

AIA® Document A133™ – 2019

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

THIS DOCUMENT HAS BEEN MODIFIED FROM ITS ORIGINAL FORM

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

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

The Board of Education of the
Elida Local Schools District
4380 Sunnysdale Ave.
Elida, OH 45807

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

Peterson Construction
18817 S.R. 501 N.
Wapakonetta, OH 45895

The Construction Manager was selected by the Owner following the qualifications based selection guidelines contained in the Ohio Revised Code Sections 9.33, et. seq. to provide construction management at risk services to the Owner for the Project.

for the following Project:
(Name, location, and detailed description)

Capital Improvements Project - Elida Fieldhouse
315 Hillcrest Drive
Elida, OH 45807

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

Garmann Miller
555 Metro Place North, Suite 320
Dublin, OH

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

The Owner and Construction Manager agree as follows.

ADDITIONS AND DELETIONS:

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

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

AIA Document A201™–2017, 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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EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

ARTICLE 1 INITIAL INFORMATION

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

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project, per Section 4.1.1:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

The Owner's initial program for the Project is set forth in the Request for Qualifications and Request for Proposals issued by the Owner.

§ 1.1.2 The Project's physical characteristics:

(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

As set forth in the Request for Qualifications and Request for Proposals issued by the Owner and to be further developed in collaboration with the Architect and the Construction Manager, in the Owner's sole discretion.

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:

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

The Owner's total budget for the Project (including, but not limited to, all preconstruction costs & fees, administrative fees and permits, land acquisition and demo costs, furniture, fixture and equipment, construction costs, design fees, and Construction Manager at Risk fees) is \$2,000,000.

§ 1.1.4 The Owner's design and construction milestone dates:

.1 Design phase milestone dates, if any:

Task	Completed by CMR by
GMP Amendment Complete	June 3, 2022
New Concession Area and Locker Rooms Complete	November 23, 2022
HVAC System Procured	June 17, 2022

.2 Construction commencement date:

June 6, 2022

.3 Substantial Completion date or dates:

June 1, 2023

.4 Other milestone dates:

§ 1.1.5 The Owner's requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:
(Identify any requirements for fast-track scheduling or phased construction.)

See Section 3.1.5

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

Where possible, the Construction Manager shall provide the Owner with various design and material options and advise on the added or reduced costs and savings for operation costs and over the life of the Project.

§ 1.1.6.1 [Not Used.]

§ 1.1.7 Other Project information:
(Identify special characteristics or needs of the Project not provided elsewhere.)

N/A

§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2:
(List name, address, and other contact information.)

Joel Parker, Treasurer

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:
(List name, address and other contact information.)

N/A

§ 1.1.10 The Owner shall retain the following consultants and contractors:

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

.1 Geotechnical Engineer:

To be retained by the Architect

.2 Civil Engineer:

To be retained by the Architect

.3 Other, if any:

(List any other consultants retained by the Owner, such as a Project or Program Manager.)

None

§ 1.1.11 The Architect's representative:

(List name, address, and other contact information.)

Brian Wolf
Garmann Miller
555 Metro Place North
Suite 320
Dublin, OH 43017

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:

(List name, address, and other contact information.)

Glen Renner, Vice President
Peterson Construction
PO Box 2058
Wapakoneta, Ohio 45895

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:

(List any Owner-specific requirements to be included in the staffing plan.)

The Preconstruction team assigned by the Construction Manager shall be the same team identified in Construction Manager's proposal unless prior written authorization is provided by the Owner.

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:

(List any Owner-specific requirements for subcontractor procurement.)

The Construction Manager shall not receive any bids for the Work until after submission of its GMP Proposal. All Subcontractors shall be procured by Construction Manager in accordance with this Agreement, the Ohio Revised Code, and the Ohio Administrative Code.

§ 1.1.15 Other Initial Information on which this Agreement is based:

The Construction Manager's Proposal, dated April 15, 2022, incorporated by reference to the extent it is not inconsistent with this Agreement

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Project schedule, the Construction Manager's services, and if agreed-upon by the Owner, the Construction Manager's compensation. The Owner may adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 Neither the Owner's nor the Construction Manager's representative shall be changed without ten days' prior notice to the other party. However, Construction Manager's representative(s) identified herein and Key Personnel identified in its Proposal may be replaced only with the prior written approval of the Owner

§ 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 GENERAL PROVISIONS

§ 2.1 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 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Agreement represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. In the event of any inconsistency, the provisions of this Agreement shall control over any proposal, purchase order or separate terms and conditions. In the event of inconsistencies, conflicts, or ambiguities within, between, or among the Contract Documents or between the Contract Documents and applicable standards, codes, or ordinances 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. An enumeration of the Contract Documents, other than a Modification, appears in this Section 2.1 and Article 15

§ 2.2 Relationship of the Parties

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

§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™-2017, General Conditions of the Contract for Construction, as modified for the Project, (hereafter, "A201-2017") shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201-2017 and all other Contract Documents, shall mean the Construction Manager.

§ 2.3.2 For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2017, which document is incorporated herein by reference. The term "Contractor" as used in A201–2017 and all other Contract Documents, shall mean the Construction Manager.

§ 2.3.3 All references to the A201–2017 in the Contract Documents including, but not limited to, references to "AIA Document A201–2017" and "AIA Document A201–2017, General Conditions of the Contract for Construction" shall mean the A201–2017 as modified for the Project.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201–2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Construction Manager shall provide all construction management services necessary for the proper management and construction of the Project. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project. The team assigned by the Construction Manager during the Construction Phase to work cooperatively with the Owner and Design Professional shall be the same team identified in Construction Manager's proposal and assigned to the Project during the Preconstruction Phase.

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager will perform such duties, including but not limited to cost estimating, budgeting, value engineering, and scheduling, consistent with the Owner's program, schedule, and current budget. If, at any time, the Construction Manager's estimates of the Cost of the Work exceed the latest approved Project budget, the Construction Manager shall inform the Owner and Architect in writing and make recommendations for corrective action. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 3.1.2 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.

§ 3.1.3 Consultation

§ 3.1.3.1 The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.3.2 The Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; 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. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

§ 3.1.3.3 If it is anticipated that BIM will be used on the Project, the Construction Manager will meet with the Architect and the Owner to determine the Construction Manager's deliverables and the Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project including the process and software for the development, use, transmission, and exchange of digital data.

§ 3.1.4 Project Schedule

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

§ 3.1.5 Phased Construction

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

§ 3.1.6 Cost Estimates

§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the Architect's review and the Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at each design phase and all other appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work with increasing detail and refinement in a format acceptable to the Owner and include all known Project elements and a detailed listing of any materially incomplete elements and the intended scope for such incomplete elements, upon which the estimate is based. The Construction Manager shall include in the estimate and identify in such detailed listing those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Guaranteed Maximum Price Proposal is required. The estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action. If required by the Owner, the Construction Manager, the Architect, and the Owner shall meet to reconcile any questions, discrepancies, or disagreements relating to the cost estimates.

§ 3.1.6.3 If the Architect is providing cost estimating services, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to conform the cost estimates.

§ 3.1.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make written recommendations regarding constructability and schedules, for the Architect's review and the Owner's approval.

§ 3.1.8 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding equipment, materials, services, and temporary Project facilities.

§ 3.1.9 The Construction Manager shall provide a staffing plan for Preconstruction Phase services, consistent with the requirements of this Agreement, the Ohio Revised Code, and the Ohio Administrative Code for the Owner's review and approval.

§ 3.1.10 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall comply with such Sustainable Objective in performing its Preconstruction Phase responsibilities.

§ 3.1.11 Subcontractors and Suppliers

§ 3.1.11.1 If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval.

§ 3.1.11.2 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.

§ 3.1.11.2.1 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.

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

§ 3.1.11.2.3 To develop prospective bidder interest in the Project, including specifically those prospective bidders (if any) the Owner asks the Construction Manager to consider, the Construction Manager may place a notice on (1) the State Public Notice Website created under ORC 125.182, (2) the official website of the Owner, (3) other websites such as appropriate trade association websites, news media, or other public media websites, or (4) any combination of the foregoing.

§ 3.1.11.2.4 Construction Manager will evaluate the qualifications of each prospective subcontractor that timely submits its qualifications and notify each of them whether they are qualified. Construction Manager will submit the names and qualifications of all of the qualified prospective subcontractors to Owner. Construction Manager may submit the names of fewer than three (3) qualified prospective subcontractors if Construction Manager submits satisfactory evidence to Owner that fewer than three (3) qualified prospective subcontractors are available. If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 7.8, 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, in writing and according to Section 7.8.2.

§ 3.1.11.2.5 Owner will review the list of prospective subcontractors submitted by Construction Manager and may rely on Construction Manager's representations to determine that the prospective subcontractors meet the prequalification criteria. Owner may eliminate any prospective subcontractor it determines is not qualified and then notify Construction Manager of Owner's decision. Construction Manager will promptly notify a prospective subcontractor in writing of Owner's decision to eliminate the prospective subcontractor.

§ 3.1.11.2.6 If Construction Manager receives a written objection from an eliminated prospective subcontractor within five (5) days after the eliminated subcontractor receives notice of Owner's decision, Construction Manager will promptly deliver the written objection to Owner. Owner may respond to the objection through Construction Manager.

§ 3.1.11.2.7 The solicitation and selection of the Subcontractors shall be conducted under an open-book pricing method consistent with Section 14.5.11 of this Agreement. Subject to the consent of the Owner, the Construction Manager is not required to award a Subcontract to the low bidder.

§ 3.1.11.2.8 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.

§ 3.1.11.2.9 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:

§ 3.1.11.2.9.1 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.

§ 3.1.11.2.9.2 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.

§ 3.1.11.2.9.3 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.

§ 3.1.11.2.9.4 Insurance: The subcontract form shall contain a provision requiring the Subcontractor to maintain insurance in accordance with the Contract Documents.

§ 3.1.11.2.9.5 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.

§ 3.1.11.2.9.6 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.

§ 3.1.11.2.9.7 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.

§ 3.1.11.2.9.8 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.

§ 3.1.11.2.9.9 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.

§ 3.1.11.2.9.10 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.

§ 3.1.11.2.9.11 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.

§ 3.1.11.2.10 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.

§ 3.1.11.2.11 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.

§ 3.1.11.2.12 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.

§ 3.1.11.2.13 For any Work that the Construction Manager proposes to self-perform, the Construction Manager must receive prior written approval from the Owner and must 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.

§ 3.1.11.3 The processes described in Article 9 shall also apply.

§ 3.1.12 Procurement

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

§ 3.1.13 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.

§ 3.1.14 Other Preconstruction Services

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document (none if none are listed)

(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)

As set forth in the Contract Documents

§ 3.1.15 Communication with Local and Government Officials

Construction Manager will assist Owner and Architect in communications with and addressing local and government officials with jurisdiction over the Project. Owner acknowledges that Construction Manager will be interacting with local and governmental officials throughout the design and construction of the Project.

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 Upon execution of this Agreement, Construction Manager shall begin the Preconstruction Phase services on the Project, as provided in the Contract Documents, including Section 3.1 herein. Within **fourteen (14)** calendar days of the Architect issuing **100 % (one hundred percent)** complete drawings for construction, and before receiving any bids from subcontractors, 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, if applicable. Submission by the Construction Manager of a GMP Proposal that attempts to modify or alter the Construction Manager's 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 executed by the parties for the Project, as a condition or assumption of the GMP Proposal shall be a material breach of this Agreement by the Construction Manager.

§ 3.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order. The GMP Proposal shall include a detailed listing of any materially incomplete design elements that may affect the GMP. Failure to identify any such element on the detailed listing shall preclude the Construction Manager from entitlement to any adjustment to the GMP based on any such element.

§ 3.2.3 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 3.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3** A statement of the proposed Guaranteed Maximum Price, in accordance with the Owner's RFP and in the form attached to the Owner's RFP or other form acceptable to the Owner, including the Cost of the Work, Construction Fee, At-Risk Fee, General Conditions, and Contingency. Construction Manager shall also provide a breakdown of the estimated Cost of the Work organized by trade categories or systems and list of any allowances included in the Cost of the Work;
- .4** The Construction Schedule, including the Date of Substantial Completion and Date of Final Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5** [Not Used];
- .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.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order, subject to Section 6.2.1.3.

§ 3.2.5 At the Owner's request, the Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both. If necessary, any adjustments to the GMP, qualifications, or assumptions shall be documented in writing and approved in writing by Owner.

§ 3.2.6 Following Owner's acceptance of a Guaranteed Maximum Price proposal, in Owner's sole discretion, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, using the form 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 3.2.1 of this Agreement, if the parties cannot agree on a GMP for the Project, the Owner may terminate the Contract for convenience, the Owner may elect to change the project delivery method, and the Owner may use the Construction Manager in an agency or advisory role, in the Owner's sole discretion. In such scenario, the Construction Manager's Fee for those services will be the Construction Manager Fee less the amount of which designated as the At-Risk Fee. Owner is not obligated to offer or to enter into an agreement with Construction Manager in an agency or advisory capacity for the Project.

§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs.

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

§ 3.2.9 The Construction Manager agrees that it will not be reimbursed for any sales, consumer, commercial activity, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed. The Owner is exempt from payment of Ohio sales and use tax and will provide the Contractor with a completed Construction Contract Tax Exemption Certificate for the purchase of materials and equipment to be incorporated into the Project.

§ 3.2.10 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.

§ 3.3 Construction Phase

§ 3.3.1 General

§ 3.3.1.1 For purposes of Section 8.1.2 of A201-2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 3.3.1.2 The Construction Phase shall commence upon the Owner's execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. The written agreement shall set forth a description of the Work to be performed by the Construction Manager. Any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment shall be as set forth in the Contract Documents.

§ 3.3.2 Administration

§ 3.3.2.1 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 of the meetings to the Owner and Architect for their review.

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work (if not included in the GMP Amendment) and a submittal schedule in accordance with Section 3.10 of A201-2017.

§ 3.3.2.3 Monthly Report

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect in a format acceptable to Owner and Architect, showing percentages of completion and other information required by the Owner.

§ 3.3.2.4 Daily Logs

The Construction Manager shall keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 3.3.2.5 Cost Control

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in a format acceptable to Owner and Architect, in accordance with Section 3.3.2.3 above.

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

§ 4.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

(Paragraphs deleted)

§ 4.1.2[Not Used.]

§ 4.1.3[Not Used.]

§ 4.1.4 **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.

§ 4.1.4.1 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.

§ 4.1.4.2 The Architect 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.

§ 4.1.4.3 The Architect shall furnish services of geotechnical engineers, which may include but not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations. The Construction Manager and Architect shall collaborate on the number and locations of such tests and borings. The documents produced by the geotechnical engineers are not Contract Documents. Construction Manager may not rely upon or make any Claim against the Owner or Design Professional, or any of their agents or employees, with respect to any of the following:

- .1 the completeness of such reports or tests for Construction Manager's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed and safety precautions and programs incident thereto; or
- .2 any interpretation by the Construction Manager of or conclusion drawn from any technical data or any such other data, interpretations, opinions, or information. For example, all interpolations and extrapolations of data performed by the Construction Manager to estimate locations or quantities of subsurface strata are independent factual assumptions, which Owner does not warrant.

§ 4.1.5 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.

§ 4.1.6 [Not Used.]

§ 4.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 4.2.1 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.

§ 4.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in the contract between Owner and Architect, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager upon written request, with a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

§ 5.1.1 For the Construction Manager's Preconstruction Phase services described in the Contract Documents including but not limited to Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:
(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

The Construction Manager's Preconstruction Fee for the Project is \$ 2,060.00. The Preconstruction Fee shall not be included in the GMP to be provided by the Construction Manager in the GMP Amendment. 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.

§ 5.1.2 If Preconstruction Phase services will be billed on a time and materials basis, the hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Not Applicable

Individual or Position	Rate
N/A	N/A

§ 5.1.2.1 The Preconstruction Fee and/or hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary

benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.

§ 5.1.3 The Preconstruction Stage services for all components of the Project are anticipated to occur between the date of this Agreement and June 6, 2022, subject to completion of the design by the Architect and approved by Owner.

§ 5.1.4 The Preconstruction compensation 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.

§ 5.1.5 **Additional Services.** Any 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.

§ 5.2 Payments

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

§ 5.2.2 Payments are due and payable as set forth in the Contract Documents. Amounts due and unpaid in accordance with this Agreement shall bear interest at the rate entered below.

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

0 % (zero percent)

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment and subject to the GMP. 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 and General Conditions) and the amount of Contingency used, as each is defined in the Contract Documents, exclusive of the Preconstruction Fee.

§ 6.1.2 The Construction Manager's GMP Proposal shall include the following pricing, which shall not exceed the following amounts:

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

- (1) Construction Fee of 1.45 % of the Cost of the Work (which includes an At-Risk Fee of .5 % of the Cost of the Work); and
- (2) General Conditions of \$ 14,750.00 per month which includes all compensation for the CMR's bond costs, insurance costs, and SDI costs, if any; and
- (3) Contingency of 1.5 % of the Cost of the Work.

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

The Construction Fee shall be applied in accordance with Article 7 of the A201-2017.

§ 6.1.4 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 the A201-2017.

(Paragraph deleted)

§ 6.1.5 Rental costs of machinery and equipment, exclusive of hand tools, minor equipment, simple scaffolds, etc., whether rented from the Construction Manager or others; charges for certain non-owned heavy or specialized equipment may be invoiced at up to 100% of the documented rental cost. Downtime due to repairs, maintenance and weather delays shall not be allowed. The Construction Manager shall submit copies of actual paid invoices to substantiate rental costs; Charges for certain Construction Manager-owned, heavy or specialized equipment may be invoiced at up to 100% of the cost listed by the current edition of the Associated Equipment Dealers Green Book rental rates and specifications for construction equipment. No recovery will be allowed for hand tools, minor equipment, 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.

§ 6.1.6 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

If the Construction Manager does not have its Work on the Project substantially complete by the Date for Substantial Completion, contained in the applicable GMP Amendment, 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 not intended to compensate the Owner for any damages the Owner incurs on account of any third-party claims attributable to the Construction Manager that are brought by others including separate consultants and separate contractors. Nothing in this section shall preclude the Owner from recovering its actual damages from the Construction Manager for third-party claims or for damages not associated with delay.

GMP	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 contained in the applicable GMP Amendment, the Construction Manager shall pay the Owner liquidated damages in the per diem amount stated below

GMP	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

§ 6.1.7 Other:

(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)

§ 6.1.7.1 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.

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

§ 6.2 Guaranteed Maximum Price

The GMP shall be established upon execution of the Guaranteed Maximum Price Amendment (**Exhibit A**). The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order 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. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

§ 6.2.1 The GMP includes the Construction 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 14.5.11 of this Agreement.

§ 6.2.1.1 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 Construction Fee includes the At-Risk Fee which 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. Such At-Risk Fee must be consistent with the At-Risk Fee set forth in Construction Manager's proposal. Construction Manager shall not be entitled to any additional At-Risk Fee beyond the At-Risk Fee included in the Guaranteed Maximum Price. The amount of the Construction Fee, including the At-Risk Fee, for the Project is identified in the GMP Amendment (**Exhibit A**).

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

- Construction Manager's home office management personnel, (e.g., President, General Manager, Operations Manager, Business Development Manager, Corporate Counsel, Health and Safety Director, Procurement Manager, Finance and Accounting Manager, Quality Assurance Manager, Estimators);
- Project Management personnel (e.g., Project Executive, Project Manager, Deputy Project Manager, Construction Manager, Deputy Construction Manager, Resident Engineer, Safety Officer, Project Controls staff, superintendents, Quality Manager, contract administration staff, procurement staff, general clerical and administrative support staff, legal staff, estimators, finance and accounting staff);
- progress scheduling;
- compliance notices;
- contract and subcontract administration;
- trash removal for construction office;
- project record keeping, documentation, document control, and status reporting;
- Ohio Utilities Protection Services/Dig Safe program notice and coordination;
- Project health and safety program including but not limited to equipment, supplies, training, record keeping, plan development, incentives, audits and drills;
- taxes, subject to Section 3.2.9 of this Agreement;
- staff expense allowances;
- personnel and site vehicle rental/mileage, fuel and maintenance;
- relocation and temporary lodging and per diem expense;
- ice and water;
- drug testing;
- communications equipment;
- field/project offices including furnishings, office equipment, utilities, heat, office supplies, telephones, facsimile machines, internet connections, computers/networks/Cadd machinery, janitorial, mail and shipping, security systems, temporary fencing and barricades, office mobilization and demobilization;
- badging and site security;

- photography/progress photos;
- tool trailer and hand tools;
- project signage;
- portable toilets, lockers and washrooms;
- temporary power;
- business licenses;
- patent fees and royalties;
- training and recruiting;
- premiums for that portion of insurance and bonds required by the Contract Documents that can be attributed to this Agreement, (self-insurance for either full or partial amounts of the coverages required by the Contract Documents may be included, with the Owner's prior approval) – the premium charges will be set forth as a line item in the Itemized General Conditions attached hereto as **Exhibit C**.

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

§ 6.2.1.3 Contingency. The "Contingency" is an amount set aside by the Construction Manager to pay for unexpected events, as set forth in this Section. 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, subject to Owner's prior written approval: (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; (iii) costs arising from default of a Subcontractor that are unrecoverable from such Subcontractor, its surety, or from an insurance carrier; and (iv) any costs incurred to accelerate the Work as a result of the delay outside the control of either party that the Construction Manager could not have foreseen with reasonable diligence at the time the GMP was accepted

§ 6.2.1.3.1 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 Conditions items, except as specifically set forth in this Section 6.2.1.3.1, 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 in a form acceptable to Owner. 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.

- a. 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.
- b. 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.
- c. Any unused portion of the Contingency upon Final Payment shall be reallocated to the Savings and added to the remaining balance of the Savings.
- d. The use of the Contingency by the Construction Manager is subject to open book pricing in accordance with Section 14.5.11 of this Agreement.

§ 6.3 Changes in the Work

§ 6.3.1 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 Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 6.3.1.1 The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.3 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as they refer to "cost" and "fee," and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.

§ 6.3.5 [Not Used.]

§ 6.3.6 Allowances

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

§ 6.3.6.2 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.

§ 6.3.6.3 The Construction Manager's Fee and costs for unloading and handling on the Site, labor, installation costs, and other expenses contemplated for the Allowances shall be included in the stated Allowance amounts.

§ 6.3.6.4 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. 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.

§ 6.3.7 Unit Prices.

§ 6.3.7.1 The Contract Sum may include the Unit Price Work identified in the GMP Amendment.

§ 6.3.7.2 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.

§ 6.3.7.3 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.

§ 6.3.7.4 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.

§ 6.3.7.5 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.

§ 6.3.7.6 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 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed Under the GMP

§ 7.1.1 Subject to the GMP, the term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work for the Construction Phase. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7. The amounts included in Article 7 are subject to open book pricing in accordance with Section 14.5.11 of this Agreement.

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost. The Construction Manager shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

§ 7.1.3 Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the Owner.

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

§ 7.2.1 Wages or salaries 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.

§ 7.2.2 [Not Used.]

§ 7.2.2.1 Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:

(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)

None

§ 7.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or while traveling, 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.

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining 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 7.2.1 through 7.2.3.

§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

§ 7.3 Subcontract Costs

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

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

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

§ 7.4.2 Actual costs, without mark-up of materials described in the preceding Section 7.4.1 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.

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

§ 7.5.1 To the extent not included in the Construction Manager's General Conditions, actual costs, without mark-up of transportation, storage, installation, dismantling, maintenance, 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 included in the General Conditions costs.

§ 7.5.2 Subject to Section 6.1.5, 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 the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

§ 7.5.3 Actual costs, without mark-up of removal of debris from the site of the Work and its proper and legal disposal.

§ 7.5.4 [Not Used.]

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

§ 7.6 Miscellaneous Costs

§ 7.6.1 [Not Used.]

§ 7.6.1.1 [Not Used.]

§ 7.6.1.2 [Not Used.]

§ 7.6.2 [Not Used.]

§ 7.6.3 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 obtain and pay for. The Construction Manager shall include an allowance in the Cost of the Work in the GMP for all such permits and inspections, including but not limited to, special inspections for soil compaction, concrete, and structural steel.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201-2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 [Not Used.]

(Paragraphs deleted)

§ 7.6.5.1 [Not Used.]

§ 7.6.6 [Not Used.]

§ 7.6.7 Costs of delivery charges.

(Paragraphs deleted)

§ 7.6.8[Not Used.]

§ 7.6.9[Not Used.]

§ 7.6.10[Not Used.]

§ 7.6.11[Not Used.]

§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other actual costs, without mark-up, incurred in the performance of the Work if, and to the extent, with the Owner's prior approval in writing.

§ 7.7.2 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 Article 10 of AIA Document A201–2017.

§ 7.7.3 If approved in advance and in writing by the Owner, actual costs, without mark-up, of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, 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.

§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9.

§ 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; or (4) any person, or any member of the immediate family of any person, who 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.

§ 7.8.2 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 in writing, 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 Article 9. If the Owner fails to authorize the transaction in writing, 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 Article 9.

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

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

- .1 Construction Manager Fee, which includes salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 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, unless the Owner has provided prior approval;
- .3 Expenses of the Construction Manager's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;

- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, 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;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;
- .9 Costs for services incurred during the Preconstruction Phase and the Preconstruction Fee;
- .10 Costs which are included in the Construction Manager's General Conditions;
- .11 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
- .12 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;
- .13 All taxes, including those identified in Section 3.2.9 of this Agreement;
- .14 Consultants to the Construction Manager not previously approved in writing by the Owner;
- .15 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; and
- .16 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.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 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 the amount to be paid, less such discount, 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.

§ 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 Those portions of the Work that the Construction Manager does not perform with the Construction Manager's own personnel pursuant to Section 3.1.11.2.13 shall be performed under subcontracts or other appropriate agreements with the Construction Manager procured pursuant to Section 3.1.11 and Ohio law. 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, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents and Ohio law. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager recommends to accept. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 9.1.1 When a specific subcontractor or supplier (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 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 of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on

the basis of cost plus a fee, 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 Article 10.

ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed records and accounts related to the GMP, including but not limited to, the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. Owner's accountants shall be afforded access to review and audit the Construction Manager's records as set forth in the AIA Document A201-2017, General Conditions of the Contract for Construction.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

§ 11.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract Documents.

§ 11.1.2 The period covered by each Application for Payment shall be as follows:

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

§ 11.1.3 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.)

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments 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, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee. All invoices and back-up for expenses included in an Application for Payment must be submitted with the Application for Payment.

§ 11.1.5 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: (1) the various portions of the Work; and (2) the Construction Manager's Fee. The Contingency accounting and General Conditions shall each be shown separately.

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect or Owner may require. The schedule of values, unless objected to by the Architect or Owner, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 11.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, it must be based upon Owner's prior written authorization per this Agreement and the Construction Manager shall submit supporting documentation to the Architect.

§ 11.1.6 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 and for which the

Construction Manager has made payment or intends to make 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.

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

§ 11.1.7.1 The amount of each progress payment shall first include:

- .1 That portion of the Cost of the Work properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Cost of the Work allocated to that portion of the Work in the most recent schedule of values;
- .2 That portion of the Cost of the Work properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified;
- .4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 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 included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .5 That portion of General Conditions earned since previous Applications for Payment.

§ 11.1.7.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld or nullified a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

§ 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

For the first 50% of the Work as measured by overall Cost of the Work, subtract retainage of eight percent (8%) of the labor portion of the Cost of the Work (including the Work of Subcontractors and that portion of the Work that the Construction Manager self-performs) and subtract retainage of 8% for the materials and equipment set forth in paragraph 11.1.7.1.2 above in accordance with the Ohio Revised Code. There will be no additional retainage on labor after the first 50% of the Work is performed;

§ 11.1.8.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

As set forth in 11.1.8.1

§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:

(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

As set forth in 11.1.8.1

Init.

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)

Such payment is subject to Owner's right to audit in accordance with the Contract Documents, completion of such audit, and all other rights and requirements under the Contract Documents. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents. The Owner is entitled to withhold 200% of the value of such incomplete or nonconforming Work.

§ 11.1.9 If final completion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the Construction Manager any additional amounts in accordance with Article 15 of AIA Document A201–2017.

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

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

§ 11.1.12 In taking action on the Construction Manager's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 11.2 Final Payment

§ 11.2.1 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 Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.

§ 11.2.2 Within 30 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner may conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after the final audit report is received by the Owner, submit a written report based upon the auditors' findings to the Architect.

§ 11.2.2.2 [Not Used.]

§ 11.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is 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 Article 15 of AIA Document A201–2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the

Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 11.2.3 Subject to its right to withhold payment, and following the review and final report of its auditors, the Owner's final payment to the Construction Manager shall be made no later than **30 days** after the issuance of the Architect's final Certificate for Payment, or as follows:

N/A

(Paragraph deleted)

§ 11.2.4[Not Used.]

§ 11.2.5 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 200% of the estimated cost to complete the Work.

§ 11.2.6 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.

§ 11.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, zero percent.

(Insert rate of interest agreed upon, if any.)

0 % zero percent

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 12.1.2 of this Agreement shall not apply.

§ 12.1.2 The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

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

§ 12.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

☐ Arbitration pursuant to Article 15 of AIA Document A201–2017

☒ Litigation in a court of competent jurisdiction in the county in which the Project is located. The parties expressly waive the right to remove any litigation to federal court.

☐ Other: *(Specify)*

If the Owner and Construction Manager do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in the county in which the Project is located.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment

§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner, in its sole discretion, may terminate this Agreement upon not less than seven days' written notice to the Construction Manager.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for the portion of any Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceed the Preconstruction compensation set forth in Section 5.1.

§ 13.1.3 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 Article 14 of A201–2017.

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for the portion of any Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the Preconstruction compensation set forth in Section 5.1.

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 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 13.1.4:

- .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 6.1 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.

§ 13.1.6 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 that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. 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 13, 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.

§ 13.1.6.1 If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination, but only for Work actually performed under said subcontract or purchase order on the Project or for restocking fees or other non-refundable costs incurred by Construction Manager to its subcontractors or suppliers in reliance on Owner approval.

§ 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment

§ 13.2.1 Termination

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017.

§ 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work actually incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work completed at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

§ 13.2.2.2 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 that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. 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 13, 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.

§ 13.2.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Construction Manager a termination fee as follows:

(Insert the amount of or method for determining the fee, if any, payable to the Construction Manager following a termination for the Owner's convenience.)

None.

§ 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Terms in this Agreement shall have the same meaning as those in A201–2017. Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as modified for the Project or amended in writing in accordance with the Contract Documents.

§ 14.2 Successors and Assigns

§ 14.2.1 The Construction Manager binds itself, its partners, successors, assigns, agents, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 14.2.2 The Owner may, without consent of the Construction Manager, 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 Construction Manager shall execute all consents reasonably required to facilitate the assignment.

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase

The Construction Manager shall maintain the insurance set forth in Article 11 of the A201–2017 for all phases of the Project, including, but not limited to, for the duration of the Preconstruction Services performed under this Agreement.

§ 14.3.1.1 [Not Used.]
§ 14.3.1.2 [Not Used.]
§ 14.3.1.3 [Not Used.]
§ 14.3.1.4 [Not Used.]
§ 14.3.1.5 [Not Used.]

§ 14.3.1.6 Other Insurance

(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)

Coverage	Limits
[Not Used.]	[Not Used.]

§ 14.3.1.7 [Not Used.]

§ 14.3.1.8 [Not Used.]

§ 14.3.1.9 The Construction Manager shall provide a payment bond and performance bond in the forms attached hereto as **Exhibit B**, as required by Ohio law. Upon execution of the GMP Amendment, or any Modification to the GMP Amendment, Construction Manager shall provide replacement payment and performance bonds in the full amount of the GMP and deliver written consent from its surety in accordance with OAC 153:1-4-02(B). The penal sum of the bond is at all times, subject to ORC § 153.11. If the Construction Manager elects to obtain a separate payment and performance bond from any Subcontractor or Sub-Subcontractor, in addition to the Construction Manager's bond, such bond(s) shall be in the forms specified in **Exhibit B** and the Construction Manager shall ensure that the Owner is listed as a co-obligee on all performance bonds and payment bonds obtained from Subcontractors and Sub-Subcontractors on the Project.

§ 14.3.2 Construction Phase

For all phases of the Project, including, but not limited to, after execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall purchase and maintain insurance as set forth in Article 11 of the A201-2017, and elsewhere in the Contract Documents.

§ 14.3.2.1 The Construction Manager shall provide bonds as set forth in Section 14.3.1.9, and elsewhere in the Contract Documents.

§ 14.4 Notice in electronic format, pursuant to Article 1 of AIA Document A201-2017, may be given as set forth below: *(If other than in accordance with AIA Document E203-2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*

Notices, requests, or demands by either party shall be in writing, unless otherwise expressly authorized, and shall be personally served; forwarded by expedited messenger service; sent by facsimile transmission; sent by electronic mail with delivery confirmation; or be given by registered or certified mail, return receipt requested, postage prepaid, and addressed to the party at the address set forth at the beginning of this Agreement. Any party may change its address by giving written notice in accordance with this Section. All notices, requests, and demands shall be deemed received upon receipt in the case of personal delivery or delivery by expedited messenger service, including leaving the notice at the address provided herein during normal business hours; upon the expiration of forty-eight (48) hours from the time of deposit in the United States mail; or, in the case of a notice given by electronic mail or facsimile transmission, upon the expiration of 24 hours after the transmission is sent.

§ 14.5 Other provisions:

§ 14.5.1 **Modifications.** No modification or waiver of any of the terms of this Agreement or of any other Contract Document 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 failure or repeated failure to insist upon compliance with any term of the Contract Documents, constitute the waiver or modification of such term. 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 section.

§ 14.5.2 Construction. The parties acknowledge that each party has reviewed this Agreement and the other Contract Documents and voluntarily entered into this Agreement. The normal rule of construction to the effect that any ambiguities are to be resolved against the party preparing the document will not be used in the interpretation of this Agreement, the other Contract Documents, or any amendments or exhibit to it or them.

§ 14.5.3 Approvals. Except as expressly provided herein, the approvals and determinations of the Owner and Architect will be subject to the sole discretion of the respective party and be valid and binding on the Construction Manager, provided only that they be reasonable and made in good faith, i.e., honestly. If the Contractor challenges any such approval or determination, the Contractor will have the burden of proving that it was not made in good faith by clear and convincing evidence.

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

§ 14.5.5 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 may rely on such agreements, negotiations, communications, representations, or understandings

§ 14.5.6 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.

§ 14.5.7 See Section 6.1.6 of this Agreement for liquidated damages requirements.

§ 14.5.8 Conflict of Interest. Except with Owner's prior knowledge and written consent, Construction Manager will not engage in any activity or accept any employment, interest, or contribution that would reasonably appear to compromise Construction Manager's professional judgment with respect to the Project.

§ 14.5.9 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.

§ 14.5.10 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. If this representation and warranty is found to be false, the Contract is void, and Construction Manager will immediately repay Owner any funds paid to Construction Manager under this Contract.

§ 14.5.11 Open Book Pricing. Construction Manager acknowledges that this Agreement is to be administered on an "open book" arrangement relative to Costs of the Work. Construction Manager shall keep full and detailed accounts and exercise

such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. The Owner and the Owner's accountants shall be afforded access to review and audit the Construction Manager's records as set forth in the AIA Document A201-2017, General Conditions of the Contract for Construction.

§ 14.5.12 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 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

§ 14.5.13 Representations.

- .1 Construction Manager hereby certifies that neither Construction Manager nor any of its partners, officers, directors, shareholders, nor the spouses of any such persons, have made contributions in excess of the imitations specified in ORC Section 3517.13.
- .2 Construction Manager, by signing this Agreement, certifies that it is currently in compliance with and will continue to adhere to, the requirements of the Ohio ethics laws and conflicts of interest laws and will take no action inconsistent with those laws.

ARTICLE 15 SCOPE OF THE AGREEMENT

§ 15.1 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.

§ 15.2 The following documents comprise the Agreement:

- .1 AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as modified
- .2 AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- .3
- .4 AIA Document A201™-2017, General Conditions of the Contract for Construction, as modified
- .5 The RFQ issued by the Owner, dated March 16, 2022 and the RFP issued by the Owner, dated April 15, 2022, incorporated by reference to the extent not inconsistent with this Agreement

(Paragraphs deleted)

.6

(Table deleted)

- .7 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201-2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Construction Manager's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

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 Notice of Claim Form

Exhibit E CMAR Affidavit with List of Subcontractors and Suppliers with Amounts Withheld

Exhibit F CMAR Progress Payment Waiver and Release Affidavit

Exhibit G Subcontractors & Suppliers Progress Payment Waiver and Release Affidavit

Exhibit H Construction Tax Exemption Certificate

Exhibit I Final Lien Waiver and Release Affidavit

Exhibit J Subcontractor Final Lien Waiver and Release Affidavit

This Agreement is entered into as of the date of execution by the Owner.

OWNER *(Signature)*

CONSTRUCTION MANAGER *(Signature)*

(Printed name and title)

(Printed name and title)

(Date)

(Date)

CERTIFICATE OF FUNDS
(ORC 5705.41)

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

Dated: _____

Fiscal Officer

DRAFT AIA® Document A133™ – 2019

Exhibit A

Guaranteed Maximum Price Amendment

This Amendment dated the « » day of « » in the year « », is incorporated into the accompanying AIA Document A133™–2019, 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 dated the « » day of « » in the year « » (the “Agreement”)
(In words, indicate day, month, and year.)

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

Capital Improvements Project - Elida Fieldhouse
315 Hillcrest Drive
Elida, OH 45807

THE OWNER:
(Name, legal status, and address)

The Board of Education of the
Elida Local Schools District
4380 Sunnydale Ave.
Elida, OH 45807

THE CONSTRUCTION MANAGER:
(Name, legal status, and address)

Peterson Construction
18817 S.R. 501 N.
Wapakonetta, OH 45895

TABLE OF ARTICLES

- A.1 GUARANTEED MAXIMUM PRICE
- A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- A.3 INFORMATION UPON WHICH AMENDMENT IS BASED
- A.4 CONSTRUCTION MANAGER'S CONSULTANTS, CONTRACTORS, DESIGN PROFESSIONALS, AND SUPPLIERS

ARTICLE A.1 GUARANTEED MAXIMUM PRICE

§ A.1.1 Guaranteed Maximum Price

Pursuant to Section 3.2.6 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 consists of the Construction Manager's Fee plus the Cost of the Work, as that term is defined in Article 6 of the Agreement.

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™–2017, 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.

ELECTRONIC COPYING of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

§ A.1.1.1 The Contract Sum is guaranteed by the Construction Manager not to exceed (\$), 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, including allowances; the Construction Manager's contingency; alternates; the Construction Manager's Fee; and other items that comprise the Guaranteed Maximum Price as defined in Section 3.2.1 of the Agreement.
(Provide itemized statement below or reference an attachment.)

« »

§ A.1.1.3 The Construction Manager's Fee is set forth in Section 6.1.2 of the Agreement.

§ A.1.1.4 The method of adjustment of the Construction Manager's Fee for changes in the Work is set forth in Section 6.1.3 of the Agreement.

§ A.1.1.5 **Alternates**

§ A.1.1.5.1 Alternates, if any, included in the Guaranteed Maximum Price:

Item	Price
------	-------

§ A.1.1.5.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Exhibit A. Upon acceptance, the Owner shall issue a Modification to the Agreement.
(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance
------	-------	---------------------------

§ A.1.1.6 Unit prices, if any:

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

Item	Units and Limitations	Price per Unit (\$0.00)
------	-----------------------	-------------------------

ARTICLE A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ A.2.1 The date of commencement of the Work shall be:

(Check one of the following boxes.)

☒ The date of execution of this Amendment.

☐ Established as follows:

(Insert a date or a means to determine the date of commencement of the Work.)

« »

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of execution of this Amendment.

§ A.2.2 Unless otherwise provided, the Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work. The Contract Time shall be measured from the date of commencement of the Work.

§ A.2.3 **Substantial Completion**

§ A.2.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Construction Manager shall achieve Substantial Completion of the entire Work:

(Check one of the following boxes and complete the necessary information.)

[☐] Not later than (☐) calendar days from the date of commencement of the Work.

[☐] By the following date:

§ A.2.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Construction Manager shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date

§ A.2.3.3 If the Construction Manager fails to achieve Substantial Completion as provided in this Section A.2.3, liquidated damages, if any, shall be assessed as set forth in Section 6.1.6 of the Agreement.

ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

§ A.3.1 The Guaranteed Maximum Price and Contract Time set forth in this Amendment are based on the Contract Documents and the following:

§ A.3.1.1 The following Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

§ A.3.1.2 The following Specifications:
(Either list the Specifications here, or refer to an exhibit attached to this Amendment.)

Section	Title	Date	Pages

§ A.3.1.3 The following Drawings:
(Either list the Drawings here, or refer to an exhibit attached to this Amendment.)

Number	Title	Date

§ A.3.1.4 The Sustainability Plan, if any:
(If the Owner identified a Sustainable Objective in the Owner's Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner's and Construction Manager's roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Exhibit C to the Agreement.)

Title	Date	Pages

Other identifying information:

§ A.3.1.5 Allowances, if any, included in the Guaranteed Maximum Price:
(Identify each allowance.)

Item	Price
------	-------

§ A.3.1.6 Assumptions and clarifications, if any, upon which the Guaranteed Maximum Price is based:
(Identify each assumption and clarification.)

« »

§ A.3.1.7 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 Amendment.)

« »

ARTICLE A.4 CONSTRUCTION MANAGER'S CONSULTANTS, CONTRACTORS, DESIGN PROFESSIONALS, AND SUPPLIERS

§ A.4.1 The Construction Manager shall retain the consultants, contractors, design professionals, and suppliers, identified below:
(List name, discipline, address, and other information.)

« »

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

OWNER (Signature)

« »

(Printed name and title)

CONSTRUCTION MANAGER (Signature)

« »

(Printed name and title)

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	_____% of the Cost of the Work, which equates to: \$ _____ when applied to the Maximum Cost of the Work provided in (D) below. This Construction Fee includes the CMR's ____% "At-Risk Fee"
(B) General Conditions**	\$ _____ (which is equal to the monthly cost of \$ _____ multiplied by ____ month Project duration, plus bond costs of ____% of the GMP, CMR insurance costs of ____% of the GMP, and SDI costs of ____% of the GMP)
(C) Contingency	_____% of the Cost of the Work, which equates to: \$ _____ when applied to the Maximum Cost of the Work provided in (D) below.
(D) Maximum Cost of the Work	\$ _____
Guaranteed Maximum Price = (A)+(B)+(C)+(D)	\$ _____

* = These values must be consistent with/shall not exceed the values in Proposer's Initial Price Proposal.

** When fully and actively engaged in construction phase Work and 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 Oblige(e)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 Oblige(e), 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 Oblige(e)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 SignatureBy:

Title:

SURETY:

Surety SignatureBy:

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 Oblige(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 Oblige, which said Contract is
made a part of this Bond the same as though set forth herein and which is more fully described as:

Project Number: _____

Project Name: _____

Contract Description: **Construction Manager at Risk**
(e.g., Construction Manager at Risk, Design-Build)

NOW, THEREFORE, if the above-named Principal shall well and faithfully do and perform the things agreed by the
Principal to be done and performed according to the terms of said Contract then this obligation shall be void; otherwise the
same shall remain in full force and effect; it being expressly understood and agreed that the liability of the Surety for any and
all claims hereunder shall in no event exceed the penal amount of this obligation as herein stated.

THE SAID Surety hereby stipulates and agrees that no modifications, omissions, or additions, in or to the terms of
said Contract or in or to the Plans and Specifications therefore shall in any way affect the obligations of said Surety on its
bond, and it does hereby waive notice of any such modifications, omissions or additions in or to the terms of the Contract, the
Work or the Contract Documents, including without limitation the Plans and Specifications.

PRINCIPAL:

Principal SignatureBy:

Title:

SURETY:

Surety SignatureBy:

Attorney-in-Fact**SURETY INFORMATION:**

Street

City State Zip

Telephone Number**SURETY AGENT'S INFORMATION:**

Agency Name

Street

City State Zip

Telephone Number

Email Address**END OF DOCUMENT**

Exhibit C

Itemized General Conditions

Exhibit D

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 Notice of Claim before a notary public.

CMAR: _____

By: _____

Name and Title: _____

Date: _____

Exhibit D

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____. The notarial act certified hereby is a jurat. An oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

Notary Public

Notary Public: _____

My Commission Expires: _____

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 Notice of Claim before a notary public.

End of Instructions

Exhibit E

**CONSTRUCTION MANAGER AT RISK'S AFFIDAVIT and CERTIFICATION WITH LIST OF
SUBCONTRACTORS
AND SUPPLIERS WITH ANY AMOUNTS WITHHELD**

PROJECT:

CONSTRUCTION MANAGER AT RISK (CMAR):

In Support of PAYMENT APPLICATION No.: _____

For the Period Through: _____

STATE OF _____ :
: SS,
COUNTY OF _____ :

The undersigned after first being sworn swears that a) all previous progress payments received on account of the Work have been applied on account to discharge CMAR's legitimate obligations associated with prior Applications for Payment; b) set forth below is a complete list of its Subcontractors and Suppliers; and c) set forth below is a complete description of all amounts withheld from any Subcontractor or Supplier and the reason why. Attach additional sheets if necessary.

Typed or Printed Name of Subcontractor or Supplier	Address of Subcontractor or Supplier	Telephone Number of Subcontractor or Supplier

Exhibit E

[illegible]

Exhibit E

WITHHOLDINGS FROM SUBCONTRACTORS AND/OR SUPPLIERS:

Typed or Printed Name of Subcontractor or Supplier	Amount Withheld	Reason for Withholding

Moreover, CMAR certifies that, except for as set forth immediately above, CMAR has paid all of its subcontractors and suppliers who were due to be paid with the proceeds of the prior Application for Payment and CMAR acknowledges that Owner is relying upon such certification when paying CMAR the amount asked for in the payment application that this Affidavit and Certification supports.

CONSTRUCTION MANAGER AT RISK: [insert name]

BY: _____

(Signature of authorized representative)

NOTARY PUBLIC

Subscribed and sworn to before me on this date by _____ on behalf of _____. The notarial act certified hereby is a jurat. An oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

Signature of Notary Public

Notary Public: _____

My Commission Expires: _____

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

Project: Capital Improvements 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 Board of Education of the Elida Local Schools District 4380 Sunnydale Ave. Elida, OH 45807 (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.

Company Name

Authorized Signature (Company Officer)

Title

Date

State of: _____ County of _____

Subscribed and sworn to before me this _____
day of _____. The notarial
act certified hereby is a jurat. An oath or affirmation was
administered to the signer with regard to the notarial act
certified to hereby.

Notary Public: _____

My Commission Expires: _____

**SUBCONTRACTORS & SUPPLIERS
PROGRESS PAYMENT WAIVER & RELEASE AFFIDAVIT
("AFFIDAVIT")**

Project: Capital Improvements 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 the Board of Education of the Elida Local Schools District (the "Owner"), for any labor, materials, or equipment the undersigned may have delivered or provided to the Project, except for any Claims the undersigned has made by properly and timely submitting a Statement of Claim form, a copy of which has been delivered to the Owner. The undersigned further certifies that this Affidavit covers claims by all contractors, subcontractors and suppliers through the date of the CMAR's last Application for Payment who may have provided any labor, material, or equipment to the Project through the undersigned or at the undersigned's request. The undersigned acknowledges that all such contractors, subcontractors, sub-subcontractors and suppliers have signed an affidavit in the form of this Affidavit releasing any and all claims against the CMAR, the CMAR's surety, and/or the Owner, except for any Claims made by properly and timely submitting a Statement of Claim, a copy of which has been delivered to the Owner. The undersigned hereby represents and warrants that it has paid any and all welfare, pension, vacation or other contributions required to be paid on account of the employment by the undersigned of any laborers on the Project.

The undersigned agrees that upon receipt of the payment from the CMAR with respect to the CMAR's current Application for Payment, it shall, if applicable, immediately execute and cause to be filed or recorded a legally effective Satisfaction of Lien, Release of Lien, or any other legal instrument necessary to cause prejudicial dismissal and release of any lien, encumbrance, lawsuit, or other claim against the CMAR, the CMAR's surety and the Owner, the property where the Project is located, and/or any surety bond posted by the CMAR or the Owner to the extent of the foresaid payment. Upon request of the CMAR, the undersigned shall provide proof of having complied with this obligation.

This Affidavit is for the benefit of, and may be relied upon by, the CMAR, the CMAR's surety and the Owner. The undersigned hereby agrees to indemnify, defend and hold harmless each of the foregoing, the Project, its Work, and real property from any and all claims, or liens arising out of work covered by this release and from any liability, cost, or expense incurred as a result of any breach of this Affidavit by the undersigned.

_____ Company Name _____ Authorized Signature (Company Officer) _____ Title _____ Date	State of: _____ County of _____ Subscribed and sworn to before me this _____ day of _____. The notarial act certified hereby is a jurat. An oath or affirmation was administered to the signer with regard to the notarial act certified to hereby. Notary Public: _____ My Commission Expires: _____
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Sales and Use Tax Construction Contract Exemption Certificate

Identification of Contract:

Contractee's (owner's) name The Board of Education of the Elida Local Schools District

Exact location of job/project 401 East North Street Elida, OH 45807; 4500 Sunnydale Ave Elida, OH 45807; 315 Hillcrest Drive Elida, OH

Name of job/project as it appears on contract documentation Capital Improvements Project

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

☐	A building used exclusively for charitable purposes by a nonprofit organization operated exclusively for charitable purposes as defined in Ohio Revised Code (R.C.) section 5739.02(B)(12);	☒	Real property that is owned, or will be accepted for ownership at the time of completion, by the United States government, its agencies, the state of Ohio or an Ohio political subdivision;
☒	Real property under a construction contract with the United States government, its agencies, the state of Ohio or an Ohio political subdivision;	☐	A computer data center entitled to exemption under R.C. 122.175;
☐	A horticulture structure or livestock structure for a person engaged in the business of horticulture or producing livestock;	☐	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;
☐	A house of public worship or religious education;	☐	A hospital facility entitled to exemption under R.C. section 140.08;
☐	The original construction of a sports facility under R.C. section 307.696;	☐	Building and construction materials and services sold for incorporation into real property comprising a convention center that qualifies for property tax exemption under R.C. 5709.084 (until one calendar year after the construction is completed).
☐	Real property outside this state if such materials and services, when sold to a construction contractor in the state in which the real property is located for incorporation into real property in that state, would be exempt from a tax on sales levied by that state;		

The original of this certificate must be signed by the owner/contractee and/or government official and must be retained by the prime contractor. Copies must be maintained by the owner/contractee and all subcontractors. When copies are issued to suppliers when purchasing materials, each copy must be signed by the contractor or subcontractor making the purchase.

Prime Contractor

Name _____

Signed by _____

Title _____

Street address _____

City, state, ZIP code _____

Date _____

Subcontractor

Name _____

Signed by _____

Title _____

Street address _____

City, state, ZIP code _____

Date _____

Owner/Contractee

Name The Board of Education of the Elida Local Schools Distr

Signed by _____

Title _____

Street address 4380 Sunnydale Ave.

City, state, ZIP code Elida, OH 45807

Date _____

Political Subdivision

Name Same as Owner/Contractee

Signed by _____

Title _____

Street address _____

City, state, ZIP code _____

Date _____

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

Project: Capital Improvements Project

In consideration for payment received from the Board of Education of the Elida Local Schools District (the "Owner") in the amount requested in CMAR's Final Application for Payment to the Owner, the receipt of which is hereby acknowledged, the undersigned CMAR hereby waives and releases any rights it has or may have to any and all types of claims relating to the Project, including without limitation claims of payment, Mechanic's Lien, stop notice, equitable lien, labor and material bond, breach of contract or unjust enrichment, or any other claim against the Owner, for any labor, materials, or equipment the undersigned may have delivered or provided to the Project, except for any Claims the undersigned has made by properly and timely submitting a Statement of Claim form. The undersigned further certifies that this Affidavit covers claims by all contractors, subcontractors, and suppliers who may have provided any labor, material, or equipment to the Project through the undersigned or at the undersigned's request. The undersigned acknowledges that all such contractors, subcontractors, sub-subcontractors and suppliers have signed an affidavit in the form of this Affidavit releasing any and all claims against the Owner, except for any Claims the undersigned has made by properly and timely submitting a written statement of its Claim. The undersigned hereby represents and warrants that it has paid any and all welfare, pension, vacation or other contributions required to be paid on account of the employment by the undersigned of any laborers on the Project.

This Affidavit is for the benefit of, and may be relied upon by the Owner. The undersigned hereby agrees to indemnify, defend and hold harmless each of the foregoing, the Project, work of improvement, and real property from any and all claims, or liens that are or should have been released in accordance with this Affidavit.

Company Name

Authorized Signature (Company Officer)

Title

Date

State of: _____ County of _____

Subscribed and sworn to before me this _____
day of _____. The notarial
act certified hereby is a jurat. An oath or affirmation was
administered to the signer with regard to the notarial act
certified to hereby.

Notary Public: _____

My Commission Expires: _____

**SUBCONTRACTORS, SUPPLIERS
FINAL WAIVER & RELEASE AFFIDAVIT
("AFFIDAVIT")**

Project: Capital Improvements Project

Upon receipt of payment in the amount of \$_____ received from _____ ("Construction Manager at Risk" or "CMAR") the undersigned Subcontractor or Supplier waives and relinquishes all rights of lien or claim that it may have either in law or equity (including but not limited to rights under Ohio Mechanics' Lien Laws, O.R.C. 1311.01 *et seq.*) with respect to the construction project known as Elida LSD Capital Improvements ("the Project"), for all labor, all equipment, and/or materials provided to or on behalf of the Project throughout its entirety, except for claims previously made pursuant to the agreement in place between Subcontractor or Supplier and CMAR, and any lien previously perfected and remaining unreleased.

The undersigned Subcontractor or Supplier acknowledges and agrees that such payment represents final payment in full for all such labor, equipment and/or materials including retainage, if any, and that the Subcontractor or Supplier has completed its work on the Project. The undersigned Subcontractor or Supplier certifies that all amounts have been paid by the Subcontractor or Supplier for all work or materials furnished by others to the Subcontractor or Supplier for which the Subcontractor or Supplier has received previous payments from CMAR, and Subcontractor or Supplier acknowledges that CMAR is now making payment to the Subcontractor or Supplier in reliance upon such certification. The undersigned Subcontractor or Supplier further certifies that it will pay all amounts lawfully owing for all work or materials furnished by others to the Subcontractor or Supplier with the payment received from CMAR referenced herein.

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 that are or should have been released in accordance with this Affidavit and from any liability, cost, or expense incurred as a result of any breach of this Affidavit by the undersigned.

IN WITNESS WHEREOF, the undersigned has caused this Affidavit to be executed by its authorized representative as of the date indicated below.

THE INDIVIDUAL SIGNING THIS AFFIDAVIT REPRESENTS THAT HE/SHE IS AUTHORIZED TO DO SO.

SUBCONTRACTOR OR SUPPLIER:

Company Name

Authorized Signature (Company Officer)

Title

Date

State of: _____ County of _____

Subscribed and sworn to before me this _____
day of _____. The notarial
act certified hereby is a jurat. An oath or affirmation was
administered to the signer with regard to the notarial act
certified to hereby.

Notary Public: _____

My Commission Expires: _____

Exhibit K

Federal Contract Provisions

CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS

The Education Department of General Administrative Regulations (EDGAR) are the federal regulations that govern all federal grants awarded by the U.S. Department of Education on or after December 26, 2014 to local districts (LEAs) and charters including State-administered programs. All recipients of federal grant dollars must comply with these rules. All provisions provided below are hereby incorporated by reference into the Owner-Contractor Agreement ("Agreement") and by entering into this Agreement, Contractor certifies the following:

Appendix II to Part 200 Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

(A) Contracts for more than the simplified acquisition threshold, currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

Pursuant to Rule (A) above, the Owner reserves all rights and privileges under the applicable laws and regulations with respect to this procurement process in the event of breach of contract by either party.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

Pursuant to Rule (B) above, Owner reserves the right to terminate any agreement resulting from this procurement process pursuant to Article 13 of the Owner-Architect Agreement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

Pursuant to Rule (C) above, this provision is hereby incorporated by reference into the Agreement.

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-

Exhibit K

Federal Contract Provisions

Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

Pursuant to Rule (D) above, Contractor will follow all applicable Davis-Bacon Act provisions.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

Pursuant to Rule (E) above, Contractor certifies that Contractor will follow all applicable provisions of the Contract Work Hours and Safety Standards Act during the term of the Agreement.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research

Exhibit K

Federal Contract Provisions

work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

Pursuant to Rule (F) above, Contractor certifies that during the term of the Agreement, Contractor agrees to comply with all applicable requirements referenced in Rule (F) above.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended - Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

Pursuant to Rule (G) above, Contractor certifies that during the term of the Agreement, Contractor agrees to comply with all applicable requirements as referenced in Rule (G) above.

(H) Debarment and Suspension (Executive Orders 12549 and 12689) - A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Pursuant to Rule (H) above, Contractor certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) - Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

Pursuant to Rule (I) above, as applicable, Contractor agrees to file all certifications and disclosures required by, and otherwise comply with, the Byrd Anti-Lobbying Amendment (31 USC 1352).

Record Retention Requirements

Exhibit K

Federal Contract Provisions

Contractor certifies that during the term of the Agreement, Contractor will comply with the record retention requirements detailed in 2 CFR § 200.333. The Contractor further certifies that all records will be retained as required by 2 CFR § 200.333 for a period of three years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

Energy Policy and Conservation Act Compliance

To the extent applicable, Contractor certifies that during the term of the Agreement, Contractor will comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

Buy American Provisions Compliance

To the extent Contractor has agreed to comply with applicable provisions of the Buy American Act with a particular public entity, Contractor certifies that Contractor is in compliance with all applicable provisions of the Buy American Act. Purchases made in accordance with the Buy American Act shall follow the applicable procurement rules calling for free and open competition.

Recovered Materials (2 C.F.R. § 200.322)

Contractor agrees to the extent practical it complies with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

Access to Records (2 C.F.R. § 200.336)

Contractor agrees that duly authorized representatives of the Agency shall have access to any books, documents, papers and records of Contractor that are directly pertinent to Contractor's discharge of its obligations under the Contract for the purpose of making audits, examinations, excerpts, and transcriptions. The right also includes timely and reasonable access to Contractor's personnel for the purpose of interview and discussion relating to such documents.

Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

Contractor, nor its subcontractors shall provide or install equipment, services, or systems that uses "covered telecommunications equipment or services" as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, "covered telecommunications equipment" is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities); video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities); telecommunications or video surveillance services provided by such entities or using such equipment; or telecommunications or

Exhibit K

Federal Contract Provisions

video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Complying with Federal, State, and Local Laws

Contractor agrees to comply with federal, state, and local laws, rules, regulations, and ordinances, as applicable. It is further acknowledged that Contractor certifies compliance with provisions, laws, acts, regulations, etc. as noted above.

Energy Conservation (34 C.F.R. § 75.616(c))

Contractor agrees to comply with US Department of Education regulation at 34 CFR 75.616(c) which requires the use of American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE) standards for Heating, Ventilation, and Air Conditioning (HVAC) projects.

Domestic Preference (2 C.F.R. § 200.322)

Contractor agrees to comply with the requirements for Domestic Preference in construction materials and supplies where applicable (2 CFR 200.322).

Assurances for Construction and Other Capital Expenditures

Contractor agrees that the project will begin in a reasonable time period and Contractor will have the final plans approved before the construction is advertised or placed on the market for bidding (34 CFR 75.605). Contractor agrees the project will be completed in a reasonable time period consistent with the approved plans and specification (34 CFR 75.606). Contractor represents that the proposed construction is functional, economical, and not elaborate in design or extravagant in the use of materials as compared to other facilities in the State or other applicable geographic area (34 CFR § 75.607).

Preservation of Historic Sites (34 CFR § 75.602)

Contractor represents it has considered the probable effects of proposed construction on any district, site, building, or structure that is included or eligible for inclusion in the National Register of Historic Places.

Health, Safety, and Disability Compliance (34 CFR §§75.609 and 75.610)

Contractor represents that it has reviewed the plans and designs for the improvement against Federal, State, and local health standards including Federal requirements regarding access by persons with disabilities, and it confirms project plans and designs

Exhibit K

Federal Contract Provisions

comply with applicable Federal, State and local health and safety standards, as well as Federal requirements regarding access by persons with disabilities, as required by (34 CFR §§75.609 and 75.610).

This certification shall be effective through the term of the Contractor's Agreement.

Exhibit L

Davis-Bacon Contract Provisions

In accordance with 29 CFR Part 5, the following Definitions and Contract Provisions are applicable to the Agreement and are hereby incorporated into the Contract Documents. In the event of a conflict between these Definitions and Contract Provisions and any other provision of the Agreement, the stricter requirement applies.

Definitions

The definitions set forth in 29 C.F.R. § 5.2 apply to the Contract Provisions contained herein. Such definitions are to be read in addition to, and not in exclusion of, any definitions set forth in the Agreement, General Conditions, or other Contract Documents.

Contract Provisions

(a) The following clauses are hereby incorporated into the Agreement, and the Construction Manager shall insert such clauses in full into its Subcontracts:

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 C.F.R. Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in §5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii) (A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

- (B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- (iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
- (2) Withholding. The Federal Agency or Owner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the Federal Agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.
- (3) Payrolls and basic records.
- (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs

anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 C.F.R. § 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

- (ii) (A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Federal Agency if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the Federal Agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 C.F.R. § 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Federal Agency if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the Federal Agency, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).
- (B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
 - (1) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 C.F.R. Part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 C.F.R. Part 5, and that such information is correct and complete;
 - (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 C.F.R. Part 3;
 - (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

- (C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.
 - (D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
- (iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Agency or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal Agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 C.F.R. § 5.12.
- (4) Apprentices and trainees.
- (i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
 - (ii) Trainees. Except as provided in 29 C.F.R. § 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The

ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 C.F.R. Part 30.
- (5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 C.F.R. Part 3, which are incorporated by reference in this contract.
- (6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 C.F.R. § 5.5(a)(1) through (10) and such other clauses as the Federal Agency may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 C.F.R. § 5.5.
- (7) Contract termination: debarment. A breach of the contract clauses in 29 C.F.R. § 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 C.F.R. § 5.12.
- (8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 C.F.R. Parts 1, 3, and 5 are herein incorporated by reference in this contract.
- (9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 C.F.R. Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
- (10) Certification of eligibility.
 - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. § 5.12(a)(1).
 - (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. § 5.12(a)(1).
 - (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

- (b) Contract Work Hours and Safety Standards Act. If the Contract Sum is in an amount in excess of \$100,000, and the Work is subject to the overtime provisions of the Contract Work Hours and Safety Standards Act, the follow provisions shall apply. Additionally, the Construction Manager shall include these provisions in full in all Subcontracts in excess of \$100,000 which are subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. The provisions in these clauses are in addition to the clauses provided above in subsection (a). As used in this paragraph, the terms laborers and mechanics include watchmen and guards.
- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
 - (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.
 - (3) Withholding for unpaid wages and liquidated damages. The Federal Agency or the Owner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.
 - (4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.
- (c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 C.F.R. § 5.1, the Construction Manager and its Subcontractors shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the records to be maintained under this paragraph shall be made available by the Construction Manager and its Subcontractors for inspection, copying, or transcription by authorized representatives of the Federal Agency and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.
- (d) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control

Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

- (e) Debarment and Suspension (Executive Orders 12549 and 12689)—Contractor warrants that it is not listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- (f) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractor and any subcontractors certify to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

Exhibit K

PREVAILING WAGE RATES

(To be provided by separate file during preconstruction)



AIA® Document A201® – 2017

General Conditions of the Contract for Construction

For Use with AIA Document A133-2019, Agreement Between Owner and Construction Manager as Constructor

THIS DOCUMENT HAS BEEN MODIFIED FROM ITS ORIGINAL FORM

for the following PROJECT:

(Name and location or address)

Capital Improvements Project

Located at:

Elida Fieldhouse, 315 Hillcrest Drive, Elida, OH 45807

THE OWNER:

(Name, legal status and address)

The Board of Education of the Elida Local Schools District
4380 Sunnydale Ave.
Elida, OH 45807

THE ARCHITECT:

(Name, legal status and address)

Garmann Miller
555 Metro Place North
Suite 320
Dublin, OH

TABLE OF ARTICLES

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- 2 OWNER
- 3 CONTRACTOR
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- 5 SUBCONTRACTORS
- 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
- 7 CHANGES IN THE WORK
- 8 TIME
- 9 PAYMENTS AND COMPLETION
- 10 PROTECTION OF PERSONS AND PROPERTY
- 11 INSURANCE AND BONDS

ADDITIONS AND DELETIONS:

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

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

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

Init.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

The definitions in this Section 1.1 apply throughout the Contract Documents.

§ 1.1.1 The Contract Documents

The Contract Documents are the Contract Documents identified in the Agreement between the Owner and the Construction Manager at Risk (hereinafter the "Agreement"). The Construction Manager at Risk may also be referred to as "Contractor" in these General Conditions. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, paperwork, reports, documentation, other requirements, 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.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the Architect, unless another person is identified in writing.

§ 1.1.9 Finally Resolved

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

§ 1.1.10 Notice of Claim Form

Notice of Claim Form means the Notice of Claim Form included as **Exhibit D** to the Agreement.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor, whether or not expressly shown or described. The Contract Documents are

complementary, and what is required by one shall be as binding as if required by all and performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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

§ 1.2.1.2 In the event of inconsistencies within or between the Contract Documents, the Contractor must provide the better quality or greater quantity of Work and must comply with the stricter requirements.

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

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

§ 1.3 Capitalization

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

§ 1.4 Interpretation

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

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

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

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by registered mail, by overnight delivery, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

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

§ 1.7 Digital Data Use and Transmission

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 already provided in the Agreement or the Contract Documents.

§ 1.8 Building Information Models Use and Reliance

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

§ 1.9 Preconstruction Conference

Before any Work at the Site is started, a conference attended by the Owner, Contractor, Architect, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the Submittal Schedule, Construction Schedule, and Schedule of Values, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

§ 1.10 Initial Acceptance of Schedules

At least 10 days before submission of the first Application for Payment, a conference attended by a Contractor, Architect, and others as appropriate will be held to review for acceptability to the Architect the schedules submitted in accordance with the Contract Documents, including a Submittal Schedule, Construction Schedule, and Schedule of Values. The Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to the Contractor until acceptable schedules are submitted to the Architect and Owner.

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 may designate in writing a representative. The Owner's Representative shall only have such authority as is expressly authorized by the Owner's legislative body and as is permitted under the law of the State of Ohio. .

§ 2.1.2 The Owner will prepare a Notice of Commencement for the Project, as required by the Ohio Revised Code and will furnish to the Contractor a copy of the Notice of Commencement for the Project.

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 The Owner will complete the certificate(s) 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 [Not Used.]

§ 2.2.3 [Not Used.]

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information. All security related information shall be automatically deemed confidential.

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements,

assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 If the agreement with the Architect is terminated, the Owner may employ a successor architect whose status under the Contract Documents will be that of the Architect.

§ 2.3.4 To the extent necessary for the Work and as requested by the Contractor, the Owner may 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. The Contractor may rely upon the general accuracy of the "technical data" contained in such reports and drawings listed below, and except for such reliance on "technical data," the Contractor shall not rely upon or make any claim against the Owner or Architect with respect to: (1) the completeness of such reports and drawings for the Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by the Contractor, and safety precautions and programs incident thereto; or (2) other data, interpretation, opinions, and information contained in such reports or shown or indicated in such drawings; or (3) any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information. For example, all interpolations and extrapolations of data performed by the Contractor to estimate locations or quantities of subsurface strata are independent factual assumptions which the Owner does not warrant.

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

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

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within two (2) business days after receipt of notice from the Owner to commence or thereafter proceed without interruption to correct such default or neglect within fifteen (15) days of such notice, the Owner, without prejudice to its other remedies, may correct such deficiencies. If such default or neglect results in a threat to the safety of any person or property, the Contractor shall immediately commence to correct such default or neglect upon receipt of written or oral notice thereof. In all such cases of default or neglect, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the costs arising out of or related to the investigation and correction of such deficiencies, including Owner's attorneys' and consultants' fees and expenses and other expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

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

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

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, investigated the entire site and the surrounding area, 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 correlated personal observations and other information with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work and in addition to the reviews required by the Contract Documents, including these General Conditions, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4. 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. The obligations of this Section 3.2 are for the purposes of facilitating construction by the Contractor for determining that the Work is constructible, for determining if the work of the Contractor is coordinated in the Contract Documents with the Work of any other Contractors, and for verifying that field conditions, including the Work of any other Contractors, are consistent with the information in the Contract Documents and ready for the Work. The Contractor shall promptly report to the Architect and the Owner in writing any inconsistencies, errors, or omissions in the Contract Documents discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.3 Except for the Contractor's design assist services (if any), the Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities to the extent that a competent construction manager at risk would do so, and shall immediately report in writing any conflicts with such laws, statutes, ordinances, building codes, and rules and regulations to the Architect and the Owner.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention and consistent with the skill of a competent contractor. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract Documents. 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 notice to the Owner and Architect, and shall not proceed with that

portion of the Work without further instructions from the Architect. The Contractor shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures. 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. The Contractor shall lay out his own work and be responsible for all lines, elevations, and measurements of the building, demolition work, utilities, and any other work to be executed by him under the contract. The Contractor shall verify grades, lines, levels, and dimensions indicated on the drawings and shall notify the Architect of errors or inconsistencies before commencing work. The Contractor shall establish and maintain a permanent benchmark, batter boards, level, and grades and shall lay out the exact location of all walls, partitions, openings, etc. The Contractor shall employ experienced and competent engineers and exercise proper precautions to verify the figures shown on the drawings for laying out work, and will be held responsible for any error resulting from his failure to exercise such precautions.

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

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

§ 3.3.4 The Contractor shall maintain readily accessible to the Architect and 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 Project Manuals, as approved by the appropriate authority having jurisdiction over the Project.
- .2 Unless otherwise specifically provided in the Contract Documents, a neat and legible set of As-Built Drawings and Project Manuals on which:
 - .1 The Contractor shall keep an accurate record of all approved changes made to the Drawings to show actual installation where installation varies from Work as originally shown, including the exact location and depth of underground utility lines. Any such changes shall be noted by Change Order Number and drawn neatly in a contrasting color;
 - .2 When Shop Drawings are used, the Contractor shall cross-reference the corresponding sheet numbers on the As-Built Drawings and sections of the Specification;
- .3 A daily log at the Project site in which it has recorded Project-related information, including, but not limited to, the weather, number of workers on site for each Contractor, identification of equipment, Work accomplished, problems encountered, and other similar relevant Project data;
- .4 As applicable to its Work, all Bulletins, Addenda, approved Shop Drawings, Product Data, Samples, manufacturers' installation, operating and/or maintenance instructions or requirements, certificates, warranties, Change Orders, Change Directives, other Modifications, and complete back-up data for all Change Orders, Change Directives, and other Modifications;
- .5 All the Contractor's communications, including but not limited to letters, memoranda, e-mail, invoices, and bills of lading, arising out of or related to the Project with the Architect, Owner, and/or its subcontractors, materialmen, and/or employees; and
- .6 The payroll reports for its employees and the employees of its Subcontractors working on the Project.
- .7 Any other document required under the Contract Documents.

§ 3.3.5 If the Contractor fails to comply with the Ohio Public Records Act, the Owner shall be entitled to indemnification 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 approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the

consent of the Owner, which the Owner may withhold in its discretion, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall only assign competent supervisors and workers to the Project, each of whom is fully qualified to perform the tasks assigned. If the Owner or Architect deems any employee of the Contractor or a Subcontractor unsatisfactory, the Contractor will transfer or require its Subcontractor to transfer such employee from the Project immediately and replace or require the prompt replacement of such employee with a competent employee. The Owner, however, shall be under no obligation to do so.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects. Work, materials, or equipment not conforming to these requirements may be considered defective. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4. 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 To the extent that the Contractor has proposed the use of specific equipment or materials as part of its services, the Contractor warrants the equipment or materials selected by it from among the equipment or materials specified will be fit for its intended purposes, compatible with the design intent, and, if the other contractors construct their work in accordance with the Contract Documents, constructible all without additional cost to the Owner. Such notice shall be conspicuously labeled at the top of the first page in not less than twelve type font as follows: "NOTICE OF PROBLEMS WITH SPECIFIED EQUIPMENT OR MATERIALS."

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use, commercial activity, and similar taxes for the Work provided by the Contractor that are legally enacted when Agreement is executed, whether or not yet effective or merely scheduled to go into effect. The Contractor acknowledges that the Owner is a political subdivision of the State of Ohio or tax exempt organization and is exempt from state sales and use taxes. Upon written request, the Owner will provide the Contractor with any applicable certificates of exemption.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

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

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

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

§ 3.7.4 Concealed or Unknown Conditions

Subject to Section 2.3.4 of these General Conditions, if the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract

Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum, GMP, and/or Contract Time. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

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

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum and GMP all allowances in accordance with Section 6.3.6 of the Agreement.

§ 3.8.2 [Not Used.]

- .1 [Not Used.]
- .2 [Note Used.]
- .3 [Not Used.]

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

§ 3.8.4 The Contractor will obtain approval from the Owner prior to incurring any costs in excess of an allowance; any approved cost in excess of an allowance will be documented by a Change Order signed by both parties.

§ 3.9 Superintendent & Construction Supervision

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

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not replace the assigned Superintendent without the Owner's consent, except with another Superintendent who is satisfactory to the Owner. If the Contractor proposes to change the Superintendent, the Contractor must submit to the Architect a written request for the change, including the justification for the change, the name and qualifications for the proposed replacement, and the time frame within which the change is proposed to take place. The Contractor shall provide promptly any related additional information the Architect or Owner requests.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, within five (5) days of the date of any request from the Architect or the Owner to submit scheduling information, shall submit the scheduling information for its Work to the Architect and to the Owner in such form and in such detail as requested. The Contractor shall prepare the Construction Schedule within ten (10) days after the date of the Effective Date. 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 Documents 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 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 update the Construction Schedule each month;
- .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 Contractor shall, on a weekly basis, prepare and submit to the Architect and Owner a written report describing the activities begun or finished during the preceding week, Work in progress, expected completion of the Work, a look-ahead projection of all activities to be started or finished in the upcoming two (2) weeks, including without limitation the Contractor's workforce crew size and total resource hours associated with such Work and any other information requested;
- .4 The float in the Construction Schedule and any updates to it shall belong to the Owner. Float shall mean the amount of time by which activities may be delayed without affecting the Contract Date for Substantial Completion; and
- .5 The Contractor's obligation to submit requested scheduling information is a material term of its Contract. If the Contractor fails to submit requested scheduling information in writing within five (5) days of a request for such information from the Architect or Owner, the Contractor shall pay and the Owner may withhold from the Contractor Liquidated Damages at the rate of Fifty Dollars (\$50.00) a day for each calendar day thereafter that the Contractor fails to submit the requested information.

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

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent Construction Schedule submitted to the Owner and Architect, 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 the Owner's rights under the Contract to have the Work completed by the contractual dates of Substantial and Final Completion.

- .1 **Notice of Delays.** The Contractor shall give the Owner and the Architect verbal notice of any delay affecting the Work within two (2) business days of the commencement of the delay. In addition, the Contractor shall give the Owner and Architect written notice of the delay within ten (10) business days of the commencement of the delay with specific recommendations about how to minimize the effect of the delay. The written notice of the delay shall conspicuously state at the top of the first page of the notice in twelve point type or larger that it is a "NOTICE OF DELAY." A notice of delay shall not constitute the submission of a Claim. The Contractor acknowledges and agrees that these notice provisions are material terms of the Contract Documents and give the Owner the opportunity to take action to minimize the cost and/or effect of delays.

§ 3.10.4 If the Architect or the Owner determines that the performance of the Work has not progressed so that it is likely that the Contractor will not Substantially Complete its Work by its Date of 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 order 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 Project site, for the Owner and the Architect the documents required by Section 3.3.4. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect in the form requested by the Owner for submittal to the Owner upon completion of the Work as a record of the Work or earlier when required by the Contract Documents.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work. Shop Drawings shall also include fabrication, erection and setting Drawings, scheduled Drawings, manufacturer's scale Drawings, wiring and control diagrams, cuts or entire catalogs, pamphlets, descriptive literature, performance, and technical data.

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

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

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

- .1 If the Shop Drawings or other submittals show variations from the requirements of the Contract Documents, the Contractor shall identify such variations in the Contractor's letter of submittal to the Architect accompanying the submittal. Variations must be approved by Change Order.
- .2 If the Contractor's Shop Drawings or its submittals do not contain sufficient information, and the Architect must perform more than two reviews with respect to any submittal, the Contractor shall pay the additional costs and expenses incurred by the Owner as a result of such additional reviews by the Architect, and the Owner may withhold from sums due or coming due the Contractor amounts to cover such additional costs and expenses.

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

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

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional who shall comply with reasonable requirements of the Owner regarding qualifications and insurance and whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by such design professionals. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.12.10.2 [Not Used.].

§ 3.12.11 **Instructions.** Unless otherwise expressly provided in the Contract Documents, the Contractor shall provide typed or printed instructions covering the operation and maintenance of each item of equipment furnished in a notebook submitted to the Architect for review and transmittal to the Owner. The instructions, as applicable, shall include the following:

- .1 Any schematic piping and wiring diagrams;
- .2 Any valve charts and schedules;
- .3 Any lubrication charts and schedules;
- .4 Guides for troubleshooting;
- .5 Pertinent diagrams and maintenance instructions for all equipment;
- .6 Manufacturer's parts list;
- .7 Operating and maintenance instructions for all equipment;
- .8 Manufacturer's parts list;
- .9 Any testing procedures for operating tests; and
- .10 Other instructions and materials as required by the Contract Documents.

The Contractor shall provide two (2) copies of the above instruction books on or before the Substantial Completion of its Work. The books shall describe the information to be covered clearly and in detail and shall be in form and content satisfactory to the Architect and the Owner.

§ 3.12.12 **Testing Following Final Completion.** The Contractor will participate in training sessions for the Owner's maintenance personnel. During the first twelve (12) months following Final Completion of each part of the Project, the Contractor (without additional compensation) will participate in tests scheduled by the Owner, which test the following building systems to the extent applicable to the Contractor's Work; air conditioning system (which shall be conducted during the first full summer following the completion of the Project or at such earlier time as scheduled by the Owner), heating system (which shall be conducted during the first full winter following the completion of the Project or at such earlier time as scheduled by the Owner), and such other systems, including the electrical system, plumbing system, fire protection system, and communications systems, as reasonably requested by the Owner. The Owner will be advised when the testing will be conducted and may observe the testing. It is intended that the testing be a comprehensive series of operation tests designed to determine whether the systems are fully operational in

accordance with the requirements of the Contract Documents. If it appears that any of the systems, including equipment and software, do not conform to the requirements of the Contract Documents, the Contractor will remedy the defective and/or non-conforming work as provided in Section 12.2.2.1 of these General Conditions.

§ 3.12.13 Manufacturer's Instructions or Requirements. Without waiving, modifying or relieving the Contractor from its other obligations under the Contract Documents, including its warranties and any performance specifications, the Contractor shall furnish and install its Work in accordance with any applicable manufacturer's instructions or requirements. Prior to installation, the Contractor shall review carefully the manufacturer's instructions and requirements, and if there is a conflict between such instructions or requirements and the Drawings and/or Specifications, the Contractor shall request clarification from the Architect prior to commencing the Work.

§ 3.12.14 The Contractor shall furnish for each submission of Shop Drawings, one (1) transparency reproduction and sufficient number of prints so the Architect can retain four (4) copies. Where the nature of the material being submitted is such that letter size sheets are a convenient method of presentation, such sheets shall be assembled in the form of booklets with covers showing the name of the job, the names of the Contractor and subcontractor or vendor, the location on the job and a list of the sheets contained. Such booklets need not be in the form of transparencies. Do not submit complete catalogues with items checked for use as shop drawings.

§ 3.12.15 After review of the submittal, the Architect will return the transparency to the Contractor marked "approved" or "not approved" and shall furnish promptly one copy in either case to the Owner for information and reference purposes on the job. If marked "not approved," the Contractor shall resubmit showing corrections made. After the transparency has been stamped "approved," the Contractor shall distribute all necessary prints to trades involved. No Shop Drawings shall be used if not stamped "approved" by the Architect. All work shall be done in accordance with approved Shop Drawings.

§ 3.12.16 Schedules, diagrams, cuts, catalogues, data, etc., as mentioned in this Section 3.12, shall be furnished in sufficient numbers so the Architect can retain four (4) copies and the Contractor will have the necessary number for its distribution. One copy of each of these shall be furnished the Owner by the Architect for reference on the job and for his permanent records.

§ 3.12.17 All Contractors furnishing material or equipment where shop or setting drawings are required shall obtain measurements and observe conditions at the job and indicate on their drawings that such dimensions have been field measured. The Contractor shall affix its stamp of approval on the drawings as evidence they have been checked before submitting them to the Architect for approval. Where information from the 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 the 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, lawful orders and all other requirements of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.13.1.1 Damage to road, features, or the grounds, resulting from hauling, storage of materials, or other activities connected with the Work, will be repaired by the Contractor at its expense to the satisfaction of the Architect.

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

§ 3.14 Cutting and Patching

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

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

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

§ 3.15 Cleaning Up

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

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

§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located. The Contractor is responsible to provide proper facilities for such access and observation and to provide access to the Work in preparation and progress for special inspections required by the authority having jurisdiction.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process, or product is an infringement of a copyright or patent, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the Owner, Architect, Architect's consultants, and the officers, directors, partners, consultants, subcontractors, agents and employees of any of them from and against claims (whether alleged or proven), demands, costs, losses, and/or damages, including but not limited to all fees and charges of architects, attorneys, and other professionals and all court, arbitration, or other dispute resolution costs, arising out of or relating to any claim or action, legal or equitable, caused or alleged to have been caused by the Contractor's performance of the Work or any breach of the Contractor's obligations under the Contract Documents, including but not limited to the breach of any warranty set forth in the Contract Documents.

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

§ 3.19 Compliance with Demolition Laws

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

§ 3.20 Underground Utility Facilities

§ 3.20.1 The Contractor, at least two (2) working days prior to commencing construction in an area that may involve underground utility facilities, will give notice to the Architect and the Owner and to the registered underground utility protection services and the owners of underground utility facilities shown on the Drawings and Specifications.

§ 3.20.2 The Contractor shall notify immediately the occupants of any premises near the Work, the Architect, and the Owner as to any emergency that it may create or discover. The Contractor shall notify immediately the operator of any underground utilities, the Architect, and the 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 included in the Contract Documents or required by the Owner for itself and each of its Subcontractors and suppliers, regardless of tier, and (b) a complete list of its Subcontractors and suppliers in the form included in the Contract Documents or as required by the Owner.

§ 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 the Agreement; 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 (4) years after final payment, or for such longer period as may be required by law. The 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 the Owner at the time of the 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, and related expenses, and the Contractor shall reimburse the Owner the full amount of any discrepancies or overages.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

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

§ 4.2 Administration of the Contract

§ 4.2.1 Unless otherwise set forth in the Agreement, the Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative (1) during construction, (2) until the date the Architect issues the final Certificate for Payment, and (3) with the Owner's concurrence, from time to time during the one-year period for correction of Work described in Section 12.2 and for such additional periods as the Owner and Architect may agree. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

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

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. Except as required by its duty of care owed to the Owner, the Architect will not be responsible to the Owner for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications Facilitating Contract Administration

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

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

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal

schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

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

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

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such Project representatives shall be consistent with these General Conditions.

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

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Section 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until 15 days after written request is made for them and the Contractor establishes the Architect's delay in responding delayed the critical path of the Work.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

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

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

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 The Contractor shall bid the Subcontracts in accordance with the Contract Documents and Ohio law. Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has an objection to a person or entity proposed by the Contractor, the Contractor shall propose within 10 days another to whom the Owner or Architect has no objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and/or GMP 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 and/or GMP shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

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

§ 5.3 Subcontractual Relations

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

§ 5.4 Contingent Assignment of Subcontracts

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

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor 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 direct costs incurred by the Subcontractor resulting from the suspension.

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

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

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Contractor shall coordinate the activities of the Owner's own forces and of each Separate Contractor, if any, with the Work of the Contractor, who shall cooperate with them.

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

§ 6.2 Mutual Responsibility

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

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for such proper execution and results of the Contractor's Work. Failure of the Contractor to so 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 [Not Used.].

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

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

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible. The Architect's decision allocating the cost shall be final and binding on the Contractor and the Owner.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

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

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

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

§ 7.1.4 All Changes to the Work which are properly classified as Cost of the Work, other than uses of the Contingency in paragraph 6.2.1.3 of the A133-2019 as modified for the Project, shall be calculated in accordance with the agreed upon GMP Amendment, subject to open-book pricing. All such changes in the Work shall be submitted with any required backup documentation to the Owner and Architect in writing in advance of performance of the Work and must be approved by the Owner in writing prior to commencement of the Work.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum and/or GMP; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 Methods used in determining adjustments to the Contract Sum or GMP may include those listed in Section 7.3.3. Notwithstanding the method used to determine the adjustment to the Contract Sum or GMP, the Contractor must provide documentation to support any cost included in the request. Documentation may include invoices and time records related to the costs, but must be in a form acceptable to the Architect and Owner. Costs included in any Change Order request must be limited to those in Section 7.3.6, unless provided elsewhere in the Contract Documents or agreed to by the Owner and Architect.

§ 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 Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum, GMP, and/or Contract Time. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum, GMP, and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum and/or GMP, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;

- .3 Subject to a not-to-exceed amount, a cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee;
- .4 As provided in Section 7.3.6; or
- .5 Except where unit prices are applicable, that the Contractor agrees and represents to the Owner for the Owner's reliance that all Change Order or Change Directive pricing submitted by the Contractor shall be based on the Contractor's actual costs or the Contractor's reasonable estimate of what would be its actual costs plus permitted overhead and profit.

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

- .1 [Not Used.]
- .2 [Not Used.]
- .3 [Not Used.]
- .4 [Not Used.]
- .5 [Not Used.]

§ 7.3.5 [Not Used.].

§ 7.3.6 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum or GMP, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change. In the case of an increase in Contract Sum or GMP, the Construction Fee as set forth in the Agreement is the maximum fee for the Contractor. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present a true and accurate itemized accounting of all labor and material with appropriate supporting data. If the Architect prescribes a format for such accounting, the Contractor shall provide the accounting in such format. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.6 shall be limited to the following:

- .1 Costs of labor, including social security, old age, and unemployment insurance, applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .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, directly related to the Work/change;
- .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 and Suppliers of all tiers on any add or deduct Change Order shall be no more than 15% of the total combined cost of labor and material.

§ 7.3.7 [Not Used.].

§ 7.3.8 [Not Used.].

§ 7.3.9 [Not Used.].

§ 7.3.10 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change order that results in a net decrease in the Contract Sum or GMP shall be actual net cost as confirmed by the Architect plus the credit for overhead and profit. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, or decrease if any, with respect to that change.

§ 7.3.11 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust to 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.

§ 7.3.12 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum, GMP, and/or Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.3.13 The Contractor shall not assign any portion of the Work to another contractor whereby the Contractor would benefit directly or indirectly from the double application of charges for overhead and profit.

§ 7.4 Minor Changes in the Work

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

ARTICLE 8 TIME

§ 8.1 Definitions

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

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

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

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

§ 8.2 Progress and Completion

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

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

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

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an Excusable Delay as set forth in Section 15.1.6.3, then subject to the agreement of the Owner, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

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

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

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

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

§ 9.1.2 [Not Used.].

§ 9.2 Schedule of Values

Within 10 days of the Owner's acceptance of the GMP, the Contractor shall submit a Schedule of Values to the Owner and Architect for the Architect's review and approval, allocating the entire Contract Sum to the various portions of the Work. The Contractor shall additionally submit a revised Schedule of Values within 10 days of awarding subcontractor bids, reflecting a revised Cost of the Work which shall not exceed the GMP. The Schedule of Values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. By submitting such Schedule of Values, the Contractor represents for the reliance of the Architect and the Owner that the allocation of the values to the portions of the Work is a fair and reasonable estimate of such allocation. Once approved, the Contractor will not change the allocations in the Schedule of Values without the Architect's further approval. The Architect may from time to time require the Contractor to adjust such Schedule if the Architect determines it to be in any way unreasonable or inaccurate. The Contractor then shall adjust the Schedule of Values as required by the Architect within ten (10) days. This schedule, with any adjustments approved by the Architect shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the Schedule of Values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.2.1 The 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 three-quarters of one percent (0.75%) of the Contract Sum for contracts with a Contract Sum of \$1,000,000 or less, and the lesser of one-half of one percent (0.5%) of the Contract Sum or fifty thousand dollars (\$50,000.00) for contracts with a Contract Sum greater than \$1,000,000. When As-Built Drawings and Record Documents are received and reviewed by the Architect, and a letter is forwarded to the Owner affirming the completeness of these documents, these costs may be released. At the Owner's discretion, the costs dedicated to this Scheduled Value may be adjusted to reflect adjustments to the Contract Sum due to approved change orders. Unless specifically approved in writing by the Owner, retained funds will not be released until As-Built Drawings and Record Drawings are received, reviewed, and deemed complete by the Architect.

§ 9.3 Applications for Payment

§ 9.3.1 At least three days before the date an Application for Payment is required to be submitted, the Contractor shall submit to the Owner and Architect a draft Application for Payment prepared in accordance with the Schedule of Values, if required under Section 9.2, for completed portions of the Work. The draft Application for Payment shall be reviewed and adjusted, if necessary, by the Architect and returned to the Contractor. The Application for Payment, as reviewed and adjusted by the Architect, shall be notarized, if required, and re-submitted with all the documentation required to be submitted with such Application for Payment, and any other supporting documentation required by the Contract Documents or by the Architect. The percentage completion of each portion of the Work shall be consistent with the then current Construction Schedule for the Project. The Application for Payment will be in the form required by the Owner, submitted with the number of copies and all related documents as required by the Contract Documents. The Contractor also shall submit with its Application for Payment such other data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

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

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

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

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

§ 9.3.1.4 The Contractor shall provide lien waivers from itself and all subcontractors, 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, 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 preceding 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.

§ 9.3.1.5 The Contractor will submit its Application for Payment to the Architect following the procedures provided for in the Agreement.

§ 9.3.1.6 Retainage or Other Escrow Account. Owner and Contractor acknowledge that R.C. 153.63 provides that retained and detained funds will be deposited into an escrow account governed by an escrow agreement with a third party escrow agent. If Contractor wishes to have funds so deposited, (1) Contractor must provide written notice to the Owner of the request for an escrow account prior to submission of the first pay application, (2) Contractor will be responsible for all expenses associated with the escrow agent and escrow account beyond the interest income from the account, which will be paid for out of the principal amount deposited into the escrow account, and (3) Contractor must enter into a mutually agreeable written escrow agreement with the Owner and escrow agent. If the Contractor does not request an escrow account prior to the submission of the first pay application or, in the event Contractor does timely request an escrow account before submission of the first pay application, if Contractor cannot (or does not) agree to a mutually agreeable escrow agreement, the Contractor consents to the following: (a) the Owner may deposit funds into a savings or checking account established by the Owner (which may also contain other funds); (b) Owner will not be serving in a fiduciary capacity while holding the funds; (c) Owner is not required to deposit the funds into a separate escrow account governed by an escrow agent; and (d) the foregoing satisfies the Owner's obligations under R.C. 153.63 as it pertains to both R.C. 153.12 (retained funds) and 1311.28 (detained funds).

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

§ 9.3.1.8 The amount of each progress payment shall be computed as set forth in paragraph 11.1.7.1 of the Agreement.

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

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials

and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities 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 real property on which the Project is located, the Owner's interest in such real property, and/or the balance of the Contract Sum then due and owing by providing a bond meeting the requirements of the Ohio Revised Code. The Contractor shall do so within sixty (60) days of the filing of the lien.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's properly completed Application for Payment and Contractor's Payment Application Checklist (if required) and Certification, the documentation described in the Contractor's Payment Application Checklist and Certification, and such other data substantiating the Contractor's right to payment as the Owner or Architect may require, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

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

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 failure to carry out the Work in accordance with the Contract Documents; or

- .8 the Contractor is in default of the performance of any of its obligations under another contract it has with the Owner.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

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

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

§ 9.6 Progress Payments

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

§ 9.6.2 The Contractor shall promptly, within the time period required by Ohio law, pay each Subcontractor no later than 10 days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. Neither the Contractor nor its Subcontractors shall withhold retainage from its Subcontractors or their sub-subcontractors beyond the retainage withheld by the Owner from the Contractor.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

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

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

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

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

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within the time period established in the Agreement, the amount certified by the Architect within the time period set forth herein and the Owner has no other basis to withhold payment under the Contract Documents, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum and/or GMP shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

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

§ 9.8.1.1 Date for Substantial Completion

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

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment together with all required documents neatly bound and indexed. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. When a specific manufacturer's warranty is required by the Specifications, the Contractor shall state in writing to the Architect that all the manufacturer's requirements for the issuance of the warranty has been completed and that the Work is ready for the Architect's and Owner's inspection. All manufacturer's warranties required for the Work shall commence as of the Date of Substantial Completion stated on the certificate issued by the Architect.

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

§ 9.8.3.1 Time for Completion of Items on List and Remedies.

The Contractor shall complete all items on the list accompanying the Architect's Certificate of Substantial Completion by the Date for 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 and obligations under the Contract Documents shall remain in full force and effect and cover any remedial work even if performed by others. If more than one inspection by the Architect for purposes of evaluating corrected Work is required, the Contractor shall pay the additional costs and expenses incurred by the Owner as a result of more than one inspection by the Architect, and the Owner may withhold from sums due or coming due the Contractor amounts to cover such additional costs and expenses.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; 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, fix the time within which the Contractor shall finish all items on the list accompanying the

Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 Upon receipt of the Certificate of Substantial Completion from the Architect and consent of the Contractor's surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor and/or with the Architect's approval, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. In the event of a disagreement about such responsibilities, correction period, or commencement of warranties, the Architect will resolve the disagreement, and the Architect's decision will be final and binding. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect, which shall be final and binding.

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

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

§ 9.10 Final Completion and Final Payment

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

§ 9.10.1.1 Final Completion Defined

Final Completion shall mean that the Work is complete in all respects in accordance with the Contract Documents and the Contractor has submitted to the Architect all documents required to be submitted to the Architect for final payment.

§ 9.10.1.2 Date for Final Completion

The Date for Final Completion is the Date for Final Completion as set forth in the Agreement or in the Guaranteed Maximum Price Amendment, as applicable. The Date for Final 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.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld

by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees. Unless otherwise provided in the Contract Documents, the final Application for Payment shall be itemized, and the Contractor shall ensure that the final Application for Payment transmitted to the Architect also is accompanied by the following additional documents, if not previously delivered to the Architect:

- .1 Evidence that all Completion/Punchlist 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 not otherwise required by the Contract Documents to be delivered earlier in both hard copy and the electronic format requested by the Owner; and
- .4 Other documents required by the Contract Documents.

§ 9.10.3 If, after Substantial Completion of the Work, Final Completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting Final Completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from 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;
- .4 audits performed by the Owner, after final payment; or
- .5 any claims, damages, losses, or expenses for indemnification under Section 3.18.1.

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

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

§ 10.2 Safety and Health of Persons and Property

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

- .1 employees on the Work and other persons who may be affected thereby, including the Owner's employees, employees of other contractors, their subcontractors, suppliers, and persons on the site or adjoining property;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor and/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 implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards. The Contractor shall be responsible, at the Contractor's sole cost and expense, for all 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. Contractor will not bring any hazardous materials onto the Project site unless expressly required by the Contract Documents.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

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

§ 10.2.8 Injury or Damage to Person or Property

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

§ 10.3 Hazardous Materials

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

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract

Documents upon written request, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of the material or substance. Work in the affected area shall be resumed immediately following the occurrence of any one of the following events: (i) the Owner causes remedial work to be performed that results in the hazardous substance being rendered harmless; (ii) the Owner and the Contractor, by written agreement, decide to resume performance of the Work; or (iii) the Work may safely and lawfully proceed using appropriate protective measures, as determined by a competent person employed by the Owner. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum and/or GMP shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up. The term "rendered harmless" shall be interpreted to mean that exposure levels of asbestos and polychlorinated biphenyl (PCB) are less than any applicable exposure standards set forth in OSHA regulations.

§ 10.3.3 [Not Used.].

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

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

§ 10.3.6 [Not Used.].

§ 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 direction, 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. Nothing in this section will be construed as relieving Contractor from the cost and responsibility for emergencies covered hereby, which with normal diligence, planning, and the close supervision of the Work as required under the Contract, could have been foreseen or prevented. Contractor will provide Owner a list of names and telephone numbers of the designated employees for each Subcontractor to be contacted in case of emergency during non-working hours. A copy of the list will also be displayed on the jobsite.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Liability Insurance

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

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;

- .7 Claims for bodily injury or property damage arising out of completed operations, which coverage shall be maintained for no less than five (5) years following final payment; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 Coverages shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

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

- .1 Commercial General Liability ("CGL"): Bodily injury (including death and emotional distress) and property damage with limits of \$1,000,000 each occurrence and \$2,000,000 aggregate. CGL shall include: (i) Premises-Operations, (ii) Explosion and Collapse Hazard, (iii) Underground Hazard, (iv) Independent Contractors' Protective, (v) Broad Form Property Damage, including Completed Operations, (vi) Contractual Liability, (vii) Products and Completed Operations, (viii) Personal Injury with no Employment Exclusion, (ix) Stopgap liability; (x) per project aggregate endorsement, and (xi) an endorsement or equivalent form redefining "occurrence" to include property damage arising from the faulty workmanship performed by the Contractor or on the Contractor's behalf by a Subcontractor.
- .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 \$1,000,000 each accident.
- .3 Workers' compensation with policy limits as established by Ohio law.
- .4 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 \$1,000,000 each occurrence and \$2,000,000 aggregate.

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

§ 11.1.2.3 Contractor's pollution liability insurance with a limit for any one incident of not less than \$1,000,000 and an aggregate limit of not less than \$2,000,000.

§ 11.1.2.4 By requiring such insurance and insurance limits herein, the Owner does not represent that coverage and limits will necessarily be adequate to protect the Contractor, and such coverage and limits shall not be deemed as a limitation on the Contractor's liability under the indemnities granted to the Owner.

§ 11.1.2.5 Professional Liability coverage shall extend for not less than the period of the Statute of Repose.

§ 11.1.2.6 Products and completed operations coverage shall commence with the certification of the final Certificate for Payment to the Contractor and extend for not less than the applicable Statute of Repose.

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

§ 11.1.2.8 All liability policies required in Section 11.1, except Professional Liability, shall include an additional insured endorsement naming the Owner, the Owner's Board members and employees, and the Architect and its employees. The CGL additional insured endorsement shall be CG 20 10 07 04 and CG 20 37 07 04 or equivalent so that Completed Operations liability extends to the additional insureds.

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

§ 11.1.3 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. Prior to commencing the Work, the Contractor shall provide the Owner with the specific additional insured endorsement that names the Owner as well as copies of the waiver of subrogation and primary and contributory endorsements.

§ 11.1.3.1 The Contractor shall furnish to the Owner, through the Architect, one copy of each of the Certificates of Insurance required by the Contract Documents. The Certificates of Insurance shall specifically set forth evidence of all coverage required by Section 11.1. The form of certificate shall be the form prescribed by the Owner, which shall be the ACORD Form 25 (2009/09 or more recent). The Contractor shall furnish to the Owner copies of any endorsement that is subsequently issued by amending coverage or limits.

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

§ 11.1.3.3 If the Contractor fails to purchase and maintain, or require to be purchased and maintained, any insurance required under the Contract Documents, 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.

§ 11.1.3.4 When any required insurance, due to the attainment of a normal expiration date or renewal date expires, the Contractor shall supply the Owner with Certificates of Insurance and amendatory riders or endorsements that clearly evidence the continuation of all coverage in the same manner, limits of protection, and scope of coverage as was provided by the previous policy. In the event any renewal or replacement policy, for whatever reason obtained or required, is written by a carrier other than that with whom the coverage was previously placed, or the subsequent policy differs in any way from the previous policy, the Contractor shall also furnish the Owner with a certified copy of the renewal or replacement policy unless the Owner provides the Contractor with a 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.

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

§ 11.1.3.6 The Contractor shall require each of its Subcontractors to (i) procure insurance reasonably satisfactory to the Owner and (ii) name the Owner and Architect, and any of their employees and agents, as additional insureds under the Subcontractor's CGL policy. The additional insured endorsement included on the Subcontractor's CGL policy shall state that coverage is afforded the additional insureds with respect to claims arising out of operations performed by or on behalf of the Contractor. If the additional insureds have other insurance that is applicable to the loss, such other insurance shall be on an excess or contingent basis. The amount of the insurer's liability under this insurance policy shall not be reduced by the existence of such other insurance.

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the

procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Liability Insurance

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

§ 11.2.2 [Not Used].

§ 11.2.3 [Not Used].

§ 11.3 Property Insurance

§ 11.3.1 Builder's Risk Insurance. 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 builder's risk insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 The builder's risk insurance obtained shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.3.1.1.1 If applicable, property insurance provided by the Owner shall not cover any tools, apparatus, machinery, scaffolding, hoists, forms, staging, shoring, and other similar items commonly referred to as construction equipment that may be on the site and the capital value of which is not included in the Work, nor shall such insurance cover any materials or equipment before these materials and equipment are physically incorporated into the Work. The Contractor shall make its own arrangements for any insurance it may require on such construction equipment and materials and equipment.

§ 11.3.1.2 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.

(Paragraphs deleted)

§ 11.3.1.3 If the Work is located in a Special Flood Hazard Area, as defined by the Federal Emergency Management Agency, the Contractor shall provide an endorsement to the property insurance policy that provides coverage for physical loss or damage caused by flood.

§ 11.3.1.4 When it is available, the party providing the builder's risk insurance shall provide the other party written proof of the builder's risk insurance, upon written request.

§ 11.3.1.5 If the property insurance requires deductibles, the Owner shall pay such deductibles, provided, however, that if the cause of any loss payment under such insurance or self-insurance is the fault of the Contractor, the Contractor shall pay such deductible.

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

§ 11.3.1.7 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.

§ 11.3.1.8 Damages to Other Property. The maintaining of such insurance as outlined in Section 11.1 shall in no way constitute a waiver of the Contractor's legal liability for damage to any adjoining buildings or existing buildings or their contents or the Work and property of others on the site beyond the limits of insurance thus maintained. The Contractor shall hold the Owner free and harmless from any injury and damage resulting from the negligent or faulty performance of the Contract by the Contractor or its Subcontractors or others under its control or direction.

§ 11.3.1.9 This property insurance must include testing and startup.

§ 11.3.2 Boiler and Machinery Insurance. The Owner, at the Owner's option, may 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 and any other individuals or entities identified in the Contract Documents and the officers, directors, partners, employees, agents, and consultants of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured.

§ 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, to the extent permissible by such policies, the Owner shall waive all rights in accordance with the terms of Section 11.3.8 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

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

§ 11.3.7 All policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with Section 11.3 will contain a provision or endorsement that the coverage afforded will not be cancelled or materially changed or renewal refused until at least 30 days prior written notice has been given to the Owner and Contractor and to each other additional insured to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with these General Conditions.

§ 11.3.8 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; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent 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 and to the extent permitted by the appropriate builder's risk insurance, unless Waiver of Subrogation is specifically prohibited, except such rights as they have to proceeds of such insurance held by the Owner in good faith. The Owner or Contractor, as appropriate, shall require by appropriate agreements, similar written waivers each in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, if any, and the subcontractors, sub-subcontractors, agents, and employees of any of them. 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 damaged property.

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

§ 11.3.10 If required in writing by a party in interest, the Owner in good faith shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received in good faith. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

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

§ 11.4 [Not Used].

§11.5 [Not Used].

§ 11.5.1 [Not Used].

§ 11.5.2 [Not Used].

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall be 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 Substantial Completion

In addition to the rights and remedies under Section 2.5, the Contractor shall promptly correct Work rejected by the Architect or Owner or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the

Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it within 30 days after receipt of notice from the Owner or Architect to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. If the Contractor fails to correct nonconforming Work within 30 days after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

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

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

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

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is 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 must 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 an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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

§ 13.3 Rights and Remedies

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

§ 13.3.2 Except as otherwise provided in the Contract Documents, no action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or

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failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. Contractor shall provide proper facilities at all times for inspections and tests of work by the Owner and other authorities having jurisdiction over the Project. Contractor shall remove any water used in conducting such tests and inspections in a manner so as not to discharge the water on any portions of the Work or damage any portion of the Work. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (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.

§ 13.4.1.1 If Laws and Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, the Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish the Architect the required certificates of inspection or approval. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures.

§ 13.4.1.2 The Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for the Owner's and Architect's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to the Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to the Owner and Architect. Tests required by the Contract Documents to be performed by the Contractor that require test certificates to be submitted to the Owner or Architect for acceptance shall be made by an independent testing laboratory or agency licensed or certified in accordance with Laws and Regulations and applicable state and local statutes. In the event state license or certification is not required, testing laboratories or agencies shall meet the following applicable requirements:

- .1 "Recommended Requirements for Independent Laboratory Qualification," published by the American Council of Independent Laboratories.
- .2 Basic requirements of ASTM E329, "Standard Specification for Agencies Engaged in the Testing and/or Inspection of Materials used in Construction" as applicable.
- .3 Calibrate testing equipment at reasonable intervals by devices of accuracy traceable to either the National Institute of Standards and Technology or accepted values of natural physical constants.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense. Neither the observations by the Owner or its designated representative, nor inspections, tests, or approvals by persons other than the Contractor, shall relieve the Contractor from its obligations to perform the Work in accordance with the Contract Documents.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

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

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

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at zero percent (0%).

§ 13.6 Time Limits on Claims.

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

§ 13.7 Attorney-Client Confidential and Privileged Communications.

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

§ 13.8 In the event the Contract Documents require the Contractor to provide documents or notice to the Architect, or if the Contractor otherwise provides documents to the Architect, the Contractor shall provide the same documents or notice to the Owner, upon request.

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 90 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work 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;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

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

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

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

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

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety as expressly stated in the applicable surety bond:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

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

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

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

§ 14.3 Suspension by the Owner for Convenience

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

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

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

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 Upon three business days written notice to the Contractor and Architect, the Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

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

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

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment in accordance with Article 13 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, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The Contractor's Claims must be initiated by submitting the Notice of Claim Form ("Claim Form") included with the Contract Documents to the Architect and the Owner, properly completed in accordance with the instructions accompanying the Form and submitted within the period provided in Section 15.1.3.1. The responsibility to substantiate Claims shall rest with the party making the Claim. The Contractor shall not knowingly present or cause to be presented to the Owner a false or fraudulent Claim. "Knowingly" shall have the same meaning as in Section 3729(b) USC of the Federal False Claims Act. If the Contractor knowingly presents or causes to be presented a false or fraudulent Claim, then the Contractor shall be liable to the Owner for the same civil penalty and damages as the United States Government would be entitled to recover under such Section 3729(a) USC and shall also indemnify and hold the Owner harmless from all costs and expenses, including the Owner's attorneys' and consultants' fees and expenses incurred in investigating and defending against such Claim and in pursuing the collection of such penalty, damages, and fees and expenses. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

The Contractor acknowledges and agrees that the Owner and/or parties in privity of contract with the Owner may delay, interfere with, and/or disrupt the Work of the Contractor, and such actions do not constitute a breach of contract by the Owner, since the Contractor is entitled to additional compensation by properly submitting and pursuing a Claim as permitted by these General Conditions. Pending final resolution of the Claim, the Contractor shall continue performance of the Work as provided in Section 15.1.4.

(Paragraphs deleted)

§ 15.1.2 [Not Used.]

§ 15.1.3 Notice of Claims

§ 15.1.3.1 As a condition precedent to a change in the Contract Sum, GMP, and/or the Contract Time, for each Claim the Contractor shall deliver a fully completed Notice of Claim Form, a copy of which form is a Contract Document, to the Initial Decision Maker with a copy sent to the Owner and the Architect, if the Architect is not serving as the Initial Decision Maker, within 10 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 the 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 10 day period is a material term of the Contract Documents and provides the Owner with the opportunity to mitigate its damages.

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

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

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

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum and/or GMP, the Contractor shall submit a Notice of Claim Form as required by Section 15.1.3.1. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time following proper Notice of Delay as required under Section 3.10.3.1 of these General Conditions, the Contractor shall submit a Notice of Claim Form as required by Section 15.1.3.1.

§ 15.1.6.2 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 Claim Form in accordance with Section 15.1.3.1. The Contractor's entitlement to additional time shall be evaluated and substantiated as provided in Section 15.1.6.2.1.

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

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

§ 15.1.6.3 **Excusable and Compensable Delays.** The delays for which the Contractor is entitled to additional time are "Excusable Delays." The only Excusable Delays are those 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 15.1.6.2, (e) concealed or unknown conditions under Section 3.7.4, and (f) other unforeseeable delays beyond the control of the Contractor and its subcontractors and suppliers of any tier. The delays for which the Contractor is entitled to additional time and money are "Compensable Delays." The only Compensable Delays are those Excusable Delays which the Contractor establishes were proximately caused by an improper action or failure to act by the Owner.

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor waives Claims against the Owner for consequential damages arising out of or relating to this Contract. This waiver includes

(Paragraphs deleted)

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.

.1 [Not Used.]

.2 [Not Used.]

This waiver is applicable, without limitation, to all consequential damages due to the Owner's termination of the Agreement in accordance with Article 13. Nothing contained in this Section 15.1.7 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.1.8 Settlement Offers. If the Contractor initiates a Claim, the Owner may make settlement offers to settle the Claim at any time up to the date of the trial. Such settlement offers shall be subject to Rule 408 (Compromise and Offers of Compromise) of the Ohio Rules of Evidence. If at any stage of the litigation, including any appeals, the Contractor's Claim is dismissed or found to be without merit, or if the damages awarded to the Contractor on its Claim do not exceed the Owner's last settlement offer, the Contractor shall be liable to the Owner and shall reimburse the Owner for all of the Owner's attorneys' fees and expenses, and arising out of or related to such Claim since the date of such last settlement offer.

§ 15.2 Initial Decision

§ 15.2.1 Claims by the Contractor, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.3.11, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to any further proceeding permitted under these General Conditions of any Claim by the Contractor prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within thirty (30) days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim. If an initial decision has not been rendered within 30 days, the Claim by the Contractor shall be deemed denied.

§ 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 the Contractor shall indemnify the Owner for all of the Owner's costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the 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 the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of

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

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum, GMP, and/or Contract Time. The initial decision shall be final and binding unless parties take action under §15.2.6.1.

§ 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 Claim by the Contractor is denied or deemed denied, unless a request for mediation is made in writing and submitted to the other party, per §15.3, the Initial Decision Maker's decision becomes final and binding upon the Contractor. If the Initial Decision Maker renders a decision after litigation has been initiated, such decision may be entered as evidence, but shall not supersede the litigation proceedings unless the decision is acceptable to all parties concerned. Litigation shall be considered "initiated" upon either the service of the original complaint on the Owner or, if litigation relating to the Project has already been filed, when a motion for leave to amend the complaint to add the claim has been filed.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, 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 but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings.

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

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the county where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 Litigation

§ 15.4.1 Any Claim subject to, but not resolved by, mediation pursuant to Section 15.3.1 shall be subject to litigation unless both parties mutually agree in writing to arbitrate the Claims. Venue for such litigation shall be exclusive in the state court of competent jurisdiction in the county in which the Project is located. The parties expressly waive the right to remove any litigation to federal court. 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.

§ 15.4.1.1 [Not Used.].

| § 15.4.2 [Not Used.]

| § 15.4.3 [Not Used.]

| § 15.4.4 [Not Used.]

| § 15.4.4.1 [Not Used.] .

| § 15.4.4.2 [Not Used.] .

| § 15.4.4.3 [Not Used.] .

