

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

Resolution

Number 22-0507

Adopted Date April 12, 2022

HIRE CALEY N. SALLEE AS CUSTODIAL WORKER I WITHIN THE WARREN COUNTY DEPARTMENT OF FACILITIES MANAGEMENT

BE IT RESOLVED, to hire Caley Sallee as Custodial Worker I within the Department of Facilities Management, classified, full-time permanent status (40 hours per week), Pay Range #7, \$15.00 per hour, effective May 2, 2022 subject to a negative drug screen, background check and a 365-day probationary period.

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 12th day of April 2022.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

H/R

cc: Facilities Management (file)
C. Sallee's Personnel file
OMB-Sue Spencer

Resolution

Number 22-0508

Adopted Date April 12, 2022

REMOVE PROBATIONARY EMPLOYEE JON STEWART, WITHIN WATER AND SEWER DEPARTMENT

WHEREAS, Mr. Stewart began employment as a wastewater treatment plant technician within the Water and Sewer Department on June 7, 2021, and is subject to a 365-day probationary period; and

WHEREAS, Section 3.02 (G) of the Personnel Policy Manual states that a newly hired probationary employee may be terminated at any time during his probationary period; and

WHEREAS, the Sanitary Engineer recommends said employee be terminated for failing to meet the required standards of his position; and

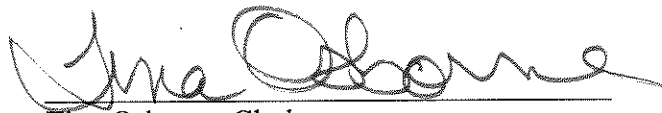
NOW THEREFORE BE IT RESOLVED, to remove Jon Stewart from employment within the Water and Sewer Department, effective April 12, 2022.

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 12th day of April 2022.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: Facilities Management (file)
J. Stewart's Personnel File
OMB – Sue Spencer
Tammy Whitaker

Resolution

Number 22-0509

Adopted Date April 12, 2022

ACCEPT RESIGNATION OF RANDI ESSIG, ELIGIBILITY REFERRAL SPECIALIST II, WITHIN THE WARREN COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES, HUMAN SERVICES DIVISION, EFFECTIVE APRIL 21, 2022

BE IT RESOLVED, to accept the resignation, of Randi Essig, Eligibility Referral Specialist II, within the Warren County Department of Job and Family Services, Human Services Division, effective April 21, 2022.

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 12th day of April 2022.

BOARD OF COUNTY COMMISSIONERS


Tina Osborne, Clerk

cc: Human Services (file)
R. Essig's Personnel File
OMB – Sue Spencer
Tammy Whitaker

Resolution

Number 22-0510

Adopted Date April 12, 2022

APPROVE DUAL ROLES OF KILEY DANE AS ELIGIBILITY REFERRAL SUPERVISOR AND TRAINING OFFICER WITHIN THE DEPARTMENT OF JOB AND FAMILY SERVICES, HUMAN SERVICES DIVISION

WHEREAS, Ms. Dane was promoted to Training Officer November 23, 2019 by resolution number 19-1557 adopted November 19, 2019; and

WHEREAS, the Director has indicated that Ms. Dane has been performing the essential functions of the eligibility referral specialist supervisor position along with the essential functions of the training officer; and

NOW THEREFORE BE IT RESOLVED, to approve dual roles of Kiley Dane as eligibility referral specialist supervisor and training officer positions, pay range A, \$2,076.54 bi-weekly, effective pay period beginning April 23, 2022.

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 12th day of April 2022.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: Human Services (file)
K. Dane's Personnel file
OMB-Sue Spencer

Resolution

Number 22-0511

Adopted Date April 12, 2022

APPROVE PROMOTION OF NATHAN ALFREY TO THE POSITION OF WATER DISTRIBUTION WORKER III WITHIN THE WATER AND SEWER DEPARTMENT

WHEREAS, Mr. Alfrey has successfully completed the 150 hours of heavy equipment operations and is eligible to be promoted to a Water Distribution Worker III classification; and

WHEREAS, it is the desire of the Board to promote Nathan Alfrey to said position in accordance with the Sanitary Engineer's staffing plan; and

NOW THEREFORE BE IT RESOLVED, to approve the promotion of Nathan Alfrey to the position of Water Distribution Worker III within the Water and Sewer Department, classified, full-time permanent, non-exempt status, Pay Range #17, \$22.32 per hour, effective pay period beginning April 9, 2022; and

BE IT FURTHER RESOLVED, Mr. Alfrey will receive a three (3) percent increase upon completion of his 365-day probation period in September 2022.

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 12th day of April 2022.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: Water/Sewer (file)
N. Alfrey's Personnel file
OMB – Sue Spencer
Theresa Reier

Resolution

Number 22-0512

Adopted Date April 12, 2022

APPROVE PROMOTION OF NATHAN BAKER TO THE POSITION OF WATER DISTRIBUTION WORKER II WITHIN THE WATER AND SEWER DEPARTMENT

WHEREAS, Mr. Baker has obtained his class A CDL license and is eligible to be promoted to a Water Distribution Worker II classification; and

WHEREAS, it is the desire of the Board to promote Nathan Baker to said position in accordance with the Sanitary Engineer's staffing plan; and

NOW THEREFORE BE IT RESOLVED, to approve the promotion of Nathan Baker to the position of Water Distribution Worker II within the Water and Sewer Department, classified, full-time permanent, non-exempt status, Pay Range #15, 21.01 per hour, effective pay period beginning April 9, 2022.

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 12th day of April 2022.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: Water/Sewer (file)
N. Baker's Personnel file
OMB – Sue Spencer

Resolution

Number 22-0513

Adopted Date April 12, 2022

APPROVE APPOINTMENT AND REAPPOINTMENT TO THE MENTAL HEALTH RECOVERY BOARD SERVING WARREN & CLINTON COUNTIES

BE IT RESOLVED, to approve the following appointment and reappointment to the Mental Health Recovery Board Serving Warren & Clinton Counties:

Appointment

Brian Payne (replacing Jonathan Westendorf) term from 7/1/22 to 6/30/26
5525 Windsor Court
South Lebanon, Ohio 45065

Reappointment


Tiffany Mattingly term from 7/1/22 to 6/30/26
3502 Riverside Drive
Mason, Ohio 45040

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

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

Resolution adopted this 12th day of April 2022.

BOARD OF COUNTY COMMISSIONERS


Tina Osborne, Clerk

/ll

cc: Mental Health Recovery Board (file)
Appointees
Appointments file
Laura Lander

*BOARD OF COUNTY COMMISSIONERS
WARREN COUNTY, OHIO*

Resolution

Number 22-0514

Adopted Date April 12, 2022

CANCEL REGULARLY SCHEDULED COMMISSIONERS' MEETING OF THURSDAY,
APRIL 14, 2022

BE IT RESOLVED, to cancel the regularly scheduled Commissioners' Meeting of Thursday, April 14, 2022.

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 12th day of April 2022.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

/tao

cc: Auditor
Commissioners' file
Press

*BOARD OF COUNTY COMMISSIONERS
WARREN COUNTY, OHIO*

Resolution

Number 22-0515

Adopted Date April 12, 2022

APPROVE AND AUTHORIZE THE COUNTY ADMINISTRATOR TO SIGN A MEMORANDUM OF UNDERSTANDING ON BEHALF OF THE WARREN COUNTY BOARD OF COMMISSIONERS AND THE WARREN COUNTY DISPATCH ASSOCIATION

BE IT RESOLVED, to authorize the County Administrator to sign a Memorandum of Understanding between the Warren County Commissioners and the Warren County Dispatch Association, regarding the observance of Juneteenth Holiday for 2021 and subsequent years, said memorandum of understanding is attached hereto and made a part hereof.

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

Mr. Grossmann – yea

Mr. Young – yea

Mrs. Jones – yea

Resolution adopted this 12th day of April 2022.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: c/a—Warren County Dispatch Association
Emergency Services (file)
WC Dispatch Union
OMB- Sue Spencer

MEMORANDUM OF UNDERSTANDING

This Agreement is entered into this 12 day of April, 2022, by and between the Warren County Commissioners ("Employer") and the Warren County Dispatch Association ("WCDA"). These parties will be collectively referred to as the "Parties."

WHEREAS, the Employer and the WCDA have executed a collective bargaining agreement effective from January 1, 2021 to December 31, 2023 ("2021-2023 CBA"); and

WHEREAS, Article 22 of the 2021-2023 CBA provides holiday benefits on the list of holidays identified in that article; and

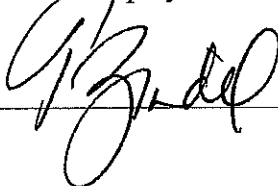
WHEREAS, the Employer has recognized the "Juneteenth" holiday for its employees beginning in 2021; and,

WHEREAS, the Employer and the WCDA desire to amend Article 22 of the 2021-2023 CBA to add the Juneteenth holiday to the holiday benefits afforded members of the WCDA without reopening other portions of the 2021-2023 CBA for negotiation;

NOW THEREFORE BE IT RESOLVED THAT, the Parties agree, as follows:

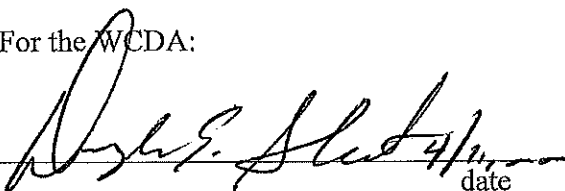
1. The Parties agree to add the "Juneteenth" holiday to the list of designated holidays set forth in Section 22.1 of the 2021-2023 CBA.
2. In 2021, the Juneteenth holiday was observed on July 2, 2021, with relevant holiday benefits provided to bargaining unit employees pursuant to Article 22 on July 2, 2021.
3. Beginning in 2022, the Juneteenth holiday will be annually observed on June 19th pursuant to the terms of Article 22.
4. Upon this Agreement's execution, it shall become part of the CBA. Unless modified through the process of collective bargaining, the addition of the Juneteenth holiday observed on June 19th shall be added to the collective bargaining agreement in Section 22.1 at the Parties' next negotiation. Alleged violations of this Agreement shall be subject to the grievance and arbitration procedures set forth in the collective bargaining agreement.

For the Employer:



4-12-22
date

For the WCDA:



4/12/22
date

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

Resolution

Number 22-0516

Adopted Date April 12, 2022

**REJECT STATEMENTS OF QUALIFICATIONS RECEIVED FOR PROFESSIONAL
CONSULTANT SERVICES FOR BROADBAND INTERNET INFRASTRUCTURE PROJECT**

WHEREAS, statements of qualifications were received by the Board of Commissioners for the Request for Qualifications for Professional Consultant Services for Broadband Internet Infrastructure Project; and

WHEREAS, it is the desire of the Board, upon recommendation of the Office of Economic Development to reject the statements of qualifications; and

WHEREAS, due to the need of exploring a different scope of services and conversations with firms about a revised scope of services it has been determined that a request for qualifications is not necessary; and

NOW THEREFORE BE IT RESOLVED, to reject the statements of qualifications received for Professional Consultant Services for Broadband Internet Infrastructure Project

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

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

Resolution adopted this 12th day of April 2022.

BOARD OF COUNTY COMMISSIONERS


Tina Osborne, Clerk

KP

cc: Economic Development (file)
OMB Bid file

Resolution

Number 22-0517

Adopted Date April 12, 2022

AUTHORIZE ACCEPTANCE OF QUOTE #001410 AND STATEMENT OF WORK FROM SECURE CYBER DEFENSE ON BEHALF OF WARREN COUNTY TELECOMMUNICATIONS FOR FORTIGATE HARDWARE SUPPORT

WHEREAS Secure Cyber Defense will provide FortiGate Hardware Support for Warren County Telecommunications as indicated on the attached quote and Statement of Work for purchase; and

NOW THEREFORE BE IT RESOLVED, to accept quote and Statement of Work from Secure Cyber Defense on behalf of Warren County Telecommunications for FortiGate Hardware Support as attached hereto and a part hereof.

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

Mr. Grossmann – yea

Mr. Young – yea

Mrs. Jones – yea

Resolution adopted this 12th day of April 2022.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: c/a—Secure Cyber Defense
Telecom (file)



We have prepared a quote for you

FortiGate Support Renewal(s)

Quote # 001410
Version 1

Prepared for:

Warren County Telecommunications

Dustin Flint
dustin.flint@wcoh.net

1390 Vanguard Blvd.
Miamisburg, OH 45342
www.secdef.com
(937) 388-4405



SECURECYBER
D E F E N S E

Hardware Support

| Description | Price | Qty | Ext. Price |
|---|------------|-----|------------|
| Fortinet Co-Term Support Renewal - Co-Term through 10/17/2023 - Enterprise Protection - FGT60FTK20071401 | \$1,764.00 | 1 | \$1,764.00 |
| Fortinet Co-Term Support Renewal - Co-Term through 10/17/2023 - Enterprise Protection - FGT40FTK2109A2JD | \$745.00 | 1 | \$745.00 |
| Fortinet Co-Term Support Renewal - Co-Term through 10/17/2023 - Enterprise Protection - FGT40FTK20024600 | \$745.00 | 1 | \$745.00 |

Subtotal: **\$3,254.00**

Invoicing & Payment Terms

| Description | Qty |
|--|-----|
| Upon approval of this quote, Customer will be invoiced for Total One-Time Costs. Payment is due within thirty (30) days of receipt of invoice. | |

1390 Vanguard Blvd.
Miamisburg, OH 45342
www.secdef.com
(937) 388-4405



SECURECYBER
D E F E N S E

FortiGate Support Renewal(s)



Prepared by:
Secure Cyber Defense
Shawn Waldman
(937) 388-4405
swaldman@secdef.com

Prepared for:
Warren County Telecommunications
500 Justice Drive
Lebanon, OH 45036
Dustin Flint
(513) 695-4357
dustin.flint@wcoh.net

Quote Information:
Quote #: 001410
Version: 1
Delivery Date: 03/23/2022
Expiration Date: 04/16/2022

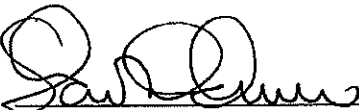
Quote Summary

| Description | Amount |
|------------------|------------|
| Hardware Support | \$3,254.00 |

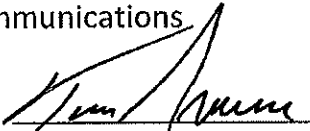
Total: \$3,254.00

Taxes, shipping, handling and other fees may apply. We reserve the right to cancel orders arising from pricing or other errors. All managed service contracts are a minimum of 1 year unless otherwise noted.

Secure Cyber Defense

Signature: 
Name: Shawn Waldman
Title: CEO
Date: 3.24.2022

Warren County Board of Commissioners c/o Telecommunications

Signature: 
Name: Tom Grossmann
Date: 4/12/22

APPROVED AS TO FORM



Adam M. Nice
Asst. Prosecuting Attorney

Resolution

Number 22-0518

Adopted Date April 12, 2022

AUTHORIZE ACCEPTANCE OF QUOTE #001409 AND STATEMENT OF WORK FROM SECURE CYBER DEFENSE ON BEHALF OF WARREN COUNTY TELECOMMUNICATIONS FOR FORTIGATE EQUIPMENT

WHEREAS Secure Cyber Defense will provide FortiGate Equipment for Warren County Telecommunications as indicated on the attached quote and Statement of Work for purchase; and


NOW THEREFORE BE IT RESOLVED, to accept quote and Statement of Work from Secure Cyber Defense on behalf of Warren County Telecommunications for FortiGate Equipment as attached hereto and a part hereof.

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

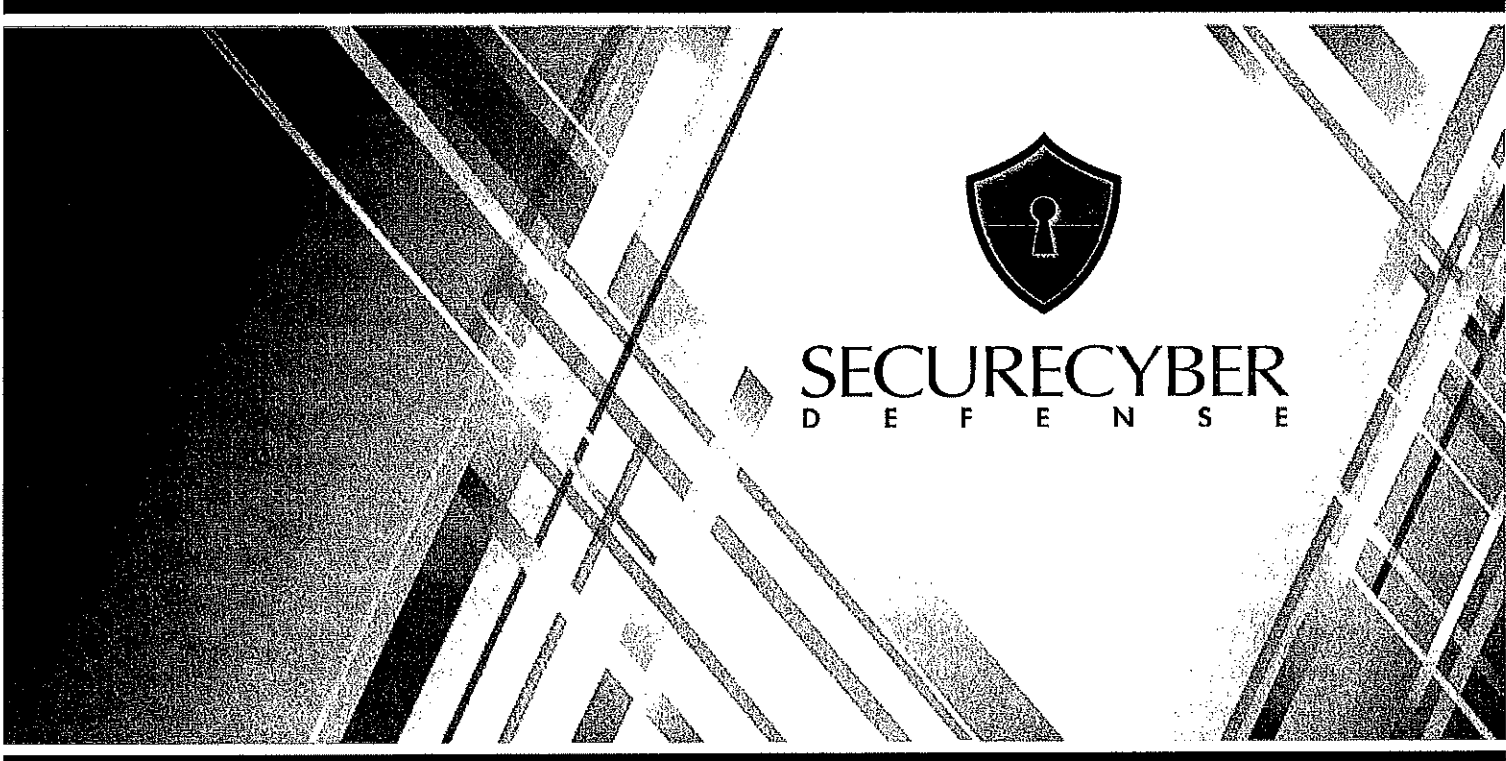
Mr. Grossmann – yea
Mr. Young – yea
Mrs. Jones – yea

Resolution adopted this 12th day of April 2022.

BOARD OF COUNTY COMMISSIONERS


Tina Osborne, Clerk

cc: c/a—Secure Cyber Defense
Telecom (file)



We have prepared a quote for you

FortiGate Purchase

Quote # 001409
Version 1

Prepared for:

Warren County Telecommunications

Dustin Flint
dustin.flint@wcoh.net

1390 Vanguard Blvd.
Miamisburg, OH 45342
www.secdef.com
(937) 388-4405



SECURECYBER
D E F E N S E

Hardware & Support

| Description | Price | Qty | Ext. Price |
|--|----------|-----|------------|
| FortiGate 40F with 1YR Enterprise Support | \$810.00 | 1 | \$810.00 |
| FortiGate-40F Hardware plus 1 Year 24x7 FortiCare and FortiGuard Enterprise Protection | | | |

Subtotal: **\$810.00**

Invoicing & Payment Terms

| Description | Qty |
|--|-----|
| Upon approval of this quote Customer will be invoiced for Total One-Time Cost. Payment is due within thirty (30) days of receipt of invoice. | |

1390 Vanguard Blvd.
Miamisburg, OH 45342
www.secdef.com
(937) 388-4405



SECURECYBER
D E F E N S E

FortiGate Purchase



Prepared by:
Secure Cyber Defense
Shawn Waldman
(937) 388-4405
swaldman@secdef.com

Prepared for:
Warren County Telecommunications
500 Justice Drive
Lebanon, OH 45036
Dustin Flint
(513) 695-4357
dustin.flint@wcoh.net

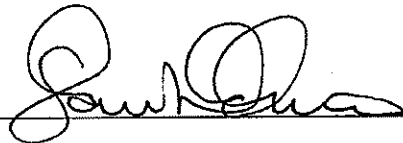
Quote Information:
Quote #: 001409
Version: 1
Delivery Date: 03/23/2022
Expiration Date: 04/16/2022

Quote Summary

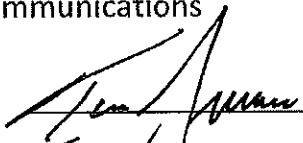
| Description | Amount |
|--------------------|----------|
| Hardware & Support | \$810.00 |
| Total: \$810.00 | |

Taxes, shipping, handling and other fees may apply. We reserve the right to cancel orders arising from pricing or other errors. All managed service contracts are a minimum of 1 year unless otherwise noted.

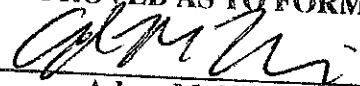
Secure Cyber Defense

Signature: 
Name: Shawn Waldman
Title: CEO
Date: 3-24-2022

Warren County Board of Commissioners c/o Telecommunications

Signature: 
Name: Tom Grossmann
Date: 4/12/22

APPROVED AS TO FORM


Adam M. Nice
Asst. Prosecuting Attorney

Resolution

Number 22-0519

Adopted Date April 12, 2022

APPROVE REPLACEMENT OF VARIOUS CULVERTS ON WARREN COUNTY ROADS UNDER FORCE ACCOUNT

WHEREAS, there is need to replace structures in various locations in Warren County; and

WHEREAS, Neil F. Tunison, P.E., P.S., Warren County Engineer proposes to replace the structures under force account; and

WHEREAS, the County Engineer's estimated cost of the portion of replacement on all nineteen culverts, including labor and materials not purchased under contract as specified under Sections 5543.19 and 5575.01 of the Ohio Revised Code is under the cap of \$100,000 for each culvert (see attached spreadsheet); and

WHEREAS, the Engineer's estimate is submitted and to be kept on file with the Board of County Commissioners; and

NOW THEREFORE BE IT RESOLVED, to approve the construction of the culverts under force account provisions of Section 5543.19 and 5575.01 of the Ohio Revised Code.

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

Mr. Grossmann – yea

Mr. Young – yea

Mrs. Jones – yea

Resolution adopted this 12th day of April 2022.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: Engineer (file)

**2022 FORCE ACCOUNT
CULVERT REPLACEMENT**

| Road | 12" to 18" Culverts | 21" to 36" Culverts | 42" to 66" Culverts | Road Total |
|---------------------------------|---------------------|---------------------|---------------------|--------------|
| Wilmington Road (CR7) | \$ 29,476.10 | \$ 38,562.28 | | \$ 68,038.38 |
| Socialville-Fosters Road (CR32) | \$ 6,158.47 | \$ 10,618.07 | | \$ 16,776.54 |
| Middleboro Road (CR45) | \$ 5,577.72 | | | \$ 5,577.72 |
| Lytle-Five Points Road (CR46) | \$ 5,991.72 | \$ 19,833.14 | | \$ 25,824.86 |
| Roachester-Osceola Road (CR200) | | \$ 8,260.57 | | \$ 8,260.57 |
| Olive Branch Road (CR217) | \$ 6,526.47 | | | \$ 6,526.47 |
| Whitegate Road (CR277) | | \$ 10,652.57 | | \$ 10,652.57 |
| McCulley Lane (TR284) | \$ 5,704.22 | | | \$ 5,704.22 |

Total = \$ 147,361.33

Resolution

Number 22-0520

Adopted Date April 12, 2022

APPROVE REPLACEMENT OF BRIDGE WA 127-0.51 ON CROSSLEY ROAD UNDER FORCE ACCOUNT

WHEREAS, there is need to replace structure WA 127-0.51 carrying Crossley Road over a Branch of Rapid Run in Clearcreek Township; and

WHEREAS, Neil F. Tunison, P.E., P.S., Warren County Engineer proposes to replace the structure under force account; and

WHEREAS, the County Engineer's estimated cost of the portion of replacement, including labor and materials not purchased under contract as specified under Sections 5543.19 and 5575.01 of the Ohio Revised Code is \$97,047.20 and under the cap of \$100,000 for a bridge; and

WHEREAS, the Engineer's estimate is submitted and to be kept on file with the Board of County Commissioners; and

NOW THEREFORE BE IT RESOLVED, to approve the construction of the bridge under force account provisions of Section 5543.19 and 5575.01 of the Ohio Revised Code.

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

Mr. Grossmann – yea

Mr. Young – yea

Mrs. Jones – yea

Resolution adopted this 12th day of April 2022.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: Engineer (file)

ESTIMATED EQUIPMENT

Each piece of equipment used in a project must be assigned an hourly rate. For equipment owned by the public entity, this rate must reflect the original purchase price of the equipment, maintenance costs, time in service, depreciation, freight, fuel, and hauling. The public office may use any generally accepted rate that reflects all of the aforementioned considerations, or it may use the statewide rates published by the Ohio Department of Transportation and updated on a quarterly basis; however, the office must use the same rate source for all equipment used in a project. Any equipment rented by the public entity must be listed in the form and reflect the rental rate.

| Description | Rate per | | Hours | = | Total |
|---------------------------------|----------|---|-------|---|--------------------|
| | Hour | | | | |
| Track Hoe | \$82.50 | X | 100 | = | \$8,250.00 |
| Compactor, Roller | \$27.50 | X | 4 | = | \$110.00 |
| Dump Truck | \$78.75 | X | 40 | = | \$3,150.00 |
| Dump Truck | \$78.75 | X | 40 | = | \$3,150.00 |
| Pickup Truck | \$15.00 | X | 40 | = | \$600.00 |
| Pickup Truck | \$15.00 | X | 40 | = | \$600.00 |
| Gradal | \$104.75 | X | 20 | = | \$2,095.00 |
| Skid Steer | \$37.00 | X | 50 | = | \$1,850.00 |
| Sweeper | \$25.00 | X | 4 | = | \$100.00 |
| Crew Truck | \$26.50 | X | 20 | = | \$530.00 |
| | | X | | = | |
| | | X | | = | |
| Total Equipment Estimate | | | | | \$20,435.00 |

TOTAL ESTIMATED PROJECT COST \$97,047.20 (labor + materials + equipment)

Prepared by: Dominic Brigano

Title: Assistant Bridge Engineer

Date: 4/1/2022

Resolution

Number 22-0521

Adopted Date April 12, 2022

APPROVE REPLACEMENT OF BRIDGE WA 35-0.23 ON STUBBS MILL ROAD UNDER FORCE ACCOUNT

WHEREAS, there is need to remove the structure WA 35-0.23 carrying Stubbs Mill Road over Big Foot Run in Hamilton Township; and

WHEREAS, Neil F. Tunison, P.E., P.S., Warren County Engineer proposes to remove the structure under force account, and

WHEREAS, the County Engineer's estimated cost of the portion of removal, including labor and materials not purchased under contract as specified under Sections 5543.19 and 5575.01 of the Ohio Revised Code is \$16,896.61 and under the cap of \$100,000 for a bridge; and

WHEREAS, the Engineer's estimate is submitted and to be kept on file with the Board of County Commissioners; and

NOW THEREFORE BE IT RESOLVED, to approve the construction of the bridge under force account provisions of Section 5543.19 and 5575.01 of the Ohio Revised Code.

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

Mr. Grossmann – yea

Mr. Young – yea

Mrs. Jones – yea

Resolution adopted this 12th day of April 2022.

BOARD OF COUNTY COMMISSIONERS


Tina Osborne, Clerk

cc: Engineer (file)

ESTIMATED EQUIPMENT

Each piece of equipment used in a project must be assigned an hourly rate. For equipment owned by the public entity, this rate must reflect the original purchase price of the equipment, maintenance costs, time in service, depreciation, freight, fuel, and hauling. The public office may use any generally accepted rate that reflects all of the aforementioned considerations, or it may use the statewide rates published by the Ohio Department of Transportation and updated on a quarterly basis; however, the office must use the same rate source for all equipment used in a project. Any equipment rented by the public entity must be listed in the form and reflect the rental rate.

| Description | Rate per | | Hours | = | Total |
|---------------------------------|----------|---|-------|---|-------------------|
| | Hour | | | | |
| Track Hoe | \$82.50 | X | 20 | = | \$1,650.00 |
| Compactor, Roller | \$27.50 | X | 4 | = | \$110.00 |
| Dump Truck | \$78.75 | X | 10 | = | \$787.50 |
| Dump Truck | \$78.75 | X | 10 | = | \$787.50 |
| Pickup Truck | \$15.00 | X | 10 | = | \$150.00 |
| Pickup Truck | \$15.00 | X | 10 | = | \$150.00 |
| Gradal | \$104.75 | X | 5 | = | \$523.75 |
| Skid Steer | \$37.00 | X | 5 | = | \$185.00 |
| Sweeper | \$25.00 | X | 4 | = | \$100.00 |
| Crew Truck | \$26.50 | X | 5 | = | \$132.50 |
| | | X | | = | |
| | | X | | = | |
| Total Equipment Estimate | | | | | \$4,576.25 |

TOTAL ESTIMATED PROJECT COST \$16,896.61 (labor + materials + equipment)

Prepared by: Dominic Brigano

Title: Assistant Bridge Engineer

Date: 4/1/2022

Resolution

Number 22-0522

Adopted Date April 12, 2022

AMEND RESOLUTION 22-0272 ADOPTED FEBRUARY 22, 2022 AUTHORIZING THE COUNTY ENGINEER TO FUND WARREN COUNTY'S PORTION (EASTERN HALF) OF THE PAVEMENT RESURFACING OF BUTLER-WARREN COUNTY LINE ROAD BETWEEN FALLEN OAKS DRIVE AND WESTERN ROW ROAD, BEING 0.860 MILES IN LENGTH, IN AN AMENDED AMOUNT NOT TO EXCEED \$95,000.00. THROUGH A JOINT PROJECT WITH WEST CHESTER TOWNSHIP, BUTLER COUNTY (WESTERN HALF) THROUGH THE BUTLER COUNTY ENGINEER'S 2022 PAVING PROGRAM AND APPROVE A PURCHASE ORDER FOR \$95,000 WITH THE SELECTED PAVING CONTRACTOR, JOHN R. JURGENSEN COMPANY

WHEREAS, the Butler-Warren County Line Road joint maintenance agreement was approved jointly by this Board and the Butler County Board of Commissioners on October 1, 1991; and

WHEREAS, the said joint maintenance agreement provides for completing capital improvements, such as pavement resurfacing, by splitting the cost equally between Warren County and Butler County; and

WHEREAS, Butler-Warren County Line Road is classified as a County Road in Warren County and a Township Road in Butler County; and

WHEREAS, the condition of Butler-Warren County Line Road between Fallen Oaks Drive and Western Row Road is deteriorating, which makes it necessary for the County Engineer and West Chester Township, Butler County, to complete a joint improvement project by resurfacing the pavement through the Butler County Engineer's 2022 Paving Program; and

NOW THEREFORE BE IT RESOLVED, to amend the resolution reflecting the amount not to exceed \$95,000.00 through a joint project with West Chester Township, Butler County (western half) through the Butler County Engineer's 2022 Paving Program contract awarded to John R. Jurgensen Company final cost not to exceed \$95,000;


BE IT FURTHER RESOLVED, to approve a purchase order in an amount of \$95,000.00 made payable John R. Jurgensen Company.

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 12th day of April 2022.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: c/a—Butler County Engineer
Engineer (file)

Resolution

Number 22-0523

Adopted Date April 12, 2022

APPROVE NOTICE OF INTENT TO AWARD BID TO THE JOHN R. JURGENSEN FOR THE 2022 RESURFACING PROJECT

WHEREAS, bids were closed at 2:00 p.m., on April 5, 2022, and the bids received were opened and read aloud for the 2022 Resurfacing Project, and the results are on file in the Commissioners' Office; and

WHEREAS, upon review of such bids by Matt Ervin, Project Technician, John R. Jurgensen has been determined to be the lowest and best bidder; and

NOW THEREFORE BE IT RESOLVED, upon recommendation of the Warren County Engineer's Office, that it is the intent of this Board to award the contract to John R. Jurgensen, 11641 Mosteller Road, Cincinnati, Ohio 45241, for a total bid price of \$5,805,032.24; and

BE IT FURTHER RESOLVED, that the President of the Board is hereby authorized to execute a "Notice of Intent to Award."

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 12th day of April 2022.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: Engineer (file)
OMB Bid file

Resolution

Number 22-0524

Adopted Date April 12, 2022

APPROVE AMENDMENT OF THE AGREEMENT WITH ROCHELLE DANIELS, ATTORNEY, AS WIOA LEGAL ADVISOR FOR THE AREA 12 WORKFORCE DEVELOPMENT BOARD

WHEREAS, following the procurement of Area 7, Area 12 approve and enter into a Service Agreement extension with Rochelle Daniels, Attorney, to provide Workforce Innovation and Opportunity Act (WIOA) Legal Services for the Area 12 Workforce Development Board; and

WHEREAS, the Board of County Commissioners and Rochelle Daniels mutually agreed to continue said services July 1, 2021, through June 30, 2022; and

WHEREAS, the Area 12 Workforce Development Board Staff has needed to use Rochelle Daniels' expertise in procuring RFPs and contracts and the cost of her expertise is in excess of her original contract; and

WHEREAS, all other terms of the contract not specifically amended hereby will remain the same; and

WHEREAS, the WIBBCW reserves the right to unilaterally amend this Agreement to be in compliance with 2 CFR 200 required contract elements; and

WHEREAS, the parties agree to amend the original contract as follows, the Area 12 Workforce Development Board request an amendment to the amount of the contract ending on June 30, 2022, from \$20,000 to \$30,000; and

NOW THEREFORE, BE IT RESOLVED, that the Board of Warren County Commissioners, on behalf of the Area 12 Workforce Development Board, does hereby approve the Amendment in the amount of \$10,000 to the contract ending June 30, 2022.

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 12th day of April 2022.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: c/a—Daniels, Rochelle
Area 12 WIB (file)

WIOA Attorney Agreement Amendment

WHEREAS, following the procurement of Area 7, Area 12 approve and enter into a Service Agreement extension with Rochelle Daniels, Attorney, to provide Workforce Innovation and Opportunity Act (WIOA) Legal Services for the Area 12 Workforce Development Board; and

WHEREAS, the Board of County Commissioners and Rochelle Daniels mutually agreed to continue said services July 1, 2021, through June 30, 2022; and

WHEREAS, The Area 12 Workforce Development Board Staff has needed to use Rochelle Daniels' expertise in procuring RFPs and contracts. The cost of her expertise is in excess of her original contract; and

WHEREAS, all other terms of the contract not specifically amended hereby will remain the same; and

WHEREAS, The WIBBCW reserves the right to unilaterally amend this Agreement to be in compliance with 2 CFR 200 required contract elements; and

Wherefor the parties agree to amend the original contract as follows, The Area 12 Workforce Development Board request an amendment to the amount of the contract ending on June 30, 2022, from \$20,000 to \$30,000; and

NOW THEREFORE, BE IT RESOLVED, that the Board of Warren County Commissioners, on behalf of the Area 12 Workforce Development Board, does hereby approve the Amendment in the amount of \$10,000 to the contract ending June 30, 2022.



Becky Ehring
Executive Director (Interim)
BCW/Workforce Board



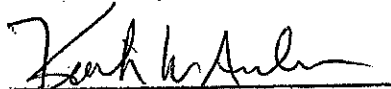
Rochelle Daniels

3-28-22
Date

3-26-22
Date

Approved as to Form:

DAVID FORNSHELL
PROSECUTING ATTORNEY
WARREN COUNTY, OHIO




By: Keith Anderson, Asst. Prosecutor

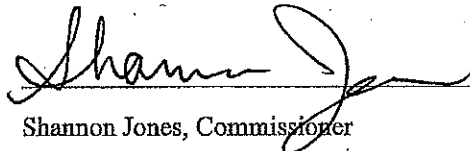
FISCAL AGENT EXECUTION

The Warren County Board of County Commissioners executes this agreement in its capacity as Fiscal Agent as agreed and memorialized in paragraph IV(a) of the Area 12 Intergovernmental Agreement between Butler, Warren, and Clinton counties. As Fiscal Agent, Warren County Board of County Commissioners is not responsible for performance of any aspect to this agreement nor bound by its terms.

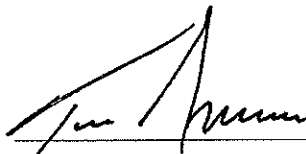
Warren County Board of County Commissioners



David Young, Commissioner

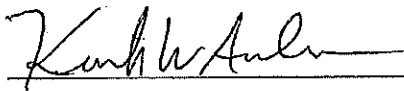


Shannon Jones, Commissioner



Thomas Grossman, Commissioner

Approved as to form:



Warren County Prosecuting Attorney

Resolution

Number 22-0525

Adopted Date April 12, 2022

APPROVE AMENDMENT TO THE WARREN COUNTY WATER AND SEWER DEPARTMENT WORK RULES

WHEREAS, pursuant to Resolution #97-528 adopted April 17, 1997, this Board approved Work Rules relative to the Warren County Water and Sewer Department; and

WHEREAS, recent expansion and improvements to the County wastewater and water treatment plants has increased the need for prompt response to emergency alarms and equipment failures; and

WHEREAS, with the implementation of ultrafiltration at the water treatment plants, the Ohio Environmental Protection Agency now requires County staff to perform additional laboratory testing to be completed each day ; and

WHEREAS, it is the desire of the Warren County Water and Sewer Department to modify Work Rules Section 3.4, Water Treatment Division and Section 4.1, Call Out, to meet the current needs of the Department; and

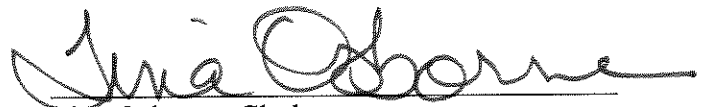
NOW THEREFORE BE IT RESOLVED, to amend the Warren County Water & Sewer Department Work Rules outlined in the attached document.

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 12th day of April 2022.

BOARD OF COUNTY COMMISSIONERS


Tina Osborne, Clerk

cgb

cc: Water/Sewer (file)
OMB – S. Spencer

**WARREN COUNTY
WATER & SEWER DEPARTMENT**

WORK RULES

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| Cash Handling Policy | 9 |
| Board - Board of County Commissioners | |
| Department - Water and Sewer Department | |

Revised: 7/21/2021

Section 1. Probationary Periods

1.1 The probationary period for all classifications shall be in accordance with the Warren County Personnel Policy Manual.

Section 2. Overtime Distribution

2.1 All employees shall receive overtime compensation at one and one-half (1 1/2) times his/her regular hourly rate of pay for each hour worked in excess of forty (40) hours in a designated work week as stipulated in the County's Personnel Policy Manual, Policy 4.05 Overtime Payment/Compensatory Time.

2.2 When the Sanitary Engineer determines that overtime is necessary, it will be offered to employees on a rotating basis. Attempts will be made to provide an equitable distribution of overtime among employees within the same division, classification series, and shift. Employees who are offered overtime and for any reason refuse or fail to work the overtime, shall be treated as if they had worked the requested overtime as it applies to successive overtime scheduling. Records of each employee's overtime shall be kept by their respective supervisor. In emergency situations, regular overtime scheduling procedures will not apply.

Section 3. Licensure

3.1 **Licensure Training**

Upon successfully completing an Operator's Training School Course sponsored by the The Ohio Operator Training Committee of Ohio, Inc. (or other pre-approved training course), an employee shall be reimbursed by the Board for the tuition associated with the Operator's Training School Course. Any training course required by the Sanitary Engineer shall be paid for by the Board in advance, rather than reimbursing the employee as provided herein.

3.2 **Water Treatment & Supply Division**

Water Treatment and Supply employees shall be promoted and advance within the pay ranges established by the County in accordance with the following criteria. Employees that obtain the required Ohio Environmental Protection Agency (OEPA) operator certifications shall be promoted upon approval of the Board of County Commissioners.

| Job Classification | Pay Range | OEPA Water Supply Operator Certification |
|------------------------------------|------------------|---|
| Water Treatment Plant Technician | 13 | No Certification |
| Water Treatment Plant Operator I | 15 | Class I |
| Water Treatment Plant Operator II | 17 | Class II |
| Water Treatment Plant Operator III | 19 | Class III |

Technicians, Operators, and Chief Operators that maintain laboratory certification from Ohio EPA for the testing of chemical constituents including, but not limited to, Fluoride, Chlorine, pH, Alkalinity, and Hardness; collect water samples; and perform the testing as needed by the County for regulatory reporting purposes shall be compensated with a 5-percent increase in wage.

Recognizing that trained employees provide County customers with a higher quality of service, the County encourages its employees to obtain training and OEPA certifications . Water Treatment and Supply employees that obtain their OEPA Water Supply Operator Class IV certification shall be compensated with an 8-percent increase in salary.

3.3 **Wastewater Treatment Division**

Wastewater Treatment employees shall be promoted and advance within the pay ranges established by the County in accordance with the following criteria. Employees that obtain the required OEPA certifications shall be promoted upon approval of the Board of County Commissioners.

| Job Classification | Pay Range | OEPA Wastewater Works Operator Certification |
|---|------------------|---|
| Wastewater Treatment Plant Technician | 13 | No Certification |
| Wastewater Treatment Plant Operator I | 15 | Class I |
| Wastewater Treatment Plant Operator II | 17 | Class II |
| Wastewater Treatment Plant Operator III | 19 | Class III |
| Wastewater Deputy Chief Operator | 20 | Class IV |

Upon the recommendation of the Wastewater Treatment Superintendent and Sanitary Engineer, wastewater treatment employees that obtain a Class A or B Commercial Driver License with N endorsement required for the operation of tank vehicles shall be compensated with a 4-percent increase in salary. These employees shall possess a valid CDL license at all times, incur less than two serious traffic violations within a three-year period, meet minimum medical standards, and be approved by the County to drive for CDL related work.

Wastewater treatment plant employees that obtain their OEPA Wastewater Works Operator Class IV certification shall be compensated with an 8-percent increase in salary.

3.4 **Water Distribution Division**

Water Distribution employees shall be promoted and advance within the pay ranges established by the County when they obtain a Class I OEPA Water Distribution Certification, a Commercial Driver’s License (CDL) of the appropriate class with the appropriate endorsements to drive a combination vehicle, or the required training and work experience as it relates to the operation of a backhoe (Backhoe Training). Employees that meet these minimum requirements shall be promoted upon approval of the Board of County Commissioners.

| Job Classification | Pay Range | Minimum Requirements |
|-------------------------------|------------------|---|
| Water Distribution Worker I | 13 | None |
| Water Distribution Worker II | 15 | CDL A or OEPA Class I Certificate |
| Water Distribution Worker III | 17 | CDL A, OEPA Class I Certificate, Backhoe Training (2 of 3 requirements) |

Water Distribution Worker III employees with backhoe certification and CDL license

that obtain their OEPA Water Distribution Class I license and are required by the County to serve as an Operator-of-Record for the County’s Class I water distribution system(s) shall be compensated with a 5-percent increase in wage.

Water Distribution Worker III employees and Foremen that obtain their OEPA Water Distribution Class II license and are required by the County to serve as an Operator-of-Record for the County’s Class II water distribution systems(s) shall be compensated with an additional 5-percent increase in wage above the rate received from a Distribution Class I licensure.

Upon the recommendation of the Water Distribution Superintendent and Sanitary Engineer, Warehouse Utility Workers and Meter Readers that obtain a Class A Commercial Driver License shall be compensated with a 4-percent increase in salary. These employees shall possess a valid CDL license at all times, incur less than two serious traffic violations within a three-year period, meet minimum medical standards, and be approved by the County to drive for CDL related work.

3.5 Sewer Collections Division

Sewer Collections employees shall be promoted and advance within the pay ranges established by the County when they obtain a Class I OEPA Wastewater Collections Certification, a Commercial Driver’s License (CDL) of the appropriate class with the appropriate endorsements to drive a combination vehicle, or the required training and work experience as it relates to the operation of a backhoe (Backhoe Training). Employees that meet minimum requirements shall be promoted upon approval of the Board of County Commissioners.

| Job Classification | Pay Range | Minimum Requirements |
|------------------------------|------------------|---|
| Sewer Collections Worker I | 13 | None |
| Sewer Collections Worker II | 15 | CDL or Class I OEPA Certificate |
| Sewer Collections Worker III | 17 | CDL, Class I Licensure, Backhoe Training (2 of 3 requirements) |

Sewer Collection Worker III employees with backhoe certification and CDL license that obtain their OEPA Collection System Class I license and are required by the County to serve as an Operator-of-Record for the County’s Class I collection system(s) shall be compensated with a 5-percent increase in salary.

Sewer Collection Worker III employees and Foremen that obtain their OEPA Wastewater Collection II license and are required by the County to serve as Operator-of-Record for the County’s Class II sanitary collection system(s) shall be compensated with an additional 5-percent increase in wage above the rate received from a Collection System Class I licensure.

The backhoe certification for the Sewer Collections Worker III position is not the same backhoe certification required for the Water Distribution Worker III position. In order for a Water Distribution Worker III employee to laterally transfer to a Sewer Collections Worker III position, said employee must meet the training and performance standards for the operation of the backhoe as established in the Sewer Collections Worker III classification.

3.6 Laboratory Personnel

Upon obtaining an Ohio Wastewater Analyst Certification I from the Ohio EPA **or** Certification as Laboratory Analyst from Ohio EPA for Chlorine Residuals, Fluoride, pH and Total Coliform & E. Coli Bacteria via MMO-MUG, an employee within the Laboratory Technician I classification may be transferred to the Laboratory Technician II classification and placed in the appropriate pay range.

Upon obtaining an Ohio Wastewater Analyst Certification I from the Ohio EPA **and** Certification as Laboratory Analyst from Ohio EPA for Chlorine Residuals, Fluoride, pH and Total Coliform & E. Coli Bacteria via MMO-MUG, an employee within the Laboratory Technician II classification may be transferred to the Laboratory Technician III classification and placed in the appropriate pay range.

3.7 Employees within the classifications outlined above shall receive the transfer and/or pay increase upon receipt of certification as noted only if a position requiring said certification is available or when the Board makes such position available.

3.8 If an employee in a position requiring a certification(s) (OEPA or, CDL and/or department backhoe) transfers to a position with a lesser pay range which does not require the certification, said employee shall be placed in the appropriate pay rate for the new position and his or her pay rate shall be reduced by the amount of the increase associated with the certification(s). The new pay rate shall be calculated by multiplying the employee's current pay rate by the ratio of the starting rate for the new position to the starting rate for the current position.

Example:

| | |
|---------------------|---|
| Current Pay Rate | \$12.00 |
| <u>Range</u> | <u>Starting Rate</u> |
| 13 | \$ 8.00 |
| 15 | 10.00 |
| <u>Calculation:</u> | $\frac{\$ 8.00}{\$10.00} \times \$12.00 = \9.60 |

Section 4. Call-Out

4.1 Water Distribution Primary On-Call Pager: For the classifications of Water Distribution Worker I, II and III, one (1) employee on a rotating basis shall be designated as Primary Water On-Call Employee.

Sewer Collection Primary On-Call Pager: For the classifications of Sewer Collection Foreman, Sewer Collection Worker I, II and III, one (1) employee on a rotating basis

shall be designated as Primary Sewer On-Call Employee.

Water Distribution Secondary On-Call Pager: For the classifications of Water System Repair Worker I, II and III, two (2) employees on a rotating basis shall be designated as Secondary Water On-Call Employee.

Sewer Collection Secondary On-Call Pager: For the classifications of Sewer system Foreman, Sewer Collection Worker I, II and III, one (1) employee on a rotating basis shall be designated as Secondary Sewer On-Call Employee.

Water Treatment Plant Secondary-Primary On-Call Pager: For the classifications of Water Treatment System-Plant Chief Operator, Water Treatment Plant Operator I, II and III, and Water Operators, and Treatment Plant Technicians, one (1) employee on a rotating basis shall be designated as Secondary-Primary Water Treatment Plant On-Call Employee.

Lower Little Miami Wastewater Treatment Plant Secondary-Primary On-Call Pager: For the classifications of Wastewater Treatment Plant Chief Operator, Deputy Chief Operator, Wastewater Treatment Plant Operator I, II and III Operators, and Wastewater Treatment Technician, Maintenance Foreman, and Maintenance Workers one (1) employee on a rotating basis shall be designated as Secondary-Primary Wastewater Treatment Plant On-Call Employee.

Dale AeresWaynesville Regional & Sycamore Trails Wastewater Treatment Plant Secondary-Primary On-Call Pager: For the classifications of Wastewater Treatment Plant Chief Operator, Deputy Chief Operator, Operators, Technicians, Maintenance Foreman, and Maintenance Workers one (1) employee on a rotating basis shall be designated as Primary Wastewater Treatment Plant On-Call Employee. For the individuals that operated and maintain the Dale Aeres and Sycamore Trails wastewater treatment plants and those additional individuals identified and designated by the Wastewater Treatment Superintendent, one (1) employee on a rotating basis shall be designated as Secondary Wastewater Treatment Plant On-Call Employee.

- 4.2 The Sanitary Engineer shall assign Primary On-Call Employee duties on a rotating basis (weekly or biweekly) to each employee within the above listed classifications. Any employee so assigned shall be required to carry a beeper/pager/cell phone and shall be responsible for responding to all emergencies during non-regular working hours during the rotation period. Any employee so assigned must remain within the beeper/pager/cell phone range and must acknowledge and respond to all emergencies within thirty (30) minutes. Failure on the part of the employee to respond to an emergency call-in shall subject the employee to discipline up to and including discharge.

The Sanitary Engineer shall assign Secondary On-Call Employee duties on a rotating basis (weekly or biweekly) to each employee within the above stated classifications. Any employee so assigned shall be required to carry a beeper/pager/cell phone and shall be responsible for responding during non-regular work hours during the rotation period to all emergencies which are determined an immediate problem by the Primary On-Call Employee or their supervisors, and respond to calls in the absence of a Primary On-Call

pager or employee, as applicable. An employee so assigned must remain within the beeper/pager/cell phone range and must acknowledge within thirty (30) minutes and respond to all call-ins within one (1) hour. Failure on the part of the employee to respond to a call-in shall subject the employee to discipline up to and including discharge.

- 4.3 The rotation of Primary On-Call Employees, and Secondary On-Call Employees shall be established by the Sanitary Engineer. Any employee so assigned shall be responsible for call-out duty but may, with the prior approval of the Department, have another employee take the duty. This prior approval by the Department is required to ensure that the Primary and Secondary On-Call Employees have the capability to adequately respond to any emergency.
- 4.4 Each employee designated Primary On-Call Employee shall be paid \$120.00 per week for this duty. Each employee designated Secondary On-Call Employee shall be paid \$80.00 per week for this duty.
- 4.5 In addition to on-call pay, each employee designated as the Primary On-Call employee, and Secondary On-Call employee shall receive one and one-half (1 ½) times his regular hourly rate of pay for each call-out, with a minimum of two (2) hours; except when a second call-out is received within two (2) hours of the prior call-out, the employee will receive one and one-half (1 ½) times his regular hourly rate of pay for both call-outs, but only one two hour minimum will be applicable.
- 4.6 All employees, Primary and Secondary On-Call and individuals not On-Call shall receive overtime compensation at one and one-half (1 1/2) times his/her regular hourly rate of pay for each hour worked in excess of forty (40) hours in a designated work week as stipulated in the County's Personnel Policy Manual, Policy 4.05 Overtime Payment/Compensatory Time for the following conditions:
 - A) Requested to continue to work upon completion of their normal shift, and
 - B) Scheduled to work a normal off day
- 4.7 Any employee, not designated as Primary or Secondary On-Call shall receive overtime compensation at one and one-half (1 1/2) times their regular hourly rate of pay with a minimum of two (2) hours, regardless of the number of hours worked during the work week for the following conditions:
 - A) Unscheduled call-out of more than one hour before the start of their normal shift or call-outs one hour after the end of their normal shift.
 - B) Call-outs of less than one hour before the start of their normal shift shall be compensated at one and one-half (1 1/2) times their regular hourly rate for the time worked and shall not be eligible for the (2) hours minimum call-out period.

Section 5. Uniforms

- 5.1 Safety Apparel - All employees working in Water Maintenance, Sewer Maintenance, Treatment Operations and any employees/supervisors working in an area where safety is a concern as deemed by the supervisor shall be issued and wear safety apparel at their respective job sites.

Safety Green Shirts & Sweatshirts. The County shall purchase and issue safety green shirts and sweatshirts to employees in the Water Maintenance, Sewer Maintenance, and Treatment Operations, and any employees/supervisors working in an area where safety is a concern. All safety shirt requests shall be reviewed and approved by the employee's supervisor. The uniforms shall be distributed and tracked by the employee supervisors and shall not qualify as taxable fringe income. Employees shall return all safety green shirts and sweatshirts upon the end of their employment with the County.

Safety Shoes & Boots. Water Maintenance, Sewer Maintenance, Treatment Operation and any employees/supervisors working in the field shall purchase and wear steel-toed and/or safety shoes or boots as directed by their supervisors. The County shall reimburse employees for the purchase of a maximum of \$400.00 per year for the purchase of safety shoes/boots. All safety boot and shoe requests shall be reviewed, approved, and tracked by the employee's supervisor and shall qualify as taxable fringe income (steel toe safety boots/shoes excluded from fringe income). Employee must request a purchase order from their supervisor prior to the purchase of any clothing.

Pants, Coveralls, Coats & Jackets. Water Maintenance, Sewer Maintenance, and Treatment Operation and any employees/supervisors working in the field are eligible for a maximum \$450.00 per year allowance for uniforms including pants, coveralls, coats, and jackets. All uniform requests shall be reviewed, approved, and tracked by the employee's supervisor and shall qualify as taxable fringe income. Employee must request a purchase order from their supervisor prior to the purchase of any clothing.

- 5.2 Prescription Safety Glasses Reimbursement

A) Purpose

The purpose of this Policy is to ensure the safety of our Water & Sewer employees who wear prescription glasses by providing a reimbursement policy to eligible employees for the purchase of prescription safety glasses.

Prescription Safety Glasses are defined as:

- Meeting the ANSI Z87.1 Standard
- Contain Corrective lenses for correction of vision impairment
- Equipped with side shields

B) Policy

This reimbursement policy applies only to those Warren County Water & Sewer Department employees whose job duties require the use of prescription safety glasses. Employees will receive up to a maximum \$100.00 annual reimbursement towards the purchase of prescription safety glasses. In order to obtain reimbursement, an employee will be required to submit to their immediate supervisor a completed

Prescription Safety Glasses Reimbursement Form along with a copy of an eye lenses prescription issued within the last year*. The eligible employee must have their eye examination performed by a licensed optometrist or ophthalmologist at no expense to the County.

C) Procedure

- 1) The employee should purchase an approved pair of prescription safety glasses as defined in Section A) above.
- 2) The employee must submit the completed Prescription Safety Glasses Reimbursement Form, a current eye lenses prescription and a detailed receipt of purchase to their immediate Supervisor for approval.
- 3) The Supervisor or Business Manager will determine 1) the employee has not received a reimbursement prior to one year from the date of the receipt, 2) the glasses meet the definition as defined in Section A) above, 3) All required paperwork is complete
- 4) If approved, the Supervisor and Business Manager will sign the Prescription Safety Glasses Reimbursement Form and submit to the Auditor's Office for reimbursement. The Assistant Business Manager will retain a copy of the form and receipt on file.

**A signed and dated letter from the Dispensing Optician certifying they have dispensed prescription eye wear to the eligible employee and that such eye wear complies with ANSI standard Z87.1 for safety eye glasses will be accepted in place of the required copy of eye lenses prescription.*

Section 6. Cash Handling Policy

- 6.1 Only the person/cashier assigned to a cash drawer shall handle cash or check payments in their drawer. At lunchtime or during breaks, the drawer should be locked.
- 6.2 A supervisor and a cashier/receptionist will go to the drop box safe together daily to retrieve payments from the drop box safe. The combination shall reside with the billing supervisor, Sanitary Engineer and cashier/receptionists. If there are cash payments, the supervisor must verify with the cashier/receptionist the cash amount. The drop box safe is to be locked at all times. On shut off days when the cashier/receptionists report to work early, they can go together to the safe and verify cash payments on that day.
- 6.3 Cashier/Receptionists are not to make any adjustments on accounts. They must give any adjustments to their supervisor.
- 6.4 When it is time to balance the cash drawer, the person assigned to the drawer shall count the cash in front of a supervisor and fill out a Cash Summary Report. The supervisor and

employee will both sign the Cash Summary Report indicating that they agree with the figure.

- 6.5 Any overages or shortages will be investigated. There should be an over/under report attached daily to the Cash Summary Report for each cash drawer. This over/under report shall be kept on file for one year. The overage is to be kept in the cash drawer.
- 6.6 If the overage reaches \$20.00 it shall be deposited in to the Water and Sewer funds.
- 6.7 If the shortage reaches \$20.00 the drawer shall be reimbursed by the Water and Sewer Department to bring it back up to a \$500.00 cash balance. (200.00 balance in the two extra cash drawers). The Business Manager has the authority to prepare a voucher to the Auditor's office to reimburse the shortage for said cash drawer. The Cashier/Receptionist and the supervisor must thoroughly investigate the shortage and submit in writing the circumstances surrounding the shortage and request reimbursement of said shortage.
- 6.8 An overage and/or shortage of more than **\$5.00** in a single day may be cause for disciplinary action.
- 6.9 More than **3** overages/shortages of more than **\$5.00** in a three month period will be cause for disciplinary action.
- 6.10 All cash drawers are to be locked and put in the safe at the end of the day. The combination of the lock shall reside with the billing supervisor and Sanitary Engineer. The keys are to be kept by the individual assigned to the cash drawer with the supervisor in charge of the spare keys. The safe is to be locked at all times. Whoever opens the safe must lock the safe afterwards.
- 6.11 If a Cashier calls in sick, the supervisor may assign a cash drawer to another employee. Said employee should count the cash drawer in the presence of a supervisor prior to taking payments. The employee will initial the Cash Summary Report indicating that they agree with the figure. They will proceed with the day's business and balance it at the end of the day.
- 6.12 Anyone assigned a cash drawer is responsible for the money in the drawer for that given day. Anyone assigned a cash drawer may request to count the money at the beginning of the day in the presence of a supervisor to verify the cash summary from the previous day.
- 6.13 At least once a month, the cashier's supervisor should count the drawers at the beginning of the day with the person responsible for that drawer.

Resolution

Number 22-0526

Adopted Date April 12, 2022

GRANT AN ELECTRIC EASEMENT TO DUKE ENERGY OHIO, INC. FOR THE RICHARD A. RENNEKER WATER TREATMENT PLANT EXPANSION PRIMARY POWER FEED

WHEREAS, this Board of County Commissioners (the "Board") of the County of Warren, Ohio (the "County") recognizing the need to perform improvements to the Richard A. Renneker Water Treatment Plant; and

WHEREAS, the expansion requires a primary electric power feed to be installed; and

NOW THEREFORE BE IT RESOLVED, to grant an Easement to Duke Energy Ohio, Inc. for a permanent easement that is part of parcel 16-11-200-002 located in Hamilton Township.

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 12th day of April 2022.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: c/a – Duke Energy Ohio, Inc.
Water/Sewer (file)
Easement file
Project file

Prepared by: Duke Energy Ohio, Inc.
Return to: Duke Energy Ohio, Inc.
Attn: Judy Downs – EF-320
139 E Fourth St
Cincinnati, OH 45202

Parcel # 16-11-200-002

EASEMENT

State of Ohio

County of Warren

THIS EASEMENT (“Easement”) is made this 12 day of April 20 22, from **WARREN COUNTY COMMISSIONERS, AKA BOARD OF WARREN COUNTY COMMISSIONERS, ON BEHALF OF WARREN COUNTY, OHIO**, an Ohio county and political subdivision of the State (“Grantor”, whether one or more), to **DUKE ENERGY OHIO, INC.**, an Ohio corporation (“Grantee”).

Grantor, for and in consideration of the sum of One and 00/100 Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby grant unto Grantee a perpetual and non-exclusive easement, to construct, reconstruct, operate, patrol, maintain, repair, replace, relocate, add to, modify, and remove electric and communication lines including, but not limited to, all necessary supporting structures, and all other appurtenant apparatus and equipment for the transmission and distribution of electrical energy, and for technological purposes related to the operation of the electric facilities and for the communication purposes of Incumbent Local Exchange Carriers (collectively, “Facilities”). Grantor is the owner of that certain property described in Military Survey # 1548, Hamilton Township, Warren County, State of Ohio; being a part of a tract as recorded in Official Record Book 323, Page 545 in the Office of the Recorder of Warren County, Ohio (“Property”). The Facilities shall be underground, except as needed on or above the ground to support the underground Facilities, and located in, upon, along, under, through, and across a portion of the Property within an

easement area described as follows: Easement being that area indicated, relative to landmarks and property lines, shown on a drawing marked Exhibit "A", attached hereto and becoming a part hereof (hereinafter referred to as the "Easement Area").

The rights granted herein include, but are not limited to, the following:

1. Grantee shall have the right of ingress and egress over the Easement Area, Property, and any adjoining lands now owned or hereinafter acquired by Grantor (using lanes, driveways, and adjoining public roads where practical as determined by Grantee).
2. Grantee shall have the right to trim, cut down, and remove from the Easement Area, at any time or times and using safe and generally accepted arboricultural practices, trees, limbs, undergrowth, other vegetation, and obstructions.
3. Grantee shall have the right to trim, cut down, and remove from the Property, at any time or times and using safe and generally accepted arboricultural practices, dead, diseased, weak, dying, or leaning trees or limbs, which, in the opinion of Grantee, might fall upon the Easement Area or interfere with the safe and reliable operation of the Facilities.
4. Grantee shall have the right to install necessary guy wires and anchors extending beyond the boundaries of the Easement Area.
5. Grantee shall have the right to relocate the Facilities and Easement Area on the Property to conform to any future highway or street relocation, widening, or alterations.
6. Grantor shall not place, or permit the placement of, any structures, improvements, facilities, or obstructions, within or adjacent to the Easement Area, which may interfere with the exercise of the rights granted herein to Grantee. Grantee shall have the right to remove any such structure, improvement, facility, or obstruction at the expense of Grantor.
7. Excluding the removal of vegetation, structures, improvements, facilities, and obstructions as provided herein, Grantee shall promptly repair or cause to be repaired any physical damage to the surface area of the Easement Area and Property resulting from the exercise of the rights granted herein to Grantee. Such repair shall be to a condition which is reasonably close to the condition prior to the damage, and shall only be to the extent such damage was caused by Grantee or its contractors or employees.
8. Grantor shall retain the right to use the Easement Area in any manner provided such use is not inconsistent with the rights granted herein to Grantee.
9. All other rights and privileges reasonably necessary, in Grantee's sole discretion, for the safe, reliable, and efficient installation, operation, and maintenance of the Facilities.

The terms Grantor and Grantee shall include the respective heirs, successors, and assigns of Grantor and Grantee. The failure of Grantee to exercise or continue to exercise or enforce any of the

rights herein granted shall not be construed as a waiver or abandonment of the right thereafter at any time, or from time to time, to exercise any and all such rights.

TO HAVE AND TO HOLD said rights, privilege, and easement unto Grantee, its successors, licensees, and assigns, forever. Grantor warrants and covenants that Grantor has the full right and authority to convey to Grantee this perpetual Easement, and that Grantee shall have quiet and peaceful possession, use and enjoyment of the same.

IN WITNESS WHEREOF, Grantor has signed this Easement under seal effective this 12 day of April, 2022.

WARREN COUNTY COMMISSIONERS,
AKA BOARD OF WARREN COUNTY
COMMISSIONERS, ON BEHALF OF
WARREN COUNTY, OHIO

[Signature]
Signed Name

Tom Grossmann
Printed Name

President
Title

State OF Ohio
COUNTY OF Warren

APPROVED AS TO FORM

[Signature]
Adam M. Nice
Asst. Prosecuting Attorney

This certificate relates to an acknowledgment in connection with which, no oath or affirmation was administered to the document signer.

The foregoing instrument was acknowledged before me, a notary public in the county and state written above this 12 day of April, 2022 by Tom Grossmann as the President of WARREN COUNTY COMMISSIONERS, AKA BOARD OF WARREN COUNTY COMMISSIONERS, ON BEHALF OF WARREN COUNTY, OHIO, an Ohio county and political subdivision of the State.



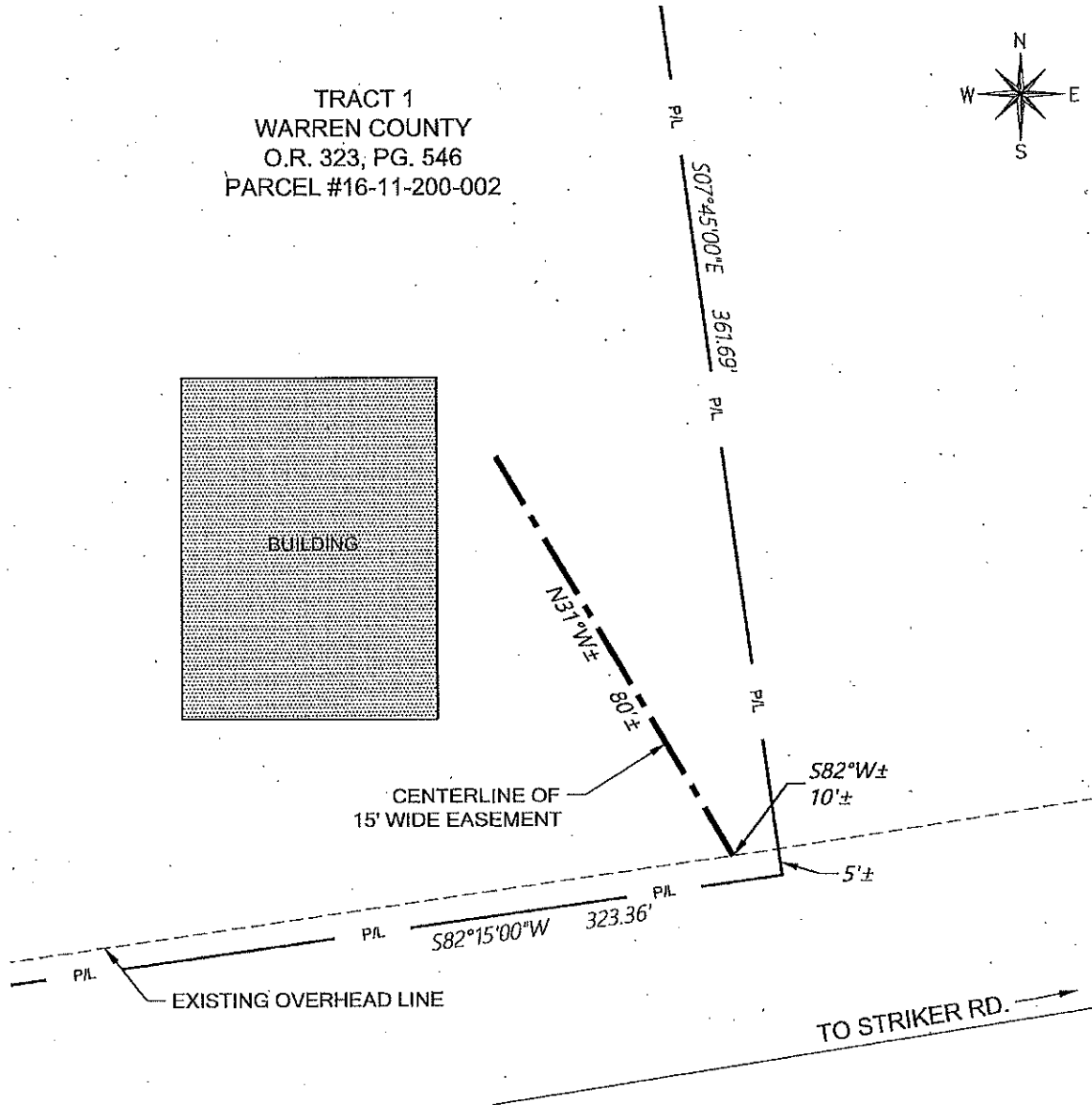
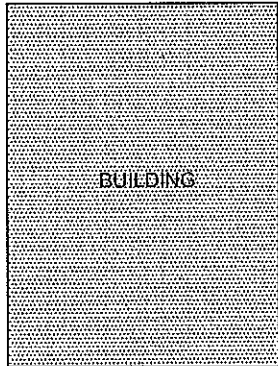
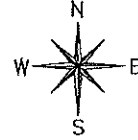
LAURA K. LANDER
NOTARY PUBLIC
STATE OF OHIO
Recorded in
Warren County
My Comm. Exp. 12/26/2022

Signed: [Signature]
Printed or Typed Name: Laura K Lander
Commission expires: 12/26/2022
My County of Residence: Warren
My Commission Number: 2017-26-687973

This instrument was prepared by Janice L. Walker, Attorney-at-Law, 139 E. 4th St., Cincinnati, OH 45202.

THIS IS NOT A SURVEY. LOCATIONS SHOWN ARE APPROXIMATE.

TRACT 1
WARREN COUNTY
O.R. 323, PG. 546
PARCEL #16-11-200-002



NOTE: PROPERTY LINES AS SHOWN WERE
PLOTTED FROM O.R. 323, PG. 546
AND SITE IMPROVEMENTS FROM GIS DATA

SERVICE DR.

TO STRIKER RD.



1:30

WARREN COUNTY, OHIO

SITE NAME: HAMILTON TOWNSHIP MILITARY SURVEY #1548

| | | | | |
|-------------|------|------------|------------------|---------------------------------|
| | DR. | AM | EXHIBIT MAP OF: | EASEMENT |
| | CK. | MT | EXHIBIT MAP FOR: | WARREN COUNTY |
| | DATE | 12/21/2021 | LOCATION | 6193 STRIKER RD, MAINEVILLE, OH |
| EXHIBIT 'A' | | | | |

Resolution

Number 22-0527

Adopted Date April 12, 2022

**APPROVE CONSTRUCTION MANAGER AT RISK SERVICES AGREEMENT WITH SHOOK
CONSTRUCTION FOR THE FOSTERS LIFT STATION AND GRAVITY SEWER
IMPROVEMENTS PROJECT**

WHEREAS, with the adoption of Resolution No. 21-1113 on August 10, 2021 the Warren County Board of County Commissioners approved the issuance of a request for qualifications to interested contractors for construction manager at risk services; and

WHEREAS, with the adoption of Resolution No. 21-1420 on October 19, 2021 the Warren County Board of County Commissioners approve the issuance of a request for proposal to the four qualified firms that responded to the County's request for qualifications; and

WHEREAS, the Commissioner appointed evaluation committee reviewed the proposals, conducted post-proposal interviews, and after ranking the firms were directed by the County Commissioners through Resolution No. 22-0177 to enter into contract negotiations with the best valued firm, Shook Construction; and

NOW THEREFORE BE IT RESOLVED, to enter into an Agreement with Shook Construction Company for construction manager at risk services for the above referenced project, subject to the following conditions:

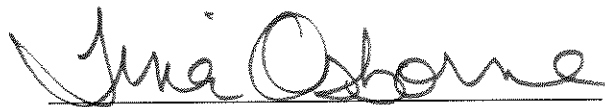
1. The scope of services shall be as stipulated in the "Standard Form of Agreement Between Owner and Construction Manager as Constructor" attached hereto and made part thereof.
2. Compensation shall be in accordance with the provisions of the aforementioned Agreement and the attachment thereto.

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 12th day of April 2022.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: c/a – Shook Construction
Water/Sewer (file)
Project file



AIA[®]

Document A133[™] - 2009

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

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

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

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

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

Shook Construction Company
2000 West Dorothy Lane
Moraine, OH 45439

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

Foster's Lift Station and Gravity Sewer Improvement Project

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

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

The Design Engineer:
(Name, legal status and address)

Burgess & Niple, Inc.
Ken Sponaugle, PE and Jeffrey Eilers, PE
525 Vine Street, Suite 1300
Cincinnati, Ohio 45202

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.

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AIA Document A133[™] - 2009 (formerly A121MCMc - 2003). Copyright © 1991, 2003 and 2009 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 10:49:14 on 03/23/2018 under Order No.1237498590 which expires on 12/13/2018, and is not for resale. User Notes: (1379299949)

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

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

The Owner's Representative is:
Chris Brausch, Sanitary Engineer, Chris.Brausch@co.warren.oh.us

The Construction Manager's Designated Representative:
(Name, address and other information)
Eric Rees, Shook, erees@shookconstruction.com

The Design Engineer's Designated Representative:
(Name, address and other information)
Jeff Eilers, Burgess & Niple, jeff.eilers@burgessniple.com

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 Design Engineer and furnished by the Owner as described in Section 2.2.8. The Contract Agreement represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. In the event inconsistencies, conflicts, or ambiguities between or among the Contract Documents are discovered after execution of the Agreement, Construction Manager shall provide the better quality or greater quantity of Work or comply with the more stringent requirements.

§ 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 Design Engineer 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

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

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

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

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

§ 2.1 Preconstruction Phase

§ 2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other. As set forth in this Agreement, the Construction Manager will be responsible for performing the following duties including, but not limited to, cost estimating, budgeting, value engineering, constructability review, scheduling, identifying inconsistencies or omissions that might affect the GMP, and preconstruction planning throughout the Preconstruction Phase. The Owner's total budget for the Project including design fees, the Cost of the Work, all other construction costs, and Construction Manager fees is \$9.5 Million. The Construction Manager will perform its duties, including but not limited to budgeting, value engineering, and scheduling, consistent with the Owner's program, schedule, and current budget. If, at any time, the Construction Manager's estimates of the Cost of the Work exceed the latest approved Project budget, the Construction Manager shall inform the Owner and Design Engineer in writing and make recommendations for corrective action.

§ 2.1.2 Consultation

The Construction Manager shall schedule and conduct meetings with the Design Engineer and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Design Engineer 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 Design Engineer on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 2.1.2.1 BIM Process. Not Used.

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§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, At the conclusion of the schematic design, design development and construction document phases, the Construction Manager shall prepare and periodically update a Project schedule in a format acceptable to the Owner for the Design Engineer's review and the Owner's acceptance. The Construction Manager shall obtain the Design Engineer's approval for the portion of the Project schedule relating to the performance of the Design Engineer's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Design Engineer's services, other Owner consultants' services and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

§ 2.1.4 Phased Construction

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

§ 2.1.5 Preliminary Cost Estimates

§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Design Engineer, 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 Design Engineer's review and Owner's approval. The Construction Manager's cost estimates of the Cost of the Work shall be provided in a format acceptable to the Owner. If the Design Engineer 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 Design Engineer progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at each design phase and all other appropriate intervals agreed to by the Owner, Construction Manager and Design Engineer, 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 Design Engineer's review and the Owner's approval. The Construction Manager shall inform the Owner and Engineer when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

§ 2.1.6 Subcontractors and Suppliers

The Construction Manager shall develop bidders' interest in the Project. In accordance with the Ohio Revised Code and Ohio Administrative Code, all subcontracts shall comply with Section 153:1-3-02 of the Ohio Administrative Code.

§ 2.1.6.1 The Construction Manager acknowledges the requirement imposed by Ohio Revised Code and Ohio Administrative Code sections that the Construction Manager establish criteria for the prequalification of prospective bidders on subcontracts and that such criteria will follow the administrative code requirements and will also include any specific criteria required by the Owner that are consistent with the scope and needs of the Project. The proposed criteria developed by the Construction Manager will be submitted to the Owner, which the Owner will approve or reject, in whole or in part. The approved prequalification criteria will be used by the Owner for any future analysis it may conduct concerning a prospective bidder's responsibility to perform a subcontract.

§ 2.1.6.2 The Construction Manager will complete the bidder prequalification process for each subcontract not later than 30 days before the Construction Manager intends to solicit bids for the subcontract, unless the Owner agrees otherwise upon request from the Construction Manager.

§ 2.1.6.3 To develop prospective bidder interest in the Project, including specifically those prospective bidders (if any) the Owner asks the Construction Manager to consider, the Construction Manager may place a notice on (1) the State

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Public Notice Website created under ORC 125.182, (2) the official website of the Owner, (3) other websites such as appropriate trade association websites, news media, or other public media websites, or (4) any combination of the foregoing.

§ 2.1.6.4 Construction Manager will evaluate the qualifications of each prospective Bidder that timely submits its qualifications and shall notify each of them whether they are qualified. The Construction Manager will submit the names and qualifications of all of the qualified prospective Bidders to the Owner. The Construction Manager may submit the names of fewer than three (3) qualified prospective Bidders if the Construction Manager submits satisfactory documentation to the Owner that fewer than three qualified prospective Bidders are available.

§ 2.1.6.4.1 The Owner will review the list of prospective Bidders submitted by the Construction Manager and may rely on the Construction Manager's representations to verify that the prospective Bidders meet the pre-qualifications criteria. The Owner may eliminate any prospective Bidder it determines is not qualified and will notify the Construction Manager of its decision. The Construction Manager will promptly notify the prospective Bidder in writing of the Owner's decision to eliminate the prospective Bidder.

§ 2.1.6.4.2 If the Construction Manager receives a written objection from the eliminated prospective Bidder within 5 days after the eliminated Bidder receives notice of the Owner's decision, the Construction Manager will promptly deliver the eliminated prospective Bidder's written objection to the Owner. The Owner may respond to the objection through the Construction Manager.

§ 2.1.6.5 The solicitation and selection of the Subcontractors shall be conducted under an open-book pricing method consistent with Paragraph 11.5.13 of the Agreement. Subject to the consent of the Owner, the Construction Manager is not required to award a Subcontract to the low bidder.

§ 2.1.6.6 Construction Manager shall obtain bids from and employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Owner may reasonably object to Construction Manager's selection of any Subcontractor, Supplier, or other individual or entity. The objection or failure to object to any Subcontractor by the Owner shall not relieve the Construction Manager of its responsibility for performance of the Work, nor shall the approval of any particular Subcontractor be construed as approval of any particular process, equipment, or material. If the Construction Manager is in default because of the Subcontractor's performance, then the Construction Manager shall not be entitled to any adjustment in the Contract Sum, Contract Time and/or GMP and shall remain liable to the Owner for any actual and direct damages or losses caused by such default.

§ 2.1.6.7 Immediately upon execution of each subcontract with a subcontractor or supplier, the Construction Manager shall provide the Owner an executed copy of such subcontract. All subcontracts shall comply with Section 153:1-3-02 of the Ohio Administrative Code. In accordance with Ohio law, all Subcontracts on the Project shall include the following terms and conditions:

§ 2.1.6.7.1 Mutual rights and responsibilities: The subcontract form shall contain a provision requiring:

- a. the Construction Manager and the Subcontractor to be mutually bound to the terms of the Contract Documents;
- b. the Construction Manager to assume toward the Subcontractor the rights, remedies, obligations, and responsibilities that the Owner has and assumes toward the Construction Manager;
- c. the Subcontractor to assume toward the Construction Manager the rights, remedies, obligations, and responsibilities that the Construction Manager assumes towards the Owner; and
- d. the Subcontractor to perform its portion of the work on the Project in accordance with the Contract Documents.

§ 2.1.6.7.2 Contingent assignment: The subcontract form shall contain a provision providing for the assignment of the subcontract to the Owner, at the Owner's option, upon the termination of the Construction Manager's contract and written notice to the Subcontractor.

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§ 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. If Owner performs other work on the Project or at the Site with separate contractors under Owner's control, Construction Manager shall reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without disruption.

§ 2.1.6.11 For any Work that the Construction Manager proposes to self-perform, the Construction Manager will receive prior written approval from the Owner and will submit a sealed bid for the work before the time when bids for the work are to be received from other prospective Bidders, as required by Ohio law.

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

§ 2.1.7 Procurement Schedule

The Construction Manager shall prepare, for the Design Engineer's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. The Construction Manager will not unreasonably withhold its consent. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 2.1.8 Extent of Responsibility

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Design Engineer and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Design Engineer may require.

§ 2.1.9 Notices and Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities for inclusion in the Contract Documents.

§ 2.1.10 Communications with Local and Government Officials. The Construction Manager shall assist the Owner and Design Engineer 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

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2.2.1 Upon execution of this Agreement, Construction Manager shall begin the Preconstruction Phase services on the Project, as provided in the Contract Documents, including Paragraph 2.1 and 2.2 herein. Within 35 calendar days of the Design Engineer issuing 90% complete drawings for construction, the Construction Manager shall submit its Guaranteed Maximum Price (GMP) Proposal to the Owner, based upon the approved Construction Documents, in accordance with the Contract Documents and using the GMP Proposal form included in the Owner's RFP. Submission by the Construction Manager of a GMP Proposal that attempts to modify or alter the Construction Fee, At-Risk Fee, General Conditions, or Contingency submitted with its Original Proposal submitted in response to the Owner's RFP shall be a material breach of this Agreement by the Construction Manager. In addition, any attempt by the Construction Manager to alter the terms of the modified A133 or modified A201 that was included in the Owner's RFP as a condition or assumption of the GMP Proposal shall be a material breach of this Agreement by the Construction Manager.

At the Owner's request, the Construction Manager, Owner and the Design Professional (along with selected engineers and consultants) will meet to reconcile any questions, discrepancies or disagreements relating to the GMP qualifications and assumptions, and the GMP. Any qualifications and assumptions shall be documented in writing and approved in writing by Owner.

§ 2.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Design Engineer, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 2.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

1. A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
2. A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
3. A statement of the proposed Guaranteed Maximum Price, including a statement in accordance with the Owner's RFP and in the form attached to the Owner's RFP or other form acceptable to the Owner, including the Cost of the Work, Construction Fee, At-Risk Fee, General Conditions, and Contingency. Construction Manager shall also provide a breakdown of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee; systems and list of any allowances included in the Cost of the Work;
4. The anticipated date of Substantial Completion, Construction Schedule, including the Date of Substantial Completion and Date of Final Completion, upon which the proposed Guaranteed Maximum Price is based;
5. [Not Used.] and
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 these 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 Design Engineer to review the Guaranteed Maximum Price proposal. In the event that the Owner and Engineer discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 2.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, Following Owner's acceptance of a Guaranteed Maximum Price

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proposal, in Owner's sole discretion, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Design Engineer, is attached hereto as Exhibit A. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based. Subject to termination for cause under Section 2.2.1 of this Agreement, if the parties cannot agree on a GMP for the Project, the Owner may terminate the Contract for convenience or the Owner may elect to change the project delivery method to construction manager agency.

§ 2.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

§ 2.2.8 The Owner shall authorize the Design Engineer to provide the revisions to the Drawings and Specifications to incorporate the agreed upon agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Design Engineer of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

§ 2.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, agrees that it will not be reimbursed for any sales, consumer, commercial activity, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed. The Owner is exempt from payment of Ohio sales and use tax and will provide the Contractor with a completed Construction Contract Tax Exemption Certificate for the purchase of materials and equipment to be incorporated into the Project. Contractor is engaged in an independent business and will perform all obligations under this Agreement as an independent contractor and not as the employee of the Owner. Contractor will act in the best interests of the Owner with respect to cost issues related to Subcontractors, will disclose Subcontractor's cost details upon request of the Owner, and solely with respect to application of Ohio's Commercial Activity Tax statute, for purposes of Ohio Revised Code 5751.01(P) and Ohio Adm. Code 5703-29-13, if applicable, Contractor is acting as an agent of the Owner and not as an agent of any Subcontractor for the limited purpose of making payments to subcontractors and suppliers providing work, goods, and/or services for the Project and will act as a conduit with respect to payments made by Owner to Contractor on behalf of Subcontractor's Work.

§ 2.2.10 Substantial Completion of the entire Work shall be achieved no later than the date identified in the GMP Amendment accepted by the Owner. The Date for Substantial Completion shall only be changed or modified by Change Order or Modification, regardless of any dates in the Construction Schedule, created by any person, including the Construction Manager. The Date for Final Completion of the Construction Manager's Work shall be the date identified in the GMP Amendment accepted by the Owner ("Date for Final Completion"). The Date for Final Completion shall only be modified by Change Order or Modification regardless of any dates in Construction Schedule, including the Construction Schedule, created by any person, including the Construction Manager. Owner and Construction Manager mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

§ 2.3 Construction Phase

§ 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201-2007, the date of commencement of the Work shall mean the date of 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 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 Design Engineer. The Owner shall then determine, with the advice of the Construction Manager and the Design Engineer, which bids will be accepted. Owner. The Owner may designate specific persons from whom, or entities from which, the Construction

Manager shall obtain bids. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection. Notwithstanding the foregoing, the Construction Manager acknowledges and agrees that Ohio law imposes certain requirements upon the Construction Manager for establishing criteria for subcontractors, for obtaining the Owner's approval of the criteria, for prequalifying prospective Bidders for the work to be performed, for soliciting bids from prequalified prospective Bidders, for obtaining the Owner's approval of Subcontractors, and for the terms in Construction Manager's subcontract agreements.

~~2.3.2.2~~ If the Guaranteed Maximum Price has been established and when When a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

~~§ 2.3.2.3~~ Subcontracts or other agreements shall conform to the applicable payment provisions requirements of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a ~~cost plus~~ cost plus a fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

~~§ 2.3.2.4~~ If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

~~§ 2.3.2.5~~ The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute meeting minutes to the Owner and Architect Design Engineer for their review.

~~§ 2.3.2.6~~ Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Design Engineer a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201-2007.

~~§ 2.3.2.7~~ The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Design Engineer, 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 Design Engineer, 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 Design Engineer and shall provide this information in its monthly reports to the Owner and Design Engineer, in a format acceptable to the Owner, in accordance with Section 2.3.2.7 above.

§ 2.4 Professional Services

Section 3.12-10 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

§ 2.5 Hazardous Materials

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

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria,

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including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems sustainability and site requirements.

§ 3.1.2 Not Used.

§ 3.1.3 Not Used.

§ 3.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, to the extent available to the Owner, 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 may not rely upon or make any Claim against the Owner or Design Professional, or any of their agents or employees, with respect to any interpretation by the Construction Manager of or conclusion drawn from any technical data or any such other data, interpretations, opinions, or information.

§ 3.1.4.1 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 3.1.4.2 The 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. Construction Manager shall be responsible for independently confirming the location of utility lines and exercising reasonable care related thereto. Notwithstanding the foregoing, the Owner may, at its option, require Construction Manager to obtain such surveys and same shall be included in the Cost of the Work.

§ 3.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations. The Construction Manager and Design Engineer shall collaborate on the number and locations of such tests and borings. The documents produced by the geotechnical engineers are not Contract Documents.

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§ 3.1.4.4 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2007, the Design Engineer 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 Design Professional

The Owner shall retain a Design Engineer to provide services, duties and responsibilities as described in AIA Document B133™, 2014, Standard Form of Agreement Between Owner and Design Engineer, Construction Manager, as the contract between Owner and Design Engineer, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager upon written request, with a copy of the executed agreement between the Owner and the Design Engineer, 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, 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:

(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

\$65,000. The Preconstruction Fee shall not be included in the GMP to be provided by the Construction Manager in the GMP Amendment.

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within () months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted. **[Not Used]**

§ 4.1.4 Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions. The Preconstruction Fee includes all Direct Personnel Expenses incurred by the Construction Manager to provide the services during the preconstruction phase of the Project as defined in the Contract Documents.

§ 4.1.5 Additional Services. Any Additional Services outside of the scope of preconstruction services set forth in this Agreement, will be compensated based upon written, signed Amendment between the Owner and Construction Manager authorizing such additional services and setting forth the agreed-upon price. Before the Construction Manager incurs any time or expenses on any activity that may be an additional service the Construction Manager shall provide verbal notice to the Owner's Representative followed immediately by written communication to the Owner's Representative. No additional services shall be performed without written, signed agreement between the Owner and Construction Manager, prior to the performance of such services.

§ 4.2 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 upon presentation of the Construction Manager's invoice. Amounts unpaid () days after the invoice date as set forth in the Contract Documents. Amounts due and unpaid in accordance with this Agreement shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager below.
(Insert rate of monthly or annual interest agreed upon.)

%
Simple interest at prime plus 0.5 per annum % Construction Manager shall give the Owner seven days written notice of late payment before interest shall begin to accrue.

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's funds for the Construction Manager's performance of the Contract. The Contract Sum is the sum of the Cost of the Work (as defined in Article 6 of this Agreement), the Construction Manager's Fee, (the sum of the Construction Fee, the At-Risk Fee, and General Conditions) and the amount of Contingency used, as each is defined in the Contract Documents, exclusive of the Preconstruction Fee.

§ 5.1.1 The Construction Manager's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

shall be set forth in the Guaranteed Maximum Price Amendment.

§ 5.1.2 The method of adjustment of the Construction Manager's Fee for changes in the Work:

Shall be in accordance with Article 7 of Document A201-2007 as modified

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

Shall be in accordance with Article 7 of Document A201-2007 as modified

§ 5.1.4. Rental rates for Construction Manager-owned equipment shall not exceed percent (%) of the standard rate paid at the place of the Project costs of machinery and equipment, exclusive of hand tools, minor equipment, simple scaffolds, etc, whether rented from the Construction Manager or others; charges for certain non-owned heavy or specialized equipment may be invoiced at up to 100% of the documented rental cost. Downtime due to repairs, maintenance and weather delays shall not be allowed. The Construction Manager shall submit copies of actual paid invoices to substantiate rental costs; Charges for certain Construction Manager-owned, heavy or specialized equipment may be invoiced at up to 100% of the cost listed by the current edition of the Associated Equipment Dealers Green Book rental rates and specifications for construction equipment. No recovery will be allowed for hand tools, minor equipment, simple scaffolds, etc. The longest period of time that the equipment is to be required for the Work shall be the basis for the pricing. Downtime due to repairs, maintenance and weather delays shall not be allowed. For Construction manager owned equipment, the aggregate equipment rental charges for any single piece of equipment used in all change order work shall not exceed fifty percent (50%) of the fair market value of the piece of equipment.

§ 5.1.5 Unit prices, if any:

(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)

| Item | Units and Limitations | Price per Unit (\$0.00) |
|--|-----------------------|-------------------------|
| None identified prior to construction. | | |

§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price GMP shall be established upon execution of the Guaranteed Maximum Price Amendment (Exhibit A).

Construction Manager guarantees that it shall not exceed the GMP identified in the Guaranteed Maximum Price Amendment subject to additions and deductions by changes in the Work as provided in the Contract Documents. The only exception to the Guaranteed Maximum Price will be for changes with Owner's prior approval, in writing. The Construction Manager guarantees that the Contract Sum shall not exceed the GMP set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work time pursuant to the terms of the Contract Documents. To the extent the Contract Sum exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.

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

§ 5.2.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents. Not used.

§ 5.2.1.1 The GMP includes the Construction Fee, the At-Risk Fee, the General Conditions, the Contingency, and the Maximum Cost of the Work, as defined herein. The use of the Contingency by the Construction Manager and all other costs incurred by the Construction Manager are subject to open book pricing in accordance with Section § 11.5.13 of this Agreement.

a. **Construction Fee.** The Construction Fee is the combination of overhead, including but not limited to, home office overhead, and profit for services provided during the construction phase of the Project as defined in the Contract Documents. The amount of the Construction Manager Fee for the Project is identified in the GMP Amendment (Exhibit A).

b. **At-Risk Fee.** The At-Risk Fee is defined as the fee amount attributable to the risk the Construction Manager assumes by agreeing to be responsible for the performance of the work. The amount of the Construction Manager's At-Risk Fee for the Project is identified in the GMP Amendment (Exhibit A). Construction Manager shall not be entitled to any additional At-Risk Fee beyond the At-Risk Fee included in the Guaranteed Maximum Price Amendment during the Project.

c. **General Conditions.** The General Conditions are the Construction Manager's costs for materials, services and equipment necessary to perform the work on the Project but that are not incorporated into the Project. The amount of the Construction Manager's General Conditions costs for the Project is identified in the GMP Amendment (Exhibit A). The Construction Manager's General Conditions costs, to the extent applicable to the Project, will include:

1. 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);
2. Project Management personnel (e.g., Project Executive, Project Manager, Deputy Project Manager, Construction Manager, Deputy Construction Manager, Resident Engineer, Safety Officer, Project Controls staff, superintendents, Quality Manager, contract administration staff, procurement staff, general clerical and administrative support staff, legal staff, estimators, finance and accounting staff);
3. progress scheduling;
4. compliance notices;
5. contract and subcontract administration;
6. trash removal for construction office;
7. project record keeping, documentation, document control, and status reporting;
8. Ohio Utilities Protection Services/Dig Safe program notice and coordination;
9. Project health and safety program including but not limited to equipment, supplies, training, record keeping, plan development, incentives, audits and drills;
10. taxes, subject to paragraph 2.2.9 of this Agreement;

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11. staff expense allowances;
12. personnel and site vehicle rental/mileage, fuel and maintenance;
13. relocation and temporary lodging and per diem expense;
14. ice and water;
15. drug testing;
16. communications equipment;
17. field/project offices including furnishings, office equipment, utilities, heat, office supplies, telephones, facsimile machines, internet connections, computers/networks/Cadd machinery, janitorial, mail and shipping, security systems, temporary fencing and barricades, office mobilization and demobilization;
18. badging and site security;
19. photography/progress photos;
20. tool trailer and hand tools;
21. project signage;
22. portable toilets, lockers and washrooms;
23. temporary power;
24. business licenses;
25. patent fees and royalties;
26. training and recruiting;
27. premiums for that portion of insurance and bonds required by the Contract Documents that can be attributed to this Agreement, (self-insurance for either full or partial amounts of the coverages required by the Contract Documents may be included, with the Owner's prior approval) – the premium charges will be set forth as a line item in the Itemized General Conditions attached hereto as Exhibit C.

The General Conditions costs shall not include costs for any of the items listed above that are included in subcontract agreements. Notwithstanding any other provisions to the contrary, Construction Manager has represented that the Itemized General Conditions attached hereto as Exhibit C identifies all of the costs that will be reimbursable as General Conditions, and that each item identified in the General Conditions will be billed on a not-to-exceed basis.

- d. Contingency.** The "Contingency" is an amount set aside by the Construction Manager to pay for unexpected events, as set forth in this paragraph. Construction Manager's Contingency may be used to cover those costs considered reimbursable as a Cost of the Work under the Contract Documents, provided the costs are not recoverable from a subcontractor, supplier, consultant or insurance, except as set forth herein. 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 not covered by insurance and unrecoverable from a subcontractor, supplier, or surety and 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; and (iii) costs arising from default of a Subcontractor that are unrecoverable from such Subcontractor, its surety, or from an insurance carrier.

The Construction Manager shall not be entitled to any additional overhead, profit or other markup on any Contingency expenditure as the parties acknowledge that the Construction Manager's Fee covers such overhead, profit and other markup. The Contingency shall not be used to cover items resulting from the Construction Manager's breach or negligence, or to cover Construction Manager's General Condition items except as specifically set forth in (i), (ii), and (iii) in this Paragraph or with Owner's prior written approval. The Construction Manager shall consult with the Owner on whether and to what extent to use funds from the Contingency and all uses of the Contingency shall be subject to the Owner's prior written approval as memorialized by a Change Order, the approval of which shall not be unreasonably withheld. With each Application for Payment, the Construction Manager shall provide Owner an accounting of the Contingency, including all reasonably foreseen uses or potential uses of the Contingency in the upcoming one (1) months. 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.

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- 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.
- ii. 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.
- iii. Any unused portion of the Contingency upon Final Payment shall be reallocated to the Savings and added to the remaining balance of the Savings.
- iv. The use of the Contingency by the Construction Manager is subject to open book pricing in accordance with Section § 11.5.13 of this Agreement.

§ 5.2.1.2 Buyout Savings. Notwithstanding any other provision in the Contract Documents to the contrary, if the Maximum Cost of the Work in the GMP is greater than the actual Cost of the Work following the bidding of subcontracts on the Project, such "Buyout Savings" shall be retained 100% by the Owner.

§ 5.2.1.3 Savings. If the Contract Sum is less than the GMP, as such GMP may have been adjusted over the course of the Project, the difference shall be retained 100% by the Owner.

§ 5.3 Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Design Engineer 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 Not used

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201-2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201-2007 shall have the meanings assigned to them in AIA Document A201-2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201-2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.

§ 5.3.5 Not used.

§ 5.3.5 Allowances.

§ 5.3.5.1 The Cost of the Work may include the Allowances identified in the GMP Amendment.

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§ 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 The Subject to the GMP, the term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work for the Construction Phase. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

§ 6.1.3 The amounts included in Article 6 are subject to open book pricing in accordance with Section § 11.5.13 of this Agreement.

§ 6.2 Labor Costs Incurred by Construction Manager in Self-Performing Work on the Project.

§ 6.2.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 6.2.2 Not Used.

§ 6.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.

§ 6.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner's prior approval.

§ 6.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

§ 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 6.4.1 Costs. Actual costs, without mark-up, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ 6.4.2 Costs. Actual costs, without mark-up of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 6.5.1 Costs. To the extent not included in the Construction Manager's General Conditions, 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 included in the General Conditions costs.

§ 6.5.2 Rental charges. Subject to 5.1.4, actual rental charges without mark-up, for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

§ 6.5.3 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.

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§ 6.5.5 [Not Used.]

§ 6.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 6.6 Miscellaneous Costs

§ 6.6.1 Premiums for Bonds on Subcontractors.

§ 6.6.2 Not Used.

§ 6.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay, obtain and pay for. In the Cost of the Work in the GMP, the Construction Manager shall include an allowance for all such permits and inspections, including but not limited to, special inspections for soil compaction, concrete, and structural steel.

6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201-2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

§ 6.6.5 [Not Used.]

§ 6.6.6 Not Used.

6.6.7 Not Used.

§ 6.6.8: Not Used.

§ 6.6.9 Not Used.

§ 6.7 Other Costs and Emergencies

6.7.1 Actual costs, without markup, incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201-2007.

§ 6.7.3 Actual costs, without markup of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recoverable by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

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§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201-2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

§ 6.8 Costs Not To Be Reimbursed as Cost of the Work

§ 6.8.1 The Cost of the Work shall not include the items listed below:

1. ~~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;
2. Expenses of the Construction Manager's principal office and offices other than the site office;
3. Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
4. The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
5. Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
6. Any cost not specifically and expressly described in Sections 6.1 to 6.7;
7. Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
8. Costs for Preconstruction Fee incurred during the Preconstruction Phase
9. Costs which are included in the Construction Manager's General Conditions and At-Risk Fee;
10. Computers (desktop, laptop, tablet, etc.) and software unless such are acquired solely, not partially or substantially, for the beneficial use of the Project, and computers may not contain other unrelated Project or personal data unless otherwise specifically approved by Owner in writing;
11. Corporate accounting, data and check processing, and similar business transaction related costs related to the Work are part of Construction Manager's overhead business expenses and should have been included in Construction Manager's Fee;
12. All taxes, including those identified in paragraph 2.2.9 of this Agreement;
13. Consultants to the Construction Manager not previously approved in writing by the Owner; and
14. Unless otherwise provided in the Agreement, Owner shall not reimburse the Construction Manager for rental charges more than two weeks prior to and one week after such temporary facilities, machinery and equipment that are needed to be used directly in the Work.
15. Relocation and temporary living allowances of personnel required for the Work unless such relocation meets the "distance test" under the United States Internal Revenue Publication 521.

§ 6.9 Discounts, Rebates and Refunds

§ 6.9.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner; or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, equipment rental discounts, insurance and surety bonding discounts and credits, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or

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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 GMP, including but not limited to, the Cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's accountants shall be afforded access to review and audit the Construction Manager's records as set forth in the AIA Document A201-2007, General Conditions of the Contract for Construction, as modified.

ARTICLE 7. PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

§ 7.1.1 Based upon Applications for Payment submitted to the Design Engineer by the Construction Manager and Certificates for Payment issued by the Design Engineer, 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 as follows:

The Construction Manager shall submit its Application for Payment to the Owner and Design Engineer in the form the Owner specifies and Certification on or before the twenty-fifth (25th) day of each month for Work completed through the twenty-second day of the month. The Owner will issue payment to the Construction Manager within thirty (30) days from the date of its receipt of the complete Application for Payment, certified by the Design Engineer and in compliance with all of Owner's policies, procedures, and documentation requirements in the Contract Documents.

§ 7.1.3 Provided that an Application for Payment is received as required by the Contract Documents, the Owner shall make payment as set forth above.

(Federal, state or local laws may require payment within a certain period of time.)

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit maintain payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Design Engineer to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment. Invoices in excess of \$1,000.00 shall be submitted with the Application for Payment. Invoices of \$1,000.00 or less shall be retained by the Construction Manager and produced to the Owner upon request.

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. ~~Fee, At-Risk Fee, Contingency accounting, and General Conditions shall each be shown separately.~~ The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Design Engineer or Owner may require. This schedule, unless objected to by the ~~Design Engineer.~~ Design Engineer or Owner, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 7.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

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

1. Take that portion of the ~~Cost of the Guaranteed Maximum Price Work~~ properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the ~~Cost of the Guaranteed Maximum Price Work~~ allocated to that portion of the Work in the schedule of values. ~~Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007; values;~~
2. Add that portion of the ~~Cost of the Guaranteed Maximum Price Work~~ properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
3. ~~Add the Construction Manager's Fee, less retainage of _____ percent (____ %). Subtract retainage of eight percent (8 %) of the Cost of the Work (including the Work of Subcontractors and that portion of the construction Work that the Construction Manager self-performs) and subtract retainage of 8% for the materials and equipment set forth in paragraph .2 above, for the first 50% of the Work, in accordance with the Ohio Revised Code;~~
4. Add the Construction Manager's Fee. The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
4. ~~Subtract retainage of _____ percent (____ %) from that portion of the Work that the Construction Manager self-performs;~~ 5. Add General Conditions earned since previous Application for Payment;
5. ~~6. Subtract the aggregate of previous payments made by the Owner;~~
6. ~~7. Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and~~
7. ~~8. Subtract amounts, if any, for which the Design Engineer has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.~~

§ 7.1.8 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 7.1.9 Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Design Engineer 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 Design Engineer 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 Design Engineer has made

exhaustive or continuous on-site inspections; or that the Design Engineer has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

7.1.11 Construction Manager's first Application for Payment is considered incomplete unless in addition to the requirements described in Sections 7.1.1 through 7.1.8 and AIA® A201™ - 2007 Article 9.3.3, all of the following completed items are also included with the Application for Payment: (1) Performance and Payment Bonds, if required; (2) Certificates of Insurance, as required; (3) Affidavits that the surety and insurance company or companies meets the requirements in AIA® A201™ - 2007 Article 11.4; (4) Construction Schedule for the Project; (5) Completed Schedule of Values for the Project.

§7.1.12 Notwithstanding Section 7.1.3 above, the Owner shall have the right to withhold sufficient amount from the Application for Payment for unacceptable, defective, deficient, or non-conforming Work ("Disputed Work") after notifying the Construction Manager. The Construction Manager shall promptly remedy the Disputed Work. Owner shall promptly render payment for such Disputed Work after the Construction Manager has cured and the Owner has accepted the remedied Disputed Work.

§7.2 Final Payment

§7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

1. the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment;
2. the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
3. a final Certificate for Payment has been issued by the Design Engineer.

The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Design Engineer's final Certificate for Payment, or as follows:

§7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Design Engineer ~~Owner~~ by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Design Engineer 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 Design Engineer's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201-2007. The Design Engineer 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. 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 Design Engineer'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 Design Engineer's final Certificate for Payment.

§7.2.4 Not Used.

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§ 7.2.5 Amounts withheld from the final payment to cover any incomplete work are not considered retainage and shall not be paid to the Construction Manager until the work is actually completed and accepted by the Owner. Such withholdings shall not be less than 150% of the estimated cost to complete the Work.

§ 7.2.6 The Owner shall have the right to deduct from the Final Payment due the Construction Manager all costs, including additional fees paid to Owner's consultants, which the Owner incurred as a result of and attributed to Construction Manager's failure to fully complete and/or closeout the Project in accordance with the Contract Documents.

ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds before construction begins, as set forth in Article 11 of AIA Document A201-2007.

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A 01-2007.)

Type of Insurance or Bond
Payment Bond and Performance Bond in the forms attached hereto as Exhibit B, as required by Ohio law.

Limit of Liability or Bond Amount (\$0.00)
Upon execution of the GMP Amendment, or any Modification to the GMP Amendment, Construction Manager shall provide replacement payment and performance bonds in the full amount of the GMP and deliver written consent from its surety in accordance with OAC 153:1-4-02(B). The penal sum of the bond is at all times, subject to ORC § 153.11

If the Construction Manager elects to obtain a separate payment and performance bond from any Subcontractor or Sub-Subcontractor, in addition to the Construction Manager's bond, such bond(s) shall be in the forms specified in Exhibit B and the Construction Manager shall ensure that the Owner is listed as a co-obligee on all performance bonds and payment bonds obtained from Subcontractors and Sub-Subcontractors on the Project.

ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201-2007. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201-2007, the method of binding dispute resolution shall be as follows:

(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

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

Other: (Specify)

§ 9.3 Initial Decision Maker

The Design Engineer will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2007 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Design Engineer.)

ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price Termination for Convenience by Owner

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201-2007.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, prior to the commencement of the Construction Phase, the Construction Manager shall be equitably compensated for the portion of any Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 4.1.

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

1. Take the Cost of the Work actually incurred by the Construction Manager to the date of termination;
2. Add the portion of the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work completed at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
3. Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse 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

Not used.

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10.2.1 Not Used.

10.2.2 Not Used.

§ 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2007. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201-2007, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

ARTICLE 11 MISCELLANEOUS PROVISIONS

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

§ 11.2 Ownership and Use of Documents

Section 1.6 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.3 Governing Law

Section 13.1 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender developer providing financing and oversight for the Project if the lender developer agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201-2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 11.5 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 Design Engineer 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

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violation of any laws, statutes, ordinances, or regulations of any public authority having jurisdiction, then, notwithstanding such term or provision, this Agreement will remain in full force and effect and such term will be deemed stricken, provided this Agreement will be interpreted, when possible, so as to reflect the intentions of the parties as indicated by any such stricken term or provision.

11.5.5 ENTIRE AGREEMENT. This Agreement and the other Contract Documents constitute the entire agreement among the parties with respect to their subject matter and will supersede all prior and contemporaneous, oral or written, agreements, negotiations, communications, representations, and understandings with respect to such subject matter, and no person is justified in relying on such agreements, negotiations, communications, representations, or understandings.

11.5.6 COUNTERPARTS. This Agreement may be executed in any number of counterparts each of which when so executed and delivered will be an original hereof, and it will not be necessary in making proof of this Agreement to produce or account for more than one counterpart hereof. This Agreement may be executed and delivered by electronic mail.

11.5.7 [Not Used].

11.5.8 LIQUIDATED DAMAGES. If the Construction Manager does not have its Work on the Project substantially complete by the Date for Substantial Completion, the Construction Manager shall pay the Owner (and the Owner may set off from sums coming due the Construction Manager) liquidated damages in the per diem amount stated in the following table per day for each day beyond the Date for Substantial Completion that the Work fails to be substantially complete. The Construction Manager acknowledges that such amount of liquidated damages represents a reasonable estimate of the actual damages that the Owner will incur if the Work is not substantially complete by the Date for Substantial Completion. The Liquidated Damages 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.

| Contract Sum | Liquidated Damages Per Day |
|---|----------------------------|
| Less than \$1,000,000.00 | \$500.00 |
| From \$1,000,000.01 to \$2,000,000.00 | \$1,000.00 |
| From \$2,000,000.01 to \$5,000,000.00 | \$2,000.00 |
| From \$5,000,000.01 to \$10,000,000.00 | \$5,000.00 |
| From \$10,000,000.01 to \$20,000,000.00 | \$10,000.00 |
| From \$20,000,000.01 to \$50,000,000.00 | \$20,000.00 |
| More than \$50,000,000.01 | \$50,000.00 |

If the Construction Manager does not have its Work on the Project finally complete by the Date of Final Completion, the Construction Manager shall pay the Owner liquidated damages in the per diem amount stated below:

| Contract Sum | Liquidated Damages Per Day |
|---|----------------------------|
| Less than \$1,000,000.00 | \$50.00 |
| From \$1,000,000.01 to \$2,000,000.00 | \$100.00 |
| From \$2,000,000.01 to \$5,000,000.00 | \$200.00 |
| From \$5,000,000.01 to \$10,000,000.00 | \$500.00 |
| From \$10,000,000.01 to \$20,000,000.00 | \$1,000.00 |
| From \$20,000,000.01 to \$50,000,000.00 | \$1,500.00 |
| More than \$50,000,000.01 | \$2,000.00 |

§ 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.

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§ 11.5.10 Privileged Communications. To the extent not inconsistent with applicable Ohio law, all communications between Owner's legal counsel and Construction Manager, while Construction Manager is acting as the consultant for Owner under the terms of this Agreement and which relate in any way to the administration of the construction of the Project or to the work of any Contractor, Subcontractor, material supplier, or any other person rendering services in connection with the Project, shall be subject to the attorney-client privilege that can be waived only by Owner. Any such communications and copies thereof that are written, including without limitation correspondence, notes, memoranda, notes of meetings and conversations that are reduced to writing, and the like, upon notice from Owner's legal counsel, shall be placed by Construction Manager in a separate file folder marked "Privileged and Confidential" and shall not be disclosed to any person other than Construction Manager's own legal counsel without the express written permission of the Owner. This Section 11.5.10 is intended to protect the confidentiality of Owner's communications with its counsel when Construction Manager comes into possession of such information in its capacity as agent of Owner in the performance of its duties under this Agreement in the event of a dispute between Owner and a third party. This section is not intended to impede communications between Construction Manager and Construction Manager's legal counsel.

§ 11.5.11 Non-Discrimination. Construction Manager agrees:

1. That in the hiring of employees for the performance of Work under this Agreement or in any subcontract, neither the Construction Manager, subcontractor, nor any person acting on behalf of either of them, shall by reason of race, creed, sex, handicap, or color, discriminate against any citizen of the state in the employment of labor or workers who are qualified and available to perform the Work to which the employment relates.
2. That neither the Construction Manager, subcontractor, nor any person acting on behalf of either of them, shall, in any manner, discriminate against or intimidate any employee hired for the performance of Work under this Agreement on account of race, creed, sex, handicap, or color.
3. That there shall be deducted from the amount payable to the Construction Manager by the Owner under this Agreement a forfeiture of twenty-five dollars (\$25.00) as required by Ohio Revised Code Section 153.60 for each person who is discriminated against or intimidated in violation of this Agreement.
4. That this Agreement may be canceled or terminated by the Owner and all money to become due hereunder may be forfeited for a second or subsequent violation of the terms of this section of this Agreement.

§ 11.5.12 No Findings for Recovery. The Construction Manager represents that the Construction Manager is not subject to a finding for recovery under Section 9.24, Ohio Revised Code, or that the Construction Manager has taken the appropriate remedial steps required under Section 9.24, Ohio Revised Code, or otherwise qualifies under this section.

§ 11.5.13 Open Book Pricing. Construction Manager acknowledges that this Agreement is to be administered on an "open book" arrangement relative to Costs of the Work. Construction Manager shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. The Owner and the Owner's accountants shall be afforded access to review and audit the Construction Manager's records as set forth in the AIA Document A201-2007, General Conditions of the Contract for Construction, as modified.

§ 11.5.14 The Construction Manager shall have the right to include exterior photographic or artistic representations of the Project among the Construction Manager promotional and professional materials. However, the Construction Manager will not publish other information regarding the Project without the Owner's prior written consent. The Construction Manager acknowledges that the Project is subject to unique security concerns. The Construction Manager agrees to keep confidential and not to disclose to any third party (without the advance written consent of the Owner) any confidential, proprietary or privileged information or documentation of the Owner.

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ARTICLE 12 SCOPE OF THE AGREEMENT

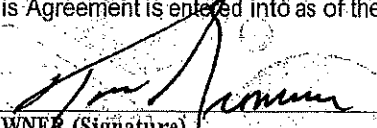
§12.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§12.2 The following documents comprise the Agreement:

- .1 AIA Document A133-2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price ~~Price, as modified~~
- .2 AIA Document A201-2007, General Conditions of the Contract for Construction ~~Construction, as modified~~
- .3 AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed, or the following:-
- .4 AIA Document E202™-2008, Building Information Modeling Protocol Exhibit, if completed, or the following:-
- .5 Other documents:
(List other documents, if any, forming part of the Agreement.)

- Exhibit A GMP Amendment
- Exhibit B Payment and Performance Bond Form as prescribed by OAC 153:1-4-02
- Exhibit C Itemized General Conditions
- Exhibit D [Not Used.]
- Exhibit E Notice of Claim Form
- Exhibit F CMAR Affidavit with List of Subcontractors and Suppliers with Amounts Withheld
- Exhibit G CMAR Progress Payment Waiver and Release Affidavit
- Exhibit H Subcontractors & Suppliers Progress Payment Waiver and Release Affidavit
- Exhibit I [Not Used.]
- Exhibit J CMAR's PPTA
- Exhibit K Construction Tax Exemption Certificate
- Exhibit L Final Lien Waiver and Release Agreement
- Exhibit M Prevailing Wage Rates

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


OWNER (Signature)


CONSTRUCTION MANAGER (Signature)


Tom Grossman
(Printed name and title)

DANIEL WOLKING, VICE PRESIDENT
(Printed name and title)

4/12/22
(Date)

3/24/2022
(Date)

APPROVED AS TO FORM


Adam M. Nice
Asst. Prosecuting Attorney

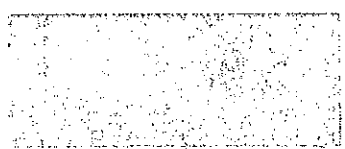
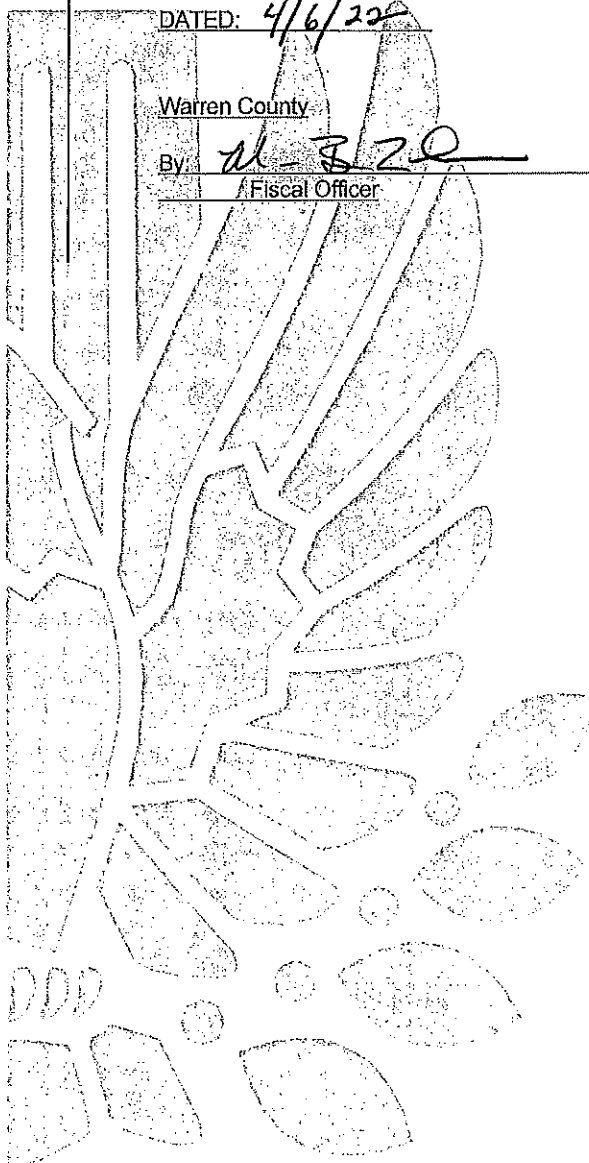
CERTIFICATE OF FUNDS
(ORC Sect on 5705.41)

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

DATED: 4/6/2018

Warren County

By: [Signature]
Fiscal Officer



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AIA[®] Document A201[™] - 2007

General Conditions of the Contract for Construction

for the following PROJECT:
(Name and location or address)
Foster's Lift Station and Gravity Sewer Improvements Project

THE OWNER:
(Name, legal status and address)
Board of County Commissioners
Warren County, Ohio
Administration Building
406 Justice Drive, First Floor
Lebanon, Ohio 45036

THE Design Engineer:
(Name, legal status and address)
Burgess & Niple, Inc.
Jeffrey R. Eilers, PE
Ken Sponaugle, PE
525 Vine Street, Suite 1300
Cincinnati, Ohio 45202

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

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

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- 2 OWNER
- 3 CONTRACTOR
- 4 DESIGN PROFESSIONAL
- 5 SUBCONTRACTORS
- 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
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14. TERMINATION OR SUSPENSION OF THE CONTRACT

15. CLAIMS AND DISPUTES

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS The definitions in this Section 1.1 shall apply throughout the Contract Documents.

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are the Contract Documents identified in the Owner-Contractor Agreement ("Agreement"). A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Design Engineer.

§ 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 Design Engineer or the Design Engineer's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Design Engineer or the Design Engineer's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Design Engineer shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Design Engineer'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 Design Engineer and the Design Engineer'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 Design Engineer.

§ 1.1.9 SUBSTANTIAL COMPLETION

Substantial Completion is the stage in the progress of the Work when the Work is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy and utilize the Work for its intended use. Notwithstanding anything in the Contract Documents to the contrary, this shall include, but is not limited to, start up and successful testing of all systems and equipment.

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§ 1.1.10 DATE FOR SUBSTANTIAL COMPLETION

The Date for Substantial Completion is the Date for Substantial Completion as set forth in the Owner-Contractor Agreement or in the Guaranteed Maximum Price, as applicable. The Date for Substantial Completion shall only be changed or modified by Change Order, other Modification or a Claim that is Finally Resolved, regardless of any dates in the Construction Schedule.

§ 1.1.11 FINALLY RESOLVED

Finally Resolved means that the Initial Decision Maker has made a decision on a Claim under Section 15.2.6.1 of the General Conditions and that any litigation regarding the Claim has been concluded.

§ 1.1.12 CLAIM

Claim is defined in Section 15.1.1 of these General Conditions.

§ 1.1.13 NOTICE OF CLAIM FORM

Notice of Claim Form means the Notice of Claim Form included as Exhibit E the Agreement.

§ 1.1.14 FINAL COMPLETION

Final Completion shall mean that the Work is complete in all respects in accordance with the Contract Documents and the Contractor has submitted to the Design Engineer all documents required to be submitted to the Design Engineer 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; all and performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by The American Institute of Architects.

§ 1.4 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1

Ownership of the respective Instruments of Service, including the Drawings and Specifications, shall be as provided in the Owner-Design Engineer Agreement. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the ownership of the Instruments of Service.

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§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Design Engineer and the Design Engineer's consultants.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

ARTICLE 2. OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative. The Owner's representative shall only have such authority as is expressly authorized by the Owner's Board and as is permitted under the laws of the State of Ohio. The Contractor is responsible for determining the limits of that authority.

§ 2.1.2 The Owner shall prepare a Notice of Commencement for the Project, as required by the Ohio Revised Code, and furnish to the Contractor a copy of the Notice of Commencement for the Project within fifteen days after receipt of a written request.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1

The Owner shall attach to the Agreement with the Contractor the certificates of available resources required by the Ohio Revised Code as evidence of available funds to fulfill the Owner's obligations under the Contract.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 To the extent necessary for the Work and as requested by the Contractor, the Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

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§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part

of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within ten (10) business days after receipt of written notice from the Owner to commence or thereafter proceed without interruption to correct such default or neglect within fifteen (15) days of such notice, the Owner, without prejudice to its other remedies, may correct such deficiencies. If such default or neglect results in a threat to the safety of any person or property, the Contractor shall immediately commence to correct such default or neglect upon receipt of written or oral notice thereof. In all such cases of default or neglect, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor costs arising out of or related to the investigation and correction of such deficiencies including the Owner's attorneys' and consultants' fees and expenses and other expenses and compensation for the Design Engineer's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Design Engineer. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents and shall comply with all rules, regulations and policies of the Owner and all applicable federal, State, and local codes, statutes, ordinances, and regulations in the performance of the Work on the Project.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Design Engineer in the Design Engineer'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 Agreement by the Contractor is a representation that the Contractor has visited the site, carefully and diligently investigated the entire site and the surrounding area, including location, condition and layout of the site and utility locations, become thoroughly familiar with local conditions under which the Work is to be performed, including the generally occurring climatic conditions and carefully correlated personal observations and other information with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, Work and in addition to the reviews required by the Contract Documents, including these General Conditions, caref

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carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3. In addition, prior to performing each portion of its Work, the Contractor shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it, including the Work of any other Contractors. These obligations of this Section 3.2 are for the purposes of facilitating construction by the Contractor, for determining that the Work is constructible, for determining if the work of the Contractor is coordinated in the Contract Documents with the work of any other Contractors, and for verifying that field conditions, including the Work of any other Contractors, are consistent with the information in the Contract Documents and ready for the Work.

The Contractor shall promptly report to the Design Engineer and the Owner any errors or omissions in the sizing, load bearing capacity or other similar design information in the Contract Documents discovered by or made known to the Contractor as a request for information in such form as the Design Engineer 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 Not Used.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Design Engineer issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. Contractor shall not be liable to the Owner or Design Engineer for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1

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, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Design Engineer and shall not proceed with that portion of the Work without further written instructions from the Engineer. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures. The Contractor shall immediately upon entering the project for the purpose of beginning work, locate all general reference points and take such action as necessary to prevent their destruction. Contractor shall lay out his own work and be responsible for all lines, elevations and measurements of the building, demolition work, utilities, and any other work to be executed by him under the contract. The Contractor shall verify grades, lines, levels, and dimensions indicated on the drawings and shall notify the Design Engineer of errors or inconsistencies before commencing work. The Contractor shall establish and maintain a permanent bench mark, batter boards, level and grades and shall layout the exact location of all walls, partitions, openings, etc. Contractor shall employ experienced and competent engineers and exercise proper precautions to verify the figures shown on the drawings for laying out work, and will be held responsible for any error resulting from his failure to exercise such precautions.

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§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.3.4 The Contractor shall maintain readily accessible to the Design Engineer and the Owner at the Project site, the following documents all of which shall be "public records" within the meaning of the Ohio Public Records Act:

1. A set of Drawings and Specifications as approved by the Authority Having Jurisdiction.
2. A copy of the Drawings and Specifications upon which the Contractor shall record changes made during the course of its Work. The Contractor shall keep an accurate record of all changes made to the Drawings to show actual installation where installation varies from Work as originally shown, including the location and depth of underground utility lines. Any such changes shall be noted by Change Order Number, if a Change Order was issued, and drawn neatly in a contrasting color on the drawings. The Contractor shall also keep record of all changes to the Specifications. When Shop Drawings are used, the Contractor shall cross-reference the drawings and sections of the specifications.
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, 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; and
5. All the Contractor's communications, including but not limited to letters, memoranda, e-mail, invoices and bills of lading, arising out of or related to the Project with the Design Engineer, Owner, other Contractors, and/or its subcontractors, materialmen and/or employees, shall be provided upon Owner's request.

Claims for the Contractor's failure to comply with the Ohio Public Records Act, if applicable, shall be claims under Section 3.18.1.

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Design Engineer in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, which the Owner may withhold in its sole discretion, after evaluation by the Design Engineer 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

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assigned. If the Owner or Design Engineer deems any employee of the Contractor or a Subcontractor unsatisfactory, the Contractor will transfer or require its Subcontractor to transfer such employee from the Project immediately and replace or require the prompt replacement of such employee with a competent employee. The Owner, however, shall be under no obligation to do so.

§ 3.5 WARRANTY

§ 3.5.1 The Contractor warrants to the Owner and Design Engineer that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. defects. Work, materials, or equipment not conforming to these requirements may be considered defective.

§ 3.5.2 If the Contractor breaches any of its obligations under Section 3.5.1, the Contractor will pay the Owner for its damages and expenses, including but not limited to attorneys' and consultants' fees and expenses, arising out of or related to such breach.

§ 3.5.3 Prior to submitting GMP Contractor shall review and confirm whether specified equipment and materials will be compatible with the design intent and constructible without additional cost to Owner, and shall notify both Design Professional and Owner in writing if specified equipment and materials are not compatible with the design intent and or not constructible without additional cost to Owner.

§ 3.6 TAXES

The Contractor shall pay sales, consumer, use, commercial activity, and similar taxes for the Work provided by the Contractor that are legally enacted at the time the Agreement is executed, whether or not yet effective or merely scheduled to go into effect.

The Contractor acknowledges that the Owner is a political subdivision of the State of Ohio or a tax exempt organization and is exempt from state sales and use taxes. Upon written request, the Owner will provide the Contractor with any applicable certificates of exemption.

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time the Agreement is executed.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders and all other requirements of public authorities applicable to performance of the Work.

§ 3.7.3 If

In addition to its other obligations under the Contract Documents, if the Contractor or any of its Subcontractors or Sub-subcontractors performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders and all other requirements of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions. If Except as provided herein, if the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Design Engineer before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Design Engineer will promptly investigate such conditions and, if the Design Engineer determines that they differ materially

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and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum, GMP and/or Contract Time. If the Design Engineer 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 Design Engineer shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Design Engineer's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Design Engineer. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Sum, GMP, and/or Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum and GMP all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

1. Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
2. Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; base Contract Sum and shall not be chargeable against the allowance; and
3. Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted

in accordance with Paragraph 5.3.5.4 of the Agreement. However the Contractor shall timely seek and obtain a final Change Order before incurring any costs in excess of an allowance.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Design Engineer the name and qualifications of a proposed superintendent. The Design Engineer may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Design Engineer has reasonable objection to the proposed superintendent or (2) that the Design Engineer requires additional time to review. Failure of the Design Engineer to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Design Engineer has made reasonable and timely objection. The Contractor shall not replace the assigned Superintendent without the consent of the Owner, except with another Superintendent who is satisfactory to the owner. If the Contractor proposes to change the Superintendent, the Contractor shall submit to the Design Engineer a written request for change, including 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 Design Engineer or Owner requests.

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3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1

Throughout the design phases, the Contractor shall prepare and submit a Construction Schedule with each cost estimate or at regular intervals agreed upon by the Owner. The Contractor shall submit the current Construction Schedule upon which the GMP is based, with its GMP Proposal, in accordance with the Agreement.

The Construction Schedule shall include and be consistent with any applicable Milestone Dates provided by the Owner. The Contractor shall prepare all Construction Schedules in CPM format unless provided otherwise in the Contract Document or otherwise agreed in writing by the Owner. Each major category of work shall be shown separately in the Construction Schedule with all the significant activities involved, showing durations of time, manpower requirements, and restraints. The Construction Schedule is for the purpose of coordinating the timing, phasing and sequence of the Work of the Contractor and to provide an instant evaluation of progress of the Work and manpower requirements. The Construction Schedule shall not change or modify the Date for Substantial Completion. The Date for Substantial Completion shall only be changed or modified by Change Order, other Modification or a Claim that is Finally Resolved, regardless of the dates in the Construction Schedule.

1. The Contractor shall submit a Weekly Progress Report to the Owner during Weekly Job Meetings. 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 Project. Float shall mean the amount of time by which activities may be delayed without affecting the Contract Date for Substantial Completion;

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 Design Engineer or Owner, the Contractor shall pay and the Owner may withhold from the Contractor Liquidated Damages at the rate of Fifty Dollars (\$50.00) a day for each calendar day thereafter that the Contractor fails to furnish the requested information.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Design Engineer's approval. The Design Engineer's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Design Engineer reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or Sum, GMP, and/or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in accordance with the most recent Construction Schedule prepared by the Contractor, provided that the Contractor shall comply with any orders under Section 3.10.4. However, preparation of such schedule shall not constitute a waiver of Owner's rights under the Contract to have the Work completed by the contractual dates of Substantial and Final Completion.

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§ 3.10.4 If the Design Engineer or the Owner determines that the performance of the Work has not progressed so that it is likely that the Contractor will not Substantially Complete its Work by its Date for Substantial Completion, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the Work, including, without limitation: (i) working additional shifts or overtime; (ii) supplying additional manpower, equipment, and facilities; and (iii) other similar measures (collectively referred to as "Corrective Measures"). If the Owner orders the Contractor to take such corrective measures, the Contractor shall take and continue such Corrective Measures until the Owner is satisfied that the Contractor is likely to Substantially Complete its Work by its Date for Substantial Completion.

- .1 The Contractor shall not be entitled to adjustment in the Contract Sum or the GMP in connection with the Corrective Measures required by the Owner pursuant to this Section 3.10.4, unless the Contractor is able to establish that it is entitled to additional compensation under the terms of the Contract Documents

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner and the Design Engineer the documents required by Section 3.3.4. These shall be available to the Design Engineer and shall be delivered to the Design Engineer for submittal to the Owner upon completion of the Work as a record of the Work as constructed or earlier when required by the Contract Documents.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

Shop Drawings shall also include fabrication, erection and setting Drawings, scheduled Drawings, manufacturer's scale Drawings, wiring and control diagrams, cuts or entire catalogs, pamphlets, descriptive literature, performance and technical data.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Design Engineer is subject to the limitations of Section 4.2.7. Informational submittals upon which the Design Engineer 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 Design Engineer without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Design Engineer Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Design Engineer 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 Design Engineer 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 Design Engineer must perform more than two reviews with respect to any submittal, the Contractor shall pay the additional costs and expenses incurred by the Owner as a result of such additional reviews by the Design Engineer and the Owner may withhold from sums due or coming due the Contractor amounts to cover such additional costs and expenses.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Design Engineer that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Design Engineer.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Design Engineer's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Design Engineer in writing of such deviation at the time of submittal and (1) the Design Engineer 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 Design Engineer'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 Design Engineer on previous submittals. In the absence of such written notice, the Design Engineer's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Design Engineer will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional who shall comply with reasonable requirements of the Owner regarding qualifications and insurance and whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Design Engineer. The Owner and the Design Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals. Pursuant to this Section 3.12.10, the Design Engineer will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.12.11 INSTRUCTIONS

Unless otherwise expressly provided in the Contract Documents, the Contractor shall provide typed or printed instructions covering the operation and maintenance of each item of equipment furnished in a notebook submitted to the Design Engineer 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;

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- .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 Design Engineer 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 Design Engineer 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 Design Engineer 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 Design Engineer 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 Design Engineer. 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 Design Engineer 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 Design Engineer 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 Design Engineer for approval. Where information from one Contractor is required by another before drawings can be made, that information shall be given in sufficient time to cause no delay on the part of either party.

§3.12.18 The Contractor shall maintain a separate complete clean set of all shop drawings, data and correspondence pertinent to maintenance requirement. This complete file shall be submitted to the Owner upon substantial completion. Drawings shall contain all changes made during construction.

§3.12.19 The Contractor shall keep a complete record of all drawings including dates of issuance, receipt and approval. A second set shall be maintained at the Project job site.

§3.12.20 When a Contractor requests a change in any item which will involve a change in related items or supports, the Contractor requesting the change shall be responsible for, and pay all costs in connection with such changes. Changes shall be recorded on shop drawings.

§ 3.13 USE OF SITE

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

§ 3.13.2 SIGNAGE

The Contractor and any entity for whom the Contractor is responsible shall not erect any sign on the Project site without the prior written consent of the Owner, which may be withheld in the sole discretion of the Owner.

§ 3.13.3 RESTRICTED ACTIVITIES

Unless expressly permitted by the Contract Documents or by the Owner in writing, the Contractor shall not interfere with the Owner's ongoing operations, shall not permit any of its employees or its Subcontractor's or materialmen's employees to use any existing facilities on the Project site, including, without limitation, lavatories, toilets, entrances, and parking areas, and shall not permit its employees or its Subcontractor's or materialmen's employees to bring any tobacco products, alcoholic beverages, controlled substances, or firearms onto the Project site or any other property owned or controlled by the Owner. Additionally, the Contractor shall not permit its employees or its Subcontractor's or materialmen's employees to use any radios, tape or compact disc players, or sound amplification equipment at or near the Project site.

§3.13.4 The Contractor shall conspicuously post notice of the prohibitions listed in the preceding subparagraphs at the Project site in the same locations as OSHA notices are required to be posted, and shall verbally inform all of the Contractor's employees, and the employees of the Contractor's Subcontractors and materialmen, regardless of tier, of such prohibitions.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.14.3 Patching resulting from operations of any Contractor shall be performed by workers skilled in the trade being patched, and paid for by Contractor causing such patching.

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§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project. At weekly intervals and as directed by the Owner, the Contractor shall clean up the job. Contractor shall remove all discarded materials, rubbish and debris from the premises, taking care to avoid scattering debris along the path of travel. The Contractor shall have a dumpster on the site so as to maintain clean and safe conditions throughout the duration of the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.
The Design Engineer's determination of the costs to be charged to the Contractor shall be final and binding.

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Design Engineer 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 Design Engineer harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Design Engineer. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Design Engineer.

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Design Engineer, Design Engineer's consultants, and agents and employees of any of them from and against any and all claims (whether alleged or proven), demands, costs, losses and/or damages, including but not limited to all fees and charges of Design Engineers, attorneys and other professionals and all court, arbitration or other dispute resolution costs, arising out of or related to the Work or any breach of Contractor's obligations under the Contract Documents, including but not limited to the breach of any warranty provided in the Contract Documents.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.19 COMPLIANCE WITH DEMOLITION LAWS

The Contractor will, at the Contractor's expense, fully comply with all statutes and regulations regarding notification and disposal of construction and demolition debris, including, without limitation, Ohio Revised Code Chapter 3714 and the regulations enacted thereunder.

§ 3.20 UNDERGROUND UTILITY FACILITIES

§ 3.20.1 The Contractor, at least two working days prior to commencing construction in an area that may involve underground utility facilities, shall give notice to the Design Engineer 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 Design Engineer 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 Design Engineer and Owner of any break or leak in the lines of such operator or any dent, gouge, groove, or other damage to such lines or to their rating or cathodic protection, made or discovered in the course of excavation.

§ 3.21 WAIVERS OF CLAIMS.

§ 3.21.1 Beginning with the second Application for Payment, the Contractor will submit a) a release and/or waiver of claims, including a waiver, of all lien rights, in the form attached to the Agreement for itself and each of its Subcontractors and Suppliers, regardless of tier, and b) a complete list of its Subcontractors and Suppliers using the form included in the Contract Documents or as required by the Design Engineer.

§ 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 DESIGN ENGINEER

§ 4.1 GENERAL

§ 4.1.1 The Owner shall retain an Design Engineer lawfully licensed to practice engineering or an entity lawfully practicing engineering in the jurisdiction where the Project is located. That person or entity is identified as the Design Engineer in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Design Engineer as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Design Engineer. Consent shall not be unreasonably withheld.

§ 4.1.3 Not Used.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Design Engineer 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 Design Engineer issues the final Certificate For Payment, and (3) with the Owner's concurrence, from time to time during the one-year period for correction of Work described in Section 12.2 and for such additional periods as the Owner and Engineer may agree.

The Design Engineer will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents. Documents and as authorized by the Owner's Board.

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§ 4.2.2 The Design Engineer will visit the site as agreed upon with the Owner (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Design Engineer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Design Engineer will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Design Engineer will keep the Owner informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. Except as required by its duty of care owed to the Owner, the Design Engineer (a) will not be responsible to the Owner for the Contractor's failure to perform the Work in accordance with the Contract Documents, and (b) will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Design Engineer about matters arising out of or relating to the Contract. Communications by and with the Design Engineer's consultants shall be through the Design Engineer. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors under contract directly with the Owner, if any, shall be through the Design Engineer.

§ 4.2.5 Based on the Design Engineer's evaluations of the Contractor's Applications for Payment, the Design Engineer will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Design Engineer has authority to reject Work that does not conform to the Contract Documents. Whenever the Design Engineer considers it necessary or advisable, the Design Engineer will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Design Engineer 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 Design Engineer to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Design Engineer 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 Design Engineer's action will be taken in accordance with the submittal schedule approved by the Design Engineer or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Design Engineer'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 Design Engineer'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 Design Engineer's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Design Engineer, of any construction means, methods, techniques, sequences or procedures. The Design Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

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§ 4.2.8 The Design Engineer will prepare Bulletins, Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Design Engineer will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Design Engineer will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue execute and distribute a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Design Engineer agree, the Design Engineer will provide one or more project representatives to assist in carrying out the Design Engineer's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents, consistent with these General Conditions.

§ 4.2.11 The Design Engineer will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Design Engineer's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. Copies of all Requests for Information shall be copies to the Owner by the Contractor at the time they are submitted to the Design Engineer.

§ 4.2.12 Interpretations and decisions of the Design Engineer 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 Design Engineer 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 Design Engineer'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 Design Engineer will review and respond to requests for information about the Contract Documents. The Design Engineer's response to such requests will be made in writing within 72 hours unless otherwise agreed upon by the Construction Manager in writing. If appropriate, the Design Engineer will prepare and issue supplemental Drawings and Specifications in response to the requests for information, within 7 calendar days.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK
Construction Manager shall bid the Subcontracts in accordance with Ohio law.

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§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Design Engineer 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 Design Engineer has reasonable an objection to a person or entity proposed by the Contractor, the Contractor shall propose within 10 days another to whom the Owner or Design Engineer has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and

Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4

The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Design Engineer makes reasonable objection to such substitution, objects to such substitute. The Owner, through the Design Engineer, may require the Contractor to change any Subcontractor previously approved and, except as provided hereafter, the Contract Sum shall be increased or decreased by the difference in cost resulting from such change. If the Contractor is in default because of the Subcontractor's performance, then the Contractor shall not be entitled to any adjustment in the Contract Sum or GMP and shall remain liable to the Owner for any damages or losses caused by such default.

§ 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Design Engineer. Each subcontract agreement shall preserve and protect the rights of the Owner and Design Engineer under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- 1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- 2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost direct costs incurred by the Subcontractor resulting from the suspension.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity

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ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to and/or award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 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 Owner shall provide for coordination of Contractor shall coordinate~~ the activities of the Owner's own forces and of each separate contractor contractor, if any, with the Work of the Contractor, who shall cooperate with them. ~~The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.~~

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Design Engineer apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

~~§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.~~

§ 6.2.4 ~~6.2.3~~ The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Owner, separate contractors as provided in Section 10.2.5.

~~§ 6.2.5~~ ~~6.2.4~~ The Owner and each separate contractor contractor, if any, shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 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 Design Engineer will allocate the cost among those responsible. The Design Engineer's decision allocating the cost shall be final and binding on the Contractor and the Owner.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

To be valid, all Changes involving an increase in the Contract Sum or GMP must have any required funding certificates attached to them.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Design Engineer; a Construction Change Directive requires agreement by the Owner and Design Engineer 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 Design Engineer alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Design Engineer Contractor and signed by the Owner, Contractor and Design Engineer 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; Sum and/or GMP; and
3. The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 Methods used in determining adjustments to the Contract Sum or GMP may include those listed in Section 7.3.3.

§ 7.2.3 The agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including but not limited to, all direct, indirect and cumulative costs associated with such change and any and all adjustments to the Contract Sum, GMP, and the Contract Time. The Contractor shall not proceed with any change in the Work without a signed Change Order, Construction Change Directive or Minor Change in the Work notice. The Contractor's failure to timely seek and obtain such authorization as specified herein, shall constitute an irrevocable waiver by the Contractor of an adjustment to the Contract Sum GMP, or Contract Time for the related work

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Design Engineer and signed by the Owner and Design Engineer, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum ~~or Contract Time, or both.~~ Sum, GMP and/or Contract Time. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum 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, Sum and/or GMP, the adjustment shall be based on one of the following methods:

1. Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

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- 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
- 4 mutually acceptable fixed or percentage fee; or
- 5 As provided in Section 7.3.7.3.7; or
- 6 Except where unit prices are applicable, that Contractor agrees and represents to the Owner for the
- 7 Owner's reliance that all Change Order or Change Directive pricing submitted by the Contractor shall
- 8 be based on the Contractor's actual costs or the Contractor's reasonable estimate of what would be its
- 9 actual costs plus permitted overhead and profit.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted ~~adjusted~~ in accordance with Paragraph 7.3.7.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Design Engineer of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum, GMP, or Contract Time.

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

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, Sum or GMP, the Design Engineer shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, Sum or GMP, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Design Engineer may prescribe, an itemized accounting together with appropriate supporting data. Present present a true and accurate itemized accounting of all labor and material with appropriate supporting data. If the Design Engineer prescribes a format for such accounting, the Contractor shall provide the accounting in such format. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section

7.3.7 shall be limited to the following:

- 1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- 2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- 3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- 4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- 5 Additional reasonable costs of supervision and field office personnel directly attributable to the change.
- 6 Any self-performed Work in an add Change Order shall be treated as a Cost of the Work based on the total cost of labor and material; and
- 7 Total cumulative overhead and profit for all Subcontractors on any add or deduct Change Order shall not exceed 15% of the total cost of labor and material.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum or GMP shall be actual net cost as confirmed by the Design Engineer. Design Engineer 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.

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The Design Engineer will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Design Engineer determines, in the Design Engineer's professional judgment, to be reasonably justified. The Design Engineer's interim determination of cost shall adjust the Contract Sum or GMP on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Design Engineer concerning the adjustments in the Contract Sum and Sum, GMP, and/or Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Design Engineer 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 Design Engineer has authority to order minor changes in the Work not involving adjustment in the Contract Sum of Sum, GMP and/or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be affected by written order conspicuously marked at the top of the order as a "**MINOR CHANGE IN THE WORK**" and signed by the Design Engineer and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Design Engineer in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by

Excusable Delay as provided in Section 15.1.5.3, then subject to the agreement of the Owner the Contract Time shall be extended by Change Order for such reasonable time as the Design Engineer may determine.

§ 8.3.2: Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3: This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, Promptly after the award of the Contract, the Contractor shall submit to the Design Engineer, before the first Application for Payment, for the Design Engineer's review and approval, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Design Engineer may require. This schedule, unless objected to by the Design Engineer, By submitting such schedule of values, the Contractor represents for the reliance of the Design Engineer 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 Design Engineer's further approval. The Design Engineer may from time to time require the Contractor to adjust such schedule if the Design Engineer determines it to be in any way unreasonable or inaccurate. The Contractor then shall adjust the schedule of values as required by the Design Engineer within ten (10) days. This schedule, with any adjustments approved by the Design Engineer shall be used as a basis for reviewing the Contractor's Applications for Payment. The Contractor shall include a separate line item in its schedule of values for its Project Superintendent.

§ 9.2.1 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 and one-half percent (1.5%) of the Contract Sum for contracts with Contract Sum of \$1,000,000 or less, and one percent (1%) of the Contract Sum for contracts with a Contract Sum greater than \$1,000,000. When As-Built Drawings and Record Documents are received and reviewed by the Design Engineer, 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 Design Engineer.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten three days before the date established in Section 9.3.1.3 for each progress payment, the Contractor shall submit to the Architect an Itemized Owner and Engineer a draft Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, values for completed portions of the Work. Such application

The draft Application for Payment shall be reviewed and adjusted, if necessary, by the Design Engineer and returned to the Contractor. The application, as reviewed and / adjusted by the Design Engineer, shall be notarized, if required, and supported by such be submitted with a properly completed Contractor's Payment Application Checklist (if required), all the documentation required to be submitted with such Checklist, and any other supporting documentation required by the Contract Documents or by the Design Engineer. The percentage completion of each portion of the Work shall be consistent with the then current Construction Schedule for the Project. The Application for Payment will be in the form and submitted with the number of copies and all related documents as required by the Contract Documents. The Contractor also shall submit with its Application for Payment such other data substantiating the Contractor's right to payment as the Owner or Design Engineer may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

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The Contractor shall also provide its monthly report detailing the project's progress to date, projected progress for the next 30 days and current project financial summary including but not limited to:

- 1 The balance of the GMP, consistency, and a summary list of how the contingency has been expended on the Project to date.
- 2 The balance of any construction allowances and summary list of how the allowances have been expended to date.
- 3 A change order log showing any proposed, pending, and approved change order expenses to date.
- 4 Complete breakout showing the total completed and/or stored materials, labor, and equipment on the Project as of the date of the payment application, and anticipated schedule of payment applications detailing projections for the value of completed and/or stored materials, labor, and equipment, month by month, through the end of the Project.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Design Engineer, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.1.3 Contractor shall provide lien waivers from itself and all subcontractors, material suppliers and any other party that performed work or supplied materials for the project. Each application for payment shall include, in the form attached to the Agreement, partial and conditional lien waivers from each of the aforementioned parties for the work performed to date on the Project and for the value of the work performed during the current billing period. A final waiver of lien in the form attached to the Agreement, for the total value of each subcontract shall be included with the final application for payment for each subcontract and with the Contractor's final pay application for the project. The total of the lien waivers shall match the total amount paid to the Contractor, inclusive of all approved change orders.

§ 9.3.1.4 The Owner will withhold retainage from the amount set forth in the Application for Payment approved by the Design Engineer, as provided in the Contract Documents.

§ 9.3.1.5 DOCUMENTATION

Upon request, the Contractor immediately will supply the Owner and the Design Engineer with such information as may be requested so as to verify the amounts due to the Contractor, including but not limited to original invoices for materials and equipment and documents showing that the Contractor has paid for such materials and equipment, and so as to verify that amounts due laborers, Subcontractors, and Material Suppliers have been paid to them. The failure to provide such information shall be justification for withholding payment to the Contractor.

§ 9.3.1.6 Retainage or other Escrow Account

The Owner and the Contractor agree that any retainage or other escrow account required in connection with this Agreement for retained funds from the construction contract or for deposit of amounts claimed due under the Ohio Mechanic's Lien law will be established at a bank or savings and loan association in the State of Ohio used by the Owner, and that the expenses to establish and maintain the account will be paid in accordance with the schedule approved by the Owner from income from the account. If the income from the account is anticipated not to be sufficient to pay the compensation due to establish and maintain the account, the Contractor agrees that the Owner may keep the amounts in its construction fund or another fund used by Owner to avoid the extra costs to establish and maintain a separate account.

§ 9.3.1.7 The amount of each progress payment shall be computed as set forth in paragraph 7.1.7 of the Agreement.

§ 9.3.1.8 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location

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agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. The Contractor agrees to bond off any lien filed on the Project by providing a bond meeting the requirements of the Ohio Revised Code. The Contractor shall do so within sixty (60) days of the filing of the lien.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Design Engineer will, within seven days after receipt of the Contractor's Application for Payment, properly completed Application for Payment and Contractor's Payment Application Checklist (if required) and Certification

the documentation described in the Contractor's Payment Application Checklist and Certification and such other data substantiating the Contractor's right to payment as the Owner or Design Engineer may require, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Design Engineer determines is properly due, or notify the Contractor and Owner in writing of the Design Engineer's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Design Engineer to the Owner, based on the Design Engineer's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Design Engineer's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Design Engineer. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Design Engineer has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Design Engineer may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Design Engineer's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Design Engineer is unable to certify payment in the amount of the Application, the Design Engineer will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Design Engineer cannot agree on a revised amount, the Design Engineer will promptly issue a Certificate for Payment for the amount for which the Design Engineer is able to make such representations to the Owner. The Design Engineer 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 Design Engineer'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; 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;

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- 3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- 4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- 5 damage to the Owner or a separate contractor;
- 6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- 7 repeated failure to carry out the Work in accordance with the Contract Documents; ~~Documents;~~ or
- 8 the Contractor is in default of the performance of any of its obligations under another contract it has with the Owner.

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

§ 9.5.3 If the Design Engineer withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Design Engineer and the Design Engineer will reflect such payment on the next Certificate for Payment.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Design Engineer has issued a Certificate for Payment, the Owner shall issue payment to the Contractor as set forth herein and shall so notify the Design Engineer.

§ 9.6.2 The Contractor shall promptly, within the time period required by Ohio law, pay each Subcontractor upon receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. Neither the Contractor nor its Subcontractors shall withhold retainage from its Subcontractors or their sub-subcontractors beyond the retainage withheld by the Owner from the Contractor.

§ 9.6.3 The Design Engineer 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 Design Engineer and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Design Engineer shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

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§ 9.7 FAILURE OF PAYMENT

If the Owner does not pay the Contractor after the date established in the Contract Documents the amount certified by the Design Engineer within the time period set forth herein and Owner has no other basis to withhold payment under Article 9 of this Agreement, then the Contractor may, upon seven additional days' written notice to the Owner and Design Engineer, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum and/or GMP shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

Notwithstanding anything in the Contract Documents to the contrary, this shall include, but is not limited to, start up and successful testing of all systems and equipment.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Design Engineer a comprehensive list of items to be completed or corrected prior to final payment.

payment together with all required documents neatly bound and indexed. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

When a specific manufacturer's warranty is required by the Specifications, the Contractor shall state in writing to the Design Engineer that all the manufacturer's requirements for the issuance of the warranty has been completed and that the Work is ready for the Design Engineer's and Owner's inspection. All manufacturer's warranties required for the Work shall commence as of the Date of Substantial Completion stated on the certificate issued by the Design Engineer.

§ 9.8.3 Upon receipt of the Contractor's list,

List and the documents required by Section 3.12.11 neatly bound and indexed, the Design Engineer will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Engineer's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Work is Substantially Complete, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Design Engineer. In such case, the Contractor shall then submit a request for another inspection by the Design Engineer to determine Substantial Completion.

§ 9.8.3.1 Time for Completion of Items on List and Remedies

The Contractor shall complete all items on the list accompanying the Design Engineer's Certificate of Substantial Completion by the Date of Final Completion. If the Contractor fails to do so, the Owner in its discretion may perform the Work by itself or others and the cost thereof shall be charged against the Contractor. If the balance of the Contract Sum is insufficient, the Contractor will pay the Owner the balance on demand. The Contractor's warranties under the Contract Documents shall remain in full force and effect and cover any remedial work even if performed by others. If more than one inspection by the Design Engineer for purposes of evaluating corrected Work is required, the Contractor shall pay the additional costs and expenses incurred by the Owner as a result of more than one inspection by the Engineer, and the Owner may withhold from sums due or coming due the Contractor amounts to cover such additional costs and expenses.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Design Engineer will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and consistent with Section 9.8.3.1 shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date

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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 Design Engineer and consent of the Contractor's surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, Contractor and/or with the Design Engineer's approval, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents.

In the event of a disagreement about such responsibilities, correction period, or commencement of warranties, the Engineer will resolve the disagreement, and the Design Engineer'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 Design Engineer 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 Design Engineer, which shall be final and binding.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Design Engineer shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, Payment and a properly completed Contractor's Payment Application Checklist (if required), all the documentation required to be submitted with such Checklist, and any other supporting documentation required by the Contract Documents or by the Design Engineer, the Design Engineer will promptly make such inspection and, when the Design Engineer finds the Work acceptable under the Contract Documents and the Contract fully performed, including all required documents submitted, the Design Engineer will promptly issue a final Certificate for Payment stating that to the best of the Design Engineer's knowledge, information and belief, and on the basis of the Design Engineer's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Design Engineer's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. Final Completion is defined in Paragraph 1.1.14 above.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Design Engineer: (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security

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interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

1. Unless otherwise provided in the Contract Documents, the final Application for Payment shall be itemized, and the Contractor shall ensure that the final Application for Payment transmitted to the Design Engineer also is accompanied by the following additional documents, if not previously delivered to the Design Engineer:

1. Evidence that all Completion/Punch List items have been completed;
2. Where applicable, keys and keying schedule;
3. The documents, including as-built set of Drawings and Specifications, referred to in Section 3.3.4 both hard copy and electronic (in the format requested by Owner) copies, not otherwise required by the Contract Documents to be delivered earlier; and,
4. Other documents required by the Contract Documents.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Design Engineer so confirms, the Owner shall, upon application by the Contractor and certification by the Design Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Design Engineer 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 or related to:

1. liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
2. failure of the Work to comply with the requirements of the Contract Documents;
3. terms of special warranties required by the Contract Documents; or
4. any claims, damages, losses or expenses for indemnification under Section 3.18.1.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 - PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract, including compliance with OSHA and other state and federal regulations applicable to the Work. The Contractor's safety program shall be written and a copy maintained at the Project site for inspection, upon request. Neither the Owner nor the Design Engineer accept any responsibility or liability for the safety of the Contractor's employees or for enforcing the Contractor's safety program. Additionally, Contractor shall comply with the Owner's rules, regulations, and policies.

§ 10.2 SAFETY AND HEALTH OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take all reasonable precautions for safety and health of, and shall provide reasonable protection to prevent damage, injury or loss to:

- 1 employees on the Work and other persons who may be affected thereby; thereby, including the Owner's employees, employees of other contractors, their subcontractors, material suppliers, and persons on the site or adjoining property;
- 2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; Sub-subcontractors and/or the Work of any other contractor and the materials and equipment to be incorporated in such Work; and
- 3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and ~~utilities.~~ utilities. The Contractor shall be responsible, at the Contractor's sole cost and expense, for all Measures necessary to protect any property adjacent to the Project and improvements therein.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. The Contractor shall not bring any hazardous materials onto the Project site unless expressly required by the Contract Documents.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Design Engineer 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 Design Engineer and the Design Engineer'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 Design Engineer.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If the Contractor suffers injury or damage to person or property because of an act or omission of the other party, Owner, or of others for whose acts the Owner is legally responsible, the Contractor shall submit a Notice of Claim Form for such injury or damage as required by Section 15.1.2.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Design Engineer in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, upon written request, the Owner shall furnish in writing to the Contractor and Design Engineer the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance.

Work in the affected area shall be resumed immediately following the occurrence of any one of the following events:

- (i) the Owner causes remedial work to be performed that results in the hazardous substance being rendered harmless; or
- (ii) the Owner and the Contractor, by written agreement, decide to resume performance of the Work; or (iii) the Work may safely and lawfully proceed using appropriate protective measures, as determined by a competent person employed by the Owner. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum and/or GMP shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

The term "rendered harmless" shall be interpreted to mean that exposure levels of asbestos and polychlorinated biphenyl (PCB) are less than any applicable exposure standards set forth in OSHA regulations.

§ 10.3.3 Not Used.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are expressly required by the Contract Documents. Hazardous materials shall be identified by a Material Safety Data Sheet (MSDS). These MSDS's shall be submitted by the Contractor to the Owner prior to that material being used on the Project. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 In addition to the Contractor's obligations in Section 3.18 and elsewhere in the Contract Documents, the Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 Not used.

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§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, without special instructions or authorization, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized approved by the Owner and licensed to do business in the jurisdiction in which the Project is located State of Ohio such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

1. Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
2. Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
4. Claims for damages insured by usual personal injury liability coverage;
5. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
6. Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
7. Claims for bodily injury or property damage arising out of completed operations; operations, which coverage shall be maintained for no less than five (5) years following final payment

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 Certificates

11.1.3.1 The minimum limits of liability for the required policies shall be not less than the following, unless a greater amount is required by law:

1. Commercial General Liability ("CGL"): Bodily injury (including death and emotional distress) and property damage with limits of \$2,000,000 each occurrence and \$2,000,000 aggregate. CGL s shall include: (i) Premises-Operations, (ii) Products and Completed Operations, (iii) Personal Injury, (iv) Stopgap liability with Ohio Intentional Tort endorsement for \$100,000 limit; and (v) per project general aggregate endorsement.
2. Automobile Liability, covering all owned, non-owned, and hired vehicles used in connection with the Work: Bodily injury (including death and emotional distress) and property damage with a combined single limit of \$1,000,000 each accident.

3 Workers' compensation with policy limits as established by Ohio law.

§ 11.1.2.2 Such policies shall be supplemented by an umbrella policy in the amount of \$1,000,000 each occurrence and aggregate for contracts with a Contract Sum of \$250,000 or less, \$2,000,000 each occurrence and aggregate for contracts with a Contract Sum greater than \$250,000 but less than or equal to \$500,000, \$3,000,000 each occurrence and aggregate for contracts with a Contract Sum greater than \$500,000 but less than or equal to \$1,000,000; and \$5,000,000 each occurrence and aggregate for contracts with a Contract Sum greater than \$1,000,000.

§ 11.1.2.3 The Contractor shall also maintain Professional Liability coverage for claims arising out of the performance of the construction management services provided pursuant to this Agreement and caused by any error, omission or negligent act for which the Construction Manager is liable with a per claim limit of \$2,000,000 Each Claim.

§ 11.1.2.4 Contractors Pollution Liability and/or Asbestos Pollution Liability and/or Errors & Omissions applicable to the work being performed, with a limit no less than \$2,000,000 per claim or occurrence and \$2,000,000 aggregate per policy period of one year.

§ 11.1.2.5 Insurance policies, except professional liability insurance, shall be written on an occurrence basis.

§ 11.1.2.6 Products and completed operations coverage shall extend for not less than five years.

§ 11.1.2.7 The Contractor shall require all Subcontractors to provide Workers' Compensation, CGL, and Automobile Liability insurance with the same minimum limits specified herein, unless the Owner agrees to a lesser amount.

§ 11.1.2.8 All liability policies required in Section 11.1, except Professional Liability, Worker's Compensation, and Employer's Liability, shall include an endorsement naming, or providing, the Owner, the Owner's Board members and employees as additional insureds. The Contractor's CGL, auto liability and umbrella / excess liability shall provide the Design Engineer and its employees as additional insureds.

§ 11.1.2.9 All liability policies required in Section 11.1 shall be primary and non-contributory.

§ 11.1.2.10 Other Insurance Provisions

All insurance policies are to contain, or be endorsed to contain, the following provisions:

1. The Owner, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of Work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired, or borrowed by or on behalf of the Contractor. CGL additional insured coverage shall be provided per ISO Form CG 20 10 07 04 for operations and ISO form CG 20 37 07 04 or their equivalents. CGL Additional insured coverage for the Engineer shall be provided by ISO form CG 20 32 07 04 or its equivalent. Auto liability additional insured coverage shall be provided per ISO CG 20 48 10 13 or its equivalent.

2. The Contractor's CGL insurance coverage shall be primary insurance cover age at least as broad as ISO CG 20 01 04 13 as respects the Owner, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Owner, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

3. Self-insured retentions must be declared to and approved by the Owner. At the option of the Owner, either: the

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contractor shall cause the insurer to reduce or eliminate such self-insured retentions as respects the Owner, its officers, officials, employees, and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the Owner guaranteeing payment of losses and related investigations, claim administration, and defense expenses. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Owner

5. Acceptability of Insurers Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best rating of no less than A: VII, unless otherwise acceptable to the Owner. Waiver of Subrogation Contractor hereby agrees to waive rights of subrogation against the additional insureds. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. Verification of Coverage Contractor shall furnish the Owner with original Certificates of Insurance including additional insured, waiver of subrogation and primary/non-contributory endorsements and a copy of the Declarations (premiums and rates redacted) and Endorsement Page of the CGL policy listing all policy endorsements to Owner before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The Owner reserves the right to require complete/certified copies of all required insurance policies, (redacted for business confidential information) including endorsements, required by these specifications, at any time. Subcontractors Contractor shall require and verify that all subcontractors maintain insurance meeting all requirements stated herein, and Contractor shall ensure that Owner is an additional insured on insurance required from subcontractors.

§ 11.1.3 Contractor shall provide Owner with certificates of insurance acceptable to the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

11.1.3.1 The Contractor shall furnish to the Owner, through the Design Engineer, 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 Design Engineer, which shall be the ACORD Form 25-S (03/2016) with AIA Document G-715 "Supplemental Attachment" attached thereto.

§ 11.1.4 In no event shall any failure of the Owner to receive certified copies or certificates of policies required under Section 11.1 or to demand receipt of such certified copies or certificates prior to the Contractor's commencing the Work be construed as a waiver by the Owner or the Design Engineer of the Contractor's obligations to obtain insurance pursuant to this Article 11. The obligation to procure and maintain any insurance required by this Article 11 is a separate responsibility of the Contractor and independent of the duty to furnish a certified copy or certificate of such insurance policies.

§ 11.1.5 If the Contractor fails to purchase and maintain, or require to be purchased and maintained, any insurance required under Section 11.1, the Owner may but shall not be obligated to, upon five (5) days written notice to the Contractor, purchase such insurance on behalf of the Contractor and shall be entitled to be reimbursed by the Contractor upon demand.

§ 11.1.6 When any required insurance, due to the attainment of a normal expiration date or renewal date, shall expire, the Contractor shall supply the Owner with Certificates of Insurance and amendatory riders or endorsements that

clearly evidence the continuation of all coverage in the same manner, limits of protection, and scope of coverage as was provided by the previous policy. In the event any renewal or replacement policy, for whatever reason obtained or required, is written by a carrier other than that with whom the coverage was previously placed, or the subsequent policy differs in any way as to coverage provided for the additional insureds from the previous policy, the Contractor shall also furnish the Owner with a certified copy of the renewal or replacement policy unless the Owner provides the Contractor with prior written consent to submit only a Certificate of Insurance for such policy. All renewal and replacement policies shall be in form and substance satisfactory to the Owner and written by carriers acceptable to the Owner.

§ 11.1.7 The CGL and umbrella/excess liability aggregate limit under the Contractor's liability insurance shall, endorsement, apply to the Project separately.

§ 11.1.8 The Contractor shall cause each of its Subcontractors to (i) procure insurance reasonably satisfactory to the Owner and (ii) name the Owner and Design Engineer, 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 and completed operations performed by or on behalf of the Subcontractor. If the additional insureds have other insurance that is applicable to the loss, such other insurance shall be on an excess or contingent basis. The amount of the insurer's liability under this insurance policy shall not be reduced by the existence of such other insurance.

§ 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Contractor 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. Such property builder's risk insurance shall be maintained until final completion. This insurance shall include interests of the Owner, the Contractor, Subcontractors at all tiers.

§ 11.3.1.1 Property insurance The builder's risk insurance obtained by the Construction Manager 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 Design Engineer's and Contractor's services and expenses required as a result of such insured loss.

§ 11.3.1.2

The Contractor shall make its own arrangements for any insurance it may require on such construction equipment and materials and equipment. Any policy obtained by the Contractor under this Section 11.3 and related sections shall include a waiver of subrogation in accordance with the requirements of Section 11.3.7. If the Work is located in a Special Flood Hazard Area, as defined by the Federal Emergency Management Agency, the Owner shall provide an endorsement to the property insurance policy that provides coverage for physical loss or damage caused by flood.

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§ 11.3.1.2 Not Used

§ 11.3.1.3 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.

§ 11.3.1.4 The builder's risk insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.1.6 Damages to Other Property

The maintaining of such insurance as outlined in Section 11.1 shall in no way constitute a waiver of the Contractor's legal liability for damage to any adjoining buildings or existing buildings or their contents or the Work and property of others on the site beyond the limits of insurance thus maintained.

§ 11.3.2 BOILER AND MACHINERY INSURANCE

The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 11.3.3 LOSS OF USE INSURANCE

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

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11.3.6 The Owner shall maintain copies of the policies of insurance it is required to purchase and maintain hereunder at its offices and shall permit the Design Engineer or the Contractor to inspect the policies during normal business hours and upon reasonable advance written notice.

§ 11.3.7. WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Design Engineer, Design Engineer's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by of actual recovery of any insurance proceeds under any property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Contractor in good faith. The Owner or Contractor, as appropriate, shall require of the Design Engineer, Design Engineer's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Contractor in good faith and made payable to the Contractor and Owner in good faith for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 The Contractor shall deposit in a separate account proceeds so received, which the Contractor shall distribute in accordance with such agreement as the Owner and Contractor reach. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Contractor in good faith shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Contractor's exercise of this power; if such objection is made, the dispute shall be resolved as the method of binding dispute resolution in the Agreement, as provided in Sections 15.3 and 15.4. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner in good faith shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Contractor shall provide a contract bond to guaranty payment and performance of the Work, as required by Ohio law.

§ 11.4.1.1 If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or it's right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of the Agreement or Ohio law, Contractor shall promptly notify Owner and Design Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of the Contract Documents.

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§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.4.3 MATERIAL DEFAULT OR TERMINATION. If the Owner notifies the Contractor's surety that the Contractor is in material default or terminates the Contract, the surety will promptly and in not more than 21 days investigate the claimed material default or termination. If the Owner gives a notice of material default and then terminates the Contract, the surety shall complete its investigation within 21 days of the notice of material default. As part of such investigation, the surety shall visit the offices of the Contractor, Design Engineer and Owner to review the available project records. If the surety proposes to take over the Work, the surety shall do so no later than the expiration of such 21 day period or 10 days after the date the Owner terminates the Contract, whichever is later. If the Owner terminates the Work, and the surety proposes to provide a replacement contractor, the replacement contractor shall be fully capable of performing the Work in accordance with the Contract Documents, including meeting all the requirements of the Contract Documents. If the Contractor is terminated, the replacement contractor shall not be the Contractor. The surety will provide the Owner with the results of its investigation, including any written report or documents. This Section 11.4.3 is in addition to the Owner's rights under Section 14.2.2 and is not intended to create any rights of the surety, including but not limited to the right to takeover the Contractor's obligations.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Design Engineer's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Design Engineer, be uncovered for the Design Engineer'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 Design Engineer has not specifically requested to examine prior to its being covered, the Design Engineer may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The In addition to the rights and remedies under Section 2.4, the Contractor shall promptly correct Work rejected by the Design Engineer or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Design Engineer's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly and in not more than 30 days after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. 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 Design Engineer, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

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§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work and does not limit any warranty period under these Contract Documents, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made. Any such acceptance shall be in writing and executed by a representative of the Owner who has been expressly authorized to do so.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered mail, over night delivery, or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No Except as otherwise provided in the Contract Documents, no action or failure to act by the Owner, Design Engineer or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

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§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals.

Contractor shall provide proper facilities at all times for inspections and tests of work by the Owner and other authorities having jurisdiction over the Project. Contractor shall remove any water used in conducting such tests and inspections in a manner so as not to discharge the water on any portions of the Work or damage any portion of the Work. The Contractor shall give the Design Engineer timely notice of when and where tests and inspections are to be made so that the Design Engineer may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after the GMP Amendment is executed, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Design Engineer, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Design Engineer 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 Design Engineer of when and where tests and inspections are to be made so that the Design Engineer may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Design Engineer's services and expenses shall be at the Contractor's expense.

Neither the observations by the Owner or its designated representative, nor inspections, tests, or approvals by person s other than the Contractor, shall relieve the Contractor from its obligations to perform the Work in accordance with the Contract Documents.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered in duplicate to the Owner and Design Engineer.

§ 13.5.5 If the Design Engineer is to observe tests, inspections or approvals required by the Contract Documents, the Design Engineer will do so promptly and, where practicable, at the normal place of testing.

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

§ 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

§ 13.7 TIME LIMITS ON CLAIMS

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

§ 13.8 ATTORNEY-CLIENT CONFIDENTIAL AND PRIVILEGED COMMUNICATIONS

§ 13.8.1 The Contractor acknowledges and agrees that the Owner's legal counsel may from time to time provide legal services to the Project and that in doing so may communicate with the Design Engineer. The Contractor agrees

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that such communications will be privileged communications and, if there is a Claim contemplated or pending, any written communications will be confidential work product.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

1. Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
2. An act of government, such as a declaration of national emergency that requires all Work to be stopped; or
3. Because the Design Engineer 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 or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Design Engineer, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Design Engineer, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

1. refuses or fails to supply enough properly skilled workers or proper materials;
2. fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
3. disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
4. otherwise is guilty of substantial breach of a provision of the Contract Documents, including but not limited to failure to maintain the Construction Schedule or failure to correct defective and/or non-conforming Work.

§ 14.2.2 When any of the above reasons exist, the Owner, Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety as expressly stated in the applicable surety bond:

1. Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

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- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

As set forth in this section, the Owner's termination of the Contractor is without prejudice to any other rights and remedies of the Owner, including but not limited to the Owner's rights and remedies under the Contract Documents and at law, all of which shall survive termination.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Design Engineer's services and expenses made necessary thereby, and other costs or damages incurred by the Owner and not expressly waived, including but not limited to the Owners' attorneys' and consultants' fees and expenses, arising out of or related to the termination, such excess shall be paid to the Contractor. If such costs, other costs, and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Sum GMP and/or Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment in accordance with Article 10 of the Agreement.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract.

The Contractor's Claims must be initiated by submitting the Notice of Claim Form ("Form") included with the Contract Documents to the Design Engineer and the Owner, properly completed in accordance with the instructions accompanying the Form and submitted within the 21 day period under Section 15.1.2. The responsibility to substantiate Claims shall rest with the party making the Claim.

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The Contractor shall not knowingly present or cause to be presented to the Owner a false or fraudulent Claim. Knowingly shall have the same meaning as in Section 3729(b) USC of the Federal False Claims Act. If the Contractor knowingly presents or causes to be presented a false or fraudulent Claim, then the Contractor shall be liable to the Owner for the same civil penalty and damages as the United States Government would be entitled to recover under such Section 3729(a) USC and shall also indemnify and hold the Owner harmless from all costs and expenses, including Owner's attorneys' and consultants' fees and expenses incurred in investigating and defending against such Claim and in pursuing the collection of such penalty, damages and fees and expenses.

The Contractor acknowledges and agrees that the Owner and/or parties in privity of contract with the Owner may delay, interfere with and/or disrupt the Work of the Contractor, and such actions shall not constitute a breach of contract by the Owner, since the Contractor is entitled to additional compensation by properly submitting and pursuing a Claim as permitted by these General Conditions. Pending final resolution of the Claim, the Contractor shall continue performance of the Work as provided in Section 15.1.3.

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and As a condition precedent to a change in the Contract Price or the Contract Times, for each Claim the Contractor shall deliver a fully completed Notice of Claim Form, a copy of which form is a Contract Document, to the Initial Decision Maker with a copy sent to the Owner and the Design Engineer, if the Design Engineer is not serving as the Initial Decision Maker, within 21 days of the start of the event giving rise to the Claim.

The Contractor shall be responsible for substantiating its Claim. The Contractor's failure to deliver a fully completed Notice of Claim form shall be an irrevocable waiver of Contractor's right to any form of additional compensation, be it in time or money, arising out of the Claim or the circumstances underlying the Claim. Further, the Contractor's obligation to deliver a fully completed Notice of Claim form within such 21 day period is a material term of the Contract Documents and provides the Owner with the opportunity to mitigate its damages.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Design Engineer will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum and/or GMP, the Contractor shall submit the Notice of Claim Form as required by Section 15.1.2. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, the Contractor shall submit a Notice of Claim Form as required by Section 15.1.2.

§ 15.1.5.2 If the Contractor is prevented from completing any part of the Work within the Contract Time due to weather conditions and the Contractor wants additional time to complete the Work, the Contractor shall initiate a Claim by submission of the Notice of Claim Form in accordance with Section 15.1.2. The Contractor's entitlement to additional time shall be evaluated and substantiated as provided in Section 15.1.5.2.1.

Init.

15.1.5.2.1 Weather Delays. When the Contractor is prevented from completing any part of the Work on the critical path within the Contract Time due to weather conditions, provided the Contractor properly initiates a Claim, the Contract Time will be extended by one (1) day for each workday lost due to weather that delays Work on the critical path in excess of those in the following table:

| Month | Number of Workdays Lost Due To Weather |
|-----------|--|
| January | 8 |
| February | 8 |
| March | 7 |
| April | 6 |
| May | 5 |
| June | 4 |
| July | 4 |
| August | 4 |
| September | 5 |
| October | 6 |
| November | 6 |
| December | 6 |

15.1.5.3 Excusable and Compensable Delays

The delays for which the Contractor is entitled to additional time are "Excusable Delays." The only Excusable Delays are delays which the Contractor establishes were: (a) caused by the Owner or those in privity of contract with the Owner, (b) physical damage to the Project over which the Contractor has no control, (c) labor disputes beyond the control of the Contractor, (d) work days lost due to weather conditions as provided under Section 15.1.5.2, and (e) concealed or unknown conditions under Section 3.7.4.

The delays for which the Contractor is entitled to additional time and money are "Compensable Delays." The only Compensable Delays are the Excusable Delays which the Contractor establishes were proximately caused by an impro per action or failure to act by Owner.

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

1. damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
2. damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of the Agreement in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

Init.

§ 15.1.7 Settlement Offers

If the Contractor initiates a Claim, the Owner may make settlement offers to settle the Claim at any time up to the date of the trial. Such settlement offers shall be subject to Rule 408 (Compromise and Offers of Compromise) of the Ohio Rules of Evidence. If at any stage of the litigation, including any appeals, the Contractor's Claim is dismissed or found to be without merit, or if the damages awarded to the Contractor on its Claim do not exceed the Owner's

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Design Engineer will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation any further proceeding permitted under these General Conditions of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ~~ten~~ thirty (30) days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.2.1 Owner's Request for Documents

The Owner may request such documents and information from the Contractor as the Owner determines necessary to evaluate and comment upon the Claim. Upon receipt of such request from the Owner, the Contractor shall provide all requested documents and information within ten (10) days. Such documents and information may include but not be limited to the Contractor's Project accounting records, estimate for the Project, daily job logs, and other information from which the Contractor's Project costs may be derived. The Contractor shall provide the requested documents in the formats requested, which include both paper and electronic copies. If requested by the Owner, the electronic copies shall be provided in native computer language. To the extent permitted by law, the Owner shall keep the Project accounting records and estimate for the Project confidential. The Contractor's provision of the requested documents to the Owner in the format requested by the Owner shall be a condition precedent to any further proceeding under the Contract Documents.

Failure to provide the requested documents shall be a material breach of the Contract, and Contractor shall indemnify Owner for all of Owner's costs, losses, and damages (including but not limited to all fees and charges of engineers, Design Engineers, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to Contractor's failure to comply with this provision. If the Contractor fails to provide the requested documents, the Contractor shall be precluded from presenting such documents in any subsequent dispute resolution proceedings, if the data was reasonably available at the time of the request.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

If the Initial Decision Maker requests supporting data from a party and the party fails to provide it, the party thereafter shall be precluded from presenting such data in any subsequent dispute resolution proceedings, if the data was reasonably available to it at the time of the request.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Design Engineer, if the Design Engineer is not serving as the Initial Decision Maker, of any change in the Contract Sum, GMP, and/or Contract Time. The initial decision shall be final and binding on the parties but subject to mediation, and if mediation is not successful in resolving the matter, litigation. Venue for such litigation shall be exclusive in the state court of competent jurisdiction in the county in which the Owner has its principal office. The parties expressly waive the right to remove any litigation to federal court.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1

When a written decision of the Initial Decision Maker states that (1) the decision is final but subject to mediation and litigation and (2) a demand for mediation is not initiated by the Contractor within 30 days from the date of an initial decision, then failure by the Contractor to demand mediation within said 30-day period shall result in the Initial Decision Maker's decision becoming final and binding upon the Contractor. If the Initial Decision Maker renders a decision after litigation has been initiated, such decision may be entered as evidence, but shall not supersede the litigation proceedings unless the decision is acceptable to all parties concerned. Litigation shall be considered "initiated" upon either the service of the original complaint on the Owner or, if litigation relating to the project has already been filed, when a motion for leave to amend the complaint to add the claim has been filed.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 may, after initial decision by the Initial Decision Maker or 30 days after submission of the Claim to the Initial Decision Maker, be subject to mediation.

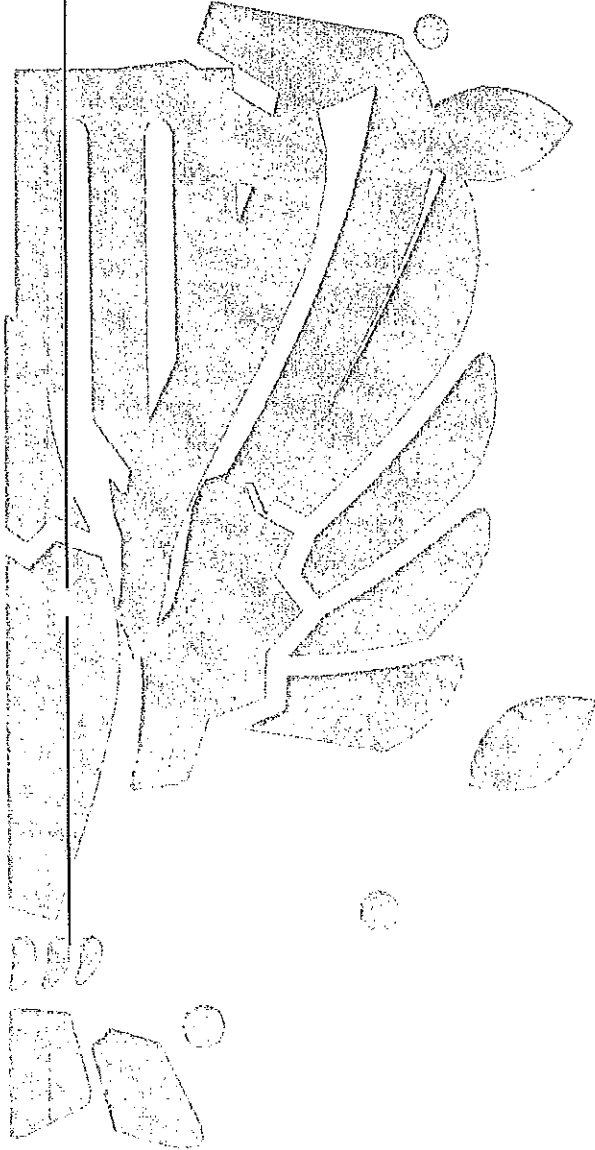
§ 15.3.2 A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the County where the Owner's principal office is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 LITIGATION

§ 15.4.1 Any Claim not resolved by mediation pursuant to Section 15.3.1 shall be subject to litigation unless both parties agree in writing to arbitrate the Claims. Any Claim subject to, but not resolved by, mediation may be decided by arbitration if the parties mutually agree in writing. There shall be no mandatory arbitration of Claims.

(The remainder of this page is intentionally left blank.)



Init.

DRAFT AIA® Document A133™ - 2009 Exhibit A

Guaranteed Maximum Price Amendment

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

Foster's Lift Station and Gravity Sewer Improvements Project

Located at 1852 Socialville-Foster Road, Deerfield Twp

THE OWNER:
(Name, legal status and address)

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

THE CONSTRUCTION MANAGER:
(Name, legal status and address)

Shook Construction Company
2000 West Dorothy Lane
Moraine, Ohio 45439

ARTICLE A.1

§ A.1.1 Guaranteed Maximum Price

Pursuant to Section 2.2.6 of the Agreement, the Owner and Construction Manager hereby amend the Agreement to establish a Guaranteed Maximum Price. As agreed by the Owner and Construction Manager, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed. The Contract Sum is the sum of the actual Cost of the Work (as defined in Article 6 of this Agreement), the Construction Manager's Fee, (the sum of the Construction Fee, the At-Risk Fee, and General Conditions) and the amount of Contingency used, as each is defined in the Contract Documents, exclusive of the Preconstruction Fee.

§ A.1.1.1 The Contract Sum (not including the Preconstruction Fee) is guaranteed by the Construction Manager not to exceed Sixty-Five Thousand (Preconstruction Fee) Dollars (\$65,000), subject to additions and deductions by Change Order as provided in the Contract Documents.

§ A.1.1.2 Itemized Statement of the Guaranteed Maximum Price. Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the Construction Manager's Fee, and other items that comprise the Guaranteed Maximum Price.
(Provide below or reference an attachment.)

«As set forth in the GMP Proposal, dated _____ which is attached to this Exhibit A and labeled Attachment I. »

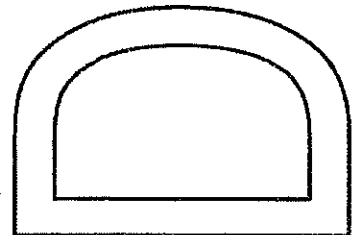
§ A.1.1.3 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:
(State the numbers or other identification of accepted alternates. If the Contract

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User Notes:

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.

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.



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Documents permit the Owner to accept other alternates subsequent to the execution of

this Amendment, attach a schedule of such other alternates showing the amount for each and the date when the amount expires.)

«[insert alternates, if any]»

§ A.1.1.4 Allowances included in the Guaranteed Maximum Price, if any:
(Identify allowance and state exclusions, if any, from the allowance price.)

| Item | Price (\$0.00) |
|------|----------------|
| | |

§ A.1.1.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

« »

§ A.1.1.6 The Guaranteed Maximum Price is based upon the following Supplementary and other Conditions of the Contract: N/A

§ A.1.1.7 The Guaranteed Maximum Price is based upon the following Specifications:
(Either list the Specifications here, or refer to an exhibit attached to this Agreement.)

« »

| Section | Title | Date | Pages |
|---------|-------|------|-------|
| | | | |

§ A.1.1.8 The Guaranteed Maximum Price is based upon the following Drawings:
(Either list the Drawings here, or refer to an exhibit attached to this Agreement.)

« »

| Number | Title | Date |
|--------|-------|------|
| | | |

§ A.1.1.9 The Guaranteed Maximum Price is based upon the following other documents and information:
(List any other documents or information here, or refer to an exhibit attached to this Agreement.)

« »

ARTICLE A.2

§ A.2.1 The Date for Substantial Completion established by this Amendment:

« , 201 »

§ A.2.2 The date of Final Completion established by this Amendment:

« , 201 »

OWNER (Signature)

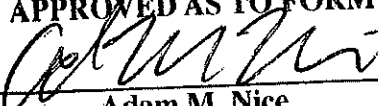
CONSTRUCTION MANAGER (Signature)

« »
(Printed name and title)

« »
(Printed name and title)

Date

Date

APPROVED AS TO FORM

Adam M. Nice
Asst. Prosecuting Attorney

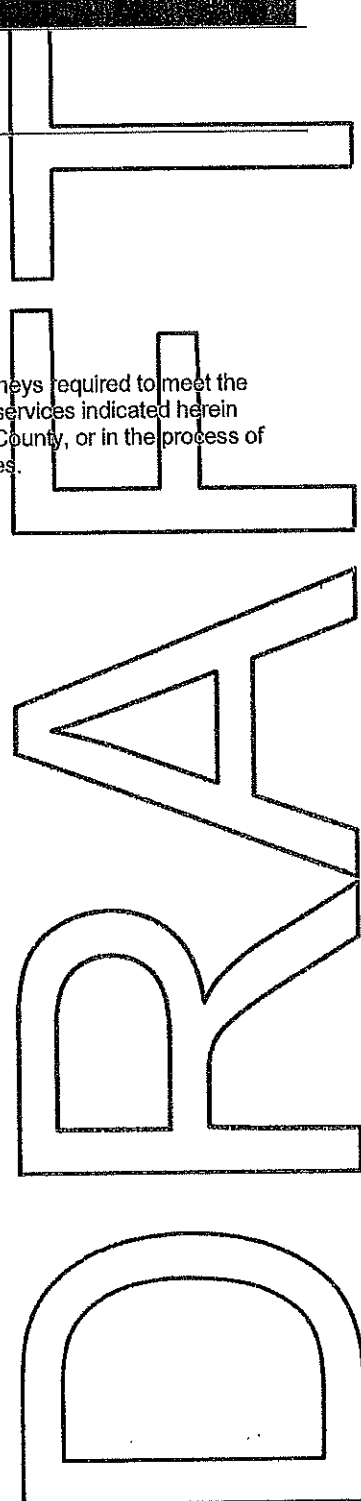
CERTIFICATE OF FUNDS
(ORC Section 5705.41)

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

DATED: _____

Warren County

By: _____
Fiscal Officer



**PROPOSAL FORM 5
GUARANTEED MAXIMUM PRICE PROPOSAL***

Note: This form shall be submitted at the completion of the Preconstruction services for the Project, per the instructions in the RFP.

| Item | Price |
|---|---|
| (A) Construction Fee | <p><u>3.0</u> % of the Cost of the Work, which equates to: \$ _____ when applied to the Maximum Cost of the Work provided in (E) below.</p> |
| (B) At-Risk Fee | <p><u>1.0</u> % of the Cost of the Work, which equates to: \$ _____ when applied to the Maximum Cost of the Work provided in (E) below.</p> |
| (C) General Conditions** | <p>\$ _____ (which is equal to the monthly cost of \$ <u>38,900</u> multiplied by ___ month Project duration)</p> |
| (D) Contingency | <p><u>2.5</u> % of the Cost of the Work, which equates to: \$ _____ when applied to the Maximum Cost of the Work provided in (E) below.</p> |
| (E) Maximum Cost of the Work | <p>\$ _____</p> |
| Guaranteed Maximum Price = (A)+(B)+(C)+(D)+(E) | <p>\$ _____</p> |

* = These values must be consistent with Proposer's Price Proposal.

**As set forth in Proposer's Itemized General Conditions, included with the Proposal.

Document 00 61 13.16 - Payment Bond Form

State of Ohio Standard Requirements for Public Facility Construction

(Form of Payment Bond prescribed by Ohio Administrative Code Section 153:4-1-02)

KNOW ALL PERSONS BY THESE PRESENTS, that we, the undersigned _____
_____, as Principal,
and _____ as Sureties,
are hereby held and firmly bound unto _____

_____ as Obligee(s), in the penal sum of _____ dollars,
for the payment of which well and truly to be made, we jointly and severally bind ourselves, our heirs, executors,
administrators, successors, and assigns.

SIGNED AND SEALED this _____ day of _____, _____.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that whereas the above-named Principal did on the
_____ day of _____, _____, enter into a Contract with the Obligee, which said Contract is
made a part of this Bond the same as though set forth herein and which is more fully described as:

Project Number: _____
Project Name: _____
Contract Description: Construction Manager at Risk
(e.g., Construction Manager at Risk, Design-Build)

NOW, THEREFORE, if the above-named Principal shall pay all lawful claims of subcontractors, material suppliers,
and laborers, for labor performed and materials furnished in the carrying forward, performing, or completing of said
Contract; we agreeing and assenting that this undertaking shall be for the benefit of any material supplier or laborer having a
just claim, as well as for the Obligee(s) herein; then this obligation shall be void; otherwise the same shall remain in full force
and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall in
no event exceed the penal amount of this obligation as herein stated.

THE SAID Surety hereby stipulates and agrees that no modifications, omissions, or additions, in or to the terms of
said Contract or in or to the Plans and Specifications therefore shall in any wise affect the obligations of said Surety on its
bond, and said Surety hereby waives notice of any such modifications, omissions or additions in or to the terms of the
Contract, the Work or the Contract Documents, including without limitation the Plans and Specifications.

PRINCIPAL:

Principal Signature

By: _____

Title: _____

SURETY:

Surety Signature

By: _____
Attorney-in-Fact

SURETY INFORMATION:

Street

City State Zip

Telephone Number

SURETY AGENT'S INFORMATION:

Agency Name

Street

City State Zip

Telephone Number

Email Address

END OF DOCUMENT

Document 00 61 13.13 - Performance Bond Form
State of Ohio Standard Requirements for Public Facility Construction

(Form of Performance Bond prescribed by Ohio Administrative Code Section 153:4-1-02)

KNOW ALL PERSONS BY THESE PRESENTS, that we, the undersigned _____
_____, as Principal,
and _____ as Sureties,
are hereby held and firmly bound unto _____

_____ as Obligee(s), in the penal sum of _____ dollars,
for the payment of which well and truly to be made, we jointly and severally bind ourselves, our heirs, executors,
administrators, successors, and assigns.

SIGNED AND SEALED this _____ day of _____, _____.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that whereas the above-named Principal did on the
_____ day of _____, _____, enter into a Contract with the Obligee, which said Contract is
made a part of this Bond the same as though set forth herein and which is more fully described as:

Project Number: _____
Project Name: _____
Contract Description: _____
(e.g., Construction Manager at Risk, Design-Build)

NOW, THEREFORE, if the above-named Principal shall well and faithfully do and perform the things agreed by the
Principal to be done and performed according to the terms of said Contract then this obligation shall be void; otherwise the
same shall remain in full force and effect; it being expressly understood and agreed that the liability of the Surety for any and
all claims hereunder shall in no event exceed the penal amount of this obligation as herein stated.

THE SAID Surety hereby stipulates and agrees that no modifications, omissions, or additions, in or to the terms of
said Contract or in or to the Plans and Specifications therefore shall in any way affect the obligations of said Surety on its
bond, and it does hereby waive notice of any such modifications, omissions or additions in or to the terms of the Contract, the
Work or the Contract Documents, including without limitation the Plans and Specifications.

PRINCIPAL:

Principal Signature

By: _____

Title: _____

SURETY:

Surety Signature

By: _____
Attorney-in-Fact

SURETY INFORMATION:

Street

City State Zip

Telephone Number

SURETY AGENT'S INFORMATION:

Agency Name

Street

City State Zip

Telephone Number

Email Address

END OF DOCUMENT

Exhibit E

NOTICE OF CLAIM FORM

Claim No. ___ for Construction Manager at Risk

1. Name of Construction Manager at Risk (CMAR): _____

2. Date written claim given: _____

3. CMAR's representative to contact regarding the claim:

Name: _____ Title: _____

Telephone No. _____ (office) FAX No. _____

E-mail: _____

4. General description of claim:

5. Contract Documents. If the claim is based upon any part or provision in the Contract Documents, including but not limited to pages in the Drawings and/or paragraphs in the Specifications, Owner-CMAR Agreement, General Conditions or Supplementary General Conditions, state upon which parts or provisions the claim is based:

6. Delay claims:

6.1 Date delay commenced: _____

6.2 Duration or expected duration of the delay, if known: _____

6.3 Apparent cause of the delay and part of critical path affected:

6.4 Expected impact of the delay and recommendations for minimizing such impact:

7. Additional compensation. Set forth in detail all additional compensation to which the CMAR believes it is entitled with respect to this claim:

8. Instructions for Completing the Notice of Claim Form ("Instructions"). The Instructions are incorporated in this Form.

9. Truth of Claim. By submitting this claim, the CMAR and its representative certify that after conscientious and thorough review and to the best of his or her knowledge and belief a) the CMAR has complied fully with the Instructions, b) the information in this State of Claim is accurate, c) the CMAR is entitled to recover the compensation in paragraph 7, and d) the CMAR has not knowingly presented a false or fraudulent claim. The CMAR by its authorized representative must acknowledge this Statement of Claim before a notary public.

CMAR: _____

By: _____

Name _____ and _____ Title: _____

Date: _____

Exhibit E

CMAR'S ACKNOWLEDGMENT

State of _____,

County of _____, ss:

_____ first being sworn, states that after conscientious and thorough review, the statements made in attached Notice of Claim Form are complete and true to the best of his or her knowledge and belief.

Sworn to before me a notary public by _____ on _____, 20__.

Notary Public

WHEN COMPLETED, FORWARD A COPY OF THIS NOTICE AND NOTICE OF CLAIM FORM TO THE OWNER AND DESIGN PROFESSIONAL.

INSTRUCTIONS FOR COMPLETING THE NOTICE OF CLAIM FORM

1. Completing the Notice of Claim Form ("Claim Form") is a material term of the Contract. The Claim Form tells the Owner and Design Professional that the CMAR is making a Claim and that they need to act promptly to mitigate the effects of the occurrence giving rise to the Claim. The Claim Form also provides them with information so that they can mitigate such effects. The CMAR acknowledges that constructive knowledge of the conditions giving rise to the Claim through job meetings, correspondence, site observations, etc. is inadequate notice, because knowledge of these conditions does not tell the Owner and Design Professional that the CMAR will be making a Claim and most often is incomplete.
2. If the space provided in the Claim Form is insufficient, the CMAR, as necessary to provide complete and detailed information, must attach pages to the Claim Form with the required information.
3. Paragraph 4. The CMAR must state what it wants, *i.e.*, time and/or compensation, and the reason why it is entitled to time and/or compensation.
4. Paragraph 5. The CMAR must identify the exact provisions of the Contract Documents it is relying on in making its Claim. For example, if the Claim is for a change in the scope of the CMAR's Work, the CMAR must identify the specific provisions of the Specifications, and the Plan sheets and details that provide the basis for the scope change.
5. Paragraph 6. This paragraph applies to delay claims, including delays that the CMAR believes result in constructive acceleration. The CMAR must identify the cause of the delay, party or parties responsible, and what the party did or did not do that caused the delay, *i.e.*, specific work activities. The CMAR acknowledges that general statements are not sufficient, and do not provide the Owner with sufficient information to exercise the remedies available to the Owner or to mitigate the effects of the delay.

For example, if the CMAR claims a slow response time on submittals caused a delay, the CMAR must identify the specific submittals, all relevant dates, and then show on the applicable schedule, by circling or highlighting, the activities immediately affected by the delays. Also for example, if the CMAR claims it was delayed by another CMAR, the CMAR must identify the delaying CMAR, specifically what the delaying CMAR did or did not do that caused the delay, and then show the applicable schedule, by circling or highlighting, the activities immediately affected by the delays. Further by example, if the CMAR seeks an extension of time for unusually severe weather, the CMAR must submit comparative weather data along with a record of the actual weather at the job site and job site conditions.

6. Paragraph 6.4. Time is of the essence under the Contract Documents. If there is a delay, it is important to know what can be done to minimize the impact of the delay. It therefore is important that the CMAR provide specific recommendations on how to do so.
7. Paragraph 7. The CMAR must provide a specific and detailed breakdown of the additional compensation it seeks to recover. For future compensation, the CMAR shall provide its best estimate of such compensation.
8. Paragraph 8 and Acknowledgment. By submitting this Claim, the CMAR and its representative certify that after conscientious and thorough review and to the best of his or her knowledge and belief a) the CMAR has complied fully with the Instructions, b) the information in this Claim Form is accurate, c) the CMAR is entitled to recover the compensation in paragraph 7, and d) the CMAR has not knowingly presented a false or fraudulent claim. The CMAR by its authorized representative must acknowledge this Statement of Claim before a notary public.

End of Instructions

CMAR: [insert name]

BY: _____
(Signature of authorized representative)

NOTARY PUBLIC

Subscribed and sworn to before me on this date by _____ on behalf of

Signature of Notary Public

Notary Public: _____

My Commission Expires: _____

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

Project:

The undersigned hereby acknowledges receipt of payment for all Work on the Project through the date of the prior Application for Payment by **Warren County, Ohio** (the "Owner") with whom it has a contract for the Project.

In return for said payment, and pursuant to certain contractual obligations of the undersigned, the undersigned hereby waives and releases any rights it has or may have through the date of the last Application for Payment to any and all types of claims relating to the Project, including without limitation claims of payment, Mechanic's Lien, stop notice, equitable lien, labor and material bond, breach of contract or unjust enrichment, or any other claim against the Owner, for any labor, materials, or equipment the undersigned may have delivered or provided to the Project, except for any Claims the undersigned has made by properly and timely submitting a Statement of Claim. The undersigned further certifies that this Affidavit covers claims by all contractors, subcontractors, and suppliers who may have provided any labor, material, or equipment to the Project through the undersigned or at the undersigned's request. The undersigned acknowledges that all such contractors, subcontractors, sub-subcontractors and suppliers have signed an affidavit in the form of this Affidavit releasing any and all claims against the Owner, except for any Claims the undersigned has made by properly and timely submitting a written statement of its Claim. The undersigned hereby represents and warrants that it has paid any and all welfare, pension, vacation or other contributions required to be paid on account of the employment by the undersigned of any laborers on the Project.

This Affidavit is for the benefit of, and may be relied upon by the Owner. The undersigned hereby agrees to indemnify, defend and hold harmless each of the foregoing, the Project, work of improvement, and real property from any and all claims, or liens arising out of work covered by this release.

| | |
|--|--|
| _____ | State of: _____ County of _____ |
| Company Name | Subscribed and sworn to before me this _____ |
| _____ | day of _____ |
| Authorized Signature (Company Officer) | Notary Public: _____ |
| _____ | My Commission Expires: _____ |
| Title | |
| _____ | |
| Date | |

Exhibit H

**SUBCONTRACTORS & SUPPLIERS PROGRESS
PAYMENT WAIVER & RELEASE AFFIDAVIT
("AFFIDAVIT")**

Project:

The undersigned hereby acknowledges receipt of payment for all Work on the Project through the date of the prior Application for Payment by the Construction Manager at Risk ("CMAR") with whom it has a contract.

In return for said payment, and/or pursuant to certain contractual obligations of the undersigned, the undersigned hereby waives and releases any rights it has or may have through the date of the CMAR's last Application for Payment and to any and all types of claims relating to the Project, including without limitation claims of payment, Mechanic's Lien, stop notice, equitable lien, labor and material bond, breach of contract or unjust enrichment, or any other claim against the CMAR, the CMAR's surety, and/or **Warren County, Ohio** (the "Owner"), for any labor, materials, or equipment the undersigned may have delivered or provided to the Project, except for any Claims the undersigned has made by properly and timely submitting a Statement of Claim form, a copy of which has been delivered to the Owner. The undersigned further certifies that this Affidavit covers claims by all contractors, subcontractors and suppliers through the date of the CMAR's last Application for Payment who may have provided any labor, material, or equipment to the Project through the undersigned or at the undersigned's request. The undersigned acknowledges that all such contractors, subcontractors, sub-subcontractors and suppliers have signed an affidavit in the form of this Affidavit releasing any and all claims against the CMAR, the CMAR's surety, and/or the Owner, except for any Claims made by properly and timely submitting a Statement of Claim, a copy of which has been delivered to the Owner. The undersigned hereby represents and warrants that it has paid any and all welfare, pension, vacation or other contributions required to be paid on account of the employment by the undersigned of any laborers on the Project.

The undersigned agrees that upon receipt of the payment from the CMAR with respect to the CMAR's current Application for Payment, it shall, if applicable, immediately execute and cause to be filed or recorded a legally effective Satisfaction of Lien, Release of Lien, or any other legal instrument necessary to cause prejudicial dismissal and release of any lien, encumbrance, lawsuit, or other claim against the CMAR, the CMAR's surety and the Owner, the property where the Project is located, and/or any surety bond posted by the CMAR or the Owner to the extent of the foresaid payment. Upon request of the CMAR, the undersigned shall provide proof of having complied with this obligation.

This Affidavit is for the benefit of, and may be relied upon by, the CMAR, the CMAR's surety and the Owner. The undersigned hereby agrees to indemnify, defend and hold harmless each of the foregoing, the Project, its Work, and real property from any and all claims, or liens arising out of work covered by this release and from any liability, cost, or expense incurred as a result of any breach of this Affidavit by the undersigned.

_____ State of: _____ County of _____
Company Name

_____ Subscribed and sworn to before me this _____
Authorized Signature (Company Officer) day of _____

_____ Notary Public: _____
President Title

_____ My Commission Expires: _____

_____ Date

Exhibit J

CONSTRUCTION MANAGER'S PERSONAL PROPERTY TAX AFFIDAVIT
(Attach)



STEC-CC
Rev. 3/15/04

Sales and Use Tax Construction Contract Exemption Certificate

Identification of Contract:

Contractee's (Owner's) name: Board of County Commissioners, Warren County, Ohio

Exact location of job/project: _____

Name of job/project as it appears on contract documentation: Fosters Lift Station and Gravity Sewer Improvements Project

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

| | | | |
|-------------------------------------|---|-------------------------------------|---|
| <input checked="" type="checkbox"/> | real property under a construction contract with the United States government, its agencies, the State of Ohio, or an Ohio political subdivision; | <input checked="" type="checkbox"/> | real property which is owned, or will be accepted for ownership at the time of completion, by the United States government, its agencies, the State of Ohio, or an Ohio political subdivision; |
| <input type="checkbox"/> | a horticulture structure or livestock structure for a person engaged in the business of horticulture or producing livestock; | <input type="checkbox"/> | a house of public worship or religious education; |
| <input type="checkbox"/> | a building used exclusively for charitable purposes by a nonprofit organization operated exclusively for charitable purposes as defined in section 5739.02(B)(12) of the Revised Code; | <input type="checkbox"/> | a building under a construction contract with an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986 when the building is to be used exclusively for the organization's exempt purposes; |
| <input type="checkbox"/> | the original construction of a sports facility under section 307.696 of the Revised Code; | <input type="checkbox"/> | a hospital facility entitled to exemption under section 140.08 of the Revised Code; |
| <input type="checkbox"/> | real property outside this state if such materials and services, when sold to a construction contractor in the state in which the real property is located for incorporation into real property in that state, would be exempt from a tax on sales levied by that state | | |

The original of this certificate must be signed by the owner/contractee and/or government official and must be retained by the prime contractor. Copies must be maintained by the owner/contractee and all subcontractors. When copies are issued to suppliers when purchasing materials, each copy must be signed by the contractor or subcontractor making the purchase.

Prime Contractor

Name: SHOOK CONSTRUCTION

Signed by: *Amil W...*

Title: VICE PRESIDENT

Street address: 2000 W. DOROTHY LANE

City, state, ZIP code: MORAIN, OH 45439

Date: 3/24/2022

Owner/Contractee

Name: Board of County Commissioners, Warren County, Ohio

Signed by: _____

Title: _____

Street address: Administration Building
406 Justice Drive, First Floor

City, state, ZIP code: Lebanon, Ohio 45036

Date: _____

Subcontractor

Name: _____

Signed by: _____

Title: _____

Street address: _____

City, state, ZIP code: _____

Date: _____

Political Subdivision

Name: same as Owner/Contractee

Signed by: _____

Title: _____

Street address: _____

City, state, ZIP code: _____

Date: _____

Exhibit L

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

Project: _____

In consideration for payment received from **Warren County, Ohio** (the "Owner") in the amount requested in CMAR's Final Application for Payment to the Owner, the receipt of which is hereby acknowledged, the undersigned CMAR hereby waives and releases any rights it has or may have to any and all types of claims relating to the Project, including without limitation claims of payment, Mechanic's Lien, stop notice, equitable lien, labor and material bond, breach of contract or unjust enrichment, or any other claim against the Owner, for any labor, materials, or equipment the undersigned may have delivered or provided to the Project, except for any Claims the undersigned has made by properly and timely submitting a Statement of Claim form. The undersigned further certifies that this Affidavit covers claims by all contractors, subcontractors, and suppliers who may have provided any labor, material, or equipment to the Project through the undersigned or at the undersigned's request. The undersigned acknowledges that all such contractors, subcontractors, sub-subcontractors and suppliers have signed an affidavit in the form of this Affidavit releasing any and all claims against the Owner, except for any Claims the undersigned has made by properly and timely submitting a written statement of its Claim. The undersigned hereby represents and warrants that it has paid any and all welfare, pension, vacation or other contributions required to be paid on account of the employment by the undersigned of any laborers on the Project.

This Affidavit is for the benefit of, and may be relied upon by the Owner. The undersigned hereby agrees to indemnify, defend and hold harmless each of the foregoing, the Project, work of improvement, and real property from any and all claims, or liens that are or should have been released in accordance with this Affidavit.

| | |
|--|--|
| _____ | 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 | |

AFFIDAVIT OF NON COLLUSION

STATE OF Ohio
COUNTY OF Warren

I, Daniel Wolking, holding the title and position of Vice President at the firm Shook Construction Co., affirm that I am authorized to speak on behalf of the company, board directors and owners in setting the price on the contract, bid or proposal. I understand that any misstatements in the following information will be treated as fraudulent concealment of true facts on the submission of the contract, bid or proposal.

I hereby swear and depose that the following statements are true and factual to the best of my knowledge:

The contract, bid or proposal is genuine and not made on the behalf of any other person, company or client, INCLUDING ANY MEMBER OF THE WARREN COUNTY BOARD OF COMMISSIONERS.

The price of the contract, bid or proposal was determined independent of outside consultation and was not influenced by other companies, clients or contractors, INCLUDING ANY MEMBER OF THE WARREN COUNTY BOARD OF COMMISSIONERS.

No companies, clients or contractors, INCLUDING ANY MEMBER OF THE WARREN COUNTY BOARD OF COMMISSIONERS have been solicited to propose a fake contract, bid or proposal for comparative purposes.

No companies, clients or contractors, INCLUDING ANY MEMBER OF THE WARREN COUNTY BOARD OF COMMISSIONERS have been solicited to refrain from bidding or to submit any form of noncompetitive bidding.

Relative to sealed bids, the price of the bid or proposal has not been disclosed to any client, company or contractor, INCLUDING ANY MEMBER OF THE WARREN COUNTY BOARD OF COMMISSIONERS, and will not be disclosed until the formal bid/proposal opening date.

[Signature]
AFFIANT

Subscribed and sworn to before me this 25 day of MARCH 20 22

[Signature]
(Notary Public),

MONTGOMERY County.

My commission expires APRIL 2 20 24





CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 03/25/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

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

PRODUCER
USI Insurance Services, LLC
10100 Innovation Drive, Suite 220
Dayton, OH 45342
937 223-8891

CONTACT NAME: Sara Horn
PHONE (A/C, No, Ext): 513-852-6400
FAX (A/C, No): 513-852-6428
E-MAIL ADDRESS: sara.horn@usi.com

Table with 2 columns: INSURER(S) AFFORDING COVERAGE and NAIC #. Rows include Phoenix Insurance Company, Travelers Property Cas. Co. of America, Charter Oak Fire Insurance Company, Indian Harbor Insurance Company, and INSURER E/F.

INSURED
Shook Construction Co.
2000 W. Dorothy Lane
Dayton, OH 45439

COVERAGES CERTIFICATE NUMBER: 35408395 REVISION NUMBER:

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

Main table with columns: INSR LTR, TYPE OF INSURANCE, POLICY NUMBER, POLICY EFF (MM/DD/YYYY), POLICY EXP (MM/DD/YYYY), LIMITS. Rows A-D include Commercial General Liability, Automobile Liability, Umbrella Liability, Workers Compensation, and Profess/Pollution.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Project: Warren County, Fosters Lift Station and Gravity Sewer Improvements
Warren County Board of Commissioners and Burgess & Niple, Inc. are included as Additional Insureds with respect to work performed by the Named Insured on their behalf.

CERTIFICATE HOLDER
Warren County Board of Commissioners
406 Justice Drive
Lebanon, OH 45036

CANCELLATION
SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
AUTHORIZED REPRESENTATIVE
[Signature]

DESCRIPTIONS (Continued from Page 1)

Automobile Liability, and Umbrella Liability.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED – AUTOMATIC STATUS IF REQUIRED BY WRITTEN CONTRACT-OTHER THAN AN ARCHITECT, ENGINEER or SURVEYOR (CONTRACTORS)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

1. The following is added to SECTION II – WHO IS AN INSURED:

Any person or organization, except any architect, engineer or surveyor, that:

- a. You agree in a "written contract requiring insurance" to include as an additional insured on this Coverage Part; and
- b. Has not been added as an additional insured for the same project by attachment of an endorsement under this Coverage Part which includes such person or organization in the endorsement's schedule;

is an insured, but:

- a. Only with respect to liability for "bodily injury", "property damage" or "personal injury"; and
- b. Only as described in Paragraph (1), (2) or (3) below, whichever applies:

(1) If the "written contract requiring insurance" specifically requires you to provide additional insured coverage to that person or organization by the use of:

(a) The Additional Insured – Owners, Lessees or Contractors – (Form B) endorsement CG 20 10 11 85; or

(b) Either or both of the following: the Additional Insured – Owners, Lessees or Contractors – Scheduled Person Or Organization endorsement CG 20 10 10 01, or the Additional Insured – Owners, Lessees or Contractors – Completed Operations endorsement CG 20 37 10 01;

the person or organization is an additional insured only if the injury or damage arises out of "your work" to which the "written contract requiring insurance" applies;

(2) If the "written contract requiring insurance" specifically requires you to provide

additional insured coverage to that person or organization by the use of:

(a) The Additional Insured – Owners, Lessees or Contractors – Scheduled Person Or Organization endorsement CG 20 10 07 04 or CG 20 10 04 13, the Additional Insured – Owners, Lessees or Contractors – Completed Operations endorsement CG 20 37 07 04 or CG 20 37 04 13, or both of such endorsements with either of those edition dates; or

(b) Either or both of the following: the Additional Insured – Owners, Lessees or Contractors – Scheduled Person Or Organization endorsement CG 20 10, or the Additional Insured – Owners, Lessees or Contractors – Completed Operations endorsement CG 20 37, without an edition date of such endorsement specified;

the person or organization is an additional insured only if the injury or damage is caused, in whole or in part, by acts or omissions of you or your subcontractor in the performance of "your work" to which the "written contract requiring insurance" applies; or

(3) If neither Paragraph (1) nor (2) above applies:

(a) The person or organization is an additional insured only if, and to the extent that, the injury or damage is caused by acts or omissions of you or your subcontractor in the performance of "your work" to which the "written contract requiring insurance" applies; and

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COMMERCIAL GENERAL LIABILITY

- (b) The person or organization does not qualify as an additional insured with respect to the independent acts or omissions of such person or organization.
2. The insurance provided to the additional insured by this endorsement is limited as follows:
- a. If the Limits of Insurance of this Coverage Part shown in the Declarations exceed the minimum limits of liability required by the "written contract requiring insurance", the insurance provided to the additional insured will be limited to such minimum required limits of liability. For the purposes of determining whether this limitation applies, the minimum limits of liability required by the "written contract requiring insurance" will be considered to include the minimum limits of liability of any Umbrella or Excess liability coverage required for the additional insured by that "written contract requiring insurance". This endorsement will not increase the limits of insurance described in Section III - Limits Of Insurance.
- b. The insurance provided to the additional insured does not apply to "bodily injury", "property damage" or "personal injury" arising out of the rendering of, or failure to render, any professional architectural, engineering or surveying services, including:
- (1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders or change orders, or the preparing, approving, or failing to prepare or approve, drawings and specifications; and
- (2) Supervisory, inspection, architectural or engineering activities.
- c. The insurance provided to the additional insured does not apply to "bodily injury" or "property damage" caused by "your work" and included in the "products-completed operations hazard" unless the "written contract requiring insurance" specifically requires you to provide such coverage for that additional insured during the policy period.
3. The insurance provided to the additional insured by this endorsement is excess over any valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the additional insured. However, if the "written contract requiring insurance" specifically requires that this insurance apply on a primary basis or a primary and non-contributory basis, this insurance is primary to other insurance available to the additional insured under which that person or organization qualifies as a named insured, and we will not share with that other insurance. But the insurance provided to the additional insured by this endorsement still is excess over any valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the additional insured when that person or organization is an additional insured, or is any other insured that does not qualify as a named insured, under such other insurance.
4. As a condition of coverage provided to the additional insured by this endorsement:
- a. The additional insured must give us written notice as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, such notice should include:
- (1) How, when and where the "occurrence" or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.
- b. If a claim is made or "suit" is brought against the additional insured, the additional insured must:
- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.
- The additional insured must see to it that we receive written notice of the claim or "suit" as soon as practicable.
- c. The additional insured must immediately send us copies of all legal papers received in connection with the claim or "suit", cooperate with us in the investigation or settlement of the claim or defense against the "suit", and otherwise comply with all policy conditions.
- d. The additional insured must tender the defense and indemnity of any claim or "suit" to any provider of other insurance which would cover the additional insured for a loss we cover under this endorsement. However, this condition does not affect whether the insurance provided to the additional insured by this endorsement is primary to other insurance available to the additional insured which covers that person or organization as a named insured as described in Paragraph 3. above.

COMMERCIAL GENERAL LIABILITY

5. The following is added to the **DEFINITIONS** section:

"Written contract requiring insurance" means that part of any written contract or agreement under which you are required to include a person or organization as an additional insured on this Coverage Part, provided that the "bodily injury" and

"property damage" occurs, and the "personal injury" is caused by an offense committed during the policy period and:

- a. After the signing and execution of the contract or agreement by you; and
- b. While that part of the contract or agreement is in effect.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - ENGINEERS, ARCHITECTS OR SURVEYORS NOT ENGAGED BY THE NAMED INSURED

This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Engineers, Architects Or Surveyors Not Engaged By The Named Insured:
ANY ARCHITECT, ENGINEER OR SURVEYOR THAT YOU AGREE IN A WRITTEN CONTRACT TO INCLUDE AS AN ADDITIONAL INSURED ON THIS COVERAGE PART PROVIDED THAT SUCH WRITTEN CONTRACT WAS SIGNED BY YOU BEFORE, AND IS IN EFFECT WHEN, THE "BODILY INJURY" OR "PROPERTY DAMAGE" OCCURS OR THE "PERSONAL INJURY" OR "ADVERTISING INJURY" OFFENSE IS COMMITTED.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Section II - Who Is An Insured is amended to include as an additional insured the architects, engineers or surveyors shown in the Schedule, but only with respect to liability for "bodily injury", "property damage", "personal injury" or "advertising injury" caused, in whole or in part by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations performed by you or on your behalf.

Such architects, engineers or surveyors, while not engaged by you, are contractually required to be added as an additional insured to your policy.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:

This insurance does not apply to "bodily injury", "property damage", "personal injury" or "advertising injury" arising out of the rendering of or the failure to render any professional services, including:

1. The preparing, approving, or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications; or
2. Supervisory, inspection or engineering services.

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COMMERCIAL GENERAL LIABILITY

c. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

d. Primary And Non-Contributory Insurance If Required By Written Contract

If you specifically agree in a written contract or agreement that the insurance afforded to an insured under this Coverage Part must apply on a primary basis, or a primary and non-contributory basis, this insurance is primary to other insurance that is available to such insured which covers such insured as a named insured, and we will not share with that other insurance, provided that:

- (1) The "bodily injury" or "property damage" for which coverage is sought occurs; and
- (2) The "personal and advertising injury" for which coverage is sought is caused by an offense that is committed;

subsequent to the signing of that contract or agreement by you.

5. Premium Audit

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute

the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.

- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

6. Representations

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

The unintentional omission of, or unintentional error in, any information provided by you which we relied upon in issuing this policy will not prejudice your rights under this insurance. However, this provision does not affect our right to collect additional premium or to exercise our rights of cancellation or nonrenewal in accordance with applicable insurance laws or regulations.

7. Separation Of Insureds

Except with respect to the Limits of insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each Insured against whom claim is made or "suit" is brought.

8. Transfer Of Rights Of Recovery Against Others To Us

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

9. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date. If notice is mailed, proof of mailing will be sufficient proof of notice.

SECTION V - DEFINITIONS

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:

- a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
- b. Regarding websites, only that part of a website that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED – PRIMARY AND NON-CONTRIBUTORY WITH OTHER INSURANCE – CONTRACTORS

This endorsement modifies insurance provided under the following:
BUSINESS AUTO COVERAGE FORM

PROVISIONS

1. The following is added to Paragraph c. in A.1., Who Is An Insured, of SECTION II – COVERED AUTOS LIABILITY COVERAGE:

This includes any person or organization who you are required under a written contract or agreement, that is signed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to name as an additional insured for Covered Autos Liability Coverage, but only for damages to which this insurance applies and only to the extent of that person's or organization's liability for the conduct of another "insured".

2. The following is added to Paragraph B.5., Other Insurance of SECTION IV – BUSINESS AUTO CONDITIONS:

Regardless of the provisions of paragraph a. and paragraph d. of this part 5. Other Insurance, this insurance is primary to and non-contributory with applicable other insurance under which an additional insured person or organization is a named insured when a written contract or agreement with you, that is signed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, requires this insurance to be primary and non-contributory.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BUSINESS AUTO EXTENSION ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

GENERAL DESCRIPTION OF COVERAGE – This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to the Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Limitations and exclusions may apply to these coverages. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

- | | |
|--|--|
| <p>A. BROAD FORM NAMED INSURED</p> <p>B. BLANKET ADDITIONAL INSURED</p> <p>C. EMPLOYEE HIRED AUTO</p> <p>D. EMPLOYEES AS INSURED</p> <p>E. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS</p> <p>F. HIRED AUTO – LIMITED WORLDWIDE COVERAGE – INDEMNITY BASIS</p> <p>G. WAIVER OF DEDUCTIBLE – GLASS</p> | <p>H. HIRED AUTO PHYSICAL DAMAGE – LOSS OF USE – INCREASED LIMIT</p> <p>I. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT</p> <p>J. PERSONAL PROPERTY</p> <p>K. AIRBAGS</p> <p>L. NOTICE AND KNOWLEDGE OF ACCIDENT OR LOSS</p> <p>M. BLANKET WAIVER OF SUBROGATION</p> <p>N. UNINTENTIONAL ERRORS OR OMISSIONS</p> |
|--|--|

PROVISIONS:

A. BROAD FORM NAMED INSURED

The following is added to Paragraph A.1, **Who Is An Insured**, of SECTION II – **COVERED AUTOS LIABILITY COVERAGE:**

Any organization you newly acquire or form during the policy period over which you maintain 50% or more ownership interest and that is not separately insured for Business Auto Coverage. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier.

B. BLANKET ADDITIONAL INSURED

The following is added to Paragraph c. in A.1., **Who Is An Insured**, of SECTION II – **COVERED AUTOS LIABILITY COVERAGE:**

Any person or organization who is required under a written contract or agreement between you and that person or organization, that is signed and executed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to be named as an additional insured is an "insured" for Covered Autos Liability Coverage, but only for damages to which

this insurance applies and only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Section II.

C. EMPLOYEE HIRED AUTO

1. The following is added to Paragraph A.1, **Who Is An Insured**, of SECTION II – **COVERED AUTOS LIABILITY COVERAGE:**

An "employee" of yours is an "insured" while operating an "auto" hired or rented under a contract or agreement in an "employee's" name, with your permission, while performing duties related to the conduct of your business.

2. The following replaces Paragraph b. in B.5., **Other Insurance**, of SECTION IV – **BUSINESS AUTO CONDITIONS:**

b. For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own:

- (1) Any covered "auto" you lease, hire, rent or borrow; and
- (2) Any covered "auto" hired or rented by your "employee" under a contract in an "employee's" name, with your

COMMERCIAL AUTO

permission, while performing duties related to the conduct of your business.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

D. EMPLOYEES AS INSURED

The following is added to Paragraph A.1., Who Is An Insured, of SECTION II - COVERED AUTOS LIABILITY COVERAGE:

Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

E. SUPPLEMENTARY PAYMENTS - INCREASED LIMITS

1. The following replaces Paragraph A.2.a.(2), of SECTION II - COVERED AUTOS LIABILITY COVERAGE:

(2) Up to \$3,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.

2. The following replaces Paragraph A.2.a.(4), of SECTION II - COVERED AUTOS LIABILITY COVERAGE:

(4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$500 a day because of time off from work.

F. HIRED AUTO - LIMITED WORLDWIDE COVERAGE - INDEMNITY BASIS

The following replaces Subparagraph (5) in Paragraph B.7., Policy Period, Coverage Territory, of SECTION IV - BUSINESS AUTO CONDITIONS:

(5) Anywhere in the world, except any country or jurisdiction while any trade sanction, embargo, or similar regulation imposed by the United States of America applies to and prohibits the transaction of business with or within such country or jurisdiction, for Covered Autos Liability Coverage for any covered "auto" that you lease, hire, rent or borrow without a driver for a period of 30 days or less and that is not an "auto" you lease, hire, rent or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company) or members of their households.

(a) With respect to any claim made or "suit" brought outside the United States of America, the territories and possessions of the United States of America, Puerto Rico and Canada:

(i) You must arrange to defend the "insured" against, and investigate or settle any such claim or "suit" and keep us advised of all proceedings and actions.

(ii) Neither you nor any other involved "insured" will make any settlement without our consent.

(iii) We may, at our discretion, participate in defending the "insured" against, or in the settlement of, any claim or "suit".

(iv) We will reimburse the "insured" for sums that the "insured" legally must pay as damages because of "bodily injury" or "property damage" to which this insurance applies, that the "insured" pays with our consent, but only up to the limit described in Paragraph C., Limits Of Insurance, of SECTION II - COVERED AUTOS LIABILITY COVERAGE.

(v) We will reimburse the "insured" for the reasonable expenses incurred with our consent for your investigation of such claims and your defense of the "insured" against any such "suit", but only up to and included within the limit described in Paragraph C., Limits Of Insurance, of SECTION II - COVERED AUTOS LIABILITY COVERAGE, and not in addition to such limit. Our duty to make such payments ends when we have used up the applicable limit of insurance in payments for damages, settlements or defense expenses.

(b) This insurance is excess over any valid and collectible other insurance available to the "insured" whether primary, excess, contingent or on any other basis.

(c) This insurance is not a substitute for required or compulsory insurance in any country outside the United States, its territories and possessions, Puerto Rico and Canada.

You agree to maintain all required or compulsory insurance in any such country up to the minimum limits required by local law. Your failure to comply with compulsory insurance requirements will not invalidate the coverage afforded by this policy, but we will only be liable to the same extent we would have been liable had you complied with the compulsory insurance requirements.

- (d) It is understood that we are not an admitted or authorized insurer outside the United States of America, its territories and possessions, Puerto Rico and Canada. We assume no responsibility for the furnishing of certificates of insurance, or for compliance in any way with the laws of other countries relating to insurance.

G. WAIVER OF DEDUCTIBLE - GLASS

The following is added to Paragraph D., **Deductible**, of SECTION III - **PHYSICAL DAMAGE COVERAGE**:

No deductible for a covered "auto" will apply to glass damage if the glass is repaired rather than replaced.

H. HIRED AUTO PHYSICAL DAMAGE - LOSS OF USE - INCREASED LIMIT

The following replaces the last sentence of Paragraph A.4.b., **Loss Of Use Expenses**, of SECTION III - **PHYSICAL DAMAGE COVERAGE**:

However, the most we will pay for any expenses for loss of use is \$65 per day, to a maximum of \$750 for any one "accident".

I. PHYSICAL DAMAGE - TRANSPORTATION EXPENSES - INCREASED LIMIT

The following replaces the first sentence in Paragraph A.4.a., **Transportation Expenses**, of SECTION III - **PHYSICAL DAMAGE COVERAGE**:

We will pay up to \$50 per day to a maximum of \$1,500 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type.

J. PERSONAL PROPERTY

The following is added to Paragraph A.4., **Coverage Extensions**, of SECTION III - **PHYSICAL DAMAGE COVERAGE**:

Personal Property

We will pay up to \$400 for "loss" to wearing apparel and other personal property which is:

- (1) Owned by an "insured"; and

- (2) In or on your covered "auto".

This coverage applies only in the event of a total theft of your covered "auto".

No deductibles apply to this Personal Property coverage.

K. AIRBAGS

The following is added to Paragraph B.3., **Exclusions**, of SECTION III - **PHYSICAL DAMAGE COVERAGE**:

Exclusion 3.a. does not apply to "loss" to one or more airbags in a covered "auto" you own that inflate due to a cause other than a cause of "loss" set forth in Paragraphs A.1.b. and A.1.c., but only:

- If that "auto" is a covered "auto" for Comprehensive Coverage under this policy;
- The airbags are not covered under any warranty; and
- The airbags were not intentionally inflated.

We will pay up to a maximum of \$1,000 for any one "loss".

L. NOTICE AND KNOWLEDGE OF ACCIDENT OR LOSS

The following is added to Paragraph A.2.a., of SECTION IV - **BUSINESS AUTO CONDITIONS**:

Your duty to give us or our authorized representative prompt notice of the "accident" or "loss" applies only when the "accident" or "loss" is known to:

- You (if you are an individual);
- A partner (if you are a partnership);
- A member (if you are a limited liability company);
- An executive officer, director or insurance manager (if you are a corporation or other organization); or
- Any "employee" authorized by you to give notice of the "accident" or "loss".

M. BLANKET WAIVER OF SUBROGATION

The following replaces Paragraph A.5., **Transfer Of Rights Of Recovery Against Others To Us**, of SECTION IV - **BUSINESS AUTO CONDITIONS**:

5. Transfer Of Rights Of Recovery Against Others To Us

We waive any right of recovery we may have against any person or organization to the extent required of you by a written contract signed and executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of operations contemplated by

1. This insurance will apply before any "other insurance" that is available to such additional insured which covers that person or organization as a named insured, and we will not share with that "other insurance", provided that the injury or damage for which coverage is sought is caused by an "event" that takes place or is committed subsequent to the signing of that contract or agreement by you.
2. This insurance is still excess over any valid and collectible "other insurance", whether primary, excess, contingent, or otherwise, which covers that person or organization as an additional insured or as any other insured that does not qualify as a named insured.

N. PREMIUM

1. The first Named Insured shown in the Declarations is responsible for the payment of all premiums and will be the payee for any return premiums.
2. If the premium is a flat charge, it is not subject to adjustment except as provided in Paragraph 4, below.
3. If the premium is other than a flat charge, it is an advance premium only. The earned premium will be computed at the end of the policy period, or at the end of each year of the policy period if the policy period is two years or longer, at the rate shown in the Declarations, subject to the Minimum Premium.
4. Additional premium may become payable when coverage is provided for additional insureds under the provisions of SECTION II - WHO IS AN INSURED.

O. PREMIUM AUDIT

The premium for this policy is the amount stated in Item 5, of the Declarations. The premium is a flat charge unless it is specified in the Declarations as adjustable.

P. PROHIBITED COVERAGE - UNLICENSED INSURANCE

1. With respect to loss sustained by any insured in a country or jurisdiction in which we are not licensed to provide this insurance, this insurance does not apply to the extent that insuring such loss would violate the laws or regulations of such country or jurisdiction.
2. We do not assume responsibility for:
 - a. The payment of any fine, fee, penalty or other charge that may be imposed on any person or organization in any country or jurisdiction because we are not licensed to

provide insurance in such country or jurisdiction or

- b. The furnishing of certificates or other evidence of insurance in any country or jurisdiction in which we are not licensed to provide insurance.

Q. PROHIBITED COVERAGE - TRADE OR ECONOMIC SANCTIONS

We will provide coverage for any loss, or otherwise will provide any benefit, only to the extent that providing such coverage or benefit does not expose us or any of our affiliated or parent companies to:

1. Any trade or economic sanction under any law or regulation of the United States of America; or
2. Any other applicable trade or economic sanction, prohibition or restriction.

R. REPRESENTATIONS

By accepting this insurance, you agree:

1. The statements in the Declarations and any subsequent notice relating to "underlying insurance" are accurate and complete;
2. Those statements are based upon representations you made to us; and
3. We have issued this insurance in reliance upon your representations.

S. SEPARATION OF INSURED

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this policy to the first Named Insured shown in the Declarations, this insurance applies:

1. As if each Named Insured were the only Named Insured; and
2. Separately to each insured against whom claim is made or "suit" is brought

T. WAIVER OR TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

1. If the insured has rights to recover all or part of any payment we have made under this insurance, those rights are transferred to us and the insured must do nothing after loss to impair them. At our request, the insured will bring suit or transfer those rights to us and help us, and with respect to Coverage A, the "underlying insurer", enforce them.

If the insured has agreed in a contract or agreement to waive that insured's right of recovery against any person or organization, we waive our right of recovery against that person or organization, but only for payments we make because of an "event" that takes place or is committed subsequent to the



execution of that contract or agreement by such insured.

2. Reimbursement of any amount recovered will be made in the following order:
 - a. First, to any person or organization (including us or the insured) who has paid any amount in excess of the applicable limit of insurance;
 - b. Next, to us; and
 - c. Then, to any person or organization (including the insured and with respect to Coverage A, the "underlying insurer") that is entitled to claim the remainder, if any.
3. Expenses incurred in the process of recovery will be divided among all persons or organizations receiving amounts recovered according to the ratio of their respective recoveries.

U. TRANSFER OF YOUR RIGHTS AND DUTIES UNDER THIS INSURANCE

1. Your rights and duties under this insurance may not be transferred without our written consent except in the case of death of an Individual Named Insured.
2. If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

V. UNINTENTIONAL OMISSION OR ERROR

The unintentional omission of, or unintentional error in, any information provided by you which we relied upon in issuing this policy will not prejudice your rights under this insurance. However, this provision does not affect our right to collect additional premium or to exercise our rights of cancellation or nonrenewal in accordance with applicable insurance laws or regulations.

W. WHEN LOSS IS PAYABLE

If we are liable under this insurance, we will pay for injury, damage or loss after:

1. The insured's liability is established by:
 - a. A court decision; or
 - b. A written agreement between the claimant, the insured, any "underlying insurer" and us; and
2. The amount of the "applicable underlying limit" or "self-insured retention" is paid by or on behalf of the insured.

SECTION VI – DEFINITIONS

A. With respect to all coverages of this insurance:

1. "Applicable underlying limit" means the sum of:
 - a. The applicable limit of insurance stated for the policies of "underlying insurance" in the Schedule of Underlying Insurance subject to the provisions in Paragraphs 4.a.(1), (2) and (3) of **COVERAGE A – EXCESS FOLLOW-FORM LIABILITY OF SECTION I – COVERAGES**; and
 - b. The applicable limit of insurance of any "other insurance" that applies.

The limits of insurance in any policy of "underlying insurance" will apply even if:

- a. The "underlying insurer" claims the insured failed to comply with any term or condition of the policy; or
 - b. The "underlying insurer" becomes bankrupt or insolvent.
2. "Auto hazard" means all "bodily injury" and "property damage" to which liability insurance afforded under an auto policy of "underlying insurance" would apply but for the exhaustion of its applicable limits of insurance.
 3. "Electronic data" means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

4. "Event" means an "occurrence", offense, accident, act, error, omission, wrongful act or loss.
5. "Extended reporting period" means any period of time, starting with the end of the policy period of your claims-made insurance, during which claims or "suits" may be first made, brought or reported for that insurance.
6. "Medical expenses" means expenses to which any Medical Payments section of any policy of Commercial General Liability "underlying insurance" applies.
7. "Other insurance" means insurance, or the funding of losses, that is provided by, through or on behalf of:
 - a. Another insurance company;
 - b. Us or any of our affiliated insurance companies;
 - c. Any risk retention group;

UMBRELLA

d. That Extended Reporting Period endorsement is issued by us and made a part of this policy.

3. Any Extended Reporting Period endorsement for this insurance will not reinstate or increase the Limits of Insurance, or extend the policy period.
4. Except with respect to any provisions to the contrary contained in Paragraphs 1, 2, or 3, above, all provisions of any option to purchase an "extended reporting period" granted to you in the "underlying insurance" apply to this insurance.

J. INSPECTIONS AND SURVEYS

1. We have the right but are not obligated to:
 - a. Make inspections and surveys at any time;
 - b. Give you reports on the conditions we find; and
 - c. Recommend changes.
2. Any inspections, surveys, reports or recommendations relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. We do not warrant that conditions:
 - a. Are safe or healthful; or
 - b. Comply with laws, regulations, codes or standards.

K. LEGAL ACTION AGAINST US

1. No person or organization has a right under this insurance:
 - a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
 - b. To sue us on this insurance unless all of its terms have been fully complied with.
2. A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured. We will not be liable for damages that:
 - a. Are not payable under the terms of this insurance; or
 - b. Are in excess of the applicable limit of insurance.

An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

L. MAINTENANCE OF UNDERLYING INSURANCE

1. The insurance afforded by each policy of "underlying insurance" will be maintained for

the full policy period of this Excess Follow-Form And Umbrella Liability Insurance. This provision does not apply to the reduction or exhaustion of the aggregate limit or limits of such "underlying insurance" solely by payments as permitted in Paragraphs 4.a.(1), (2) and (3) of **COVERAGE A - EXCESS FOLLOW-FORM LIABILITY** of **SECTION I - COVERAGES**. As such policies expire, you will renew them at limits and with coverage at least equal to the expiring limits of insurance, if you fail to comply with the above requirements, Coverage A is not invalidated. However, in the event of a loss, we will pay only to the extent that we would have paid had you complied with the above requirements.

2. The first Named Insured shown in the Declarations must give us written notice of any change in the "underlying insurance" as respects:
 - a. Coverage;
 - b. Limits of insurance;
 - c. Termination of any coverage; or
 - d. Exhaustion of aggregate limits.
3. If you are unable to recover from any "underlying insurer" because you fail to comply with any term or condition of the "underlying insurance", Coverage A is not invalidated. However, we will pay for any loss only to the extent that we would have paid had you complied with that term or condition in that "underlying insurance".

M. OTHER INSURANCE

This insurance is excess over any valid and collectible "other insurance" whether such "other insurance" is stated to be primary, contributing, excess, contingent or otherwise. This provision does not apply to a policy bought specifically to apply as excess of this insurance.

However, if you specifically agree in a written contract or agreement that the insurance provided to any person or organization that qualifies as an insured under this insurance must apply on a primary basis, or a primary and non-contributory basis, then insurance provided under Coverage A is subject to the following provisions:

1. This insurance will apply before any "other insurance" that is available to such additional insured, which covers that person or organization as a named insured, and we will not share with that "other insurance", provided that the injury or damage for which coverage is sought is caused by an "event" that takes place or is committed subsequent to the signing of that contract or agreement by you.
2. This insurance is still excess over any valid and collectible "other insurance", whether primary, excess, contingent or otherwise, which covers that person or organization as an additional insured or as any other insured that does not qualify as a named insured.

N. PREMIUM

1. The first Named Insured shown in the Declarations is responsible for the payment of all premiums and will be the payee for any return premiums.
2. If the premium is a flat charge, it is not subject to adjustment except as provided in Paragraph 4, below.
3. If the premium is other than a flat charge, it is an advance premium only. The earned premium will be computed at the end of the policy period, or at the end of each year of the policy period if the policy period is two years or longer, at the rate shown in the Declarations, subject to the Minimum Premium.
4. Additional premium may become payable when coverage is provided for additional insureds under the provisions of SECTION II - WHO IS AN INSURED.

O. PREMIUM AUDIT

The premium for this policy is the amount stated in Item 5 of the Declarations. The premium is a flat charge unless it is specified in the Declarations as adjustable.

P. PROHIBITED COVERAGE - UNLICENSED INSURANCE

1. With respect to loss sustained by any insured in a country or jurisdiction in which we are not licensed to provide this insurance, this insurance does not apply to the extent that insuring such loss would violate the laws or regulations of such country or jurisdiction.
2. We do not assume responsibility for:
 - a. The payment of any fine, fee, penalty or other charge that may be imposed on any person or organization in any country or jurisdiction because we are not licensed to

provide insurance in such country or jurisdiction or

- b. The furnishing of certificates or other evidence of insurance in any country or jurisdiction in which we are not licensed to provide insurance.

Q. PROHIBITED COVERAGE - TRADE OR ECONOMIC SANCTIONS

We will provide coverage for any loss, or otherwise will provide any benefit, only to the extent that providing such coverage or benefit does not expose us or any of our affiliated or parent companies to:

1. Any trade or economic sanction under any law or regulation of the United States of America; or
2. Any other applicable trade or economic sanction, prohibition or restriction.

R. REPRESENTATIONS

By accepting this insurance, you agree:

1. The statements in the Declarations and any subsequent notice relating to "underlying insurance" are accurate and complete;
2. Those statements are based upon representations you made to us; and
3. We have issued this insurance in reliance upon your representations.

S. SEPARATION OF INSUREDS

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this policy to the first Named Insured shown in the Declarations, this insurance applies:

1. As if each Named Insured were the only Named Insured; and
2. Separately to each insured against whom claim is made or "suit" is brought.

T. WAIVER OR TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

1. If the insured has rights to recover all or part of any payment we have made under this insurance, those rights are transferred to us and the insured must do nothing after loss to impair them. At our request, the insured will bring suit or transfer those rights to us and help us, and with respect to Coverage A, the "underlying insurer", enforce them.

If the insured has agreed in a contract or agreement to waive that insured's right of recovery against any person or organization, we waive our right of recovery against that person or organization, but only for payments we make because of an "event" that takes place or is committed subsequent to the



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

Resolution

Number 22-0528

Adopted Date April 12, 2022

ACKNOWLEDGE RECEIPT OF MARCH 2022 FINANCIAL STATEMENT


BE IT RESOLVED, to acknowledge receipt of the March 2022 County Financial Statement for Funds #1101 through #6650; as attached hereto and made a part hereof.

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

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

Resolution adopted this 12th day of April 2022.

BOARD OF COUNTY COMMISSIONERS


Tina Osborne, Clerk

cc: Auditor (file)
S. Spencer
Tina Osborne

Financial Statement for 2022 Period 03



| FUND | FUND DESCRIPTION | PREVIOUS BALANCE | RECEIPTS | EXPENDITURES | CURRENT BALANCE | OUTSTANDING WARRANTS | TREASURER'S FUND BALANCE |
|------|--------------------------------|------------------|--------------|--------------|-----------------|----------------------|--------------------------|
| 1101 | GENERAL FUND | 69,634,905.26 | 6,934,914.17 | 6,441,348.56 | 70,128,470.87 | 268,333.70 | 70,396,804.57 |
| 2201 | SENIOR CITIZENS SERVICE LEVY | 12,189,345.74 | 0.00 | 1,083,380.61 | 11,105,965.13 | 477,344.72 | 11,583,309.85 |
| 2202 | MOTOR VEHICLE | 7,743,050.67 | 787,655.69 | 1,013,838.52 | 7,516,867.84 | 215,731.12 | 7,732,598.96 |
| 2203 | HUMAN SERVICES | 739,119.90 | 2,555.00 | 527,932.88 | 213,742.02 | 16,032.73 | 229,774.75 |
| 2204 | COVID19 EMERGENCY RENTAL ASSIS | 6,706,864.66 | 6,259.00 | 270,496.46 | 6,442,627.20 | 134,701.56 | 6,577,328.76 |
| 2205 | BOARD OF DEVELOPMENTAL DISABIL | 38,922,578.78 | 1,391,760.17 | 1,528,028.83 | 38,786,310.12 | 176,677.32 | 38,962,987.44 |
| 2206 | DOG AND KENNEL | 938,766.34 | 29,974.74 | 40,797.62 | 927,943.46 | 12,203.44 | 940,146.90 |
| 2207 | LAW LIBRARY RESOURCES FUND | 152,548.66 | 17,238.27 | 66,925.18 | 102,861.75 | 0.00 | 102,861.75 |
| 2208 | CO&TRANSIT MEDICAID SALES TAX | 835,463.72 | 0.00 | 0.00 | 835,463.72 | 0.00 | 835,463.72 |
| 2209 | BOE ELECTIONS SECURITY GRANTS | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 2210 | LOCAL CORONAVIRUS RELIEF FUND | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 2211 | LOCAL FISCAL RECOVERY FUND | 9,575,653.54 | 0.00 | 55,505.52 | 9,520,148.02 | 0.00 | 9,520,148.02 |
| 2212 | ONEOHIO OPIOID SETTLEMENT FUND | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 2215 | VETERAN'S MEMORIAL | 6,899.34 | 0.00 | 0.00 | 6,899.34 | 0.00 | 6,899.34 |
| 2216 | RECORDER TECH FUND 317.321 | 469,674.20 | 12,434.25 | 26,413.47 | 455,694.98 | 11,100.00 | 466,794.98 |
| 2217 | BOE TECHNOLOGY FUND 3501.17 | 1,833,096.19 | 0.00 | 0.00 | 1,833,096.19 | 0.00 | 1,833,096.19 |
| 2218 | COORDINATED CARE | 683,657.74 | 11,972.50 | 15,810.00 | 679,820.24 | 10,042.00 | 689,862.24 |
| 2219 | WIRELESS 911 GOVERNMENT ASSIST | 406,060.62 | 19,455.09 | 14,706.78 | 410,808.93 | 0.00 | 410,808.93 |
| 2220 | CP INDIGENT DRVR INTRLK/MONITG | 9,422.76 | 59.46 | 0.00 | 9,482.22 | 0.00 | 9,482.22 |
| 2221 | CC/MC INDIGENT DRIVER INTERLOC | 120,544.15 | 845.77 | 0.00 | 121,389.92 | 0.00 | 121,389.92 |
| 2222 | JUV INDIGENT DRIVER INTERLOCK | 2,094.87 | 116.45 | 0.00 | 2,211.32 | 0.00 | 2,211.32 |
| 2223 | PROBATE/JUVENILE SPECIAL PROJ | 283,487.96 | 2,519.88 | 0.00 | 286,007.84 | 0.00 | 286,007.84 |
| 2224 | COMMON PLEAS SPECIAL PROJECTS | 259,898.89 | 6,892.88 | 27,231.10 | 239,560.67 | 1,000.00 | 240,560.67 |
| 2227 | PROBATION SUPERVISION 2951.021 | 746,782.60 | 15,225.50 | 0.00 | 762,008.10 | 0.00 | 762,008.10 |
| 2228 | MENTAL HEALTH GRANT | 130,009.69 | 0.00 | 0.00 | 130,009.69 | 0.00 | 130,009.69 |
| 2229 | MUNICIPAL MOTOR VEH PERMIS TAX | 2,714,240.16 | 40,892.20 | 0.00 | 2,755,132.36 | 0.00 | 2,755,132.36 |
| 2231 | CO LODGING ADD'L 1% | 52,820.21 | 69,446.15 | 52,820.21 | 69,446.15 | 0.00 | 69,446.15 |

Financial Statement for 2022 Period 03



| FUND | FUND DESCRIPTION | PREVIOUS BALANCE | RECEIPTS | EXPENDITURES | CURRENT BALANCE | OUTSTANDING WARRANTS | TREASURER'S FUND BALANCE |
|------|--------------------------------|------------------|------------|--------------|-----------------|----------------------|--------------------------|
| 2232 | COUNTY LODGINGS TAX (FKA 7731) | 158,460.37 | 208,338.16 | 158,460.37 | 208,338.16 | 0.00 | 208,338.16 |
| 2233 | DOMESTIC SHELTER | 4,839.00 | 2,738.00 | 0.00 | 7,577.00 | 0.00 | 7,577.00 |
| 2237 | REAL ESTATE ASSESSMENT | 7,175,193.54 | 2,125.25 | 78,746.77 | 7,098,572.02 | 29,073.84 | 7,127,645.86 |
| 2238 | WORKFORCE INVESTMENT BOARD | 31,396.98 | 207,733.06 | 132,210.61 | 106,919.43 | 759.00 | 107,678.43 |
| 2243 | JUVENILE GRANTS | 329,477.64 | 12,067.26 | 0.00 | 341,544.90 | 0.00 | 341,544.90 |
| 2245 | CRIME VICTIM GRANT FUND | 24,100.33 | 3,047.26 | 4,142.11 | 23,005.48 | 0.00 | 23,005.48 |
| 2246 | JUVENILE INDIGENT DRIVER ALCOH | 20,844.84 | 64.95 | 0.00 | 20,909.79 | 0.00 | 20,909.79 |
| 2247 | FELONY DELINQUENT CARE/CUSTODY | 492,948.89 | 0.00 | 80,991.16 | 411,957.73 | 311.94 | 412,269.67 |
| 2248 | TAX CERTIFICATE ADMIN FUND | 28,858.49 | 0.00 | 578.00 | 28,280.49 | 0.00 | 28,280.49 |
| 2249 | DTAC-DELINQ TAX & ASSESS COLLE | 594,664.16 | 0.00 | 16,964.53 | 577,699.63 | 1,276.60 | 578,976.23 |
| 2250 | CERT OF TITLE ADMIN FUND | 3,260,165.76 | 159,467.29 | 96,773.98 | 3,322,859.07 | 2,269.63 | 3,325,128.70 |
| 2251 | COAP GRANT - OPIOD ABUSE PROG | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 2252 | WC TECHNOLOGY CRIMES UNIT | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 2253 | COUNTY COURT PROBATION DEPT | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 2254 | CCMEP/TANF | 46,958.68 | 8,950.40 | 24,878.42 | 31,030.66 | 28.05 | 31,058.71 |
| 2255 | MUNICIPAL VICTIM WITNESS FUND | 121,360.01 | 0.00 | 6,779.72 | 114,580.29 | 0.00 | 114,580.29 |
| 2256 | WARREN COUNTY SOLID WASTE DIST | 1,175,576.86 | 7,740.63 | 11,233.53 | 1,172,083.96 | 632.23 | 1,172,716.19 |
| 2257 | OHIO PEACE OFFICER TRAINING | 80,097.00 | 0.00 | 0.00 | 80,097.00 | 0.00 | 80,097.00 |
| 2258 | WORKFORCE INVESTMENT ACT FUND | 65,461.91 | 100,406.18 | 70,181.24 | 95,686.85 | 512.87 | 96,199.72 |
| 2259 | JTPA | 1,675.19 | 0.00 | 0.00 | 1,675.19 | 0.00 | 1,675.19 |
| 2260 | OHIO WORKS INCENTIVE PROGRAM | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 2261 | PASS THROUGH GRANTS | 200.01 | 0.00 | 0.00 | 200.01 | 0.00 | 200.01 |
| 2262 | COMMUNITY CORRECTIONS MONITORI | 756,448.91 | 31,064.57 | 20,866.80 | 766,646.68 | 3,140.00 | 769,786.68 |
| 2263 | CHILD SUPPORT ENFORCEMENT | 1,055,362.35 | 172,195.11 | 239,620.85 | 987,936.61 | 2,130.59 | 990,067.20 |
| 2264 | EMERGENCY MANAGEMENT AGENCY | 308,338.95 | 33,414.45 | 17,446.18 | 324,307.22 | 0.00 | 324,307.22 |
| 2265 | COMMUNITY DEVELOPMENT | 535,132.44 | 39,909.00 | 47,048.54 | 527,992.90 | 0.00 | 527,992.90 |
| 2266 | COMM DEV-ENT ZONE MONITOR FEES | 105,563.00 | 7,500.00 | 0.00 | 113,063.00 | 0.00 | 113,063.00 |

Financial Statement for 2022 Period 03



| FUND | FUND DESCRIPTION | PREVIOUS BALANCE | RECEIPTS | EXPENDITURES | CURRENT BALANCE | OUTSTANDING WARRANTS | TREASURER'S FUND BALANCE |
|------|--------------------------------|------------------|------------|--------------|-----------------|----------------------|--------------------------|
| 2267 | LOEB FOUNDATION GRANT | 23,502.75 | 0.00 | 0.00 | 23,502.75 | 0.00 | 23,502.75 |
| 2268 | INDIGENT GUARDIANSHIP FUND | 246,285.75 | 1,630.00 | 152.09 | 247,763.66 | 0.00 | 247,763.66 |
| 2269 | INDIGENT DRIVER ALCOHOL TREATM | 679,235.97 | 4,521.61 | 0.00 | 683,757.58 | 0.00 | 683,757.58 |
| 2270 | JUVENILE TREATMENT CENTER | 395,867.65 | 17,095.96 | 105,267.69 | 307,695.92 | 472.75 | 308,168.67 |
| 2271 | DTAC-PROSECUTOR ORC 321.261 | 154,776.45 | 0.00 | 15,158.74 | 139,617.71 | 0.00 | 139,617.71 |
| 2272 | CP INDIGENT DRVR ALC TREATMT | 38,663.18 | 5,268.81 | 0.00 | 43,931.99 | 0.00 | 43,931.99 |
| 2273 | CHILDREN SERVICES | 10,333,068.35 | 314,233.52 | 534,443.85 | 10,112,858.02 | 176,710.99 | 10,289,569.01 |
| 2274 | COUNTY COURT COMPUTR 1907.261A | 73,851.16 | 768.00 | 335.44 | 74,283.72 | 0.00 | 74,283.72 |
| 2275 | COUNTY CRT CLK COMP 1907.261B | 43,784.98 | 1,885.92 | 315.00 | 45,355.90 | 0.00 | 45,355.90 |
| 2276 | PROBATE COMPUTER 2101.162 | 93,376.76 | 405.00 | 0.00 | 93,781.76 | 0.00 | 93,781.76 |
| 2277 | PROBATE CLERK COMPUTR 2101.162 | 256,249.01 | 1,350.00 | 0.00 | 257,599.01 | 0.00 | 257,599.01 |
| 2278 | JUVENILE CLK COMPUTR 2151.541 | 34,109.66 | 1,099.88 | 0.00 | 35,209.54 | 0.00 | 35,209.54 |
| 2279 | JUVENILE COMPUTER 2151.541 | 43,675.58 | 328.57 | 0.00 | 44,004.15 | 0.00 | 44,004.15 |
| 2280 | COMMON PLEAS COMPUTER 2303.201 | 70,218.74 | 1,032.00 | 0.00 | 71,250.74 | 0.00 | 71,250.74 |
| 2281 | DOMESTIC REL COMPUTER 2301.031 | 9,441.27 | 771.00 | 117.67 | 10,094.60 | 0.00 | 10,094.60 |
| 2282 | CLERK COURTS COMPUTER 2303.201 | 134,194.22 | 5,239.00 | 0.00 | 139,433.22 | 0.00 | 139,433.22 |
| 2283 | COUNTY CT SPEC PROJ 1907.24B1 | 1,965,204.60 | 12,736.03 | 3,068.81 | 1,974,871.82 | 0.00 | 1,974,871.82 |
| 2284 | COGNITIVE INTERVENTION PROGRAM | 419,314.07 | 6,815.90 | 7,833.36 | 418,296.61 | 60.00 | 418,356.61 |
| 2285 | CONCEALED HANDGUN LICENSE | 806,807.39 | 8,983.75 | 6,048.56 | 809,742.58 | 185.98 | 809,928.56 |
| 2286 | SHERIFF-DRUG LAW ENFORCEMENT | 10,468.90 | 0.00 | 609.79 | 9,859.11 | 2,357.33 | 12,216.44 |
| 2287 | SHERIFF-LAW ENFORCEMENT TRUST | 116,231.14 | 0.00 | 2,530.29 | 113,700.85 | 0.00 | 113,700.85 |
| 2288 | COMM BASED CORRECTIONS DONATIO | 11,320.41 | 0.00 | 3,300.00 | 8,020.41 | 0.00 | 8,020.41 |
| 2289 | COMMUNITY BASED CORRECTIONS | 431,409.07 | 0.00 | 52,574.93 | 378,834.14 | 2,000.00 | 380,834.14 |
| 2290 | HAZ MAT EMERG PLAN SPEC FUND | 4.48 | 0.00 | 0.00 | 4.48 | 0.00 | 4.48 |
| 2291 | SHERIFF-D.A.R.E. PROGRAM | 1,436.14 | 0.00 | 0.00 | 1,436.14 | 0.00 | 1,436.14 |
| 2292 | TRAFFIC SAFETY PROGRAM-SHERIFF | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 2293 | SHERIFF GRANTS | 12,982.00 | 100.00 | 0.00 | 13,082.00 | 0.00 | 13,082.00 |

Financial Statement for 2022 Period 03



| FUND | FUND DESCRIPTION | PREVIOUS BALANCE | RECEIPTS | EXPENDITURES | CURRENT BALANCE | OUTSTANDING WARRANTS | TREASURER'S FUND BALANCE |
|------|--------------------------------|------------------|--------------|--------------|-----------------|----------------------|--------------------------|
| 2294 | SHERIFF DARE LAW ENFORC GRANT | 30,679.91 | 0.00 | 0.00 | 30,679.91 | 0.00 | 30,679.91 |
| 2295 | TACTICAL RESPONSE UNIT | 18,384.42 | 0.00 | 0.00 | 18,384.42 | 0.00 | 18,384.42 |
| 2296 | COMP REHAB DWNPMT ASST COMMDEV | 47,144.73 | 0.00 | 0.00 | 47,144.73 | 0.00 | 47,144.73 |
| 2297 | ENFORCEMT & EDUCATN 4511.19C5A | 132,058.43 | 50.00 | 0.00 | 132,108.43 | 0.00 | 132,108.43 |
| 2298 | REHAB INC FUNDS | 72,376.74 | 0.00 | 0.00 | 72,376.74 | 0.00 | 72,376.74 |
| 2299 | COUNTY TRANSIT | 1,283,103.34 | 18,555.28 | 68,269.40 | 1,233,389.22 | 72.28 | 1,233,461.50 |
| 3327 | BOND RETIREMENT SPECIAL ASSMT | 40,472.72 | 0.00 | 0.00 | 40,472.72 | 0.00 | 40,472.72 |
| 3360 | STATE OPWC LOAN | 0.00 | 112,715.70 | 0.00 | 112,715.70 | 0.00 | 112,715.70 |
| 3368 | 2013 RADIO SYSTEM BONDS | 0.00 | 919,253.75 | 0.00 | 919,253.75 | 0.00 | 919,253.75 |
| 3384 | TAX INCREMENT FINANCING - P&G | 441,999.78 | 0.00 | 0.00 | 441,999.78 | 0.00 | 441,999.78 |
| 3393 | RID BOND GREENS OF BUNNEL | 2,887,063.38 | 0.00 | 0.00 | 2,887,063.38 | 0.00 | 2,887,063.38 |
| 3395 | JAIL BONDS 2019 | 479.09 | 5,047,275.00 | 0.00 | 5,047,754.09 | 0.00 | 5,047,754.09 |
| 4401 | COUNTY WIDE FINANCIAL SOFTWARE | 212,155.46 | 0.00 | 0.00 | 212,155.46 | 0.00 | 212,155.46 |
| 4430 | DEFAULTED SUBDIVISION SPEC ASM | 399,158.40 | 0.00 | 0.00 | 399,158.40 | 0.00 | 399,158.40 |
| 4431 | SOCIALVILLEFOSTERSBRIDGE&WALL | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 4432 | EDWARDSVILLE ROAD BRIDGE | 6,229.04 | 0.00 | 0.00 | 6,229.04 | 0.00 | 6,229.04 |
| 4433 | MIDDLEBORO RD BRIDGE REHAB | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 4434 | LIBERTY WAY/MASON RD TURN LANE | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 4435 | STROUT RD BRIDGE 207-0.02 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 4436 | ZOAR RD IMPROVEMENT PROJECT | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 4437 | KING AVE BRIDGE PROJECT | 806,648.40 | 0.00 | 5,807.31 | 800,841.09 | 3.00 | 800,844.09 |
| 4438 | NB COLUMBIA/3C RIGHT TURN LN | 17,730.50 | 300,000.00 | 0.00 | 317,730.50 | 0.00 | 317,730.50 |
| 4439 | VARIOUS WATER ASSESSMENT PROJE | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 4449 | VARIOUS SEWER ASSESSMENT PROJE | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 4450 | ESTATES OF KEEVER CREEK ROAD P | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 4451 | ROAD INFRASTRUCTURE | 21,050,000.00 | 0.00 | 0.00 | 21,050,000.00 | 0.00 | 21,050,000.00 |
| 4453 | OLD 122 & TWP LINE RD ROUNDABO | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |

Financial Statement for 2022 Period 03



| FUND | FUND DESCRIPTION | PREVIOUS BALANCE | RECEIPTS | EXPENDITURES | CURRENT BALANCE | OUTSTANDING WARRANTS | TREASURER'S FUND BALANCE |
|------|--------------------------------|------------------|--------------|--------------|-----------------|----------------------|--------------------------|
| 4454 | FIELDS-ERTEL RD IMPROV PROJ | 433,448.21 | 0.00 | 32,317.64 | 401,130.57 | 0.00 | 401,130.57 |
| 4455 | PHASE II ROAD RESURFACING | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 4463 | FIELDS-ERTEL AND COLUMBIA ROAD | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 4467 | COUNTY CONST PROJECTS | 5,574,916.17 | 0.00 | 166,919.09 | 5,407,997.08 | 57,959.48 | 5,465,956.56 |
| 4479 | AIRPORT CONSTRUCTION | 967,742.28 | 33,470.00 | 18,680.00 | 982,532.28 | 0.00 | 982,532.28 |
| 4484 | P&G TIF ROAD CONSTRUCTION | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 4485 | MIAMI VALLEY GAMING TIF | 1,059,352.58 | 0.00 | 0.00 | 1,059,352.58 | 0.00 | 1,059,352.58 |
| 4489 | TOWNE CENTER BLVD EXTENSION | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 4492 | COMMUNICATION PROJECTS | 4,250,379.98 | 0.00 | 37,627.50 | 4,212,752.48 | 0.00 | 4,212,752.48 |
| 4493 | REDEVELOPMENT TAX EQUIV FUND | 371,908.31 | 0.00 | 0.00 | 371,908.31 | 0.00 | 371,908.31 |
| 4494 | COURTS BUILDING | 7,837,107.04 | 0.00 | 17,556.15 | 7,819,550.89 | 15,625.00 | 7,835,175.89 |
| 4495 | JAIL CONSTRUCTION SALES TAX | 12,107,465.76 | 1,288,156.66 | 5,079,838.67 | 8,315,783.75 | 17,439.91 | 8,333,223.66 |
| 4496 | JUVENILE DETENTION ADDN & RENO | 245,190.94 | 0.00 | 0.00 | 245,190.94 | 0.00 | 245,190.94 |
| 4497 | JAIL CONSTRUCTION & REHAB | 9,961,558.75 | 0.00 | 0.00 | 9,961,558.75 | 0.00 | 9,961,558.75 |
| 4498 | COUNTY FAIRGROUNDS CONSTRUCTN | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 4499 | JUVENILE/PROBATE CT EXPANSION | 472,507.59 | 0.00 | 0.00 | 472,507.59 | 0.00 | 472,507.59 |
| 5510 | WATER REVENUE | 32,204,356.89 | 1,187,598.46 | 725,265.38 | 32,666,689.97 | 141,728.84 | 32,808,418.81 |
| 5574 | LOWER LITTLE MIAMI WASTEWATER | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 5575 | SEWER CONST PROJECTS | 1,116,941.17 | 426.06 | 160,173.41 | 957,193.82 | 0.00 | 957,193.82 |
| 5580 | SEWER REVENUE | 32,046,319.12 | 887,096.26 | 1,019,225.80 | 31,914,189.58 | 267,029.85 | 32,181,219.43 |
| 5581 | SEWER IMPROV-WC VOCATIONAL SCH | 256,188.70 | 5,960.58 | 0.00 | 262,149.28 | 0.00 | 262,149.28 |
| 5583 | WATER CONST PROJECTS | 6,337,516.39 | 2,417.44 | 2,332,433.30 | 4,007,500.53 | 2,998.55 | 4,010,499.08 |
| 5590 | STORM WATER TIER 1 | 98,938.39 | 0.00 | 12,247.74 | 86,690.65 | 0.00 | 86,690.65 |
| 6619 | VEHICLE MAINTENANCE ROTARY | 198,715.35 | 24,841.34 | 44,628.97 | 178,927.72 | 6,991.81 | 185,919.53 |
| 6630 | SHERIFF'S POLICING REVOLV FUND | 680,259.56 | 140,805.06 | 391,677.94 | 429,386.68 | 0.00 | 429,386.68 |
| 6631 | COMMUNICATIONS ROTARY | 310,733.37 | 9,080.19 | 9,981.84 | 309,831.72 | 1,151.40 | 310,983.12 |
| 6632 | HEALTH INSURANCE | 2,282,448.76 | 1,280,637.41 | 830,759.57 | 2,732,326.60 | 369.54 | 2,732,696.14 |

Financial Statement for 2022 Period 03



| FUND | FUND DESCRIPTION | PREVIOUS BALANCE | RECEIPTS | EXPENDITURES | CURRENT BALANCE | OUTSTANDING WARRANTS | TREASURER'S FUND BALANCE |
|------|--------------------------------|------------------|---------------|---------------|-----------------|----------------------|--------------------------|
| 6636 | WORKERS COMP SELF INSURANCE | 1,416,390.27 | 528,774.83 | 14,423.88 | 1,930,741.22 | 4,581.98 | 1,935,323.20 |
| 6637 | PROPERTY & CASUALTY INSURANCE | 360,822.90 | 0.00 | 500.00 | 360,322.90 | 0.00 | 360,322.90 |
| 6650 | GASOLINE ROTARY | 208,310.75 | 69,076.86 | 127,095.46 | 150,292.15 | 32,677.74 | 182,969.89 |
| 7707 | P.E.R.S. ROTARY | 2,717.01 | 0.00 | 0.00 | 2,717.01 | 0.00 | 2,717.01 |
| 7708 | TOWNSHIP FUND | 2,500,000.00 | 3,472,429.83 | 5,972,429.83 | 0.00 | 0.00 | 0.00 |
| 7709 | CORPORATION FUND | 4,144.18 | 5,462,447.14 | 5,461,300.27 | 5,291.05 | 0.00 | 5,291.05 |
| 7713 | WATER-SEWER ROTARY FUND | 367,768.46 | 2,219,965.52 | 2,391,744.28 | 195,989.70 | 12,728.21 | 208,717.91 |
| 7714 | PAYROLL ROTARY | 325,819.53 | 3,384,341.73 | 0.00 | 338,246.01 | 14,846.35 | 353,092.36 |
| 7715 | NON PARTICIPANT ROTARY | 16,218.72 | 4,633.92 | 7,723.20 | 13,129.44 | 0.00 | 13,129.44 |
| 7716 | SCHOOL | 24,460,000.00 | 26,650,000.00 | 51,110,000.00 | 0.00 | 0.00 | 0.00 |
| 7717 | UNDIVIDED GENERAL TAX | 140,703,663.17 | 29,135,859.79 | 36,121,201.02 | 133,718,321.94 | 936,152.94 | 134,654,474.88 |
| 7718 | TANGIBLE PERSONAL PROPERTY. | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 7719 | TRAILER (LIKE REAL ESTATE) TAX | 35,545.43 | 45,212.59 | 0.00 | 80,758.02 | 0.00 | 80,758.02 |
| 7720 | LOCAL GOVERNMENT FUND | 0.00 | 357,965.13 | 357,965.13 | 0.00 | 0.00 | 0.00 |
| 7721 | SPECIAL DISTRICTS | 40,000.00 | 20,000.00 | 60,000.00 | 0.00 | 0.00 | 0.00 |
| 7722 | CIGARETTE LICENSE TAX | 180.94 | 0.00 | 0.00 | 180.94 | 0.00 | 180.94 |
| 7723 | GASOLINE TAX | 0.00 | 495,488.73 | 495,488.73 | 0.00 | 0.00 | 0.00 |
| 7724 | WC PORT AUTHORITY FUND | 132,960.55 | 4,550.00 | 0.00 | 137,510.55 | 0.00 | 137,510.55 |
| 7725 | UNDIVIDED WIRELESS 911 GOV ASS | 19,376.40 | 38,910.19 | 38,831.49 | 19,455.10 | 0.00 | 19,455.10 |
| 7726 | MOTOR VEHICLE LICENSE TAX | 0.00 | 1,012,640.98 | 1,012,640.98 | 0.00 | 0.00 | 0.00 |
| 7727 | RE RATE CORRECT/REFUNDS | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 7728 | TREASURER TAX REFUNDS | 539,226.33 | 29,678.94 | 522,340.51 | 46,564.76 | 446,769.54 | 493,334.30 |
| 7729 | CORONAVIRUS RELIEF DIST FUND | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 7731 | COUNTY LODGING TAX | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 7734 | REAL ESTATE ADVANCE PAYMENT | 0.00 | 9,333.63 | 0.00 | 9,333.63 | 0.00 | 9,333.63 |
| 7740 | TRAILER TAX | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 7741 | LIFE INSURANCE | 22,704.07 | 10,458.00 | 10,612.37 | 22,549.70 | 0.00 | 22,549.70 |

Financial Statement for 2022 Period 03



| FUND | FUND DESCRIPTION | PREVIOUS BALANCE | RECEIPTS | EXPENDITURES | CURRENT BALANCE | OUTSTANDING WARRANTS | TREASURER'S FUND BALANCE |
|------|--------------------------------|------------------|--------------|--------------|-----------------|----------------------|--------------------------|
| 7742 | LIBRARIES | 0.00 | 409,191.62 | 409,191.62 | 0.00 | 0.00 | 0.00 |
| 7744 | ARMCO PARK TOURNAMENT FEES | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 7745 | STATE | 1,973.85 | 3,241.75 | 1,954.13 | 3,261.47 | 0.00 | 3,261.47 |
| 7746 | MIAMI CONSERVANCY DISTRICT FUN | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 7747 | ADVANCE ESTATE TAX | 845.74 | 0.00 | 0.00 | 845.74 | 0.00 | 845.74 |
| 7751 | UNDIVIDED INTEREST | 8,920.91 | 567,417.50 | 144,264.51 | 432,073.90 | 0.00 | 432,073.90 |
| 7754 | OHIO ELECTIONS COMMISSION FUND | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 7756 | SEWER ROTARY | 4,086.00 | 26,451.00 | 0.00 | 30,537.00 | 0.00 | 30,537.00 |
| 7758 | WIA PASS THROUGH TO BUTLER/CLE | 15,670.66 | 78,199.85 | 93,870.51 | 0.00 | 0.00 | 0.00 |
| 7761 | OUTSIDE ENTITY FLOWTHRU | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 7765 | RECORDER'S ESCROW FUND | 27,506.88 | 831.80 | 252.00 | 28,086.68 | 0.00 | 28,086.68 |
| 7766 | ESCROW ROTARY | 868,281.93 | 0.00 | 3,700.00 | 864,581.93 | 1,100.00 | 865,681.93 |
| 7767 | UNIDENTIFIED DEPOSITS | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 7768 | RE TAX PYMT PRO/PRE/SALES | 0.00 | 238.91 | 0.00 | 238.91 | 0.00 | 238.91 |
| 7769 | BANKRUPTCY POST PETITION CONDU | 8,988.93 | 3,310.30 | 0.00 | 12,299.23 | 0.00 | 12,299.23 |
| 7773 | SEX OFFENDER REGISTRATION FEE | 0.00 | 0.00 | 0.00 | 0.00 | 125.00 | 125.00 |
| 7774 | ARSON OFFENDER REGISTR FEE | 220.00 | 0.00 | 0.00 | 220.00 | 0.00 | 220.00 |
| 7775 | UNDIVIDED SHERIFF WEB CHECK FE | 18,262.75 | 15,524.50 | 17,972.25 | 15,815.00 | 13,442.50 | 29,257.50 |
| 7776 | UNDIVIDED EVIDENCE SHERIFF | 113,045.85 | 0.00 | 0.00 | 113,045.85 | 0.00 | 113,045.85 |
| 7777 | UNDIVIDED FEDERAL & STATE FORF | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 7778 | COURT ORDERED SHERIFF SALES | 651,767.61 | 1,231,449.39 | 359,650.00 | 1,523,567.00 | 75,625.00 | 1,599,192.00 |
| 7779 | UNDIVIDED DRUG TASK FORCE SEIZ | 150,389.98 | 0.00 | 60,761.67 | 89,628.31 | 9,265.56 | 98,893.87 |
| 7781 | REFUNDABLE DEPOSITS | 430,367.73 | 19,437.73 | 13,964.95 | 435,840.51 | 4,033.24 | 439,873.75 |
| 7782 | SHERIFF - LOST/ABANDONED PROPE | 44.34 | 0.00 | 0.00 | 44.34 | 0.00 | 44.34 |
| 7785 | MASSIE WAYNE CAPACITY FEES | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 7786 | PMT IN LIEU OF TAXES | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 7787 | UNDIVIDED INCOME TAX-REAL PROP | 19,496.82 | 0.00 | 14,398.22 | 5,098.60 | 0.00 | 5,098.60 |

Financial Statement for 2022 Period 03



| FUND | FUND DESCRIPTION | PREVIOUS BALANCE | RECEIPTS | EXPENDITURES | CURRENT BALANCE | OUTSTANDING WARRANTS | TREASURER'S FUND BALANCE |
|-------|--------------------------------|------------------|---------------|----------------|-----------------|----------------------|--------------------------|
| 7788 | UNDIVIDED PUBLIC UTILITY DEREG | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 7789 | FORFEITED LAND | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 7790 | FORFEITED LAND EXCESS SALE PRO | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 7792 | ZONING & BLDG BOND FUND | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 7793 | HOUSING TRUST AUTHORITY | 238,501.11 | 121,806.99 | 365,841.50 | -5,533.40 | 362,183.08 | 356,649.68 |
| 7795 | UNDIVIDED INDIGENT FEES | 0.00 | 1,665.00 | 1,665.00 | 0.00 | 333.00 | 333.00 |
| 7796 | MUNICIPAL ORD VIOLATION INDIGE | 5,799.31 | 6,000.00 | 1,310.34 | 10,488.97 | 600.34 | 11,089.31 |
| 7797 | NEW UNDIVIDED AUCTION PROCEEDS | 0.00 | 23,576.45 | 23,576.45 | 0.00 | 0.00 | 0.00 |
| 7798 | OLD ZONING & BLDG BOND FUND | 138,020.47 | 0.00 | 0.00 | 138,020.47 | 0.00 | 138,020.47 |
| 8843 | UNCLAIMED MONEY | 688,505.23 | 0.00 | 185.97 | 688,319.26 | 0.00 | 688,319.26 |
| 8855 | CH.SERV.SCHEURER SMITH TRUST | 43,609.59 | 0.00 | 0.00 | 43,609.59 | 0.00 | 43,609.59 |
| 9911 | WARREN CO HEALTH DISTRICT | 8,987,791.64 | 126,163.04 | 504,906.75 | 8,609,047.93 | 8,934.63 | 8,617,982.56 |
| 9912 | FOOD SERVICE | 242,987.05 | 125,268.25 | 16,161.25 | 352,094.05 | 12,814.25 | 364,908.30 |
| 9915 | PLUMBING BOND-HEALTH DEPT. | 6,000.00 | 0.00 | 1,500.00 | 4,500.00 | 500.00 | 5,000.00 |
| 9916 | STATE REGULATED SEWAGE PROGRAM | 259,797.50 | 33,978.00 | 20,738.00 | 273,037.50 | 183.00 | 273,220.50 |
| 9925 | SOIL & WATER CONSERVATION DIST | 1,067,920.98 | 43,170.80 | 73,737.16 | 1,037,354.62 | 7,930.88 | 1,045,285.50 |
| 9928 | REGIONAL PLANNING | 466,952.83 | 26,627.87 | 35,969.23 | 457,611.47 | 469.09 | 458,080.56 |
| 9938 | WARREN COUNTY PARK DISTRICT | 1,108,685.05 | 89,729.99 | 54,626.02 | 1,143,789.02 | 1,031.60 | 1,144,820.62 |
| 9944 | ARMCO PARK | 260,115.88 | 18,515.69 | 66,045.21 | 212,586.36 | 7,711.16 | 220,297.52 |
| 9953 | WATER SYSTEM FUND | 60,136.58 | 2,756.00 | 0.00 | 62,892.58 | 100.00 | 62,992.58 |
| 9954 | MENTAL HEALTH RECOVERY BOARD | 13,745,981.61 | 569,126.77 | 771,913.82 | 13,543,194.56 | 89,951.80 | 13,633,146.36 |
| 9961 | HEALTH GRANT FUND | 509,643.91 | 157,463.66 | 22,622.07 | 644,485.50 | 224.31 | 644,709.81 |
| 9963 | CAMPGROUNDS | 2,205.70 | 0.00 | 0.00 | 2,205.70 | 0.00 | 2,205.70 |
| 9976 | HEALTH - SWIMMING POOL FUND | 140,307.30 | 847.00 | 0.00 | 141,154.30 | 0.00 | 141,154.30 |
| 9977 | DRUG TASK FORCE COG | 855,564.85 | 59,266.22 | 7,051.15 | 907,779.92 | 731.39 | 908,511.31 |
| 9996 | WC FIRE RESPONSE LIFE SAFETY | 27,118.36 | 0.00 | 27,118.36 | 0.00 | 27,118.36 | 27,118.36 |
| Total | | 536,526,634.93 | 98,702,606.77 | 130,676,569.77 | 501,180,756.68 | 4,128,623.00 | 505,309,379.68 |

It is hereby certified, that the foregoing is a true and accurate statement of the finances of Warren County, Ohio, for March, 2022 showing the balance on hand in cash in each fund at the beginning of the month, the amount received to each, the amount disbursed from each, the balance remaining to the credit of each, and the balance of money in the treasury and depository.

*BOARD OF COUNTY COMMISSIONERS
WARREN COUNTY, OHIO*

Resolution

Number 22-0529

Adopted Date April 12, 2022

ACKNOWLEDGE PAYMENT OF BILLS

BE IT RESOLVED, to acknowledge payment of bills from 4/5/22 and 4/7/22, as attached hereto and made a part hereof.

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


Mr. Grossmann – yea

Mr. Young – yea

Mrs. Jones – yea

Resolution adopted this 12th day of April 2022.

BOARD OF COUNTY COMMISSIONERS


Tina Osborne, Clerk

/tao

cc: Auditor

Resolution

Number 22-0530

Adopted Date April 12, 2022

APPROVE A SUBDIVISION PUBLIC IMPROVEMENT PERFORMANCE AND MAINTENANCE SECURITY RELEASE WITH GRAND COMMUNITIES, LLC. FOR IMPROVEMENTS IN SHAKER RUN SUBDIVISION, SECTION SEVEN, SITUATED IN TURTLECREEK TOWNSHIP

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

RELEASE

| | | |
|----------------|---|---------------------------------------|
| Bond Number | : | 20-027 (W/S) |
| Development | : | Shaker Run Subdivision, Section Seven |
| Developer | : | Grand Communities, LLC. |
| Township | : | Turtlecreek |
| Amount | : | \$39,091.50 |
| Surety Company | : | Berkley Insurance Company (0234000) |

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 12th day of April 2022.

BOARD OF COUNTY COMMISSIONERS


Tina Osborne, Clerk

cgb

cc: Grand Communities, Ltd., Laura Greathouse, 3940 Olympic Blvd, Suite 100, Erlanger KY 41018
Berkley Insurance Company, 475 Steamboat Road, Greenwich, CT 06830
Water/Sewer (file)
Bond Agreement file

Resolution

Number 22-0531

Adopted Date April 12, 2022

ENTER INTO STREET AND APPURTENANCES (INCLUDING SIDEWALKS) SECURITY AGREEMENT WITH WILSON FARMS DEVELOPMENT II, LLC FOR INSTALLATION OF CERTAIN IMPROVEMENTS IN WILSON FARMS, SECTION SIX, PHASE A SITUATED IN FRANKLIN TOWNSHIP

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

SECURITY AGREEMENT


| | | |
|----------------|---|--|
| Bond Number | : | 22-008 (P/S) |
| Development | : | Wilson Farms, Section Six, Phase A |
| Developer | : | Wilson Farms Development II, LLC |
| Township | : | Franklin |
| Amount | : | \$124,727.01 |
| Surety Company | : | Great American Insurance Co. (3853727) |

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 12th day of April 2022.

BOARD OF COUNTY COMMISSIONERS


Tina Osborne, Clerk

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

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

**STREETS AND APPURTENANCES
(including Sidewalks)**

Security Agreement No.

22-008 (P/s)

This Agreement made and concluded at Lebanon, Ohio, by and between _____
WILSON FARMS DEVELOPMENT II, LLC (1) (hereinafter the "Developer") and the
Warren County Board of County Commissioners, (hereinafter the "County Commissioners"), and
GREAT AMERICAN INSURANCE COMPANY (2) (hereinafter the "Surety").

WITNESSETH:

WHEREAS, the Developer is required to install certain improvements in _____
WILSON FARMS **Subdivision, Section/Phase SIX / A** (3) (hereinafter the "Subdivision") situated in
FRANKLIN (4) Township, Warren County, Ohio, in accordance with the Warren County
Subdivision regulations (hereinafter called the "Improvements"); and,

WHEREAS, it is estimated that the total cost of the Improvements is \$623,635.07,
and that the Improvements that have yet to be completed and approved may be constructed in the sum of
\$83,804.50; and,

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

NOW, THEREFORE, be it agreed:

1. The Developer will provide **performance security** to the County Commissioners in the sum
of \$124,727.01 to secure the performance of the construction of the
uncompleted or unapproved Improvements in accordance with Warren County subdivision
regulations (hereinafter the Performance Obligation). If any sum greater than zero (0) is
inserted herein, the **minimum performance security** shall be twenty percent (20%) of the
total cost of the Improvements.

2. The County Commissioners will, upon approval of the County Engineer of all Improvements in the Subdivision, tentatively accept all Improvements.
3. The Developer shall be in default of the Performance Obligation if the construction or installation of any Improvement by the Developer is not completed within 2 years from the date of the execution of this agreement, as determined by the County Engineer. The same shall apply whenever construction of the Improvements is not performed in accordance with the Warren County subdivision regulations.
4. The condition of the Performance Obligation shall be that whenever the Developer shall be declared by the County Commissioners to be in default, the Surety and the Developer shall, upon written notification of default by the County Commissioners to the Surety promptly make sufficient funds available to the County Commissioners to pay the cost of the completion of the construction of the uncompleted or unapproved Improvements in accordance with Warren County subdivision regulations, including any costs incurred by the County Commissioners which are incidental to the completion of the construction of the uncompleted or unapproved Improvements, including, but not limited to costs associated with publication of legal notices, preparation of such additional plans, specifications and drawings as may, in the judgment of the County Commissioners, be necessary, preparation of bid documents, etc., but not exceeding the amount set forth in Item 1 hereof. The Developer shall have the opportunity to respond in writing within two (2) weeks of receipt of notice of intent to find the Developer in default. In the case that the performance security given is in the form of a cashier's check or certified check provided directly to the County Commissioners, the County Commissioners may apply such funds as set forth herein upon notification of default to the Surety. The determination of the amount of funds to be disbursed by Surety to the County Commissioners as set forth in the aforesaid notification is final and binding upon the parties hereto. However, the foregoing shall not release Developer from any liability for any deficiency between the amount of funds disbursed and the actual costs incurred by the County Commissioners in the completion of the construction or installation of the uncompleted or unapproved Improvements and Developer expressly agrees to be liable to the County Commissioners for any such deficiency.
5. **The County Commissioners, the Developer and Surety mutually agree that the Performance Obligation created herein shall continue until the completion of the installation of the Improvements in accordance with Warren County subdivision regulations and that upon the Improvements having been inspected and approved for two years maintenance, the Performance Obligation shall become null and void after the Developer posts the maintenance security provided for herein.**
6. The Developer will provide **maintenance security** to the County Commissioners in the sum of \$124,727.01 to secure the performance of all maintenance upon the Improvements as determined to be necessary by the County Engineer (hereinafter the Maintenance Obligation). In no event shall the sum provided for herein be less than twenty percent (20%) of the estimated total cost of the Improvements as set forth above.

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

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

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

A. To the County Commissioners:

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

B. To the County Engineer:

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

C. To the Developer:

WILSON FARMS DEVELOPMENT II, LLC
2610 CRESCENTVILLE RD
WEST CHESTER OH 45069
Ph. (513) 326 - 6000

D. To the Surety:

GREAT AMERICAN INSURANCE COMPANY

301 E 4TH ST

CINICNNATI OH 45202

Ph. (513) 412 9176

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

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

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

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

 Original Escrow Letter (attached)

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

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

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

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

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

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

DEVELOPER:

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

WILSON FARMS DEVELOPMENT II, LLC

SIGNATURE: 

PRINTED NAME: DANIEL STREICHER

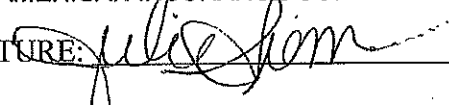
TITLE: DIRECTOR OF DEVELOPMENT

DATE: 2/24/2022

SURETY:

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

GREAT AMERICAN INSURANCE COMPANY

SIGNATURE: 

PRINTED NAME: JULIE SIEMER

TITLE: ATTORNEY-IN-FACT

DATE: 2/23/2022

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN EXECUTION WHEREOF, the Warren County Board of County Commissioners have caused this security agreement to be executed by the President of the Board, on the date stated below, pursuant to Board Resolution Number 22-0531, dated 4-12-22.

**WARREN COUNTY
BOARD OF COUNTY COMMISSIONERS**

SIGNATURE: 

PRINTED NAME: Tom Grossmann

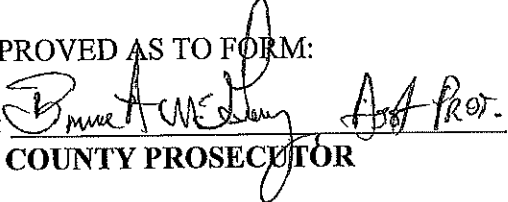
TITLE: President

DATE: 4/12/22

RECOMMENDED BY:

By: 
COUNTY ENGINEER

APPROVED AS TO FORM:

By: 
COUNTY PROSECUTOR

Key:

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

GREAT AMERICAN INSURANCE COMPANY®

Administrative Office: 301 E 4TH STREET • CINCINNATI, OHIO 45202 • 513-369-5000 • FAX 513-723-2740

The number of persons authorized by this power of attorney is not more than TEN

No. 0 21630

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That the GREAT AMERICAN INSURANCE COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Ohio, does hereby nominate, constitute and appoint the person or persons named below, each individually if more than one is named, its true and lawful attorney-in-fact, for it and in its name, place and stead to execute on behalf of the said Company, as surety, any and all bonds, undertakings and contracts of suretyship, or other written obligations in the nature thereof; provided that the liability of the said Company on any such bond, undertaking or contract of suretyship executed under this authority shall not exceed the limit stated below.

| Name | Address | Limit of Power |
|-----------------|--------------------|----------------|
| MARK NELSON | LIZ OHL | ALL |
| TIFFIANY GOBICH | JULIE SIEMER | \$100,000,000 |
| RANDAL T. NOAH | G. DALE DERR | |
| STELLA ADAMS | NANCY NEMEC | |
| KATIE ROSE | TAMMY L. MASTERSON | |

This Power of Attorney revokes all previous powers issued on behalf of the attorney(s)-in-fact named above.

IN WITNESS WHEREOF the GREAT AMERICAN INSURANCE COMPANY has caused these presents to be signed and attested by its appropriate officers and its corporate seal hereunto affixed this 13TH day of APRIL, 2021

Attest

GREAT AMERICAN INSURANCE COMPANY



Atty L C B

Assistant Secretary

Mark V Vicario

Divisional Senior Vice President

MARK VICARIO (877-377-2405)

STATE OF OHIO, COUNTY OF HAMILTON - ss:

On this 13TH day of APRIL, 2021, before me personally appeared MARK VICARIO, to me known, being duly sworn, deposes and says that he resides in Cincinnati, Ohio, that he is a Divisional Senior Vice President of the Bond Division of Great American Insurance Company, the Company described in and which executed the above instrument; that he knows the seal of the said Company; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by authority of his office under the By-Laws of said Company, and that he signed his name thereto by like authority.



SUSAN A KOHORST
Notary Public
State of Ohio
My Comm. Expires
May 18, 2025

Susan A Kohorst

This Power of Attorney is granted by authority of the following resolutions adopted by the Board of Directors of Great American Insurance Company by unanimous written consent dated June 9, 2008.

RESOLVED: That the Divisional President, the several Divisional Senior Vice Presidents, Divisional Vice Presidents and Divisional Assistant Vice Presidents, or any one of them, be and hereby is authorized, from time to time, to appoint one or more Attorneys-in-Fact to execute on behalf of the Company, as surety, any and all bonds, undertakings and contracts of suretyship, or other written obligations in the nature thereof; to prescribe their respective duties and the respective limits of their authority; and to revoke any such appointment at any time.

RESOLVED FURTHER: That the Company seal and the signature of any of the aforesaid officers and any Secretary or Assistant Secretary of the Company may be affixed by facsimile to any power of attorney or certificate of either given for the execution of any bond, undertaking, contract of suretyship, or other written obligation in the nature thereof, such signature and seal when so used being hereby adopted by the Company as the original signature of such officer and the original seal of the Company, to be valid and binding upon the Company with the same force and effect as though manually affixed.

CERTIFICATION

I, STEPHEN C. BERAHA, Assistant Secretary of Great American Insurance Company, do hereby certify that the foregoing Power of Attorney and the Resolutions of the Board of Directors of June 9, 2008 have not been revoked and are now in full force and effect.

Signed and sealed this 23rd day of February, 2022



Atty L C B

Assistant Secretary

AGREEMENT FOR SNOW AND ICE REMOVAL FOR UNACCEPTED STREETS

I. Parties:

The parties to this Agreement are the Warren County Board of County Commissioners (hereinafter the "County") or the FRANKLIN Township Board of Trustees (hereinafter the "Township"), and WILSON FARMS DEVELOPMENT II, LLC (hereinafter the "Developer"), the developer of WILSON FARMS Subdivision, Section/Phase SIX / A (hereinafter the "Subdivision").

II. Purpose:

The purpose of this Agreement is to make provision for the removal of snow and ice from the streets as are shown upon the recorded plat of the Subdivision prior to the time of the acceptance of such streets by the County as a part of the County or Township road system if the Developer, for whatever reason, does not remove snow and ice in a timely manner from said streets.

III. Authorization:

Developer does hereby grant permission to the County or Township, as may be appropriate, to enter into the Subdivision as may be necessary to perform such snow and ice removal upon all streets shown upon the plat of such subdivision and dedicated as public streets.

IV. Reimbursement of Cost of Snow and Ice Removal:

The County or Township performing snow and ice removal from the aforesaid streets shall invoice the Developer for the actual cost of such snow and ice removal. The Developer shall pay such invoice within thirty (30) days of the date of the same by check made payable to the invoicing political subdivision.

As used herein, "actual cost" means any costs incurred due to the use of employees, materials or equipment. Costs incurred due to the use of employees shall include wages, fringe benefits and employer PERS contributions. Costs incurred due to the use of materials shall be the costs incurred by the political subdivision in purchasing such materials and based upon quantity of materials used. Costs incurred due to the use of equipment shall be based upon standard rental rates within the community for the equipment used.

V. Hold Harmless; Indemnification; Defense

The Developer does hereby agree to defend, indemnify and hold the County and/or Township, its agents, employees and contractors, performing the snow and ice removal harmless from any and all

claims, suits, actions, injuries, damages, liabilities, costs, expenses and attorneys fees which may be occasioned by the County or Township performing the snow and ice removal within the aforesaid subdivision.

VI. Determination of Necessity and Priority of Snow and Ice Removal:

The County or Township responsible for snow and ice removal within the Subdivision shall determine in its sole discretion the necessity of performing snow and ice removal within the Subdivision and the priority of performing snow and ice removal within the Subdivision.

VII. No Common Law Acceptance:

The performance of snow and ice removal within the Subdivision by the County or Township, as may be applicable, is not intended nor should the performance of such snow and ice removal be construed as an act indicating the acceptance of the streets within the Subdivision as a part of the County or Township road system and that such acceptance may only occur by formal resolution adopted by the County.

VIII. Modification; Binding Effect; Entire Agreement:

- A. This Agreement may be modified only in writing and signed by both parties.
- B. This Agreement shall be binding upon the successors and assigns of the parties hereto.
- C. This Agreement represents the entire understanding of the parties and any oral discussions or representations not consistent with the terms of this Agreement are of no force and effect.

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

DEVELOPER:

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

SIGNATURE: 

PRINTED NAME: DANIEL STREICHER

TITLE: DIRECTOR OF DEVELOPMENT

DATE: 2/28/22

IN EXECUTION WHEREOF, the _____ Township Board of Trustees have caused this security agreement to be executed by the President of the Board, on the date stated below, pursuant to Board Resolution Number _____, dated _____.

BOARD OF TRUSTEES **TOWNSHIP**

SIGNATURE: _____

PRINTED NAME: _____

TITLE: President _____

DATE: _____

Resolution

Number 22-0532

Adopted Date April 12, 2022

ENTER INTO A SUBDIVISION PUBLIC IMPROVEMENT PERFORMANCE AND MAINTENANCE SECURITY AGREEMENT WITH WILSON FARMS DEVELOPMENT II, LLC FOR INSTALLATION OF CERTAIN IMPROVEMENTS IN WILSON FARMS SECTION SIX, PHASE A, SITUATED IN FRANKLIN TOWNSHIP

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

AGREEMENT

| | | |
|----------------|---|--|
| Bond Number | : | 22-012 (W/S) |
| Development | : | Wilson Farms Section Six, Phase A |
| Developer | : | Wilson Farms Development II, LLC |
| Township | : | Franklin |
| Amount | : | \$32,658.35 |
| Surety Company | : | Great American Insurance Co. (3853733) |

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 12th day of April 2022.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

CGB

cc: Wilson Farms Development LLC, 2610 Cresentville Rd, West Chester, OH 45069
Great American Insurance Company, 301 E. 4th Street, Cincinnati, OH 45202
Water/Sewer (file)
Bond Agreement file

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

WATER AND/OR SANITARY SEWER

Security Agreement No.

22-012 (w/s)

This Agreement made and concluded at Lebanon, Ohio, by and between _____
WILSON FARMS DEVELOPMENT II, LLC (1) (hereinafter the "Developer") and the
Warren County Board of County Commissioners, (hereinafter the "County Commissioners"), and
GREAT AMERICAN INSURANCE COMPANY (2) (hereinafter the "Surety").

WITNESSETH:

WHEREAS, the Developer is required to install certain improvements in _____
WILSON FARMS Subdivision, Section/Phase SIX / A (3) (hereinafter the "Subdivision") situated in
FRANKLIN (4) Township, Warren County, Ohio, in accordance with the Warren County
Subdivision regulations (hereinafter called the "Improvements"); and,

WHEREAS, it is estimated that the total cost of the Improvements is \$319,446.00,
and that the Improvements that have yet to be completed and approved may be constructed in the sum of
\$0; and,

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

NOW, THEREFORE, be it agreed:

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

2. The County Commissioners will, upon approval of the County Sanitary Engineer of all Improvements in the Subdivision, tentatively accept all Improvements.
3. The Developer shall be in default of the Performance Obligation if the construction or installation of any Improvement by the Developer is not completed within 2 years from the date of the execution of this agreement, as determined by the County Sanitary Engineer. The same shall apply whenever construction of the Improvements is not performed in accordance with the Warren County subdivision regulations.
4. The condition of the Performance Obligation shall be that whenever the Developer shall be declared by the County Commissioners to be in default, the Surety and the Developer shall, upon written notification of default by the County Commissioners to the Surety promptly make sufficient funds available to the County Commissioners to pay the cost of the completion of the construction of the uncompleted or unapproved Improvements in accordance with Warren County subdivision regulations, including any costs incurred by the County Commissioners which are incidental to the completion of the construction of the uncompleted or unapproved Improvements, including, but not limited to costs associated with publication of legal notices, preparation of such additional plans, specifications and drawings as may, in the judgment of the County Commissioners, be necessary, preparation of bid documents, etc., but not exceeding the amount set forth in Item 1 hereof. The Developer shall have the opportunity to respond in writing within two (2) weeks of receipt of notice of intent to find the Developer in default. In the case that the performance security given is in the form of a cashier's check or certified check provided directly to the County Commissioners, the County Commissioners may apply such funds as set forth herein upon notification of default to the Surety. The determination of the amount of funds to be disbursed by Surety to the County Commissioners as set forth in the aforesaid notification is final and binding upon the parties hereto. However, the foregoing shall not release Developer from any liability for any deficiency between the amount of funds disbursed and the actual costs incurred by the County Commissioners in the completion of the construction or installation of the uncompleted or unapproved Improvements and Developer expressly agrees to be liable to the County Commissioners for any such deficiency.
5. The County Commissioners, the Developer and Surety mutually agree that the Performance Obligation created herein shall continue until the completion of the installation of the Improvements in accordance with Warren County subdivision regulations and that upon the Improvements having been inspected and approved for one year maintenance, the Performance Obligation shall become null and void.
6. The Developer will provide **maintenance security** to the County Commissioners in the sum of \$32,658.35 to secure the performance of all maintenance upon the Improvements as determined to be necessary by the County Sanitary Engineer (hereinafter the Maintenance Obligation). In no event shall the sum provided for herein be less than ten percent (10%) of the estimated total cost of the Improvements as set forth above.

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

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

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

A. To the County Commissioners:

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

B. To the County Sanitary Engineer:

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

C. To the Developer:

WILSON FARMS DEVELOPMENT II, LLC

2610 CRESCENTVILLE RD

WEST CHESTER OH 45069

Ph. (513) 326 - 6000

D. To the Surety:

GREAT AMERICAN INSURANCE COMPANY

301 E 4TH ST

CINCINNATI OH 45202

Ph. (513) 412 - 9176

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

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

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

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

Original Escrow Letter (attached)

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

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

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

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

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

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

DEVELOPER:

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

WILSON FARMS DEVELOPMENT II, LLC

SIGNATURE: 

PRINTED NAME: DANIEL STREICHER

TITLE: DIRECTOR OF DEVELOPMENT

DATE: 3-7-22

SURETY:

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

GREAT AMERICAN INSURANCE COMPANY

SIGNATURE: 

PRINTED NAME: JULIE SIEMER

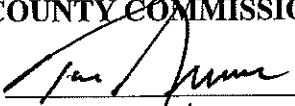
TITLE: ATTORNEY-IN-FACT

DATE: 3/1/2022

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN EXECUTION WHEREOF, the Warren County Board of County Commissioners have caused this security agreement to be executed by the President of the Board, on the date stated below, pursuant to Board Resolution Number 22-0532, dated 4/12/22.

WARREN COUNTY
BOARD OF COUNTY COMMISSIONERS


SIGNATURE: 

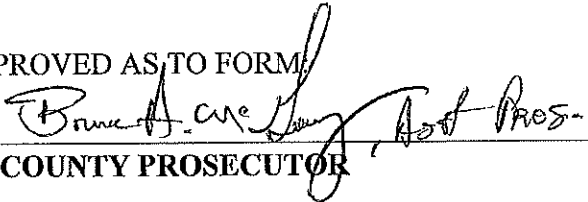
PRINTED NAME: Tom Grossman

TITLE: President

DATE: 4/12/22

RECOMMENDED BY:

By: 
SANITARY ENGINEER

APPROVED AS TO FORM:
By: 
COUNTY PROSECUTOR

Key:

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

GREAT AMERICAN INSURANCE COMPANY®

Administrative Office: 301 E 4TH STREET • CINCINNATI, OHIO 45202 • 513-369-5000 • FAX 513-723-2740

The number of persons authorized by this power of attorney is not more than TEN

No. 0 21630

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That the GREAT AMERICAN INSURANCE COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Ohio, does hereby nominate, constitute and appoint the person or persons named below, each individually if more than one is named, its true and lawful attorney-in-fact, for it and in its name, place and stead to execute on behalf of the said Company, as surety, any and all bonds, undertakings and contracts of suretyship, or other written obligations in the nature thereof; provided that the liability of the said Company on any such bond, undertaking or contract of suretyship executed under this authority shall not exceed the limit stated below.

| | Name | Address | Limit of Power |
|----------------|--------------------|------------------|----------------|
| MARK NELSON | LIZ OHL | ALL OF | ALL |
| TIFFANY GOBICH | JULIE SIEMER | CINCINNATI, OHIO | \$100,000,000 |
| RANDAL T. NOAH | G. DALE DERR | | |
| STELLA ADAMS | NANCY NEMEC | | |
| KATIE ROSE | TAMMY L. MASTERSON | | |

This Power of Attorney revokes all previous powers issued on behalf of the attorney(s)-in-fact named above.

IN WITNESS WHEREOF the GREAT AMERICAN INSURANCE COMPANY has caused these presents to be signed and attested by its appropriate officers and its corporate seal hereunto affixed this 13TH day of APRIL, 2021
GREAT AMERICAN INSURANCE COMPANY



Atty L C B

Assistant Secretary

Mark V Vicario

Divisional Senior Vice President

MARK VICARIO (677-377-2405)

STATE OF OHIO, COUNTY OF HAMILTON - ss:

On this 13TH day of APRIL, 2021, before me personally appeared MARK VICARIO, to me known, being duly sworn, deposes and says that he resides in Cincinnati, Ohio, that he is a Divisional Senior Vice President of the Bond Division of Great American Insurance Company, the Company described in and which executed the above instrument; that he knows the seal of the said Company; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by authority of his office under the By-Laws of said Company, and that he signed his name thereto by like authority.



SUSAN A KOHORST
Notary Public
State of Ohio
My Comm. Expires
May 18, 2025

Susan A Kohorst

This Power of Attorney is granted by authority of the following resolutions adopted by the Board of Directors of Great American Insurance Company by unanimous written consent dated June 9, 2008.

RESOLVED: That the Divisional President, the several Divisional Senior Vice Presidents, Divisional Vice Presidents and Divisional Assistant Vice Presidents, or any one of them, be and hereby is authorized, from time to time, to appoint one or more Attorneys-in-Fact to execute on behalf of the Company, as surety, any and all bonds, undertakings and contracts of suretyship, or other written obligations in the nature thereof; to prescribe their respective duties and the respective limits of their authority; and to revoke any such appointment at any time.

RESOLVED FURTHER: That the Company seal and the signature of any of the aforesaid officers and any Secretary or Assistant Secretary of the Company may be affixed by facsimile to any power of attorney or certificate of either given for the execution of any bond, undertaking, contract of suretyship, or other written obligation in the nature thereof, such signature and seal when so used being hereby adopted by the Company as the original signature of such officer and the original seal of the Company, to be valid and binding upon the Company with the same force and effect as though manually affixed.

CERTIFICATION

I, STEPHEN C. BERAHA, Assistant Secretary of Great American Insurance Company, do hereby certify that the foregoing Power of Attorney and the Resolutions of the Board of Directors of June 9, 2008 have not been revoked and are now in full force and effect.

Signed and sealed this 1st day of March, 2022



Atty L C B

Assistant Secretary

*BOARD OF COUNTY COMMISSIONERS
WARREN COUNTY, OHIO*

Resolution

Number 22-0533

Adopted Date April 12, 2022

APPROVE VARIOUS RECORD PLATS

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

- Wilson Farm Section 6A - Franklin Township
- Fry Estates Subdivision Revision 02 – Clearcreek Township

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

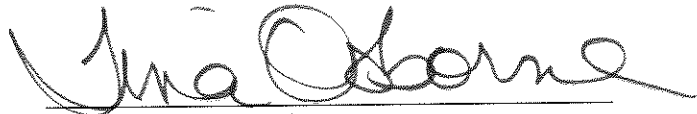
Mr. Grossmann – yea

Mr. Young – yea

Mrs. Jones – yea

Resolution adopted this 12th day of April 2022.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: Plat File
RPC

Resolution

Number 22-0534

Adopted Date April 12, 2022

APPROVE AN OPERATIONAL TRANSFER FROM COMMISSIONERS FUND #11011112 INTO HUMAN SERVICES FUND #2203

WHEREAS, the Department of Human Services has requested that the eighth and ninth disbursement of their mandated share for SFY 2021-2022 be transferred into the Human Services Public Assistance Fund #2203; and

NOW THEREFORE BE IT RESOLVED, to approve the following operational transfer from Commissioners Fund #1101 into the Human Services Fund #2203:

\$ 32,928.84 from #11011112-5742 (Commissioners Grants - Public Assistance)
into #2203-49000 (Human Services - Public Assistance)

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 12th day of April 2022.

BOARD OF COUNTY COMMISSIONERS


Tina Osborne, Clerk

cc: Auditor ✓
Operational Transfer file
Human Services (file)
OMB

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

Resolution

Number 22-0535

Adopted Date April 12, 2022

APPROVE OPERATING TRANSFERS FROM SEWER 5580 (SURPLUS) INTO 5575 SEWER REVENUE PROJECTS

WHEREAS, it has previously been determined that all of the projects in Fund 5575 are going to be financed fully or partially through sewer revenue funds (surplus); and

WHEREAS, a portion of those funds are necessary to pay current and anticipated obligations within Fund 5575; and

NOW THEREFORE BE IT RESOLVED, to approve the following Operating Transfers:


| | | | |
|--------------|------|-------------------------------------|--|
| \$142,233.38 | from | #E-55803319-AAEXPENSE-55803319-5997 | (Operational Transfers) |
| | into | #F-55753384-AAREVENUE-5575-49000 | (Waynesville Sanitary Coll. System Imp.) |
| \$55,209.65 | from | #E-55803319-AAEXPENSE-55803319-5997 | (Operational Transfers) |
| | into | #F-55753385-AAREVENUE-5575-49000 | (LLMWWTP Improv Projects) |
| \$169,200.76 | from | #E-55803319-AAEXPENSE-55803319-5997 | (Operational Transfers) |
| | into | #F-55753395-AAREVENUE-5575-49000 | (Hazen Ave. Project) |
| \$14,693.63 | from | #E-55803319-AAEXPENSE-55803319-5997 | (Operational Transfers) |
| | into | #F-55753396-AAREVENUE-5575-49000 | (Kings Ave. Bridge Sewer Lateral Proj) |

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 12th day of April 2022.

BOARD OF COUNTY COMMISSIONERS


Tina Osborne, Clerk

mbz

cc: Auditor
Operational Transfer file
Water/Sewer (File)

Resolution

Number 22-0536

Adopted Date April 12, 2022

APPROVE OPERATING TRANSFERS FROM WATER 5510 (SURPLUS) INTO 5583 WATER REVENUE PROJECTS FUND

WHEREAS, it has previously been determined that all of the projects in Fund 5583 are going to be financed fully or partially through Water Revenue Funds (surplus); and

WHEREAS, a portion of those funds are necessary to pay current and anticipated obligations within Fund 5583; and

NOW THEREFORE BE IT RESOLVED, to approve the following Operating Transfers:

Operational Transfer

| | | | |
|----------------|------|-------------------------------------|---|
| \$1,171,101.52 | from | #E-55103219-AAEXPENSE-55103219-5997 | (Operational Transfers) |
| | into | #F-55833208-AAREVENUE-5583-49000 | (Water Softening Project) |
| \$558,064.43 | from | #E-55103219-AAEXPENSE-55103219-5997 | (Operational Transfers) |
| | into | #F-55833216-AAREVENUE-5583-49000 | (South Union Rd Improvements Proj) |
| \$1,321,427.00 | from | #E-55103219-AAEXPENSE-55103219-5997 | (Operational Transfers) |
| | into | #F-55833218-AAREVENUE-5583-49000 | (Socialville Main Transmission Project) |
| \$28,876.00 | from | #E-55103219-AAEXPENSE-55103219-5997 | (Operational Transfers) |
| | into | #F-55833223-AAREVENUE-5583-49000 | (2021 Well Redevelopment Project) |
| \$48,658.49 | from | #E-55103219-AAEXPENSE-55103219-5997 | (Operational Transfers) |
| | into | #F-55833225-AAREVENUE-5583-49000 | (Kings Ave Bridge Water Main Project) |
| \$118,225.00 | from | #E-55103219-AAEXPENSE-55103219-5997 | (Operational Transfers) |
| | into | #F-55833226-AAREVENUE-5583-49000 | (Columbia Rd Turn Lane Project) |
| \$94,877.00 | from | #E-55103219-AAEXPENSE-55103219-5997 | (Operational Transfers) |
| | into | #F-55833228-AAREVENUE-5583-49000 | (Butler-Warren Rd Improvements Proj) |
| \$25,145.80 | from | #E-55103219-AAEXPENSE-55103219-5997 | (Operational Transfers) |
| | into | #F-55833200-AAREVENUE-5583-49000 | (Water Projects) |

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 12th day of April 2022.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

mbz

cc: Auditor
Operational Transfer file

Water/Sewer (File)

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

Resolution

Number 22-0537

Adopted Date April 12, 2022

APPROVE SUPPLEMENTAL APPROPRIATION INTO COMMON PLEAS COURT
SPECIAL PROJECTS #2224

BE IT RESOLVED, to approve the following supplemental appropriation:


\$ 20,000.00 into #22241220-5318 (Data Bd. Approval – Non-Capital Purchase)

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 12th day of April 2022.

BOARD OF COUNTY COMMISSIONERS


Tina Osborne, Clerk

cc: Auditor
Supplemental App. file
Common Pleas Court (file)

*BOARD OF COUNTY COMMISSIONERS
WARREN COUNTY, OHIO*

Resolution

Number 22-0538

Adopted Date April 12, 2022

APPROVE SUPPLEMENTAL APPROPRIATION INTO COMMON PLEAS COURT
COMMUNITY BASED CORRECTIONS FUND #2284

BE IT RESOLVED, to approve the following supplemental appropriation:

\$ 30,000.00 into 22842911-5400 (Purchased Services)

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


Mr. Grossmann – yea

Mr. Young – yea

Mrs. Jones – yea

Resolution adopted this 12th day of April 2022.

BOARD OF COUNTY COMMISSIONERS


Tina Osborne, Clerk

cc: Auditor
Supplemental App. file
Common Pleas Court (file)

Resolution

Number 22-0539

Adopted Date April 12, 2022

APPROVE SUPPLEMENTAL APPROPRIATION INTO OHIOMEANSJOBS FUND #2258

BE IT RESOLVED, to approve the following supplemental appropriation:

\$50,000 into #22585800-5663 (Classroom Training)

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 12th day of April 2022.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: Auditor
Supplemental App. file
OhioMeansJobs (file)

Resolution

Number 22-0540

Adopted Date April 12, 2022

APPROVE SUPPLEMENTAL APPROPRIATION INTO SHERIFF'S OFFICE FUND #2285

BE IT RESOLVED, to approve the following supplemental appropriation:

\$1,000.00 into #22852200-5370 (Software Non-Data Board)

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 12th day of April 2022.

BOARD OF COUNTY COMMISSIONERS


Tina Osborne, Clerk

cc: Auditor
Supplemental App. file
Sheriff (file)

Resolution

Number 22-0541

Adopted Date April 12, 2022

APPROVE A SUPPLEMENTAL APPROPRIATION WITHIN RID BOND GREENS OF BUNNELL HILL FUND #4493

WHEREAS, a supplemental appropriation is necessary for the RID Bond Greens of Bunnell Hill Fund; and

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

\$1,046.81 into #44933908-5320 (Capital Purchase)

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 12th day of April 2022.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: Auditor
Supplemental App. file
Engineer (file)

Resolution

Number 22-0542

Adopted Date April 12, 2022

APPROVE SUPPLEMENTAL APPROPRIATIONS INTO PROPERTY INSURANCE FUND
#6637

BE IT RESOLVED, to make CORSA insurance premium payment, it is necessary to approve the following supplemental appropriation within fund 6637:


\$ 26,178.00 into #66371113- 5460 (Property Casualty – Insurance)

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

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

Resolution adopted this 12th day of April 2022.

BOARD OF COUNTY COMMISSIONERS


Tina Osborne, Clerk

/js

cc: Auditor
Supplemental App. file
OMB (file)

Resolution

Number 22-0543

Adopted Date April 12, 2022

APPROVE APPROPRIATION ADJUSTMENT FROM COMMISSIONERS GENERAL FUND #11011110 INTO SHERIFF'S OFFICE FUND #11012210

BE IT RESOLVED, to approve the following appropriation adjustment from Commissioners Fund #11011110 into Sheriff's Office Fund #11012210 in order to process a vacation leave payout for Travis Woleslagle former employee of the Sheriff's Office:

| | | | |
|----------|------|----------------|---|
| \$280.00 | from | #11011110-5882 | (Commissioners - Vacation Leave Payout) |
| | into | #11012210-5882 | (WCSO – Det. - Vacation Leave Payout) |

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

Mr. Grossmann – yea

Mr. Young – yea

Mrs. Jones – yea

Resolution adopted this 12th day of April 2022.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: Auditor
Appropriation Adjustment file
Sheriff (file)
OMB

Resolution

Number 22-0544

Adopted Date April 12, 2022

APPROVE APPROPRIATION ADJUSTMENT FROM COMMISSIONERS GENERAL FUND #11011110 INTO EMERGENCY SERVICES FUND #11012850

BE IT RESOLVED, to approve the following appropriation adjustment from Commissioners Fund #11011110 into Emergency Services #11012850 in order to process vacation leave payouts for Robert Plummer former employees of Emergency Services:

| | | | |
|------------|------|----------------|---|
| \$7,845.00 | from | #11011110-5882 | (Commissioners - Vacation Leave Payout) |
| | into | #11012850-5882 | (Dispatch - Vacation Leave Payout) |

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

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

Resolution adopted this 12th day of April 2022.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

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

Resolution

Number 22-0545

Adopted Date April 12, 2022

APPROVE APPROPRIATION ADJUSTMENTS WITHIN TREASURER'S OFFICE FUND
11011130

BE IT RESOLVED, to approve the following appropriation adjustments

\$10,000.00 from #11011130-5114 (Overtime Pay)
into #11011130-5400 (Purchased Services)


\$ 500.00 from #11011130-5114 (Overtime Pay)
into #11011130-5871 (Medicare)

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

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

Resolution adopted this 12th day of April 2022.

BOARD OF COUNTY COMMISSIONERS


Tina Osborne, Clerk

/tao

cc: Auditor
Appropriation Adj. file
Treasurer (file)

Resolution

Number 22-0546

Adopted Date April 12, 2022

APPROVE APPROPRIATION ADJUSTMENT WITHIN TELECOMMUNICATIONS
DEPARTMENT FUND #11012812

BE IT RESOLVED, to approve the following appropriation adjustment:

\$1,000.00 from #11012812-5910 (TEL Data Other Expense)
 into #11012812-5911 (TEL Non-Taxable Meal Fringe)

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 12th day of April 2022.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: Auditor
Appropriation Adj. file
Telecom (file)

Resolution

Number 22-0547

Adopted Date April 12, 2022

APPROVE REQUISITIONS AND AUTHORIZE COUNTY ADMINISTRATOR TO SIGN DOCUMENTS RELATIVE THERETO

BE IT RESOLVED, to approve requisitions as listed in the attached document and authorize Tiffany Zindel, County Administrator, to sign on behalf of this Board of County Commissioners.

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

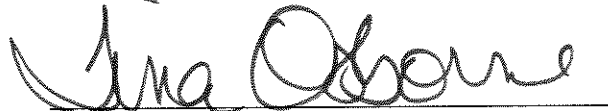
Mr. Grossmann – yea

Mr. Young – yea

Mrs. Jones – yea

Resolution adopted this 12th day of April 2022.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

/tao

cc:

Commissioners' file

REQUISITIONS

| Department | Vendor Name | Description | Amount |
|------------|---------------------------------|---|--------------|
| ENG | REDI ROCK STRUCTURES OF OKI LLC | REDI ROCK WALLS/CROSSLEY RD BRIDGE | \$ 5,772.00 |
| WAT | SHOOK CONSTRUCTION CO | CONSTRUCTION MANAGER AT RISK SERVICES AGREEMENT | \$ 65,000.00 |
| ENG | JOHN R JURGENSEN COMPANY | RESURFACE EAST HALF BUTLER WARREN RD | \$ 95,000.00 |
| TEL | MOBILCOMM INC | TEL MOBILCOMM BACKUP PAGING CO | \$ 1,920.00 |

PO CHANGE ORDER

| | | | |
|-----|------------------|----------------|-----------------------|
| WIB | ROCHELLE DANIELS | LEGAL SERVICES | \$ 10,000.00 INCREASE |
|-----|------------------|----------------|-----------------------|

4/12/2022 APPROVED:



Tiffany Zindel, County Administrator

Resolution

Number 22-0548

Adopted Date April 12, 2022

AUTHORIZE THE COUNTY ADMINISTRATOR TO NEGOTIATE AGREEMENT TOWARD BROADBAND RELATED PROFESSIONAL SERVICES UTILIZING ARPA (AMERICAN RESCUE PLAN ACT) FUNDS

WHEREAS, the Board of County Commissioners has authorized a framework for the expenditure of American Rescue Plan Act dollars for a variety of projects throughout the County; and

WHEREAS, the Board of County Commissioners is desirous of providing funds for the increase of broadband capabilities throughout the County; and

WHEREAS, the Board of County Commissioners is desirous of utilizing the services of a professional consultant to assist in drafting, publishing, and reviewing submissions of an RFP to service providers; and

WHEREAS, Morley, a firm of architects, engineers, and surveyors, has submitted a proposal to assist with the above referenced services (attached as Exhibit A); and

NOW THEREFORE BE IT RESOLVED, to authorize the County Administrator or Deputy County Administrator to negotiate and execute a contract with Morley for broadband related professional services.

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

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

Resolution adopted this 12th day of April 2022.

BOARD OF COUNTY COMMISSIONERS



Tina Osborne, Clerk

cc: Economic Development (file)
Commissioners' file
Telecom (FILE)
c/a—Morley



» 812.464.9585 office 812.464.2514 Fax
» 4800 Rosebud Ln., Newburgh, IN 47630
» morleycorp.com

March 29, 2022

Board of Commissioners of Warren County, Ohio
Attn: Matthew Schnipke
406 Justice Drive
Lebanon, Ohio
Sent via email: matthew.schnipke@co.warren.oh.us

**Re: Professional Services
Preparation of Broadband Request for Proposals
Morley PR21.0.428**

Morley is pleased to provide professional services relating to the above referenced project as outlined in the scope of work identified below.

Request for Proposal

Due Diligence

1. Perform a high-level desktop analysis of current broadband availability throughout Warren County using publicly available county, state, and federal data and mapping.
2. Meet virtually with County assigned personnel to discuss the goals and objectives of the Request for Proposals (RFP) to internet service providers (ISPs). The County shall assist in answering key and relevant questions provided by Morley.

Request for Proposal Publication

1. Prepare a draft RFP document for County personnel and legal review. The RFP shall be drafted in the context of using American Rescue Plan Act (ARPA) funding as the sole or primary funding source for the broadband project. The RFP shall fundamentally target the deployment of fiber broadband, and not encourage non-wireline solutions.
2. Incorporate ARPA rules, guidance, and eligibility requirements into the RFP so that proposals shall be eligible for funding through ARPA.
3. Meet virtually with County personnel to review all aspects of the draft RFP.
4. Prepare the final RFP to receive applicant responses to deploy a network for high-speed broadband internet, including public notice, supporting documentation, exhibits, mapping, etc.
5. Manage the entire RFP process, including publishing, receiving and answering questions, and conducting a virtual pre-bid meeting.



Proposal Scoring and Analysis

1. Review and score applicant proposals in accordance with the objectives and scoring criteria of the RFP.
2. Meet virtually and coordinate with County personnel to review all proposals and form a recommendation.
3. Prepare a formal recommendation for the County to enter into a contract with an awarded service provider (the County is not required to make an award).
 - a. We have included one trip to Warren County to present the formal recommendation before the Board of Commissioners and to answer any pending questions.

Contract Negotiations

1. Contract negotiations are not included in this proposal because the scope of an ISP proposal is unknown. Once the County makes an award, Morley will happily provide a new proposal for services to prepare the final construction agreement and handle all negotiations with the ISP.

Any service(s) not clearly expressed herein are not included or implied as part of this proposal. All services are rendered one time only.

Compensation

Morley proposes to provide the services described above as follows:

Fixed Fee = \$18,800 + Reimbursables

In addition to the fee listed above there will also be reimbursable expenses for such items as digital photographs, copies, newspaper fees, filing fees, etc. Reimbursable expenses will be billed for the actual number of expendable items used.

Summary

This letter and the attached Standard Provisions of Agreement constitute the contract and conditions and services to be provided by Morley on the project described above.

If this letter is acceptable, please sign and date the Authorization below and return one copy to our office via fax at (812) 464-2514 or by email.

We look forward to working with you on this project. If you have any questions, or require additional information, please feel free to call me at (812) 464-9585.

Sincerely,



Jeramy Elrod, PE
Managing Engineer

Authorization

| | |
|----------------------------------|------------------------------|
| _____ Signature | _____ Client Company Name |
| _____ Authorized by (printed) | _____ Mailing address |
| _____ Title | _____ Email Address |
| _____ Date | _____ Phone |

Encl: Standard Provisions of Agreement
cc: Accounting, File
J:\Proposal & Promotional\2021\PR210428\OH Warren County\Follow Up
Proposal\PR21.0.428_WarrenOH_Morley.docx

Standard Provisions of Agreement

1. Unless otherwise stated, the Consultant and its sub consultants will have access to the Project site (the "Site") for activities necessary for the performance of the Services. The Consultant will take precautions to minimize damage due to these activities, but has not included in the fee the cost of restoration of any resulting damage and will not be responsible for any damage unless caused by Consultant's own gross negligence.
2. The Consultant is not responsible for delay, nor shall Consultant be responsible for damages or be in default or deemed to be in default by reason of strikes, lockouts, accident or acts of God; or the failure of Client to furnish timely information or to approve or disapprove Consultant's work promptly; or delay or faulty performance by Client, other contractors, or governmental agencies; or any other delays beyond Consultant's reasonable control.
3. Consultant shall not be liable for damage resulting from the actions or inactions of governmental agencies including, but not limited to, permit processing, environmental impact reports, dedications, general plans and amendments thereto, zoning matters, annexations or consolidations, use or conditional use permits, and building permits; and Consultant shall only act as an adviser in all governmental relations if such governmental relations are part of the Services.
4. Generally speaking, Consultant's final work product is embodied in finished Mylar or other hard copy drawings (the final hard copy Mylar or other hard copy signed or sealed and approved by Consultant are referred to herein as the "Originals"). While Consultant may be willing, on a case by case basis, to provide electronic files, Consultant is unwilling to undertake any liability in relation to such electronic files or their use, and Consultant is under no obligation to deliver any electronic files. All electronic files provided by Consultant, whether in AutoCAD format or otherwise (the "Files") are provided "AS IS", "WHERE IS" and "WITH ALL FAULTS". CONSULTANT MAKES NO WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE IN LAW OR IN FACT WITH RESPECT TO THE FILES OR ANY INFORMATION CONTAINED THEREIN. ALL WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY ARE SPECIFICALLY DISCLAIMED. Without limiting the foregoing, Client understands and agrees that differences may exist between these Files and corresponding Originals. In the event that a conflict arises between the Originals and the Files, the Originals shall govern. Client is responsible for determining if any conflict exists. Further, Consultant may change the Originals and/or the Files at any time and from time to time. After completion of the Services, Consultant is under no obligation to advise Client of any changes to the Originals or Files or send modified Files.
5. Copyright to and all other statutory and common law rights in the Originals, the Files and all drawings, specifications and other documents including, without limitation, those in electronic form (the "Instruments of Service") shall vest and remain in Consultant. Consultant reserves the right to remove all indicia of ownership and/or involvement from each File and electronic display; however, Client nonetheless agrees that copyright in and all other rights to the Files remains with Consultant. Provided that Client observes the terms of this Agreement, Client, and only to the extent necessary to complete the Project, Client's construction contractor and related professionals are granted a limited, non-exclusive, non-transferable license for the duration of the Project for Client's use in relation to the Project and for no other purpose to: (1) view and print the Instruments of Service delivered to Client by Consultant, if any; and (2) retain and use a set of the Instruments of Service. Any disclosure, copying, distribution, transfer of any of the Instruments of Service or the taking of any action in reliance on the content of the Files is strictly prohibited. Under no circumstances shall delivery of the Instruments of Service for use by Client or payment of Consultant's fees and charges or copy or reproduction charges be deemed a sale by Consultant. Further, neither the submitting of any of the Instruments of Service to regulatory officials for approval or similar purposes nor the recording of any of the Instruments of Service shall act as a derogation or waiver of any rights of Consultant granted in this paragraph. Consultant may charge a separate fee for copying Originals or providing Files or other Instruments of Service, which Client shall pay before delivery of the same.
6. Services provided pursuant to this Agreement are for the exclusive use of the Client for the Project only and may not be reused or used for any other purpose.
7. The Client acknowledges that Boundary Surveying services do not determine land ownership and the Professional Land Surveyor provides only an opinion of previously described boundary lines which may or may not be upheld by a court of law.
8. The Consultant makes no representation concerning the estimated quantities and cost figures made in connection with maps, plans, specifications, or drawings other than that all such figures are estimates only and the Consultant shall not be responsible for fluctuations in cost factors.
9. Consultant has no responsibility or liability for and does not guarantee the completion or quality of performance of contract(s) by the construction contractor or contractors, or other third parties, nor is it responsible for their acts or omissions.
10. CONSULTANT MAKES NO WARRANTY, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE AS TO ITS SERVICES OR ANY FINDINGS, RECOMMENDATIONS, SPECIFICATIONS, OR PROFESSIONAL ADVICE EXCEPT THAT THE SERVICES WILL BE PERFORMED PURSUANT TO GENERALLY ACCEPTED STANDARDS OF PRACTICE FOR SIMILAR SERVICES IN EFFECT AT THE TIME OF PERFORMANCE.
11. As used herein, the phrase "Project Documents" means all plans, specifications, surveys, studies, data and drawings relating to the Project, whether prepared by or for Client, and all other contracts and agreements relating to the Project. In the event that any changes are made in the Project Documents by the Client or persons other than the Consultant, which affects the Consultant's Services, any and all liability arising out of such changes is waived as against the Consultant and the Client assumes full responsibility for such changes. The Consultant is not responsible, and liability is waived by Client as against Consultant, for use by Client or any other person of any Project Documents not signed by Consultant.
12. The Client agrees that in accordance with generally accepted construction practices, the construction contractor and not Consultant will be required to assume sole and complete responsibility for job site conditions and the Site during the course of construction of the Project, including safety of all persons and property, and that this requirement shall be made to apply continuously and not be limited to normal working hours. Client shall procure or cause to be procured and maintained at its sole expense, for the duration of this Contract, the insurance policy described below. Client shall carry "all risk" and "builders risk" property insurance on the Project and Project in progress, on all of its buildings and facilities located on the Project Site, and on all of its buildings and facilities that are adjacent to the Project Site to the full insurable value thereof. Client shall provide Consultant a certificate of insurance evidencing this insurance coverage prior to Consultant commencing any Services on the Project Site, and Client shall name Consultant as an additional insured on this "all risk" and "builders risk" policy. This certificate of insurance shall, upon request of Consultant, provide that the insurer shall give thirty (30) days advance written notice to Consultant prior to change or cancellation of this policy. Client hereby releases Consultant and its employees and agents from any and all claims or liability for any loss of or damage to any of Client's property including, without limitation, the Project and the buildings and facilities located on or adjacent to the Project Site, by reason of casualty or any other risk or cause which is or which is required to be insured against under this Agreement, regardless of cause, including the negligence of Consultant and its employees and agents, and Client agrees that such "all risk" and "builders risk" insurance shall contain a clause whereby the insurer waives its right of subrogation against Consultant, its employees and agents. Client shall give its insurance company notice of this provision and have such insurance policy endorsed, if necessary, to prevent the invalidation of such insurance by reason of the provisions of this paragraph 12.
13. Client shall require in its contract with its construction contractor that each carefully study the Instruments of Service provided to such contractor, to compare the Instruments of Service to the Project Documents, to take field measurements of any existing conditions related to the Services and observe conditions at the Site effecting the Project; and to promptly report in writing to Consultant any errors, omissions or any inconsistencies discovered by the contractor or Client.
14. In the event that the Project Documents are changed, the Project requires any Services by Consultant not anticipated by Consultant at the time of this Agreement, and/or any governmental agency requires any Services not anticipated by Consultant at the time of this Agreement, the fees and costs in relation to additional office and/or field work shall be paid for by Client based on Consultant's hours or part thereof spent by Consultant in

- relation thereto at the Hourly Rate Schedule in effect at the time for all time so spent as extra work, even if this Agreement is on a Fixed Fee or not-to-exceed basis.
15. Changes in the Services may be agreed upon from time to time in writing by and between Client and Consultant provided that, however, that no such change in the Services shall invalidate this Agreement.
 16. In the event Client fails to pay Consultant within sixty days (60) days after the date of any invoice is rendered or breaches any other term of this Agreement, Client agrees that Consultant shall have the right to consider said default a total breach of this Agreement, and upon WRITTEN NOTICE, Consultant may declare a Termination. Client may declare a Termination for any reason or no reason upon written notice.
 17. In the event all or any portion of the Services prepared or partially prepared by the Consultant be suspended, abandoned, or terminated before completion of the Project for any reason or no reason (a "Termination"), the Client shall pay the Consultant for all fees, charges, and services performed prior to the receipt of notice of Termination, not to exceed any contract limit specified herein. NOTICE OF any Termination SHALL BE IN WRITING. In the event of a Termination: a) Client hereby completely releases and forever discharges Consultant from and against any and all past, present or future claims, demands, obligations, actions, causes of actions, damages, costs, expenses, and compensation relating to the Project and/or Services, whether based in tort, contract or any other theory or recovery which Client then has, jointly or separately, or which may hereafter accrue or otherwise be acquired, whether known or unknown, in which have arisen or may arise from or are in any way connected with any act or omission occurring prior to or upon the date of the Termination; (b) Client acknowledges and agrees that this is a release of known and unknown claims, and Client expressly waives and assumes the risk of any and all claims or damages which exist as of this date or in the future exist, but of which they do not know or expect to exist whether through ignorance, oversight, error, negligence, or otherwise, and which if known would materially effect Client's decision to enter into this Agreement; (c) Consultant shall be under no obligation to deliver any Instruments of Service or perform any additional work or Services, and Client shall have no right or license to use any Instruments of Service in its possession until Consultant is paid all sums due to Consultant from Client, whether pursuant to this Agreement or otherwise; and (d) Client shall, at its own expense, promptly undertake all commercially reasonable actions to remove Consultant from all permits and applications and obligations under permits or applications to any governmental, quasi governmental or similar body or contractor therefore in relation to the Project.
 18. All fees and other charges will be billed monthly and shall be due at the time of billing unless otherwise specified in this Agreement. All of Consultant's fees, expenses and charges shall be paid within thirty (30) days of the date of the invoice, and without setoff, reduction or deduction of any kind. A late payment finance charge will be computed at the periodic rate of 1 1/2% per month, or the highest rate allowed by law, whichever is less, which is an annual percentage rate of 18%, and will be applied to any unpaid balance commencing 30 days after the date of the original invoice.
 19. The Client shall pay all costs of collection and all costs in relation to any dispute in any way relating to this Agreement, the Services and/or the Project, including, without limitation, Consultant's internal staff costs based on Consultant's hours or part thereof spent at the Hourly Rate Schedule in effect at the time and reasonable attorneys' fees and costs. In addition, in the event that: (a) Consultant is consulted by Client in relation to any dispute or problem with the Project, (b) Consultant is subpoenaed by any person or entity in any way related to the Project, and/or (c) Consultant is made a party to any dispute or litigation in any way related to the Project, whether or not any litigation is filed (any of the foregoing in items a-c a "Dispute"), by any person or entity, then Client shall pay to Consultant on demand fees based on Consultant's hours or part thereof spent by Consultant in relation thereto at the Hourly Rate Schedule in effect at the time for all time so spent, whether for investigation, consultation, internal or external preparation, attendance at deposition or trial or answering interrogatories, requests for admission, requests for production or other discovery or informal information requests. Further, in the event that Consultant, in its sole and absolute discretion, consults with or engages legal counsel of its choosing in relation to any of the foregoing, Client shall, upon demand, reimburse Consultant any and all reasonable attorneys' fees, paralegal fees, deposition charges, appraiser's fees and investigation charges incurred by Consultant.
 20. Client hereby agrees to indemnify, defend and hold harmless Consultant, its present and future officers, directors, shareholders, employees, agents, subcontractors and affiliates from and against all claims, losses, liability, penalties, fines, demands, suits, expenses and other detriments of every nature and description (including reasonable attorneys' fees, consultant fees and remedial costs), arising out of or related to: (a) the performance of Services or the Project unless caused by Consultant's own negligence or willful misconduct; (b) use or modification of the Files; (c) any obligation of Consultant to any governmental, quasi governmental or similar body or contractor therefore in relation to the Project, including, without limitation, all liability under permits, applications and plats in relation to the Project; (d) a Dispute; and/or (e) a violation by Client of any term of this Agreement. Except in the event of a Termination, such indemnification obligation specifically excludes liability arising from the sole negligence of the Consultant, and in the event of a Termination, such indemnification obligation specifically includes, without limitation, claims arising out of or related to the negligence or alleged negligence of Consultant and/or its present and future officers, directors, shareholders, employees, agents and/or subcontractors.
 21. The Client shall pay the costs of checking and site observation fees, zoning and annexation application fees, assessment fees, soil engineering fees, soil testing fees, aerial photography fees, all fees paid to any authority for approval of the Project, and all other fees, permits bond premiums, title company charges, blueprints and reproductions, renderings, models and mock-ups, postage, handling, copy charges, and all other reasonable expenses incurred by Consultant and not specifically covered by the terms of this Agreement.
 22. Limitation of Liability: The Client agrees, to the fullest extent permitted by law, that the total aggregate liability of Consultant, its present and future officers, directors, shareholders, employees, agents and subcontractors on all claims, whether in contract, warranty, tort, strict liability, indemnity or otherwise, arising out of or in any way related to this Agreement, the Project and/or the Services, shall not exceed the greater of (a) the fees actually paid by Client and received by Consultant for the Services, (b) in the event that Client initials here _____ indicating that Client desires Consultant to purchase additional insurance in relation to the Project, and Client reimburses Consultant for such additional insurance within ten (10) days of the date of this Agreement, then up to the full amount of insurance coverage actually provided and paid by the carrier(s) for damages to Client under the policies of insurance obtained by Consultant. NOTWITHSTANDING ANY OTHER PROVISIONS HEREIN TO THE CONTRARY, IN NO EVENT SHALL CONSULTANT BE LIABLE FOR INDIRECT, CONSEQUENTIAL, SPECIAL, SPECULATIVE, PUNITIVE, OR REMOTE DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, COST OF CAPITAL OR MONEY, AND DOWN TIME COSTS.
 23. No Fiduciary Responsibility: The Client confirms that neither the Consultant nor any of the Consultant's sub consultants or subcontractors have offered any fiduciary service to the Client and no fiduciary responsibility shall be owed to the Client by the Consultant or any of the Consultant's sub consultants or subcontractors.
 24. The parties agree that this Agreement shall be interpreted under the laws of the state of Indiana. In the event of any dispute between the parties, the jurisdiction shall be Indiana and each party agrees that the Courts located in Warrick County, Indiana shall be exclusive forum for such disputes, and each party submits to the exclusive jurisdiction of such Courts and waives any claim of improper venue or inconvenient forum for such Courts. Any claims or disputes made during design, construction or post-construction between the Client and Consultant shall be submitted to non-binding mediation.
 25. There are no understandings or agreements except as herein expressly stated.
 26. All representations, warranties, covenants, releases and agreements of each of the parties to this Agreement shall survive the consummation of the transactions contemplated by this Agreement and shall not be affected by any investigation by or on behalf of the other party to this Agreement. Without limiting the foregoing, the rights and obligations under paragraphs 4-6, 10, 12, and 15- 26 shall survive the termination or expiration of this Agreement.