

REQUEST FOR BID

For

Filager Campus Improvement Phase 3
East Filager Road
BATAVIA, OHIO 45103

**BOARD OF CLERMONT COUNTY COMMISSIONERS
CLERMONT COUNTY, OHIO
July 30, 2026**

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Overview

OVERVIEW

THE CLERMONT COUNTY BOARD OF COUNTY COMMISSIONERS IS ACCEPTING SEALED BIDS FOR A SINGLE, LUMP SUM GENERAL CONTRACT FOR THE FILAGER CAMPUS IMPROVEMENT PHASE 3, LOCATED AT EAST FILAGER ROAD; BATAVIA, OHIO 45103.

THE PURPOSE OF THIS REQUEST FOR BIDS ("RFB") IS TO SELECT A GENERAL CONTRACTOR WHO CAN BEST MEET THE REQUIREMENTS OF THE RFB IN THE BEST MANNER. THE CONTRACTOR SELECTED FROM THIS RFB PROCESS SHALL PROVIDE CONSTRUCTION SERVICES, AS DEFINED HEREAFTER. THE BID MUST MEET THE SPECIFIED NEEDS LISTED IN THIS RFB DOCUMENT. THE DETAILS OF THE SERVICES NEEDED ARE FURTHER DEFINED IN ARTICLE 5.0 PROJECT SPECIFICATIONS.

ARTICLE 1

Required Contents of all Bids

ARTICLE 1: REQUIRED CONTENTS OF ALL BIDS

All bids submitted in response to this RFB should be organized as follows:

- | | | |
|----------------|------------|---|
| Section | 1. | Pricing per the specifications. |
| Section | 2. | A Letter of Transmittal signed by an officer of the company or signed by another employee and accompanied by an affidavit of authority to bind the company. |
| Section | 3. | The following affidavits/attachments: |
| | 3.1 | Affidavit affirming compliance with 9.24 and 5719.042 ORC |
| | 3.2 | Non-collusion affidavit |
| | 3.3 | W-9 Taxpayer Identification |
| Section | 4. | A bid bond |
| Section | 5. | Qualifications (see Article 4 for Contractor Information) |
| Section | 6. | A copy of this RFB |

ARTICLE 2

Public/Legal Notification

The Clermont Sun

Date: August 20th, 2026

The Board of County Commissioners, Clermont County, Ohio, will be accepting sealed bids for the Filager Campus Improvement Phase 3, located at East Filager Road Batavia, Ohio 45103. All bids shall be submitted in a sealed envelope marked: BID – Filager Campus Improvement Phase 3. All bids must be received in the Office of the Board of Clermont County Commissioners, 101 E. Main Street, Suite 329, Batavia, Ohio 45103, no later than **2:00 P.M. local time on Thursday, September 17, 2026**, at which time all bids shall be opened and read publicly.

Bid Documents (instructions to contractors, drawings, specifications, and bid form outlining the terms and conditions) may be purchased in hard copy or electronic PDF form at DC Alphagraphics, 1254 Courtland Ave, Columbus, Ohio 43201; www.DCplanroom.com; Phone 614-297-1200. Partial sets may only be purchased in addition to a minimum of one full set. Cost for the documents is non-refundable. Bid documents may also be viewed by interested parties at Garmann Miller ; 38 South Lincoln Drive, P.O. Box 71, Minster, OH 45865, Phone (419) 628-4240 or at the offices of the Clermont County Facilities Management Department; 4001 Filager Road, Batavia, Ohio, 45103, Phone: (513) 732-8850, rlinne@clermontcountyohio.gov Office hours are from 8:00 A.M. to 4:30 P.M., local time, Monday thru Friday. There will be a **mandatory** pre-bid conference at the Clermont County Engineer Highway Operations Building, 4475 OH-222, Batavia, OH 45103 at 10 A.M. local time, Tuesday, September 1, 2026. **Bids will not be accepted from bidders who do not attend the mandatory pre-bid conference and site visit.** Deadline for questions Monday, September 7, 2026, by 12:00 P.M. local time.

NOTE: ALL PROSPECTIVE BIDDERS/RESPONDENTS ARE HEREBY CAUTIONED NOT TO CONTACT ANY MEMBERS OF THE CLERMONT COUNTY STAFF OR OFFICIALS OTHER THAN THE SPECIFIED CONTACT PERSONS.

The Architect's Estimate for the work of this project is \$2,850,000.00

Each Bidder MUST submit their bid in DUPLICATE, one (1) original paper copy, along with one (1) searchable PDF copy on a USB. All copies must be in a sealed envelope marked: BID- Filager Campus Improvement Phase 3. Each bidder must deposit with his bid, security in the amount of 100% of the bid if in the form of a Bid Bond or in the amount of not less than ten (10%) percent of the bid if in the form of a certified check, cashier's check or letter of credit, for and subject to the conditions provided in the Information for Bidders and pursuant with Ohio Revised Code Section 153.54. Bid security furnished in Bond form shall be issued by a surety company or corporation licensed in the State of Ohio to provide said surety. Letters of credit and bid bonds must be filed with original signatures. Facsimile and electronic copies of the letter of credit, bid bond and Power of Attorney of the Surety will be deemed non-responsive.

The Board of Clermont County Commissioners reserves the right to waive any informalities, reject any or all bids and to hold such bids for a period of sixty (60) days before taking any action and to award a contract to the lowest and best bidder.

This notice is also posted on Clermont County's web site at the following URL link: www.clermontcountyohio.gov. In order to view the legal notice click on the link Legal Notices located on the Clermont County Home Page.

BOARD OF COUNTY COMMISSIONERS
CLERMONT COUNTY, OHIO

Bonnie J. Batchler, President
David L. Painter, Vice President
Claire B. Corcoran, Member

ATTEST:

Gael Fawley, Clerk of the Board

Bill to:
Board of Clermont County Commissioners
ATTN: Dottie Coffey
101 E. Main Street
Batavia, Ohio 45103

ARTICLE 3

General Instructions to Bidders

ARTICLE 3: GENERAL INSTRUCTIONS TO BIDDERS**1. *Bid Submittal:***

Reply to:

**Board of County Commissioners
Clermont County
101 E. Main Street
Batavia, Ohio 45103-2960**

All bids submitted for consideration by the Board of Clermont County Commissioners (referred to herein as “County” or “Owner”) must comply with these instructions in order to be considered. These instructions set forth minimum requirements as to the terms and conditions of the contract. Therefore, if any time frames, bid bond or other surety requirements set forth herein are in conflict with stated requirements in the specifications, the more stringent requirements shall prevail.

2. *Schedule of Activities:***Bids Due and Opened:**

Time: 2:00 P.M. local time
Date: Thursday, September 17, 2026
Location: Board of Clermont County Commissioners
Clermont County
101 E. Main Street, 3rd Floor
Batavia, Ohio 45103-2960

Mandatory Pre-Bid Conference and Site Visit

Time: 10:00 A.M. local time
Date: Tuesday September 1, 2026
Location: Clermont County Engineer Highway Operations Building
4475 OH-222
Batavia, OH 45103

Bids will not be accepted from bidders who do not attend the mandatory pre-bid conference and site visit.

- 3. *Contractor Requirements:*** It is required that the bidder have prior experience/expertise in the area pertaining to the bid items listed in Article 5 Project Specifications as attached.
- 4. *Foreign Corporations:*** If the Bidder to be awarded the Contract is a foreign corporation, the Secretary of State has certified that such corporation is

authorized to do business in this state; and until if the Bidder so awarded the Contract, is a person or partnership has filed with the Secretary of State as its agent for the purpose of accepting service of summons in any action brought under Section 153.05 of the Revised Code or under Sections 4123.01 to 4123.94, inclusive of the Revised Code.

5. *Implied Requirements:* All products and services not specifically mentioned in the bid, but which are necessary to provide the functional capabilities described by the vendor, shall be included in the vendor's base bid.
6. *Base and/or Alternate Bids:* Bids may contain descriptions of options or alternatives that may be available to the County. The Base Bid will contain all material and labor to execute the base project as indicated in the bid request and all other bidding documents. All bidders must also include Alternate Bids for listed alternates.

The County reserves the right to award a contract that includes the base bid alone or the base bid and any combination of alternate bids.

7. By responding to this RFB, the bidder hereby agrees that if it is awarded the bid it shall indemnify and hold the County harmless from any claims, demands or losses of any type or nature to any person, bidder or corporation arising in any manner from the bidder's performance or failure to perform the work required under this RFB and shall pay any judgment or liability obtained or growing out of said claims, liabilities, or judgments, including reasonable attorney's fees and costs.
8. *Contractor-supplied Materials:* Any material submitted by a vendor shall become the property of the County.
9. *Rejection of Bids:* The County reserves the right to reject any and all bids, to waive any informalities in the bidding procedure, to accept any bid which it deems to be for the best interest of the County and to hold such bids for a period of sixty (60) days before taking action to award a contract. The bid will be awarded to the "lowest and best" bidder.
10. *Bid Identification and Submittal:* Bids shall be clearly marked on the envelope: **"BID – Filager Campus Improvement Phase 3"** and include the bidders name and address. Bids must be in a sealed envelope submitted with one (1) original copy and (1) searchable PDF copy on a USB. Replies must be received in the Office of the Board of County Commissioners no later than 2:00 P.M. local time on September 17, 2026. Late bids will not be considered. Bidders will not be permitted to alter their bids after bid closing. Should the bidder wish to mail in

the bid, they should send them to the County at the address indicated and must be received by the County prior to the above date and time.

- 11.** *Bid Opening:* Bid opening will occur at 2:00 P.M. local time on Thursday, September 17, 2026 at the Office of the Board of Clermont County Commissioners, 101 E. Main Street, 3rd Floor, Batavia, Ohio 45103.
- 12.** Each person bidding for a contract for the construction, demolition, alteration, repair, or reconstruction of any public improvement is required to file with his bid a bid guaranty in the form of either (1) a bond for the full amount of the bid or (2) a certified check, cashier's check, or letter of credit pursuant to Chapter 1305 of the Revised Code in an amount equal to ten (10) percent of the total amount of the bid (including add alternates) pursuant to Section 153.54 of the Ohio Revised Code. The successful bidder at the time he enters into the contract shall be required to file a performance bond in the full amount of the contract pursuant to Section 153.54 (C) of the Ohio Revised Code. Letters of credit and bid bonds must be filed with original signatures. Facsimile and electronic copies of the letter of credit, bid bond and Power of Attorney of the Surety will be deemed non-responsive.
- 13.** Bids may be rejected if all required papers are not returned with the bid. The bid bond shall be returned:
 - A:** If said bid shall be rejected.
 - B:** If said bid shall be accepted and the principal shall execute and deliver contract properly completed in accordance with said bid, and the successful bidder enters into a performance bond, guaranteeing performance of all required under the contract.
- 14.** *Bid Duration:* All prices quoted by the bidder in their bid must remain unchanged for a period of sixty (60) days after the date of bid opening.
- 15.** *Bid Suitability:* When analyzing the bids submitted, when applicable, superior design, technology, workmanship, materials, size of component parts, operating cost, warranty, service facility etc. will be considered in addition to price. It is Clermont County's intent to accept the bid for which a thorough analysis of the bids submitted, proves to be the most suitable for the intended use.
- 16.** *Discounts:* Bidders may offer cash discounts for prompt payment of invoices, but their discounts will not be used in determining the final net prices bid. The County will endeavor to take advantage of such discounts if offered.

17. *Prices:* Fixed price on Bid Cost Sheet governs the award unless otherwise specified in the RFB. Detailed fixed prices must be entered and totaled for all items on the attached Bid Detail Cost Sheet at the time of submission of the RFB.
18. *Cost Liability:* The County assumes no responsibility, and no liability, for costs incurred by the prospective bidders for the purposes of preparing and submitting bids.
19. *Delivery:* Every effort shall be made by the Bidder awarded the contract to deliver items by or before the time designated in the contract. Any delinquency in such delivery without satisfactory written explanation directed to the Clermont County Commissioners may result in cancellation of the contract and substitution of other goods. The defaulting bidder shall be liable for any increased cost or expenses incurred as a result of such default.
20. *Performance:* The Board of County Commissioners reserves the right to require faithful performance of all things to be done under the contract and may require, as a condition of entering a purchase contract, lease, or lease with option to purchase the bond provided for by Section 153.57 of the Revised Code, with good and sufficient surety in an amount not to exceed the amount of the bid.

21. **REQUIRED BID CONTENTS:**

- A. Each bid shall include a letter of transmittal which bears the signature of the President, Vice-President, or any other Office or Official as long as accompanied by affidavit of authority to bind the vendor.
- B. All bidders are required to submit the following affidavits with their bid:

1. Affidavit Affirming Compliance with 9.24 and 5719.042 ORC.
2. Non-Collusion Affidavit
3. W-9 TAXPAYER IDENTIFICATION

These affidavits and specifications heretofore referenced shall be incorporated into and become a part of the Contract document.

- C. The successful bidder will be required to enter into a written Contract with the Board of Clermont County Commissioners within ten (10) days of the notification of award thereof.

- D. Bid Security:** Each bidder is required, pursuant with Ohio Revised Code Section 153.54, to file with his bid a bid guaranty in the form of either:
- a.** A bond, for the full amount of the bid, prepared in the form provided herein and duly executed by the bidder as principal and having as surety thereon a surety company approved by the Owner. The Surety on such bond shall be a duly authorized surety company satisfactory to the Owner and Bidder must supply a certificate stating that Surety executing the Bond is authorized to do business in the State of Ohio.
 - b.** A certified check, cashier's check, or letter of credit pursuant to Chapter 1305 of the Ohio Revised Code. Any such letter of credit shall be revocable only at the option of the beneficiary state, political subdivision, district, institution, or agency. The amount of the certified check, cashier's check, or letter of credit shall be equal to ten percent (10%) of the bid.
 - c.** Bid security filed pursuant with this Section shall be returned to all unsuccessful bidders immediately after the contract is executed, or if no award has been made within the 60 days after the date of opening of bids, upon demand of the bidder at any time thereafter, so long as he has not been notified of the acceptance of his bid or extended the bid. The guaranty filed pursuant to this section shall be returned to the successful bidder upon filing of the bond required under Item 20 of this Section.
 - d.** Bid bonds must be filed with original signatures. Facsimile and electronic copies of the bid bond and Power of Attorney of the Surety will be deemed non-responsive.
 - e.** If a bidder furnished a cashier's check, letter of credit, or certified check as bid security, the bidder shall furnish a surety bond or bonds in the amount of 100% of the bid simultaneously with his delivery of the executed contract, as security for faithful performance of this contract and for the payment of all persons performing labor on the project under the contract and furnishing materials in connection with this contract, as specified in the specifications included herein.
 - f.** If the bidder has furnished a combination bid guaranty and contract bond, this bond shall become the security for faithful performance of the executed contract and for payment of all

persons performing labor on the project under the contract and for furnishing materials in connection with the contract.

- E.** Each bidder shall complete and submit the Required Contractor Information as specified in Article 4 of this bid packet.
- F.** Unless otherwise specified, all material shall be new and of the best grade in its particular line; all articles shall be complete and in first class condition; all articles shall include all applicable manufacturer's warranties. Such warranty shall be reflected in the bid documents. All work shall be done in the best and most skilled manner, exactly as specified or detailed, and shall be subject to the approval of Clermont County Officials. When required in the specifications, bidders shall make available for inspection a sample or similar model of the bid item prior to the award of the bid.

22. *Subcontracting:* It is to be understood that no part of this bid shall be assigned, transferred, conveyed, sublet, or otherwise disposed of, without the expressed written approval of the State of Ohio Subcontractor Forms by the Owner's Representative. **State of Ohio Subcontractor Forms will be required from Contractor at the Pre-Construction Meeting after the Award of Bid.

23. *Basis of Design:* Reference to a particular trade name, manufacturer's catalog or model number (Basis of Design) are made for descriptive purposes to guide the bidder in interpreting the requirements of the County. They should not be construed as excluding bids on other types of materials, equipment and supplies. However, the bidder, if awarded a contract, will be required to furnish the particular item referred to in the specifications or description. If the Basis of Design is not as proposed, the bidder shall clearly note, describe, and highlight the departure in the bid.

24. *Type of Contract:* Bidders should be aware that the contract is to be of a fixed cost nature. Cost plus/percentage of cost contracts will not be acceptable.

25. *Exemption:* Clermont County is exempt from payment of Federal Excise Tax, Transportation Tax and Ohio State Tax. Prices shall not include these taxes.

26. *Receipt and Opening of Bids:* Any bid may be withdrawn prior to the scheduled time and date for the bid opening.

27. *Obligations of Bidder:* At the time of opening of bids, it shall be presumed that each bidder has reviewed the specifications to clear up any questions. The

failure of any bidder to examine any bid requirement shall in no way relieve the bidder of any obligation or condition of these contract documents.

- 28. Bidder Qualifications:** The County reserves the right to conduct any investigations that it deems necessary to establish the responsibility, qualifications and financial ability of the bidders, proposed subcontractors and other persons and organizations to do the work in accordance with the Contract documents to the County's satisfaction within the prescribed time limits. The bidder shall furnish the County any and all such information, documents and data for this purpose that the County may request.
- 29. Statements of Conditionality:** Bids which contain statements of conditionality will not be accepted. The County also reserves the right to reject any bid should the information submitted by or the investigation of such bidder fails to satisfy the County that such bidder is sufficiently qualified to carry out any and all obligations of the contract.
- 30.** All materials and exhibits submitted in the bid response shall become the property of Clermont County and will not be returned to the bidder. All bids received constitute public information as a matter of statutory law and will be made available for public inspection and copying upon request by members of the public pursuant to the requirements of Section 149.43 of the Ohio Revised Code. Any portion of the bid that the bidder requires to be treated as confidential in nature must be marked to that effect and provided that the information falls within an appropriate exemption enumerated under Section 149.43 of the Ohio Revised Code, that portion will not be considered public record. **A blanket indication of confidentiality or privilege will not be accepted and unless specific materials that fall within the appropriate statutory exemption are identified, the entire bid response will be treated as a public record.**
- 31. Inquiries:** Respondents must address any questions or requests for interpretation regarding the RFB via e-mail to the County's point of contact, Ronnie Ross, ross@clermontcountyohio.gov, no later than 12:00PM (noon) local time, Monday, September 7, 2026. The person submitting the question or request shall be responsible for its prompt delivery. Answers to all questions or requests for interpretation will be sent via e-mail by 4:30 PM local time on Friday, September 11, 2026, to all Respondents that have submitted a written request for the proposal or have registered an email address.

ARTICLE 4

Required Contractor Information

ARTICLE 4: REQUIRED CONTRACTOR INFORMATION

Company Background - Provide a short description of your company.

Include the following information:

1. Organizational structure.
2. Location of main office and any branch offices.
3. Years in business.
4. Financial background and information.
5. Three Current References.
6. Bid Bonds.
7. Liability Insurance.
8. Workers Compensation Insurance.
9. Detail Cost Sheet.
10. Representative Project Descriptions and Client References - Submit descriptions of similar assignments which were conducted by the bidder, including other agency's contact name and telephone number, must include similar size site locations. Locations near the proposed site are preferred in order to allow for site visits.

ARTICLE 5

Project Specifications

ARTICLE 5: PROJECT SPECIFICATIONS**1. General**

The Project Manual includes this document and all technical specifications sections Divisions 00 through 43 as enumerated in Division 00 Section 000003 Index to Specifications

General Conditions:

- See Division 00 Section 00 11 00 Request for Bid

Alternate Bids:

- See Division 01 Section 01 23 00 Alternates

Exclusions:

- N/A

Time of Completion:

- Receipt of a Certificate of Occupancy for all work shall be no later than 547 calendar days after the Notice to Proceed.

Liquidated Damages:

- Failure to complete the project within the agreed timeframe shall subject the Contractor to liquidated damages. Said damages shall be assessed against the General Contractor, no exceptions will be made. Owner and Contractor agree that as liquidated damages for delay, Contractor shall pay Owner two thousand dollars (\$2,000.00) for each day that expires after the completion date in accordance with "Time of Completion" above. Contractor claims for delay will be evaluated in terms of Section 108.06 of the State of Ohio Department of Transportation Construction & Material Specifications, January 01, 2016 edition. Claims for weather days will not be accepted unless they exceed those indicated in Table 108.06-1 as shown below.

TABLE 108.06-1

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

ARTICLE 6

Affidavits/Attachments

AFFIDAVIT IN COMPLIANCE WITH SECTIONS 9.24 and 5719.042
OF THE OHIO REVISED CODE

STATE OF _____ SS:
COUNTY OF _____

Personally appeared before me the undersigned, a bidder in a competitive bidding for

(Name of Firm)

for a _____ contract let by the County of Clermont, who, being
(Type of Product or Service)

duly cautioned and sworn, makes the following statement with respect to the personal property taxes on the general tax list of personal property of Clermont County, Ohio:

1. That the undersigned at the time of making this bid on the aforementioned contract was not charged with any delinquent personal property taxes on the general tax list of personal property of Clermont County.
2. That this statement is made in compliance with Section 5719.042 to be incorporated into the contract between the parties as provided in that Section of the Ohio Revised Code.
3. That pursuant to 9.24 of the Ohio Revised Code, if the project for which this bid is submitted has been identified as being funded in whole or in part with funds from the State of Ohio, the affiant further certifies that the bidder, if an individual, or if a corporation, any principal owning more than 10% equitable interest in the corporation, does not have a finding for recovery issued by the Auditor of State which remains unresolved as defined in 9.24 ORC.

Signature: _____

Title: _____

Subscribed and sworn before me this _____ day of _____, 20 ____.

Notary Public _____

Printed Name of Notary: _____

My Commission expires _____

NON-COLLUSION AFFIDAVIT OF PRIME BIDDER

STATE OF _____)

COUNTY OF _____)

_____, being first duly sworn, deposes and says that:

1. They are _____ of _____ the Bidder

(owner, partner, officer, representative, or agent)

that has submitted the attached Bid:

2. They are fully informed respecting the preparation and contents of the attached Bid and of all pertinent circumstances respecting such Bid:
3. Such Bid is genuine and is not a collusive or sham Bid:
4. Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this Affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly with any other Bidder, firm or person to submit a collusive or sham Bid in connection with the Contract for which the attached Bid has been submitted or to refrain from bidding in connection with such Contract or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Bidder, firm or person to fix the price or prices in the attached Bid or of any other Bidder or to fix any overhead, profit or cost element of the Bid price or Bid price of any other Bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the Board of County Commissioners of Clermont County or any person interested in the proposed Contract: and
5. The price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest, including this Affiant.

Signature: _____

Title: _____

Subscribed and sworn before me this _____ day of _____, 20_____

Notary Public _____,

Printed Name of Notary: _____

My Commission expires: _____

Form W-9 (Rev. October 2018) Department of the Treasury Internal Revenue Service	Request for Taxpayer Identification Number and Certification ▶ Go to www.irs.gov/FormW9 for instructions and the latest information.	Give Form to the requester. Do not send to the IRS.
Print or type. See Specific Instructions on page 3.	1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.	
	2 Business name/disregarded entity name, if different from above	
	3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes.	
	☐ Individual/sole proprietor or single-member LLC ☐ C Corporation ☐ S Corporation ☐ Partnership ☐ Trust/estate	
	☐ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ▶ _____	
	Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.	
	☐ Other (see instructions) ▶ _____	
4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):		
Exempt payee code (if any) _____		
Exemption from FATCA reporting code (if any) _____		
(Applies to accounts maintained outside the U.S.)		
5 Address (number, street, and apt. or suite no.) See instructions.		
Requester's name and address (optional)		
6 City, state, and ZIP code		
7 List account number(s) here (optional)		

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number
[] [] [] - [] [] - [] [] [] []
or
Employer identification number
[] [] - [] [] [] [] [] [] [] []

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here	Signature of U.S. person ▶ _____	Date ▶ _____
------------------	----------------------------------	--------------

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.

Cat. No. 10231X

Form **W-9** (Rev. 10-2018)

STATE OF _____)
) SS:
COUNTY OF _____)

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ARTICLE 7

Bid Bonds

BID GUARANTY AND CONTRACT BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned,

(Here insert full name or legal title of Contractor)

as Principal and

(Here insert full name or legal title of Surety)

as Surety, are hereby held and firmly bound unto the **Board of Clermont County Commissioners, Clermont County, Ohio** hereinafter called the Oblige, in the penal sum of the dollar amount of the bid submitted by the Principal to the Oblige on _____ to undertake the project known as:

(Date)

**Clermont County
Filager Campus Improvement Phase 3**

The penal sum referred to herein shall be the dollar amount of the Principal's Bid to the Oblige, incorporating any additive or deductive alternate proposals made by the Principal on the date referred to above to the Oblige, which are accepted by the Oblige. In no case shall

the penal sum exceed the amount of

_____ dollars (\$ _____). (If the above line is left blank, the penal sum will be the full amount of the Principal's Bid, including alternates. Alternatively, if completed, the amount stated must not be less than the full amount of Bid, including alternates, in dollars and cents. A percentage is not acceptable.)

For the payment of the penal sum well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that whereas the above named Principal has submitted a bond on the above referred project;

NOW, THEREFORE, if the Oblige accepts the bid of the Principal and the Principal fails to enter into a proper contract in accordance with the plans, details, specifications, contract documents, and bills of material; and in the event the Principal pays to the Oblige the difference not to exceed ten percent of the penalty hereto between the amount specified in the bid and such larger amount for which the Oblige may in good faith contract with the next lower bidder to perform the work covered by the bid; or in event the Oblige does not award the contract to the next lower bidder and resubmits the project for bidding, the Principal will pay the Oblige the difference, not to exceed ten percent of the penalty hereof between the amount specified in the bid, or the costs, in connection with the resubmission, of printing new contract documents, required advertising and printing and mailing notices to prospective bidders, whichever is less, then this obligation shall be null and void, otherwise to remain in full force and effect.

If the Obligee accepts the bid of the Principal and the Principal, within ten days after the awarding of the contract, enters into a proper contract in accordance with the bid, plans, details, specifications, and bills of material, which said contract is made a part of this bond the same as though set forth herein; and if the said Principal shall well and faithfully perform each and every condition of such contract; and indemnify the Obligee against all damage suffered by failure to perform such contract according to the provisions thereof and in accordance with the plans, details, specifications, and bills of material therefore; and shall pay all lawful claims of subcontractors, materialman, 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 benefit of any materialman or laborer having just claim, as well as for the Obligee 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 hereunto 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 this bond, and it does hereby waive notice of any such modifications, omissions or additions to the terms of the contract or to the work or to the specifications.

ATTEST:

(Principal) Secretary

(Seal)

ATTEST:

(SURETY) Secretary

(Seal)

PRINCIPAL:

By:

Title:

Address:

SURETY:

By:

Attorney-in-Fact:

Title:

Address:

SURETY COMPANY ADDRESS:

Street:

City/State/Zip

Agency Name:

Street:

City/State/Zip

ARTICLE 8

Bid Detail Cost Sheet

BID COST SHEET

Contractor Name: _____

Contractor Address: _____

Contact Person: _____

Phone Number - Contact Person: _____

Fax Number - Contact Person: _____

Base Bid Contract \$_____.**Base Bid in Written Number** _____

ALTERNATES:**ALTERNATE 1 (Work associated with Bus Canopy Package** \$_____.**Grand Total (Total Base Bid + Alternates 1)** \$_____.**Grand Total in Written Number** _____

Acknowledgement of Addenda: _____
(include numerical list of addenda)_____
Signature - Authorized Representative_____
Date_____
Title

BID DETAIL COST SHEET

Contractor Name: _____

For Owner's information and evaluation, provide the following detail breakdown of base bid costs:

General Requirements	\$ _____.
Site Construction	\$ _____.
Concrete	\$ _____.
Masonry	\$ _____.
Metals	\$ _____.
Wood and Plastics	\$ _____.
Thermal and Moisture Protection	\$ _____.
Doors and Windows	\$ _____.
Finishes Base Bid	\$ _____.
Carpet/Flooring	\$ _____.
Specialties	\$ _____.
Equipment	\$ _____.
Mechanical	\$ _____.
Plumbing	\$ _____.
Fire Suppression	\$ _____.
Electrical	\$ _____.
Voice/Data	\$ _____.
Landscaping	\$ _____.

The Owner may negotiate scopes of work to be self-performed or performed under State Contract.

ARTICLE 9

AIA A101 Standard Form of Agreement

AIA® Document A101® – 2017

Standard Form of Agreement Between Owner and Contractor *where the basis of payment is a Stipulated Sum*

AGREEMENT made as of the «» day of «» in the year «»
(In words, indicate day, month and year.)

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

«Clermont County Commissioners»« »
«101 E. Main Street, Suite 329
Batavia, Ohio 45103»
« »
« »

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

«»« »
« »
« »
« »

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

«Filager Campus Improvement Phase 3»
«East Filager Road
Batavia, Ohio 45103»
« »

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

«Garmann/Miller & Associates, Inc.»« »
«38 S. Lincoln Drive, P.O. Box 71
Minster, Ohio 45865»
« »
« »

The Owner and Contractor 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.

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

The parties should complete A101®-2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. 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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TABLE OF ARTICLES

- 1 THE CONTRACT DOCUMENTS**
- 2 THE WORK OF THIS CONTRACT**
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**
- 4 CONTRACT SUM**
- 5 PAYMENTS**
- 6 DISPUTE RESOLUTION**
- 7 TERMINATION OR SUSPENSION**
- 8 MISCELLANEOUS PROVISIONS**
- 9 ENUMERATION OF CONTRACT DOCUMENTS**

EXHIBIT A INSURANCE AND BONDS**ARTICLE 1 THE CONTRACT DOCUMENTS**

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Articles 1-11 of this RFB, Drawings, Specifications, Addenda issued prior to 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. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:

(Check one of the following boxes.)

☐ The date of this Agreement.

☐ A date set forth in a notice to proceed issued by the Owner.

☐ 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 this Agreement.

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

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§ 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor 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: « »

§ 3.3.2 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 Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work**Substantial Completion Date**

« »

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be « » (\$ « »), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 Alternates

§ 4.2.1 Alternates, if any, included in the Contract Sum:

Item**Price**

« »

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.

(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item**Price****Conditions for Acceptance**

« »

§ 4.3 Allowances, if any, included in the Contract Sum:

(Identify each allowance.)

Item**Price**

« »

§ 4.4 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)**

« »

§ 4.5 Liquidated damages, if any:

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

« »

§ 4.6 Other:

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

« »

ARTICLE 5 PAYMENTS**§ 5.1 Progress Payments**

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

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

« »

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the « » day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the « » day of the « » month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than « » (« ») days after the Architect receives the Application for Payment.

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

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 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.

§ 5.1.6 In accordance with AIA Document A201™–2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

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

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

§ 5.1.6.2 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 a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor 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; and
- .5 Retainage withheld pursuant to Section 5.1.7.

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§ 5.1.7 Retainage

§ 5.1.7.1 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.)

« »

§ 5.1.7.1.1 The following items are not subject to retainage:

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

« »

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

(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)

« »

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

(Insert any other conditions for release of retainage upon Substantial Completion.)

« »

§ 5.1.8 If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201–2017.

§ 5.1.9 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.

§ 5.2 Final Payment

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor'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; and
- .2 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

« »

§ 5.3 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, at the legal rate prevailing from time to time at the place where the Project is located.

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

Interest will be calculated in accordance with Ohio Revised Code 153.14 as applicable.

« » % « »

ARTICLE 6 DISPUTE RESOLUTION**§ 6.1 Initial Decision Maker**

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker.

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

« »
« »
« »
« »**ARTICLE 7 TERMINATION OR SUSPENSION**

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

§ 7.1.1 If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor a termination fee as follows:

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

« »

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 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 amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner's representative:

(Name, address, email address, and other information)

« »
« »
« »
« »
« »
« »

§ 8.3 The Contractor's representative:

(Name, address, email address, and other information)

« »
« »

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« »
« »
« »
« »

§ 8.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

§ 8.5 Insurance and Bonds

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in the RFB and the AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in the RFB and elsewhere in the Contract Documents.

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

30. *(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.)*

« »

§ 8.7 Other provisions:

« »

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor
- .2 AIA Document A101™–2017, Exhibit A, Insurance and Bonds
- .3 AIA Document A201™–2017, General Conditions of the Contract for Construction
- .4 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

(Insert the date of the E203-2013 incorporated into this Agreement.)

« »

.5 Drawings

Number	Title	Date
« »		

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.6 Specifications

Section	Title	Date	Pages
« »			

.7 Addenda, if any:

Number	Date	Pages
« »		

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

.8 Other Exhibits:

(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

[« »] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
« »			

.9 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 Contractor'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.)

«Articles 1-11 of the RFB»

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

« »

OWNER *(Signature)*

« »« »

(Printed name and title)

« »

CONTRACTOR *(Signature)*

« »« »

(Printed name and title)

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AIA® Document A201® – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

«Filager Campus Improvement Phase 3»
«State Route 222
Batavia, Ohio 45103»

THE OWNER:

(Name, legal status and address)

«Clermont County Commissioners»« »
«101 E. Main Street, Suite 329
Batavia, Ohio 45103»

THE ARCHITECT:

(Name, legal status and address)

«Garmann/Miller & Associates, Inc.»« »
«38 S. Lincoln Drive, P.O. Box 71
Minster, Ohio 45865»

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. 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. Contract documents incorporate Articles 1-11 of the RFB.

§ 1.1.2 The Contract

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

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 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 person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

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

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

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

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

§ 1.3 Capitalization

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

§ 1.4 Interpretation

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

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

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

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

§ 1.6 Notice

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

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

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§ 1.7 Digital Data Use and Transmission

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

§ 1.8 Building Information Models Use and Reliance

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

ARTICLE 2 OWNER**§ 2.1 General**

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 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.

§ 2.3 Information and Services Required of the Owner

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

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

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

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

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

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

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.

§ 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, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, 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, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the

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purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is required to carry out its obligations in the Contract Documents in accordance with all applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, and the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor.

§ 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. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 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. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 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.

§ 3.4 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, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

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§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 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, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

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

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

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

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

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If 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 or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but

shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

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

§ 3.9 Superintendent

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

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

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

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

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§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

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

§ 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.

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

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

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

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

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

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

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

§ 3.13 Use of Site

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

§ 3.14 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.

§ 3.15 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.

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§ 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.

§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

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

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, as well as any acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 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.

ARTICLE 4 ARCHITECT

§ 4.1 General

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

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

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. 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 at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. 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,

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or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

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

§ 4.2.4 Communications

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

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

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures, as this shall be the responsibility of the Contractor. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component as this shall also be the responsibility of the Contractor.

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

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

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

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

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

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

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

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

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

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of 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 reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

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§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 Subcontractual Relations

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

§ 5.4 Contingent Assignment of Subcontracts

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

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

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

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 with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

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

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

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

§ 6.2 Mutual Responsibility

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

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction.

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

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

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

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

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

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

§ 7.2 Change Orders

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

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

§ 7.3 Construction Change Directives

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

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

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

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall promptly determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .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 change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

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

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

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

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. 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, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and 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.

§ 7.4 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 or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum 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 or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

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

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

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

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

§ 8.2 Progress and Completion

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

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

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

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.

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

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

ARTICLE 9 PAYMENTS AND COMPLETION**§ 9.1 Contract Sum**

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

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to 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.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

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

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

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

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

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

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

§ 9.5 Decisions to Withhold Certification

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

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

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

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

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

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven 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.

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

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

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

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

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

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

§ 9.7 Failure of Payment

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

§ 9.8 Substantial Completion

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

§ 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. 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.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the 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.

§ 9.8.4 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 fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 Partial Occupancy or Use

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

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

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

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, 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.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

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

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

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**§ 10.1 Safety Precautions and Programs**

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

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

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

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

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 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.

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

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

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

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 30 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

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§ 10.3 Hazardous Materials and Substances

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

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. 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 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.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS**§ 11.1 Contractor's Insurance and Bonds**

§ 11.1.1 See Supplemental Conditions for insurance and bond requirements.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**§ 12.1 Uncovering of Work**

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

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work**§ 12.2.1 Before Substantial Completion**

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

§ 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 promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period 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 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.

ARTICLE 13 MISCELLANEOUS PROVISIONS**§ 13.1 Governing Law**

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

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§ 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 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered 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 the legal rate prevailing from time to time at the place where the Project is located.

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 180 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .2 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents.

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

§ 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' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 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, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, 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' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .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.

§ 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 damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

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

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

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

§ 14.4 Termination by the Owner for Convenience

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

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

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

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in 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 responsibility to substantiate Claims shall rest with the party making the Claim. 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.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

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§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 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, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

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

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 15.1.7 Waiver of Claims for Consequential Damages

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

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

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been

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rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

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

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision.

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

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 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.

§ 15.2.7 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.

SECTION 00 73 00 - SUPPLEMENTARY CONDITIONS**MODIFICATIONS TO AIA**

These Supplementary Conditions amend or supplement the General conditions of the Contract for Construction (AIA Document A201, 2017 edition) and other provisions of the Contract Documents as indicated below. All provisions which are not so amended or supplemental remain in full force and effect.

The terms used in these Supplementary Conditions which are defined in the General Conditions of the Contract of Construction (AIA Document A201, 2017 Edition) have the meanings assigned to them in the General Conditions.

ARTICLE 1 - GENERAL PROVISIONS

Paragraph 1.1 Basic Definitions: Add the following paragraphs

1.1.1 The obligations in RFB Articles 1-11 shall be fully incorporated into the Contract Documents and binding on the Contractor and Owner.

1.1.9 Furnish: The term 'furnish' shall mean to purchase and deliver product to the site ready for installation.

1.1.10 Install: The term 'install' shall mean to take furnished product and assemble, erect, secure in place, connect in operation as applicable.

1.1.11 Provide: The term 'provide' shall mean to furnish and install.

Paragraph 1.2 Correlation and Intent of the Contract Documents:

Add the following paragraph 1.2.1.1

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

ARTICLE 2 - OWNER

Paragraph 2.1.2.1; Add the following:

The Owner shall prepare a Notice of Commencement for the Project as required by the Ohio Revised Code and provide a copy to the Contractor.

Add paragraph 2.1.3

2.1.3 The Owner shall mean:

Clermont County Commissioners
101 E. Main St., Suite 329 Batavia, OH 45103
Batavia, Ohio 45103

Paragraph 2.3.4: Modify to read

2.3.4 The owner shall not be responsible for furnishing surveys or other information as to the physical characteristics, legal limitations, or utility locations for the Project site, except as included in the Contract Documents. The Contractor shall confirm the location of each utility.

ARTICLE 3 - CONTRACTOR

Article 3.2 Review of Contract Documents and Field Conditions by Contractor.

Add the following paragraph 3.2.2.1

3.2.2.1 If the contractor finds any perceived conflict, error, omission or discrepancy on, or between the drawings, specifications, or any of the contract documents, the contractors, before proceeding with the work, shall submit a request to the architect for an interpretation or clarification, the contractor shall be responsible for the prompt delivery of such request.

The architect shall respond to the requests for interpretation of the contract documents within three (3) business days.

3.2.2.2 Any interpretation of the Contract Documents made by any party other than the architect or in any manner other than writing, shall not be binding and the contractor shall not rely upon any such interpretation.

Article 3.4 Labor and Material

Paragraph 3.4.2 add the following at the end of the paragraph:

See Substitution Procedures in Section 01 6000 - Product Requirements for additional requirements.

Article 3.5 Warranty

Add the following to paragraph 3.5.1

The contractor shall warranty and guarantee that all work is in conformity with the Contract Documents and free from defects in workmanship, materials and equipment for a period of one (1) year in addition to other warranties and guarantees specified in the Contract Documents. The performance bond will remain in effect during the warranty period

The warranty and guarantee time period shall commence on the date that the Certificate of Substantial Completion is issued by the architect unless otherwise provided in writing. The warranty and guarantee provided in this article shall be in addition to and not limitation of any other warranty and guarantee or remedy provided by law or by the Contract Documents.

Should defects in the work become apparent within the warranty and guarantee period, the owner shall promptly notify the contractor in writing and provide a copy of the notice to the architect. Within ten (10) days of receipt of the notice, the contractor shall visit the project in the company of the owner to determine the extent of the defects and shall promptly repair or replace the defective work, including adjacent work damaged as a result of such defects and as a result of remedying the defects whether or not such adjacent work was originally provided by the contractor. The contractor shall be responsible for the cost of temporary materials or equipment required during the repair or replacement of the defective work.

If the defective work is considered by the Owner to be an emergency, the owner may require the contractor to visit the project within one (1) day of receipt of the notice.

Work which is repaired or replaced by the contractor shall be inspected and accepted by the Owner. The repaired and replaced work shall be guaranteed by the contractor for one (1) year from the date of acceptance by the owner.

Article 3.6 Taxes

Add the following:

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, use and commercial activity taxes. Upon written request, the Owner will provide the Contractor with an applicable certificate of exemption.

Article 3.7 Permits, Fees and Notices

Omit paragraph 3.7.1 and add the following:

3.7.1 The Owner shall secure and pay for the Certificate of Plan Approval. The contractor shall secure and pay for all other building permits, tap fees, user fees, and governmental fees, licenses and inspections including the sprinkler and fire alarm fees as required by the Ohio Basic Building Code. The contractor is to verify the exact cost of permits, fees, licenses and inspections. No additional cost or change orders will be permitted because of causal or approximated fees or escalation of fees occurring after award of contract.

Article 3.11 Documents and Samples at the Site

Add the following paragraph 3.11.1

3.11.1 The Contractor shall maintain readily accessible to the authorities having jurisdiction, the Architect, and the Owner drawings, project manual and related documents approved by appropriate building departments and authorities having jurisdiction.

Article 3.12 Shop Drawings, Product Data and Samples

Add the following paragraph 3.12.11

3.12.11 Refer to Section 01 3000 Administrative Requirements for additional requirements.

Article 3.13 Use of the Site

Add the following paragraphs

3.13.1 Damage to road, features, or the grounds, resulting from hauling , storage of materials, or other activities connected with the work shall be repaired by the contractor at their expense to the satisfaction of the Architect.

3.13.2 The contractor and any entity for whom the contractor is responsible shall not erect any sign at the project site without the consent of the owner.

Article 3.16 Access to Work

Add the following to paragraph 3.16

The contractor shall provide proper facilities for such access and observation.

Add the following paragraph 3.16.1

3.16.1 The Contractor shall provide access to the work in preparation and progress as required for special inspection required by the building department or authority having jurisdiction.

ARTICLE 4 - ARCHITECT

Article 4.1.1

Add the following paragraph 4.1.1.1

4.1.1.1 Architect shall mean: Garmann/Miller and Associates, Inc., 38 South Lincoln Drive, Minster, Ohio 45865

ARTICLE 5 - SUBCONTRACTORS

Article 5.3

Add the following paragraph

Contractor shall obtain the Subcontractor Forms that are included in the RFB from all subcontractors.

ARTICLE 7 – CHANGES IN THE WORK

Article 7.2 Change Orders

Add the following paragraph

7.2.2 No cost increases shall be paid to contractor for any work performed unless said increases are approved by Owner and a certificate for such increases is issued by the Clermont County Auditor.

ARTICLE 8 - TIME

Add the following to Article 8.4

8.4.Liquidated Damages

8.4.1 Upon Failure to have all work substantially completed within the time period stated, or failure to have the applicable portion of the work substantially complete upon any milestone date, the Owner shall be entitled to retain or recover from the Contractor, as Liquidated Damages, and not as a penalty, the applicable amount set forth in the following table for each and every calendar day thereafter until Contract Completion, unless an extension of time is granted in accordance with the Contract Documents.

Contract Amount	Dollars per Day
less than \$50,000.00	\$300.00
More than \$50,000.00 to \$150,000.00	\$500.00
More than \$150,000.00 to \$500,000.00	\$1000.00
More than \$500,000.00 to \$2,000,000.00	\$1,500.00
More than \$2,000,000.00 to \$5,000,000.00	\$2,000.00
More than \$5,000,000.00	\$3,000.00

8.4.2 The amount of Liquidated Damages is agreed upon by an between the Contractor and the Owner because of the impracticality and extreme difficulty of ascertaining the actual amount of damage the Owner would sustain. The payment of these fees is in compliance with Ohio Revised Code Section 153.19, shall constitute liquidated damages not penalties, and are in addition to all other rights and remedies the Owner may pursue

against Contractor. The Owner may deduct these amounts from what is owed to Contractor and the Owner may take action against Contractor for the payment of any additional amounts owed that cannot be deducted from the amount Owner owes to Contractor.

ARTICLE 9 PAYMENT AND COMPLETION

ARTICLE 9.3 - Applications for Payment

Add the following to Article 9.3.1

9.3.1.3 The form of Application for Payment will be a notarized AIA Document G702, Application and Certificate for Payment with AIA Document G703, Continuation Sheet.

Applications for payment shall be made at approximately 30 day intervals. The contractor shall submit in triplicate the Application for Payment and Continuation Sheet.

The Continuation Sheet (G703) shall be prepared the same as the Schedule of Values.

9.3.1.4 Contractor shall submit with each Application for Payment a notarized affidavit that payroll, bills for equipment, material and any other indebtedness connected with the work for which the previous Applications for Payment submitted and the owner might any way be responsible, have been paid. Also, submit release of liens arising out of the contract from each subcontractor, supplier, material person and laborer of the contract.

9.3.1.5 Schedule of Values (AIA Form G703 - Application and Certificate for Payment Continuation Sheet) shall utilize the table of contents of the Project Manual to identify each line item with title and number of the specification Section. Each line item including subcontracted work shall be shown with separate amounts for labor and material.

9.3.1.5.1 Identify on separate line items; Bonds, Insurance, Permits, Allowances, Site Mobilization, and Project Closeout (punch list, attic stock, project record drawings, training, final cleaning).

9.3.1.5.2 If the project is of sufficient size or nature, the Schedule of Values various items shall be subdivided into areas or units when requested by the Architect.

9.3.1.5.3 The architect reserves the right to use the approved Schedule of Values to determine the cost or credit resulting from any changes to the Work.

9.3.1.6 Labor Payments - Partial payments for labor performed under lump sum contract shall be made at the rate of 92 percent of the amount invoiced through the Application for Payment which shows the total contract completion at 50 percent or greater. After the contract is 50 percent complete, as evidenced by payments in the amount at least 50 percent of the labor contract price to the contractor, no additional funds will be retained.

Retained funds will be deposited accordance to Paragraph 9.3.1.8

9.3.1.7 Material Payments - Partial payments for materials delivered on the site, or other point in the vicinity of the Project, or otherwise stored, as approved by the Architect, under lump sum contract shall be made at the rate of 92 percent of the amount invoiced. Payment for material incorporated into the project shall be made at the rate of 100 percent of scheduled value. Retained funds will be deposited accordance to Paragraph 9.3.1.8.

9.3.1.8 The balance such invoiced cost shall be paid when such material is incorporated into and becomes part of the Project.

9.3.1.8 All funds retained shall be deposited in an escrow account with a bank in the state in accordance with the term as, and conditions provided in an escrow agreement executed by the contractor, the Owner and the applicable bank.

9.3.1.9 When the project is complete and there exists no other reason to withhold retainage, the retained percentages held in connection with such portions shall, upon request of the contractor, be released from escrow and paid to the contractor, withholding that amount necessary to assure completion. The amount of fund retained to assure completion of the work shall not be less than two (2) times the value of the work as determined by the Architect and Owner.

Add the following to paragraph 9.3.2

9.3.2.1 Where it is to the owner's best interest, materials stored off site will receive payment provided the contractor furnished to the owner with the monthly application for payment the following:

A list of the materials consigned to the project giving the place of storage, together with copies of invoices and reasons why materials cannot be delivered to the site.

Certification that all items are tagged for delivery to the project and that they will not be used for any other purpose.

Evidence of adequate insurance covering the material stored naming the owner as additionally insured.

The owner and architect shall have the right to inspect all materials stored.

When payment is allowed on account of material delivered on the site of the work or in the vicinity thereof or under the possession and control of the contractor but not yet incorporated therein, such material shall become the property of the owner, but if such material is stolen, destroyed, or damaged by casualty before being used, the contractor will be required to replace it at the contractor's expense

Add the following to paragraph 9.3.3

9.3.3.1 No materials or supplies for the work shall be purchased by the contractor or any subcontractor subject to any chattel mortgage, under conditional sale contract or other agreement by which an interest is retained by the seller.

ARTICLE 11 INSURANCE AND BONDS

11.1 - Contractor's Insurance and Bonds

Add the following to Article 11.1.1:

At Contractor's sole expense, Contractor shall obtain and maintain at all times during the term of this Contract the following insurance coverage and agree to satisfy the other conditions thereof:

Liability Insurance of the following types at limits of liability not less than Five Million Dollars (\$5,000,000) per occurrence:

- Commercial General Liability including
 - * Independent Contractors
 - * Contractual Liability including defense
 - * Products & Completed Operations
 - * Ohio Stop Gap
 - * Fire / Water Legal Liability - Real Property
- Automobile Liability –symbol 1 (any auto)

Above insurance limits may be satisfied by any combination of primary and Excess/Umbrella Liability totaling the minimum required liability limit.

Contractor's insurance coverage shall be provided on an "occurrence" policy form basis with an insurance company authorized to operate in the State of Ohio and having an A.M. Best's Rating of not less than A-:VI unless expressly approved in writing by Owner. Said insurance policies shall be endorsed to include Owner, its employees, officials, etc. as additional insured without any cross liability exclusion for Owner's interests.

Products and completed operation coverage shall commence with the certification of final Certificate of Payment to the Contractor and extend for not less than two years beyond that date. Owner agrees that if 50% of any aggregate policy limits are exhausted by either paid or reserved claims, Contractor will purchase additional insurance to at least replenish the aggregate limit(s).

Contractor shall maintain Pollution Liability coverage of \$2,000,000 per occurrence & aggregate limit of \$2,000,000.

Workers Compensation Insurance

Contractor shall obtain and maintain at all times during the term of this contract Workers Compensation insurance in compliance with State of Ohio law.

Evidence of Coverage

Contractor shall provide Owner with documentation providing evidence of insurance coverage via certificates of insurance and, if requested by Owner, complete copies of said policies including any amendments or modifications of said policies allowing for redaction of any confidential premium or

pricing information or any wording specific to a project or jurisdiction other than those relevant to this Contract.

Notice of Cancellation or Material Change

Contractor shall cause its insurance carrier to provide Owner thirty (30) day notice of cancellation or material change in coverage and agrees to provide a copy of carrier notices of change in policy conditions as soon as Owner receives from its carrier.

Acknowledgement

Contractor agrees and acknowledges these insurance requirements are the minimum the Owner desires to protect Owner's interests and that the insurance requirements are in no way represented as fully protecting the interests of the Contractor.

Bonds

The contractor shall furnish surety bonds covering faithful performance of the contract and payment of obligations arising there under. Cost of surety bonds shall be included in contract sum. The amount of each bond shall be equal to one hundred percent (100%) of the contract sum. Bond shall be in a form in compliance with the Ohio Revised Code 153.57 or 153.571.

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

Owner Insurance

The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

Owners Property Insurance Policy (Builders Risk): The Owner shall provide and maintain, during the progress of the work and until the execution of the certificate of substantial completion by the architect, a Property (builder's risk) Insurance Policy to cover all work in the course of construction including falsework, temporary buildings and structures and materials used in the construction process, stored on or off site, or while in transit. Such insurance shall be on a "Risk of Direct Physical Loss" form policy and shall insure against the perils of fire and extended coverage and physical loss or damage including, but not limited to, theft, vandalism, malicious mischief, earthquake, tornado, lightning, explosion, breakage of glass, flood, collapse and water damage. It shall also include debris removal, demolition occasioned by enforcement of an applicable legal requirement, and shall cover reasonable compensation for the state's services and expenses required to limit further loss.

Coverage must include provision to pay the reasonable extra costs of expediting temporary and/or permanent repairs to, or permanent replacement of damaged property. This shall include overtime wages and the extra cost of "express" or other means for rapidly transporting materials and supplies necessary to such repair or replacement.

Such builder's risk policy shall protect both the contractor and the owner from loss and provide coverage for materials in transit or stored off site and identified for the project. However, Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Section 11.2 to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any policy deductible amounts up to \$25,000. The risk of loss within such identified deductible amount will be borne by Contractor, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

Coverage for other perils may be required if specified in the special conditions. Unless otherwise specified in the contract documents, the builder's risk policy shall be written in the amount equal to 100 percent of the contract price, including landscaping, paving and other site work.

The builder's risk policy shall specifically permit and allow for partial occupancy by the owner prior to acceptance of the project by the architect.

Property insurance provided by the Owner shall not cover any tools, apparatus machinery, scaffolding, hoist, forms, staging, shoring, and other similar items commonly referred to construction equipment that may be on site and the capital value of which is not included in the Work, nor shall such insurance cover any material or equipment before these materials and

equipment are incorporated into the Work. The contractor shall make its own arrangements for any insurance it may require for such construction equipment, materials, and equipment.

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

Waiver of Subrogation

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

Loss & Settlement

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

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

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

11.2 Owners Insurance

11.2.1.1 - Owners Property Insurance Policy (Builders Risk): The Owner shall provide and maintain, during the progress of the work and until the execution of the certificate of

substantial completion by the architect, a Property (builder's risk) Insurance Policy to cover all work in the course of construction including falsework, temporary buildings and structures and materials used in the construction process, stored on or off site, or while in transit. Such insurance shall be on a "Risk of Direct Physical Loss" form policy and shall insure against the perils of fire and extended coverage and physical loss or damage including, but not limited to, theft, vandalism, malicious mischief, earthquake, tornado, lightning, explosion, breakage of glass, flood, collapse and water damage. It shall also include debris removal, demolition occasioned by enforcement of an applicable legal requirement, and shall cover reasonable compensation for the state's services and expenses required to limit further loss.

11.2.1.2 - Coverage must include provision to pay the reasonable extra costs of expediting temporary and/or permanent repairs to, or permanent replacement of damaged property. This shall include overtime wages and the extra cost of "express" or other means for rapidly transporting materials and supplies necessary to such repair or replacement.

11.2.1.3 - Such builder's risk policy shall protect both the contractor and the owner from loss and provide coverage for materials in transit or stored off site and identified for the project.

11.2.1.4 - Coverage for other perils may be required if specified in the special conditions.

Unless otherwise specified in the contract documents, the builder's risk policy shall be written in the amount equal to 100 percent of the contract price, including landscaping, paving and other site work.

11.2.1.5 - The builder's risk policy shall specifically permit and allow for partial occupancy by the owner prior to acceptance of the project by the architect.

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

ARTICLE 15 - ARBITRATION

15.4 Arbitration: Delete this article. Arbitration is not an acceptable form of binding dispute resolution for this project.

ARTICLE 16 PAYROLL AND WAGE DETERMINATION

Add the following

16.1 State of Ohio Prevailing Wage Determination

16.1.1 The Ohio Prevailing Wage Rates may be accessed from the Ohio Department of Commerce, Wage & Hour Bureau, at its website for current edition of wage rates.

16.2 The following wage information shall be furnished to the prevailing wage coordinator, as designated by the owner.

16.2.1 Every contractor and/or subcontractor as soon as they begin work under this contract shall furnish to the prevailing wage coordinator, a schedule of dates during the life of the contract for which they will pay wage to employees of the project. They shall also deliver to the prevailing wage coordinator monthly two (2) certified copies of their payroll for the project.

16.2.2 Each report (monthly) shall state the period covered and exhibit for each employee paid on the project, their name, current address, social security number, number of hours worked each day on the project during the reporting period, the total hours each week on the project as well as the total work on other projects, their hourly rate, their job classification, fringe payment, all deductions from their wages and net pay.

16.2.3 Each report shall also have certification executed by the contractor, subcontractor, or duly appointed agent thereof. It shall recite that the payroll is correct and complete and that the rate/rates shown are not less than those required by the contract.

It shall also state the name of the union or plan to whom the withheld or unpaid fringes

are to be paid. The first report shall also list each fringe and state if it is paid as cash to the employee or to named plan.

16.2.4 Upon final completion and prior to final payment, the contractor will execute, deliver, and require its subcontractors to execute and deliver to the prevailing wage coordinator an affidavit stating that the contractor/subcontractor has fully complied with Section 4115.03 to 4115.16 Ohio Revised Code. The contract sum will not be increased because of increases in the prevailing wages or wage rates.

GENERAL NOTES

CONDITIONS PRECEDENT FOR EXECUTION OF AGREEMENT

THE FOLLOWING ITEMS SHALL BE FURNISHED IN TRIPLICATE:

Declaration of Insurance, including property insurance (builders risk)

Ohio Workers Compensation Certificate

A Contract Cost Breakdown Showing itemized Labor & Material amounts for the Total Contract Price

Performance and Payment Bond, Power of Attorney for the bonding agent.

A Certificate of Compliance issued by the Department of Insurance showing the Bonding Co. is licensed to do business in the State of Ohio.

Financial Statement of Bonding Co.

DOCUMENTS REQUIRED AFTER ISSUANCE OF NOTICE TO PROCEED

The architect shall issue a notice to proceed which shall establish the date for commencement of the project time. The contractor will, within 10 days of the date of the Notice to Proceed, furnish the architect in TRIPLICATE:

A Schedule of Values (AIA Document G703, Continuation Sheet)

A Time Schedule of the Work.

A list of proposed Sub-contractors.

A list of Material Suppliers.

An estimated schedule of monthly payments.

DISCRIMINATION AND INTIMIDATION

The prohibition against discrimination and intimidation on account of race, creed, or color, and the provisions as to forfeitures to be applied in the event of violation of contract regarding same, as contained in sections 153.59 and 153.60, and sections 4112.01 through 4112.99, inclusive, of the Revised Code of Ohio, shall apply to all contracts entered into in conjunction with the work.

DRUG FREE WORK PLACE

Contractor shall, to the extent applicable, comply with all applicable federal and state drug free work place laws, rules, regulations, orders, and ordinances.

WORK PERFORMED

Any work performed by Contractor in the absence of a valid warrant issued by the Clermont County Auditor is a violation of Ohio law and shall not create any payment obligation on Owner.

DEBARMENT

Contractor warrants that it is not debarred from consideration for contract awards by any governmental office, department, entity, or agency or subject to an unresolved finding for recovery pursuant to Section 9.24 of the Ohio Revised Code. If this warranty is or becomes false, the Contract Documents and all of the obligations contained therein are void ab initio and Contractor shall immediately repay Owner any and all funds paid by Owner to Contractor.

SURVIVAL CLAUSE

Obligations in this Contract Documents relating to payment, indemnification, damages, public records, audit, debarment, and insurance shall survive and remain obligations of Contractor following termination of the Contract Documents and the Work therein as do any other provisions in the Contract Documents that by their nature and intent anticipate performance after termination of the Contract Documents.

CONTRACT DOCUMENTS

The Contract Documents shall be deemed to be drafted by both Owner and Contractor and neither Owner or Contractor shall benefit from any claimed ambiguity in the Contract Documents based on a theory that the other drafted the Contract Documents.

END OF SECTION

ARTICLE 10

SUBCONTRACTOR FORMS

IF BID IS ACCEPTED THE STATE OF OHIO SUBCONTRACTOR FORM(S) WILL BE
REQUIRED WITH SUBMISSION OF CONTRACT.

State of Ohio Subcontract Form

State of Ohio Standard Requirements for Public Facility Construction



This Agreement is made as of the date set forth below between the Contractor and the Subcontractor in connection with the Project.

Project Number:

Project Name: Clermont County
Filager Campus Improvement Phase 3

Site Address: East Filager Road
Batavia, OH 45103

Contractor:

Contractor's Principal
Contact:
Address:

Subcontractor:

Subcontractor's Principal
Contact:
Address:

Public Authority: Clermont County Board of Commissioners

Public Authority Contact: Ralph Linne
Address: 101 East Main Street
Batavia, Ohio 45103

ARTICLE 1 – NATURE OF SUBCONTRACT

1.1 The Subcontractor shall perform the entire Subcontract Work as specified in Exhibit ___ and described in the Contract Documents for the Project:

ARTICLE 2 – COMPENSATION

2.1 The Contractor agrees to pay for the performance of this Subcontract, subject to additions and deductions as provided in the Contract Documents, the Subcontract Sum of _____, comprised of the following:

[Insert Subcontract Sum Component].....\$ [Insert Amounts]
[Insert Subcontract Sum Component].....\$ [Insert Amounts]
[Insert Subcontract Sum Component].....\$ [Insert Amounts]
[Insert Subcontract Sum Component].....\$ [Insert Amounts]

ARTICLE 3 – TIME OF PERFORMANCE

3.1 Time is of the essence. The Subcontractor shall diligently prosecute and complete all Subcontract Work in accordance with the construction progress schedule agreed between the parties.

ARTICLE 4 – CONTRACT DOCUMENTS

4.1 To the extent that the contract between the Public Authority and the Contractor applies to the Subcontract Work:

4.1.1 The Contractor and the Subcontractor agree to be mutually bound by the terms of the Contract Documents;

4.1.2 The Contractor assumes toward the Subcontractor the rights, remedies, obligations, and responsibilities that the Public Authority has and assumes toward the Contractor;

4.1.3 The Subcontractor assumes toward the Contractor the rights, remedies, obligations, and responsibilities that the Contractor assumes toward the Public Authority; and

4.1.4 The Subcontractor agrees to perform its portion of the Work in accordance with the Contract Documents.

4.2 The Subcontract and any modifications, amendments, or alterations thereto shall be governed, construed, and enforced by and under the laws of the State of Ohio.

4.3 If any term or provision of the Subcontract, or the application thereof to any Person or circumstance, is finally determined, to be invalid or unenforceable by a court of competent jurisdiction, the remainder of the Subcontract or the application of such term or provision to other Persons or circumstances, shall not be affected thereby, and each term and provision of the Subcontract shall be valid and enforced to the fullest extent permitted by law.

4.4 The Subcontract shall be binding on the Contractor and Subcontractor, their successors and assigns, in respect to all respective covenants and obligations contained in the Contract Documents, but the Subcontractor may not assign the Subcontract without the prior written consent of the Contractor and the Public Authority.

ARTICLE 5 – EFFECTIVENESS

5.1 The Subcontract shall become binding and effective upon execution by the Contractor.

5.2 This Subcontract has been executed in several counterparts, each of which shall constitute a complete original Subcontract, which may be introduced in evidence or used for any other purpose without production of any other counterparts.

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

ARTICLE 6 – REPRESENTATIONS

6.1 Contingent Assignment. The Contractor's contingent assignment of this Subcontract to the Public Authority, as provided in the Contract, is effective after termination of the Contractor by the Public Authority and the Public Authority's acceptance of the assignment in writing to the Subcontractor. The Subcontractor consents to the assignment and shall be bound at the same price and terms as in the Subcontract to the Public Authority. Unless the Public Authority takes assignment of the Subcontract, the Subcontractor will not have any contractual rights against the Public Authority.

6.2 Intended Third-Party Beneficiary. The Public Authority is an intended third party beneficiary of the Subcontract, entitled to enforce any rights thereunder for its benefit.

6.3 Insurance. The Subcontractor shall maintain insurance in accordance with the Contract Documents. Exhibit [] sets forth the minimum limits of liability for the insurance required in the Contract Documents.

6.4 Right to Audit. The Subcontractor agrees that the Public Authority or any agents designated by the Public Authority have access to and the right to audit and the right to copy at the Public Authority's cost all of the Subcontractor's books, records, contracts, correspondence, instructions, drawings, receipts, vouchers, purchase orders, and memoranda relating to the Work for a period of not less than 3 years following completion of the Work consistent with Ohio Revised Code ("ORC") Section 149.43 with regard to the Public Authority's obligation to maintain confidentiality of trade secrets.

6.5 Indemnity. To the fullest extent permitted by law, the Subcontractor shall indemnify, defend, and hold harmless the Public Authority, the Contractor, their 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, including reasonable attorneys' fees, costs and expenses, but only to the extent caused by the negligent acts or omissions of the Subcontractor or a person or entity for whom the Subcontractor may be liable. This Subcontract does not require a Subcontractor to waive its immunity under the Workers Compensation laws of Ohio from claims brought against the Subcontractor by the Subcontractor's employees.

6.6 Prompt Pay. The Contractor shall at a minimum make payments to the Subcontractor in accordance with Applicable Law, including ORC Section 4113.61. Progress payments to the Subcontractor for satisfactory performance of Subcontract Work shall be made no later than 10 days after receipt by the Contractor of payment from the Public Authority for Subcontract Work.

6.7 Retainage. Subcontractor retainage shall be at a rate equal to the percentage retained from the Contractor's payment by the Public Authority for the Subcontract Work, unless a lesser percentage is otherwise specified.

6.8 Warranty. The Subcontractor fully warrants, for the benefit of the Public Authority, 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.

6.9 Non Waiver of Lien Rights or Payment of Bond Rights. This Subcontract shall not prohibit a Subcontractor from exercising its rights under ORC Chapter 1311 or under any Contractor -provided payment bond.

6.10 Non-Discrimination. The Subcontractor agrees to fully comply with Applicable Law regarding equal opportunity, including ORC Section 153.59 and, to the extent applicable, all Executive Orders issued by the Governor of the State of Ohio.

6.11 Dispute Resolution. The Supplemental conditions to this Subcontract shall provide for a dispute resolution process comparable to the Contract's dispute resolution process in terms of timing, notice, substantiation, and informal dispute resolution efforts. This dispute resolution process provided in the supplemental conditions shall result in prompt access to the ultimate dispute resolution mechanism selected by the parties.

6.12 In the event that any supplemental conditions or other Subcontract terms conflict with the State of Ohio Subcontract Form, the State of Ohio Subcontract Form takes precedence and this Subcontract shall be read and enforced to include the provisions of the State of Ohio Subcontract Form.

6.13 The following exhibits are attached to and are a part of the Subcontract:

6.13.1 Exhibit A:

6.13.2 Exhibit B:

6.13.3 Exhibit C:

6.13.4 Exhibit D:

SIGNATURES

IN WITNESS WHEREOF, the parties have executed this Subcontract Form.

Subcontractor's Name

Contractor's Name

Signature

Signature

Printed Name

Printed Name

Title

Title

Date

END OF DOCUMENT

ARTICLE 11

Prevailing Wages

WAGE DETERMINATION

The Federal Davis Bacon Prevailing Wages shall be paid for a legal day's work to laborers, workers, or mechanics engaged in work under this Contract, at the site of the Project, in the trade or occupation listed.

It shall be the Contractor's responsibility to verify the accuracy of the reported wages and any omission or error in the Prevailing Rates of Wages shall not result in any claim against the Owner by the Contractor.

In case of conflict between classifications of the Project, the higher wage rates shall apply, unless otherwise indicated or required by law.