construction drawings related to the building of the new event center. Services to include selection of interior finishes, preparation of appropriate

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interior design details, finish specifications and required schedules. 3D interior renderings, animations or presentation quality drawings are excluded. Fee included in basic services.

Detailed Cost Estimating:

The Construction Manager will prepare detailed cost estimating during the Design Development phase of the project as well as continued monitoring of the cost of work through the Construction Document phase. The Architect's scope of services in conjunction with the Construction Manager's detail cost estimating efforts shall be limited to assisting the Construction Manager in their efforts to prepare their detailed cost estimates for the project. This assistance shall include providing the drawings and specifications for project and review meetings to go over the Construction Managers estimating assumptions and potential value management ideas. The Architect's fee for this limited scope of services is included in the basic services compensation.

Conformed Construction Documents:

The architect shall revise the construction documents as necessary during bidding and permit to reflect any changes requested by the permitting authorities, as well as changes made in response to owner initiated changes and issued addenda during bidding. This work is included in the base services fee.

As Constructed Record Drawings

The Architect shall coordinate with the Construction Manager's "Red Lined" Construction Documents to update the Architect's CADD Files and provide the Owner with appropriate electronic files of the updated data. Since it is not known how many changes may be needed to be incorporated, the Architect shall perform this as additional services on and time and material basis under separate proposal at the close of construction if requested by the owner. The architect will rely solely on the general contractors "Red Lines" drawings for this work.

Coordination with Owner's Consultants

The Architect shall assist the Construction Manager in its efforts to coordinate the Owner's Consultants related to the design and construction of this Project. This includes meetings, providing updated data and electronic files as necessary. The Architect shall coordinate their work with that of the Design Build Trade contractors as selected by the Construction Manager/Owner. This service is part of the basic services.

Telecommunications/data design

Telecommunications/data design fee is included in Basic Services. Services shall be provided through KLH Engineers and is limited to following scope:

- Voice and data cabling system
 - Structured cabling systems including:
 - Backbone cabling and terminations
 - Horizontal cabling and terminations
 - Enlarged plans and details for the main equipment room (ER/MDF) and telecommunications rooms (TRs/IDFs)
- Data Network Electronics
 - This is based on an estimated number of active data ports of approximately 20 to provide data wireless Local Area Network (WLAN) throughout the facility
- Personal security systems,
 - Access control (card reader) system
 - Surveillance Video System (SVS) system
 - Intrusion detection alarm system
- Audio Visual (AV) systems,
 - Main event area that separates into 2 smaller self-sufficient break out areas.
 - Projector with connection rough ins
 - Overhead PA system

Kitchen Planning and Design

Kitchen Planning and Design shall be provided by KBR Associates, LLC is limited to the following scope:

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User Notes:

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- Preliminary Planning:
 - Develop preliminary kitchen facility layout
 - Revise and resubmit as is necessary for approval
 - Develop preliminary cost estimate
- Production Drawings:
 - Prepare all documents and drawings necessary for bid and negotiation with contractor, such as:
 - Detail food service kitchen facility plan
 - Complete item schedule - food service equipment
 - Food service equipment plumbing requirements plan (for mechanical engineer's work)
 - Food service equipment electrical requirements plan (for electrical engineer's work)
 - Food service equipment exhaust requirements plan (for mechanical engineer's work)
 - Complete elevation and details - food service equipment
 - Complete food service equipment specifications
 - Recommended finishes ceiling, floor and walls - kitchen area

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.3.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner's written authorization:

- 1 Services necessitated by a change in the Initial Information, previous instructions or recommendations given by the Construction Manager or the Owner, approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or bid packages in addition to those listed in Section 1.1.6;
- 2 Services necessitated by the Owner's request for extensive sustainable design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
- 3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations, or official interpretations;
- 4 Services necessitated by decisions of the Owner or Construction Manager not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- 5 Preparing digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;
- 6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner or Construction Manager;
- 7 Preparation for, and attendance at, a public presentation, meeting or hearing, excluding meetings with Owner;
- 8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- 9 Evaluation of the qualifications of bidders or persons providing proposals;
- 10 Consultation concerning replacement of Work resulting from fire or other cause during construction;
- 11 Assistance to the Initial Decision Maker, if other than the Architect;
- 12 Services necessitated by replacement of the Construction Manager or conversion of the Construction Manager as constructor project delivery method to an alternative project delivery method;
- 13 Services necessitated by the Owner's delay in engaging the Construction Manager; and
- 14 Making revisions requested by Owner in Drawings, Specifications, and other documents resulting from substitutions included in the agreed to assumptions and clarifications contained in the Guaranteed Maximum Price Amendment or Control Estimate.

§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

- .1 Reviewing a Construction Manager's submittal out of sequence from the submittal schedule agreed to by the Architect;
- .2 Responding to the Construction Manager's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Construction Manager from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Construction Manager-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders, and Construction Change Directives that require evaluation of the Construction Manager's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker;
- .5 Evaluating substitutions proposed by the Owner or Construction Manager and making subsequent revisions to Instruments of Service resulting therefrom; or
- .6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion, identified in Initial Information, whichever is earlier.
- .7 Revising the Instruments of Service where such revisions are due in any part to the fault of the Architect or its consultant(s), at no cost to the Owner.

§ 4.3.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 Two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor
- .2 Visits to the site by the Design Team over the duration of the Project during construction shall be up to the limits as follows:
 - (20) MSP Architecture
 - (2) MEP Engineer
 - (1) Structural Engineer
 - (2) Civil Engineer
 - (2) Landscape Architect
- .3 Two (2) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 Two (2) inspections for any portion of the Work to determine final completion

§ 4.3.4 If the services covered by this Agreement have not been completed within Twenty-Four (24) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request

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from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 5.2 The Owner shall retain a Construction Manager to provide services, duties, and responsibilities as described in the agreement selected in Section 1.1.5.

§ 5.3 The Owner shall furnish the services of a Construction Manager that shall be responsible for creating the overall Project schedule. The Owner shall adjust the Project schedule, if necessary, as the Project proceeds.

§ 5.4 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; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall furnish the services of a Construction Manager that shall be responsible for preparing all estimates of the Cost of the Work. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the budget for the Cost of the Work or in the Project's scope and quality.

§ 5.4.1 The Owner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it associated risks. Such risks include the Owner incurring costs for the Architect to coordinate and redesign portions of the Project affected by procuring or installing elements of the Project prior to the completion of all relevant Construction Documents, and costs for the Construction Manager to remove and replace previously installed Work. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs.

§ 5.5 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.6 Once the Demolition of the existing Grandstand facility has been completed, the Architect, through a separate agreement with the Warren County Agricultural Society [or Lessee] for the procurement and services of a surveyor, shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written 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.

§ 5.7 If necessary to provide complete Construction Documents in accordance with this Agreement, the Owner 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 subsurface conditions, with written reports and appropriate recommendations. The Architect will assist the Owner in obtaining such services, as requested by the Owner and will provide electronic drawings with desired soil test locations for the geotechnical engineer's use.

§ 5.8 The Owner, with the assistance of the Architect, shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance and other liability insurance as appropriate to the services provided.

§ 5.9 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

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§ 5.10 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.

§ 5.11 The Owner shall provide prompt written notice to the Architect and Construction Manager if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service. Notwithstanding the foregoing, the parties understand that the Owner has no duty to search for faults or defects and further agree that the Owner is not a professional skilled in finding such faults or defects.

§ 5.12 The Owner shall contemporaneously provide the Architect with any communications provided to the Construction Manager about matters arising out of or relating to the Contract Documents. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.13 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Construction Manager, including the General Conditions of the Contract for Construction.

§ 5.14 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Construction Manager to provide the Architect access to the Work wherever it is in preparation or progress.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include the Construction Managers' general conditions costs, overhead, and profit. The Cost of the Work does not include the compensation of the Architect, the compensation of the Construction Manager for Preconstruction Phase services, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's Stated Cost Limitation is provided in the Initial Information, which includes the Cost of Work and other costs, and it shall be the limit of funds available for the Project.

§ 6.3 The Owner shall require the Construction Manager to include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the Work. The Architect shall be entitled to rely on the accuracy and completeness of estimates of the Cost of the Work the Construction Manager prepares as the Architect progresses with its Basic Services. The Architect shall prepare, as an Additional Service, revisions to the Drawings, Specifications or other documents required due to the Construction Manager's inaccuracies or incompleteness in preparing cost estimates. The Architect may review the Construction Manager's estimates solely for the Architect's guidance in completion of its services, however, the Architect shall report to the Owner any material inaccuracies and inconsistencies noted during any such review.

§ 6.3.1 If the Architect is providing detailed cost estimating services as an Additional Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Architect shall work cooperatively with the Construction Manager to conform the cost estimates to one another.

§ 6.3.2 Subject to Section 4.3, if the Owner engages a Cost Consultant and a discrepancy exists between the Construction Manager's estimate and the Cost Consultant's estimate, the Architect shall assist the Cost Consultant and Construction Manager as necessary to conform the estimates to one another.

§ 6.4 If, prior to the conclusion of the Design Development Phase, the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect, in consultation with the Construction Manager, shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.5 If the Construction Manager's estimate of the Cost of the Work at the conclusion of the Design Development Phase exceeds the Owner's budget for the Cost of the Work, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;

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- .2 in consultation with the Architect and Construction Manager, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .3 implement any other mutually acceptable alternative.

§ 6.6 If the Owner chooses to proceed under Section 6.5.2, the Architect, without additional compensation, shall incorporate the required modifications in the Construction Documents Phase as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Design Development Phase Services, or the budget as adjusted under Section 6.5.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility as a Basic Service under this Article 6.

§ 6.7 After incorporation of modifications under Section 6.6, the Architect shall make any required revisions to the Drawings, Specifications or other documents necessitated by the Construction Manager's subsequent cost estimates, the Guaranteed Maximum Price proposal, or Control Estimate that exceed the Owner's budget for the Cost of the Work, except when the excess is due to changes initiated by the Architect in scope, basic systems, or the kinds and quality of materials, finishes or equipment.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 7.2 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 shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service 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 reserved rights of the Architect and the Architect's consultants.

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Construction Manager, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. This license will survive any termination of this Agreement. In the event of termination of this Agreement for whatever reason, the Architect grants the Owner a nonexclusive license permitting the Owner to authorize other similarly credentialed design professionals to reproduce and, as permitted by law, to make changes, corrections or additions to the Instruments of Service solely for the purposes of completed, using, and maintaining the Project.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to hold harmless the Architect and its consultants from all costs and expenses related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2007, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the Construction Manager, contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect shall indemnify and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Architect, its employees and its consultants in the performance of professional services under this Agreement.

§ 8.1.4 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.2 Mediation

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation. The parties agree to choose a mediator from the Warren County Common Pleas Court's list of approved court appointed mediators. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution 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.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project 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.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:
(Check the appropriate box. If the Owner and Architect 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, the dispute will be resolved in a court of competent jurisdiction.)

Arbitration pursuant to Section 8.3 of this Agreement

Litigation in a court of competent jurisdiction

Other: *(Specify)*

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§ 8.3 Arbitration – Paragraphs Deleted

(Paragraphs deleted)

§ 8.3.4 Consolidation or Joinder – Paragraphs Deleted.

(Paragraphs deleted)

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give twenty-one (21) days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project for more than ninety (90) days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than twenty-one (21) days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than twenty-one (21) days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7.

§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated.

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, which is the State of Ohio. The Parties agree that jurisdiction of any disputes that arise in connection with this Agreement that are not settled through negotiation will be the Court of Common Pleas, in the venue of Warren County, Ohio, which will have jurisdiction over such dispute to the exclusion of any other court, including any U.S. District Court. The parties waive their right to remove the action to any federal court.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction, except as modified in this Agreement. The term "Contractor" as used in A201-2007 shall mean the Construction Manager.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect. However, it is understood by the parties that the Owner is an intended third-party beneficiary of the Architect's agreement with its consultants for design and engineering services. The Architect shall incorporate the obligations of this Agreement into its respective consultant agreements and subcontracts.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site. However, should the Architect become aware of the presence of hazardous materials or toxic substances on the Project site, the Architect shall immediately report that presence to the Owner in writing.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner, at its discretion, may provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 10.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," to the extent permitted by law, including but not limited to public records law or judicial orders, the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

The fixed amount of \$ 195,000.00 which will be disbursed in proportion to the Architect's completion of each phase as described in Paragraph 11.5

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

Telecom / IT:	\$ 7,500.00
Civil Engineering:	\$15,000.00
Landscape Design:	\$ 7,500.00
Kitchen Planning and Design:	\$15,000.00

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

Time and Materials or lump sum as agreed to before execution of additional services.

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Architect plus Five percent (5 %), or as otherwise stated below:

Before any Additional Services provided by the Architect's consultants will be compensated by the Owner, the parties will agree upon the Additional Services to be provided by the consultants, will negotiate the compensation for such services, and will sign a written amendment to this Agreement to document any Additional Services to be provided by the consultants and the related compensation for those services.

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

Schematic Design Phase	fifteen	percent (15	%)
Design Development Phase	twenty five	percent (25	%)
Construction Documents Phase	forty	percent (40	%)
Construction Phase	twenty	percent (20	%)
Total Basic Compensation	one hundred	percent (100	%)

The Owner acknowledges that with an accelerated Project delivery, multiple bid package process, or Construction Manager as constructor project delivery method, the Architect may be providing its services in multiple Phases simultaneously. Therefore, the Architect shall be permitted to invoice monthly in proportion to services performed in each Phase of Services as appropriate.

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the Owner-accepted Guaranteed Maximum Price Amendment or Control Estimate, as applicable, or (2) if the Guaranteed Maximum Price proposal or Control Estimate has not been accepted by the Owner, the most recent estimate of the Cost of the Work prepared by the Construction Manager for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

See Attached rate schedule.

(Table deleted)

§ 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Paragraph deleted.
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 Architect's consultants' expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses; and
- .11 Other similar Project-related expenditures.

Init.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Zero percent (00 %) of the expenses incurred.

§ 11.8.2.1 Reimbursable Expenses must be submitted to the Owner no later than 60 days after such expense is incurred by the Architect. Architect's failure to submit Reimbursable Expenses to the Owner as required herein will be an irrevocable waiver of Architect's right to reimbursement for such Reimbursable Expenses.

§ 11.8.3 Paragraph Deleted.

§ 11.9 Compensation for Use of Architect's Instruments of Service

(Paragraphs deleted)

- Paragraph Deleted.

§ 11.10 Payments to the Architect

§ 11.10.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid thirty (30) days after the invoice date 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 Architect.

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

1-1/4 %

(Paragraphs deleted)

§ 11.10.3 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

(Paragraph deleted)

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

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

§12.2 Alternates. The Architect will prepare Alternates for procurement changes in material, equipment, and products requirement minimum documentation alternations at no increase in fee. When Alternates require major changes in documentation or additional documentation, the Architect's compensation for each alternate will be established at the time the alternate is proposed.

§12.3 Indemnification. The Architect agrees to indemnify and hold the Owner harmless from damage, liability, or cost, including reasonable attorney fees, to the extent caused by the Architect's negligent acts, errors, or omissions in the performance of professional services under this Agreement and those of its consultants or anyone for whom the Architect is legally liable.

§12.4 Ethics. The Architect is aware of the ethics responsibilities contained in Section 3517.13 of the Ohio Revised Code and is in compliance with this section of the Ohio Revised Code.

§12.5 Findings for Recovery. The Architect is not subject to an unresolved finding for recovery under Section 9.24 of the Ohio Revised Code. If this representation and warranty in this Paragraph 12.5 is found to be false, this Agreement is void, and the Architect will immediately repay to the Owner any funds under this Agreement.

None

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect 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 Architect.

§ 13.2 This Agreement is comprised of the following documents listed below:

- 1 AIA Document B133™-2014, Standard Form Agreement Between Owner and Architect, Construction Manager as Constructor Edition

2

(Paragraphs deleted)

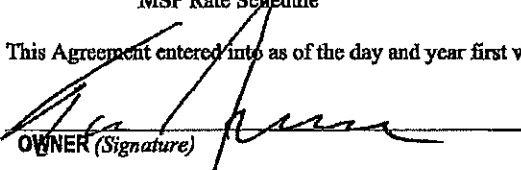
Other documents:

(List other documents, if any, including additional scopes of service forming part of the Agreement.)

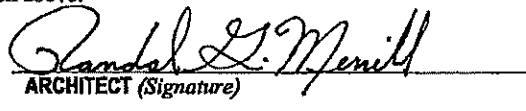
Insurance Certificates

MSP Rate Schedule

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


OWNER (Signature)

Tom Grossmann, President
(Printed name and title)


ARCHITECT (Signature)

Randal G. Merrill
Vice President of Architecture
(Printed name and title)

APPROVED AS TO FORM


Adam M. Nice
Asst. Prosecuting Attorney



HOURLY RATE SCHEDULE

Principal.....	\$135-\$180.00/hour
Project Manager	\$90-\$165.00/hour
Registered Engineer	\$120-\$180.00/hour
Registered Architect.....	\$80-\$180.00/hour
Registered Landscape Architect/Planner.....	\$90-\$130.00/hour
Professional Surveyor	\$85-\$180.00/hour
Designer/Job Captain	\$75-\$110.00/hour
CADD Operator/Technician	\$55-\$95.00/hour
Surveying (Monday through Friday) 8 Hours*	
3 Man Crew.....	\$170.00/hour
2 Man Crew.....	\$135.00/hour
1 Man Crew	\$95.00/hour

*A minimum 2 hours will be charged per trip (Monday through Friday)

*A minimum of 4 hours will be charged per trip (Saturday and Sunday)

Technical Support.....\$55-\$125.00/hour

Travel .54¢ per mile

Reimbursable expenses such as postage, plots, prints, fees paid, travel expenses, long distance phone calls, e-mail, disk transfers and deliveries will be invoiced at MSP cost.

All invoices are due and payable upon receipt. Interest will be charged after 30 days at one and one quarter percent (1-1/4%) per month.

Effective Date: January 1, 2017

Exhibit B

Assignment Agreement
for Construction Manager at Risk Agreement

Recitals

- A. This Assignment Agreement (the Assignment) is made effective as of the date it is executed by the Warren County Port Authority, and is being granted by the **Warren County Board of County Commissioners** (the County) to **Warren County Port Authority** (the Port Authority) and acknowledged and agreed to by **Conger Construction Group, Inc.** (the CMR). The County, Port Authority, and CMR are collectively referred to as the Parties.
- B. Pursuant to Warren County Board of County Commissioners' Resolution Number 17-1537, dated October 3, 2017 the County previously authorized and entered into a contract for construction manager at risk services with Conger Construction Group, Inc., including the general conditions to the contract, attached hereto as **Attachment 1** (the CMR Agreement) for preconstruction and construction services for the new Warren County Fairgrounds Event Center (the Project).
- C. The CMR was selected by the County following the selection process outlined in Ohio Revised Code Sections 9.33 et seq., to provide construction management at risk services for the Project.
- D. Due to rising construction costs and unforeseen but necessary improvements required to be made on the parcel of land relevant to the Project, it is not economically feasible for the County to continue the Project.
- E. The Port Authority has identified the Project as an important economic development opportunity for the surrounding area and wishes to acquire by lease the relevant real property and to assume the County's rights, interests and obligations under the CMR Agreement, and the County wishes to assign such rights, interests and obligations to the Port Authority, all as more specifically described herein.
- F. Pursuant to the Warren County Port Authority's Resolution Number 2018-26 the Port Authority is authorized to take an assignment of the CMR Agreement from the County.
- G. Pursuant to the terms of the CMR Agreement, the rights and responsibilities granted to the County therein may not be assigned without the written consent of the CMR.
- H. The CMR wishes to consent to such assignment and assumption of the rights, interests and obligations of the County as set forth herein, and joins herein for that purpose and for the purpose of ratifying and affirming its obligations to the Port Authority, as the successor in interest to the County, under the CMR Agreement.

In consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged:

Statement of Assignment

1. **Assignment.** The County assigns, transfers, and sets over to the Port Authority all of its rights, obligations, and interests in the CMR Agreement identified above, together with all rights arising under or by virtue of the CMR Agreement. All references to the "Owner" in the CMR Agreement are hereby deemed to refer to the Port Authority. The Port Authority accepts this assignment and assumes and agrees to perform all of the obligations of the Owner arising or accruing under the CMR Agreement, from the date of and subject to the terms of this Assignment Agreement.
 - a. The CMR shall provide the Port Authority with revised certificates of insurance, with the Port Authority named as an additional insured, pursuant to Paragraph 11.1.2.8 of the general conditions to the CMR Agreement.
2. **Compensation.** The CMR's compensation for its preconstruction services under the CMR Agreement is \$5,000. The Port Authority is responsible to pay the CMR \$5,000 for its preconstruction services.

Pursuant to the CMR Agreement, the CMR will provide the Port Authority with a GMP Proposal for construction phase services and if accepted by the Port Authority, the Port Authority will be responsible to pay the CMR for the construction phase services, subject to the GMP, in accordance with the CMR Agreement.
3. **Cooperation.** The County and the CMR will fully and without reservation share with the Port Authority all information and records relating to the CMR Agreement.
4. **Third Party Beneficiary.** The County is an intended third-party beneficiary of the assigned CMR Agreement.
5. **Miscellaneous.** The above recitals are incorporated herein by this reference. No agreement shall be effective to change, modify or terminate this Assignment in whole or in part unless such is in writing and signed by the Parties. This Assignment shall be governed, construed, interpreted and enforced in accordance with the laws of the State of Ohio.
6. **Binding Effect.** This Assignment shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and assigns.
7. **Notices.** CMR agrees that any notice or other communication pertaining to the CMR Agreement shall be provided to the Port Authority. For purposes thereof, the Port Authority's notice address is as follows:

Warren County Port Authority
Attention: Executive Director
406 Justice Drive
Lebanon, Ohio 45036

With a copy to:
J. Caleb Bell, Esq.
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215

8. **Counterparts.** This Assignment may be executed in one instrument or in separate counterparts, the aggregate of which shall constitute an integrated, fully executed version hereof; Each person executing this Assignment represents and warrants that s/he has the capacity and authority to execute this instrument on behalf of the entity for which s/he is acting and to bind such party hereto.

Amended Terms of the CMR Agreement

1. Paragraph 3.5.1 of the modified AIA A201 general conditions to the CMR Agreement is hereby deleted and replaced with the following: Notwithstanding anything in the Contract Documents to the contrary, the Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects. Work, materials, or equipment not conforming to these requirements may be considered defective.
2. Notwithstanding anything in the Contract Documents to the contrary:
 - a. The Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy for the project in the amount of the initial GMP, plus value of subsequent contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such builder's risk insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.
 - b. The builder's risk insurance obtained by the Owner shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings

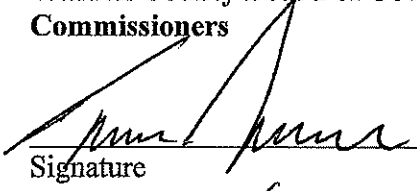
and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

- c. Property insurance provided by the Owner may not cover any tools, apparatus, machinery, scaffolding, hoists, forms, staging, shoring, and other similar items commonly referred to as construction equipment that may be on the site and the capital value of which is not included in the Work, nor shall such insurance cover any materials or equipment before these materials and equipment are physically incorporated into the Work. The Contractor shall make its own arrangements for any insurance it may require on such construction equipment and materials and equipment. Any policy obtained by the Contractor under this Section and related sections shall include a waiver of subrogation in accordance with the requirements of the Contract Documents. If the Work is located in a Special Flood Hazard Area, as defined by the Federal Emergency Management Agency, the Owner shall provide an endorsement to the property insurance policy that provides coverage for physical loss or damage caused by flood.
- d. When it is available, Owner shall provide Contractor with written proof of the builder's risk insurance, upon Contractor's written request.
- e. If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles. Notwithstanding the foregoing, if the cause of any loss payment under such insurance or self-insurance is the fault of the Contractor or its Subcontractors the Contractor shall pay such deductible.
- f. The builder's risk insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

Except as stated herein, this Assignment shall not alter any part of the CMR Agreement between the Owner and CMR for the Project.

IN WITNESS WHEREOF, this Assignment is agreed-upon and executed by an authorized agent of:

Warren County Board of County Commissioners


Signature

Tom Grossmann
Printed Name

President
Title

12/11/18
Date

Warren County Port Authority

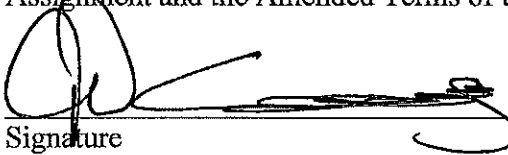

Signature

Martin Rusell
Printed Name

Executive Director
Title

12/10/18
Date

Conger Construction Group, Inc. hereby acknowledges, consents, and agrees to this Assignment and the Amended Terms of the CMR Agreement:

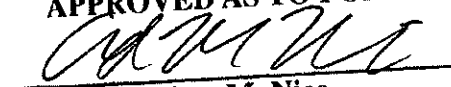

Signature

Justin Conger
Printed Name

President
Title

11/30/18
Date

APPROVED AS TO FORM


Adam M. Nice
Asst. Prosecuting Attorney

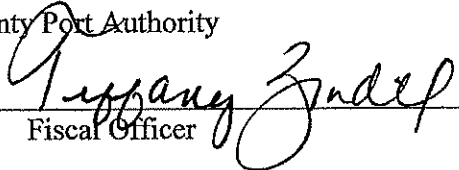
**SECTION 5705.41
CERTIFICATE OF AVAILABILITY OF FUNDS**

The undersigned, Fiscal Officer of the Warren County Port Authority, located in Warren County, Ohio, hereby certifies in connection with the Agreement to which this Certificate is attached that the amount required to meet the obligations under the contract, obligation, or expenditure for the services described in the attached agreement, has been lawfully appropriated for the purpose, and is in the treasury or in process of collection to the credit of an appropriate fund, free from any outstanding obligation or encumbrance.

IN WITNESS WHEREOF, I have hereunto set my hand this 11 day of December, 2018.

Warren County Port Authority

By: _____


Fiscal Officer

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

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;

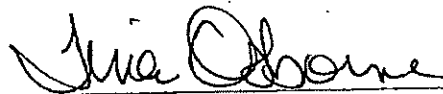
NOW THEREFORE BE RESOLVED, to authorize the President or Vice President of the Board of County Commissioners to execute the Construction Manager at Risk Service Contract with Conger Construction Group for the construction of the Warren County Fairgrounds Event Center.

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 3rd 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@warrencountyfairohio.org

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

Justin Conger, President – Conger Construction Group
justin@congerbuilt.com

Andrew Tompkins, Project Manager – Conger Construction Group
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.

TABLE OF ARTICLES

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

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.

§ 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.

§ 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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§ 2.1.7 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:

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- 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

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 approval 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.

§ 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).

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.

§ 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 1.1.5, 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.

§ 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

- 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

§ 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	Limit of Liability or Bond Amount (\$0.00)
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.

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

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.

§ 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.

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

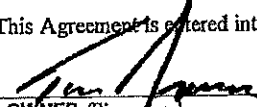
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5 Other documents:
(List other documents, if any, forming part of the Agreement.)

- 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

Inif.

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:

(1999852208)

Warren County Fair Board
665 North Broadway Ave.
Lebanon, Ohio 45036
ROsborne@warrencountyfairohio.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™ 2007, ~~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 ~~A201-2007, 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.

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§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements requirements, at the conclusion of the schematic design, design development and construction document phases, using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. The Construction Manager's cost estimates of the Cost of 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 approval 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 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, 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.

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User Notes:

(1999652208)

~~§ 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, 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 ()~~ 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 ()~~ 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;
- 5.1 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
- [X] 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 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 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 Guaranteed Maximum Price~~

~~Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated. 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 ~~leader-developer~~ providing financing and oversight for the Project if the ~~leader-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

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

Justin Conger, President

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

KALDAL MERRILL
I, **KALDAL 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.

Kaldal Merrill

(Signed)

Vice President of Architecture

(Title)

12-2-17

(Date)

AIA Document A201[™] - 2017

MODIFIED General Conditions of the Contract for Construction

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

Wentworth County Fair Grounds Level 2 Center
665 North Broadway Ave.
Farmington, Ohio 45036

THE OWNER:
(Name, legal status and address)

Wentworth County Board of County Commissioners
400 North Broadway
Farmington, Ohio 45036
The County Engineer is Martin Russell
Email: Martin.Russell@co.wentworth.oh.us

THE ARCHITECT:
(Name, legal status and address)

Charles W. Ward
Randall Ward
McCull South Drive
3500 Park Avenue, Suite 1000
Cincinnati, Ohio 45241
The Architect may also be referenced in the AIA Contract Documents and the AIA 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 Contractor's 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 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.

§ 3.13.3 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 Contract or would benefit directly or indirectly from the double application of charges for overhead and profit.

§ 7.3.12 The Contractor shall not be reimbursed for the following costs:

- .1 Employee Profit Sharing Plans - regardless of how defined or described, the Contractor will pay these charges from Contractor profit and will not be reimbursed
- .2 Voluntary Employee Deductions (e.g. United Way contributions, U.S. Savings Bonds, etc).

§ 7.4 Minor Changes in the Work

The Architect 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 the 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 casualties, (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



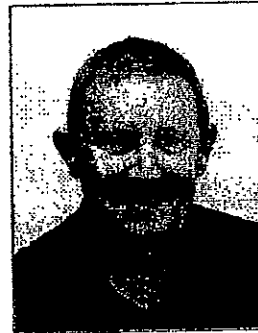
Larry Conger, Director of
Pre-Construction



Steve Deger,
Superintendent



Mario Geraci,
Sr. Estimator



Ty Wilson,
Project Engineer



Andrew Tompkins,
Project Manager



HOURLY RATE SHEET

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.

Company Name State of: _____ County of _____

Authorized Signature (Company Officer) Subscribed and sworn to before me this _____
day of _____

President Notary Public: _____
Title 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:

County	Amount (include total amount, penalties and interest thereon)
_____ County	\$ _____
_____ County	\$ _____
_____ County	\$ _____

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

[Signature]
(Affiant)

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

My Commission expires:
2/8, 2020
[Signature]
(Notary Public)
VICKY L. SHORT



Notary Public, State of Ohio
My Commission Expires 2/8/2020
Recorded in Warren County





Department of
Taxation
tax.ohio.gov

STEC CC
Rev. 11/14

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"/>	A hospital facility entitled to exemption under R.C. section 140.08;
<input type="checkbox"/>	The original construction of a sports facility under R.C. section 307.696;	<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).
<input type="checkbox"/>	Real property outside this state if such materials and services, when sold to a construction contractor in the state in which the real property is located for incorporation into real property in that state, would be exempt from a tax on sales levied by that state;		

The original of this certificate must be signed by the owner/contractee and/or government official and must be retained by the prime contractor. Copies must be maintained by the owner/contractee and all subcontractors. When copies are issued to suppliers when purchasing materials, each copy must be signed by the contractor or subcontractor making the purchase.

Prime Contractor

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

Owner/Contractee

Name 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 10/3/17

Subcontractor

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

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 10/3/17

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

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

Lease Amendment No. 3

This Lease Amendment No. 3 ("AMENDMENT"), is entered into by and between the BOARD OF COMMISSIONERS OF WARREN COUNTY, OHIO (aka Board of Warren County Commissioners; Board of County Commissioners of Warren County, Ohio; Warren County Board of County Commissioners; and, Warren County, Ohio), 406 Justice Drive, Lebanon, Ohio, 45036 ("LESSOR"), and the AGRICULTURAL SOCIETY OF WARREN COUNTY, OHIO (aka Warren County Fair Board), 665 N. Broadway, Lebanon, Ohio 45036 ("LESSEE").

Recitals

WHEREAS, LESSOR and LESSEE entered into a Lease Agreement, executed by LESSEE on 8/18/2016 and LESSOR on 8/23/2016, for the initial term of five (5) years and four months commencing September 1, 2016, with successive options to renew the Lease for up to two (2) additional terms of five-year each for the property described in the Lease as Exhibit A and illustrated in Exhibit B attached thereto (commonly known as the WARREN COUNTY FAIRGROUNDS); and,

WHEREAS, in accordance with Section 1, Paragraph 1.3 of the Lease Agreement, LESSOR, as owner of the Leased Premises, reserved the right to develop, use, lease or sell, all or any part of the Leased Premises; and,

WHEREAS, in accordance with Section 1, Paragraph 1.3 (c) of the Lease Agreement, LESSOR and LESSEE agreed to execute one or more amendments to the Lease should LESSOR notify LESSEE in writing of LESSOR'S intention to develop, use, lease or sell, a part of the Leased Premises, wherein the Lease Premises would be reduced by written amendment that attaches a survey plat, and metes and bounds description (or alternative drawing/map/plat required building and zoning, subdivision or other applicable local regulations) of the reduction to the Leased Premises; and,

WHEREAS, LESSEE acknowledges receipt of notice in writing from LESSOR of LESSOR'S intention to allow a part of the Leased Premises, as identified and illustrated in the attached drawings, to be developed and used for the Warren County Fairgrounds Event Center and related site improvements; and,

WHEREAS, LESSEE acknowledges that the said development and use would not substantially impair LESSEE from conducting LESSEE'S Activities, as defined in the Lease Agreement, rather, LESSEE anticipates that the said development and use will benefit LESSEE'S Activities, and LESSEE desires to enter into this AMENDMENT with LESSOR.

NOW THEREFORE, in consideration of mutual promises and agreements contained herein, and in the LEASE AGREEMENT, the PARTIES agree as follows:

- 1. TERM OF AMENDMENT.** The term of this AMENDMENT shall run concurrently with the TERM of the LEASE and any renewal options exercised by LESSEE.
- 2. LEASED PREMISES.** The Leased Premises, as provided in Paragraph 1.1 and particularly described in Exhibit A and illustrated in Exhibit B attached to the Lease Agreement, are hereby reduced by removing from the Lease Agreement, the property identified and illustrated in the Warren County Fairgrounds Event Center drawings attached hereto and made a part hereof. LESSEE shall have no

leasehold interest in the property as identified and illustrated as the Warren County Fairgrounds Event Center.

3. **FUTURE AMEUREMENT CONTEMPLATED.** LESSEE acknowledges that the exact location of additional property needed for the related improvements, including the storm water detention facilities, necessary for the Warren County Fairgrounds Event Center, has not been identified to date, and agrees that at such future time property is identified by drawings for the related improvements, LESSEE will execute another Amendment reducing and removing such property from the Lease Agreement.

4. **MISCELLANEOUS.** Nothing in this AMENDMENT shall be construed as prohibiting LESSEE from subleasing the property identified and illustrated as the Warren County Fairgrounds Event Center from a lessee of such premises.

5. Lessee's Acknowledgment:

IN EXECUTION WHEREOF, the AGRICULTURAL SOCIETY OF WARREN COUNTY, OHIO, the LESSEE herein, has caused this Lease Amendment No. 3 to be executed by Gene Steiner, its President and Becky Osborne, its Treasurer, on the date stated below, pursuant to a majority vote at its Meeting with a quorum present on 28 day of November, 2018.

SIGNATURE: [Signature]
NAME: Gene Steiner
TITLE: President
DATE: 11/28/18

AGRICULTURAL SOCIETY
OF WARREN COUNTY, OHIO
SIGNATURE: [Signature]
NAME: Rebecca Osborne
TITLE: Secretary
DATE: 11/28/18

5. Lessor's Acknowledgment.

IN EXECUTION WHEREOF, the BOARD OF COMMISSIONERS OF WARREN COUNTY, OHIO, the LESSOR herein, has caused this Lease Amendment No. 3 to be executed by Tom Grossman its President or Vice-President, on the date stated below, pursuant to Board Resolution No. 18-1945, dated 12/1/18

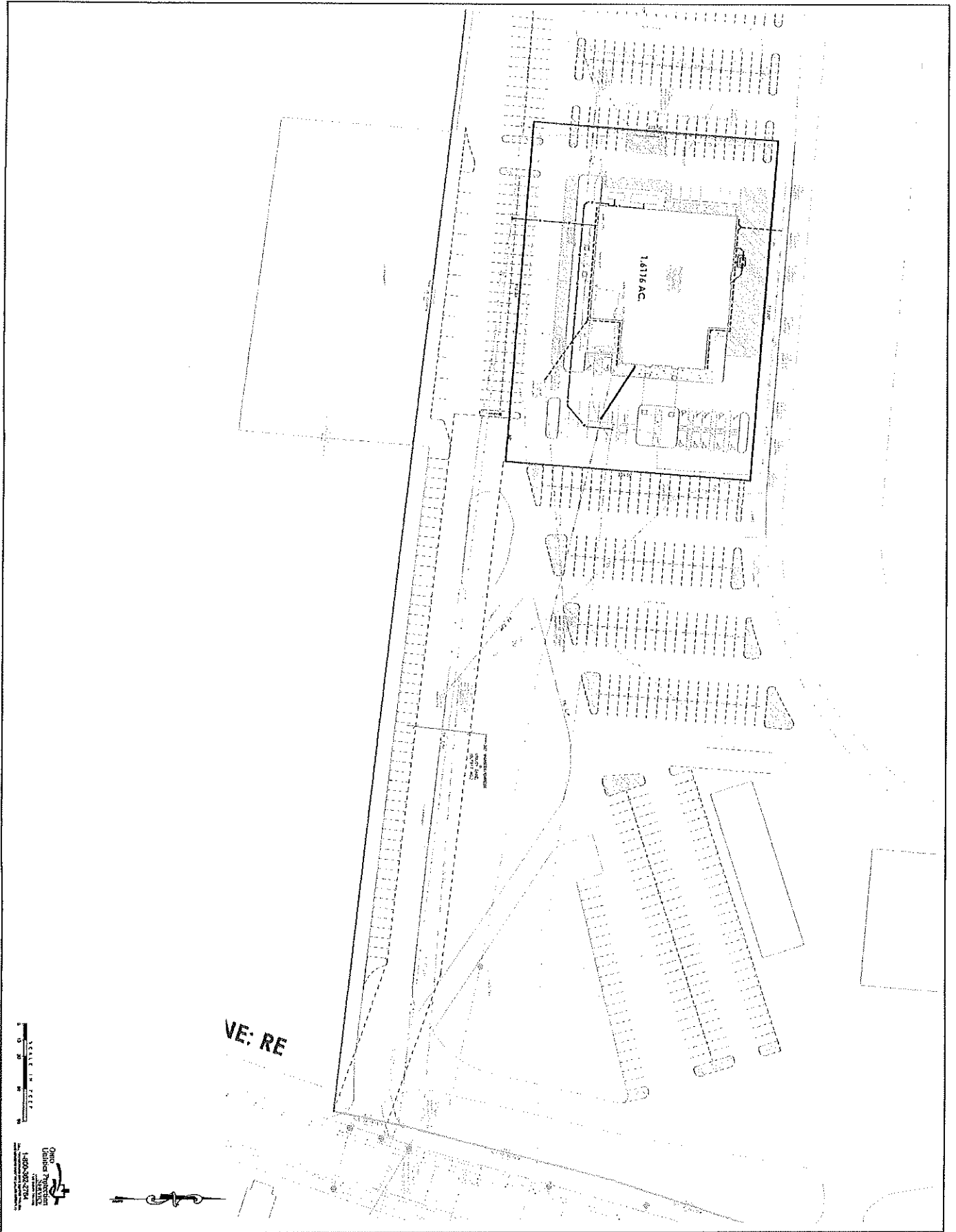
BOARD OF COMMISSIONERS
OF WARREN COUNTY, OHIO
SIGNATURE: [Signature]
NAME: Tom Grossman
TITLE: President/Vice-President
DATE: 12/1/18

Approved as to form:

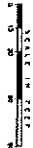
DAVID P. FORNSHELL,
PROSECUTING ATTORNEY
WARREN COUNTY, OHIO
[Signature]
By: Bruce A. McGary, Asst. Prbsecutor
Attachment

Parcel No. 12-06-227-001-2 (Pt.)

[attach Warren County Fairgrounds Event Center drawings]



VE: RE



Ohio
 Unified Professional
 Engineers
 License No. 1400588-0001
 www.madsen.com



WARREN COUNTY FAIRGROUNDS
EVENT CENTER
 SECTION 6, TOWN 4, RANGE 3
 CITY OF LEBANON
 WARREN COUNTY, OHIO

Sheet Title
ENGINEERING
GROUND LEASE
BOUNDARY
 Project Number: 24511.00
 Drawing Scale: 1" = 20'
 Sheet Number: E1
 10/03

MSP	
DESIGN	
MASON, SMITH & PULSIFON	
Project Number	24511.00
Client Name	WARREN COUNTY
City	LEBANON, OHIO
State	OHIO
Project Name	WARREN COUNTY FAIRGROUNDS
Project Location	SECTION 6, TOWN 4, RANGE 3, LEBANON, OHIO
Project Status	PLANNING
Project Start Date	10/03
Project End Date	
Project Manager	
Project Engineer	
Project Designer	
Project Checker	
Project Approver	
Project Date	10/03

Resolution

Number 18-1946

Adopted Date December 11, 2018

APPROVE SUPPLEMENTAL APPROPRIATION INTO FAIRGROUNDS CONSTRUCTION
PROJECT FUND #498

BE IT RESOLVED, to approve the following supplemental appropriation:

\$579,039 into #498-3740-410 (Contracts – BOCC approved)

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

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


Resolution adopted this 11th day of December 2018.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

Tz/

cc: Auditor 
Supplemental Appropriation file
Fairgrounds (file)
OMB

*BOARD OF COUNTY COMMISSIONERS
WARREN COUNTY, OHIO*

Resolution

Number 18-1947

Adopted Date December 11, 2018

CANCEL REGULARLY SCHEDULED COMMISSIONERS' MEETING OF THURSDAY,
DECEMBER 13, 2018


BE IT RESOLVED, to cancel the regularly scheduled Commissioners' Meeting of Thursday,
December 13, 2018.

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


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

Resolution adopted this 11th day of December 2018.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: Auditor 
Tina Osborne
Commissioners file
Press