

OK
over A amended
3-12-2020

REQUEST FOR COUNCIL ACTION

NO. RCA 20-070-3/23

FROM: Patrick Patton and Nino Piscoll
DATE: March 17, 2020

COMMITTEE Finance
REFERRAL: _____

SUBJECT: Modify Ordinance No. 4- 20 regarding the bids for the 2020 Concrete Pavement General Services

This requests asks Council to modify Ordinance No. No. 4- 20 regarding the bids for the 2020 Concrete Pavement General Services program by adding \$60,000 for a new total amount of \$160,000.

This contract is primarily used for the City's sidewalk repair program. The original project estimate was included based on review of the costs spent on the City's previous two sidewalk repair programs. After preparing the program for bid, we learned that the quantity of sidewalk to be repaired was much larger than our previous programs. In our first program (2016) we completed approximately 9,080 square feet of sidewalk repair. In the second program we completed approximately 10,100 square feet of repairs. In this year's program, we anticipate completing approximately 14,800 square feet of repairs.

Please be advised that most of the cost of this program is charged back to the property owners.

Thank you for your consideration.

ESTIMATED COST: \$160,000

SUGGESTED FUNDING: 108-0610-54411

Sufficient Funds in Account Number:

Transfer Needed From:
To:

New Appropriation:

Emergency Clause Requested:

Reason:

COUNCIL USE ONLY:

COMMITTEE RECOMMENDATION:

Council Action Taken:

Ord./Res. Number:

Date:

ORDINANCE NO. 4-20

AN ORDINANCE AUTHORIZING THE MAYOR TO ADVERTISE FOR COMPETITIVE BIDS AND TO AWARD A CONTRACT TO THE SUCCESSFUL BIDDER FOR THE 2020 CONCRETE PAVEMENT GENERAL SERVICES PROGRAM.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEDINA, OHIO:

- SEC. 1:** That the Mayor is hereby authorized and directed to advertise for competitive bids and to award a contract to the successful bidder for the 2020 Concrete Pavement General Services Program in accordance with specifications on file in the office of the Mayor.
- SEC. 2:** That the estimated cost of the contract, in the amount of \$100,000.00, is available in Account No. 108-0610-54411.
- SEC. 3:** That it is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with the law.
- SEC. 4:** That this Ordinance shall be in full force and effect at the earliest period allowed by law.

PASSED: January 13, 2020

SIGNED: John M. Coyne, III
President of Council

ATTEST: Kathy Patton
Clerk of Council

APPROVED: January 14, 2020

SIGNED: Dennis Hanwell
Mayor

OK
Per Hammett
3-17-2020

REQUEST FOR COUNCIL ACTION

NO. RCA 20-071-3/23

FROM: Patrick Patton 
DATE: March 17, 2020
SUBJECT: Bids – Job #1045 Public Square Mid Block Crossing

COMMITTEE
REFERRAL: Finance

This request is for permission to advertise, bid and award the Public Square Mid Block Crossing Project. This project consists of the following:

- Construction of eight (8) concrete pedestrian protective islands on each side of the four (4) mid block crossings around the square (example attached)
- Installation of eight (8) solar powered rectangular rapid flashing beacons (pedestrian yield signs with flashing LED lights); two signs at each of the four crossings
- Installation of transverse crosswalk lines at each crossing

An example of one of the crossing plans is attached.

The engineer's estimate for the project is \$106,000.

A portion of the funding of this project will be paid through on OFCC grant as follows:

- Grant amount: \$70,666 (66.6%)
- Local share: \$35,334 (33.4%)

Thank you for your consideration.

ESTIMATED COST: \$106,000

SUGGESTED FUNDING: 108-0610

Sufficient Funds in Account Number:

Transfer Needed From:
To:

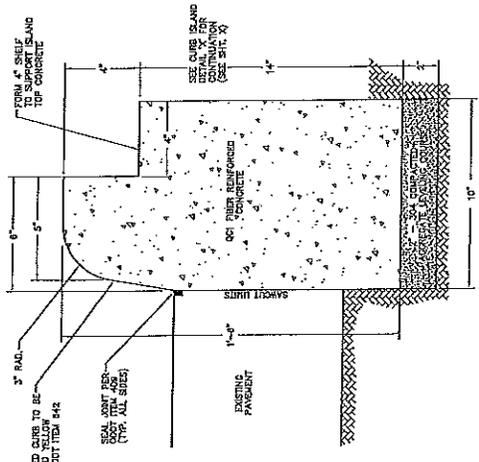
New Appropriation:

Emergency Clause Requested: No

Reason:

COUNCIL USE ONLY:

COMMITTEE RECOMMENDATION:

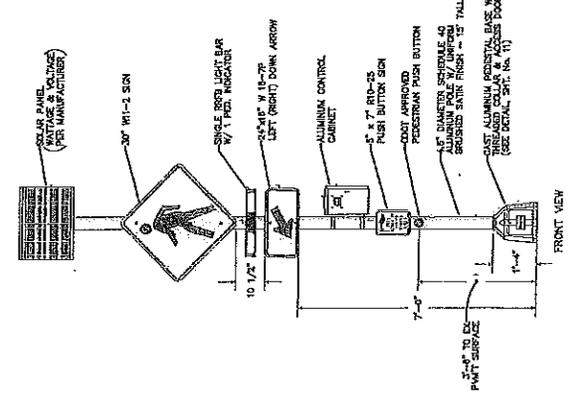


MODIFIED TYPE 6 CONCRETE CURB
DETAIL 'I'

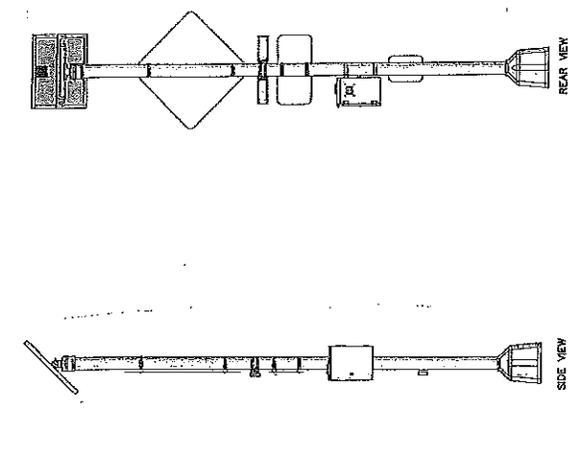
SCALE 1/2"=1'

RECTANGULAR RAPID FLASHING BEACON (RRFB) NOTES:

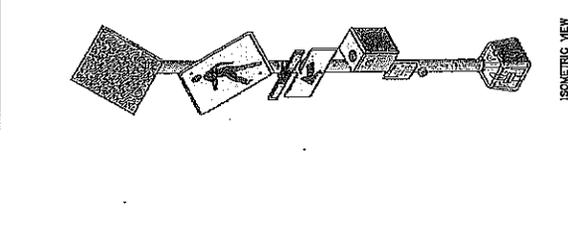
1. THE RECTANGULAR RAPID FLASHING BEACON SHALL CONSIST OF LED ARRAYS AND SHALL BE ACTIVATED BY A WIRELESS BATTERY AND SHALL UTILIZE A SPREAD SPECTRUM WIRELESS ACTIVATION SYSTEM. THE BEACON SHALL BE INSTALLED IN THE MIDDLE OF THE CROSSWALK. THE RRFB SHALL BE IN CONFORMANCE WITH ALL APPLICABLE MUTED SIGNAL STANDARDS. THE RRFB SHALL EXCEED ALL MINIMUM REQUIREMENTS ESTABLISHED THROUGH CURRENT TRMA AND GOOT STANDARDS.
2. EACH RRFB COMPLETE ASSEMBLY, EITHER SINGLE OR DOUBLE SIDED, SHALL CONSIST OF A PRECAST BASE, 4.5 INCH POLE SHAFT, LED INDICATORS WITH LIGHT BAR, SOLAR PANEL, RADIO, AND BATTERY. THE TWO SIDED ASSEMBLIES SHALL HAVE TWO LIGHT BARS AND BATTERY ON BOTH SIDES OF THE POLE. THE SINGLE SIDED ASSEMBLY SHALL HAVE ONE LIGHT BAR AND BATTERY ON ONE SIDE OF THE POLE. THE COMPLETE ASSEMBLY AND EACH INDIVIDUAL COMPONENT MUST BE SUBMITTED TO THE CITY ENGINEER FOR REVIEW AND APPROVAL PRIOR TO INSTALLATION.
3. THE COMPLETE ASSEMBLY SHALL BE SUBMITTED TO THE CITY ENGINEER FOR REVIEW AND APPROVAL PRIOR TO INSTALLATION.
4. THE COMPLETE ASSEMBLY SHALL BE SUBMITTED TO THE CITY ENGINEER FOR REVIEW AND APPROVAL PRIOR TO INSTALLATION.
5. THE COMPLETE ASSEMBLY SHALL BE SUBMITTED TO THE CITY ENGINEER FOR REVIEW AND APPROVAL PRIOR TO INSTALLATION.
6. THE COMPLETE ASSEMBLY SHALL BE SUBMITTED TO THE CITY ENGINEER FOR REVIEW AND APPROVAL PRIOR TO INSTALLATION.
7. THE COMPLETE ASSEMBLY SHALL BE SUBMITTED TO THE CITY ENGINEER FOR REVIEW AND APPROVAL PRIOR TO INSTALLATION.
8. THE COMPLETE ASSEMBLY SHALL BE SUBMITTED TO THE CITY ENGINEER FOR REVIEW AND APPROVAL PRIOR TO INSTALLATION.



FRONT VIEW



SIDE VIEW



ISOMETRIC VIEW

SINGLE SIDED RECTANGULAR RAPID FLASHING BEACON (RRFB)
DETAIL 'J'

SCALE 1/2"=1'

CONTROLLER

1. THE BATTERY SHALL BE HOUSED IN A NEMA 3R RATED ALUMINUM ENCLOSURE, INTENDED FOR INDOOR OR OUTDOOR USE, PRIMARILY TO PROVIDE PROTECTION AGAINST CORROSION AND WEATHER ELEMENTS.
2. THE LED LIGHT OUTPUTS AND FLASH PATTERN SHALL BE COMPLETELY PROGRAMMABLE, WITH THE FLASHING OUTPUT SHALL HAVE TWO TO FOUR PERIODS OF BEACON AND LED ENHANCED SIGNALS. ONE OF THE YELLOW INDICATORS SHALL EXHIBIT TWO MEDIUM PULSES OF LIGHT AND THE OTHER PULSES SHALL EXHIBIT FOUR SHORT RAPID PULSES OF LIGHT FOLLOWED BY A LONG PULSE. THE FLASHING OUTPUT SHALL BE PROGRAMMABLE.
3. THE CONTROLLER SHALL BE PROGRAMMABLE FOR THE DURATION OF THE FLASHING OUTPUT.
4. THE CONTROLLER SHALL BE REPLACEABLE IF FUTURE CHANGES ARE REQUIRED BY THE STATE.
5. THE CONTROLLER SHALL BE REPLACEABLE INDEPENDENT OF ALL OTHER COMPONENTS.

BATTERY

1. THE BATTERY SHALL BE A 12VDC ABSORBED GLASS MAT (AGM) SEALED LEAD-ACID, MAINTENANCE FREE BATTERY.
2. THE BATTERY SHALL BE RATED AT 45AH MINIMUM AND SHALL CONFORM TO THE BATTERY COUNCIL INTERNATIONAL (BCI) SPECIFICATIONS.
3. THE BATTERY SHALL BE RATED AT 14-28 DAYS OF AUTONOMY.
4. THE BATTERY SHALL BE REPLACEABLE INDEPENDENT OF OTHER COMPONENTS OF THE SYSTEM.
5. THE BATTERY SHALL HAVE A MINIMUM OPERATING TEMPERATURE RANGE OF -76 TO 140°F.

WIRELESS TRANSMITTER/RADIO

1. THE RADIO SHALL BE A FCC-APPROVED 800 MHZ FREQUENCY HOPPING SPREAD SPECTRUM NETWORK WITH A NORMAL OPERATING RANGE OF 1000 FEET.
2. THE RADIO SHALL BE RATED AT 14-28 DAYS OF AUTONOMY.
3. TO ENSURE CONSISTENT UNISON FLASHING, THE RADIO SHALL SYNCHRONIZE THE CONTROLLER TO THROUGHOUT THE DURATION OF THE FLASHING OUTPUT.
4. THE RADIO SHALL OPERATE FROM 3.6VDC TO 15.0VDC AND SHALL BE REPLACEABLE INDEPENDENT OF OTHER COMPONENTS OF THE SYSTEM.
5. THE RADIO SHALL HAVE A MINIMUM OPERATING TEMPERATURE RANGE OF -30 TO 165°F.

SOLAR PANEL

1. THE SOLAR PANEL SHALL PROVIDE THE NECESSARY WATTAGE TO OPERATE THE SYSTEM AS SPECIFIED BY THE MANUFACTURER TO MEET THE SPECIFICATIONS STATED HEREIN. THE SOLAR PANEL SHALL BE RATED AT 10 WATT MINIMUM AND SHALL BE RATED AT 10 WATT MINIMUM.
2. THE SOLAR PANEL SHALL BE ATTACHED TO AN ALUMINUM PLATE/BRAKET THAT IS ADJUSTABLE TO MAXIMIZE SOLAR COLLECTION.
3. THE SOLAR PANEL SHALL BE MOUNTED ON A NON-TILT ADJUSTABLE POLE CAP MOUNT AND SHALL BE RATED FOR AN OPERATING TEMPERATURE RANGE OF -40 TO 185°F.

PEDESTRIAN ILLUMINATION AND SIGNAGE

1. THE ALL SIGNS SHALL MEET CURRENT GOOT AND MUTCO STANDARDS.
2. THE PUSH BUTTONS SHALL BE ADA COMPLIANT AND SHALL OPERATE AS A NORMALLY OPEN (NO) CONTACT. THE PUSH BUTTON SHALL BE CAPABLE OF OPERATING WITHIN A TEMPERATURE RANGE OF -30 TO 165°F.

SEE SHEET 11 OF 13 FOR CONTINUATION OF NOTES

Project:	CITY OF MEDINA
Title:	CROSSWALK IMPROVEMENTS
Scale:	PLAN - 1"=1'
Drawn:	JANUARY, 2020
Reviewed:	
Sheet Number:	9 of 13

City Job No. 1045

RCA 20-072-3/23
Finance Only

City of Medina
Board of Control/Finance Committee Approval
Administrative Code: 141

- Department Heads can authorize expenditures up to \$1,000.00 (requisition)
- Board of Control authorizes expenditures from \$1,000.01 to \$15,000.00 (BOC form).
- Finance Committee authorizes expenditures from \$15,000.01 to \$25,000.00 (BOC form).
- Council authorizes expenditures/bids over \$25,000.00 (RCA form). Board of Control awards all bids, unless otherwise specified in authorizing ordinance. (Ord. 101-05)

Date: 13/19/20

Department: Water

Amount: \$20,000.00

B.O.C. Number: _____

Account Number: 513-0533-52224

Vendor: CT Consultants Vendor # C00577

Department head/Authorized signature *Chris Pineda*

Item/Description:

Update of the City's Water Model (previously done in 2006 and 2012)

Reflect changes made through various water line projects.

Go over Capital Improvement Plan and evaluate priorities.

Assess impact of upcoming Rte. 18 ODOT project.

FINANCE COMMITTEE APPROVAL: (expenditures from \$15,000.01 to \$25,000.00)

Date Approved/Denied by Finance Committee: _____

Date to Finance: _____

Clerk of council

Please have all BOC items for the agenda to the Mayor's Office before 5 p.m. on Friday before the scheduled BOC meeting.

Please have all Finance Committee items for the agenda to the Clerk of Council's Office before Noon on Friday before the scheduled Finance Committee meeting.

Thank you.

D Hanwell
3/18/2020

REQUEST FOR COUNCIL ACTION

No. RCA 20-073-3/23
Committee: Finance

FROM: Mayor Dennis Hanwell

DATE: March 18, 2020

SUBJECT: Police Collective Bargaining Agreements Fact Finder Report

SUMMARY AND BACKGROUND:

Respectfully request Council's consideration of the Fact Finder Report for the three Collective Bargaining Agreements for the Police Department. The report was dated March 16, 2020 and the Council has seven days to accept or reject the report. As such, if accepted it must be approved by Finance Committee, Council, and passed with an Emergency Clause all at the March 23, 2020 meetings.

Estimated Cost:

Suggested Funding:

- Sufficient funds in Account No.
- Transfer needed from Account No.
to Account No.

NEW APPROPRIATION needed in Account No.

Emergency Clause Requested: Yes

Reason: For the aforementioned time line requirements

COUNCIL USE ONLY:

Committee Action/Recommendation:

Council Action Taken:

Ord./Res.
Date:

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF FACT-FINDING BETWEEN:

City of Medina)	
)	
and)	Factfinder: Colman R. Lalka
)	
Ohio Benevolent Association)	
Communications)	2019-MED-08-0653
Patrol Officers)	2019-MED-08-0654
Sergeants)	2019-MED-08-0655
)	

HEARING

Date of Hearing: February 27, 2020

Location of Hearing: Medina, Ohio

ATTENDANCE AT HEARING

For the Employer:

Jon M. Dileno, Esq.

Dennis Hanwell, Mayor and Safety Director

Dave Birckbichler, Lieutenant and Acting Chief

For the Union:

George E. Gerken, Esq.

Danielle Chaffin, Esq.

Patty Miller, Dispatcher

Patrick Sloan, Sergeant

Jeff Smith, Detective

Daniel Warner, Patrol Officer

MEDIATION

Prior to the commencement of the fact-finding hearing, mediation was requested by the parties. The Factfinder acted as mediator with all outstanding issues being negotiated. No outstanding issues were resolved.

CRITERIA

After giving thorough consideration to the evidence and argument of the parties, the criteria used by the Factfinder in resolving the disputed issues were those set forth in Rules 4117-9-05(J) and (K) of the State Employment Relations Board, to wit:

4117-9-05(J). The fact-finding panel, in making findings of fact, shall take into consideration all reliable information relevant to the issues before the fact-finding panel.

4117-9-05(K). The fact finding panel, in making recommendations, shall take into consideration the following factors pursuant to division (C)(4)(e) of section 4117.14 of the Revised Code:

4117-9-05(K)(1). Past collectively bargained agreements, if any, between the parties;

4117-9-05(K)(2). Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work giving consideration to factors peculiar to the area and classification involved;

4117-9-05(K)(3). The interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;

4117-9-05(K)(4). The lawful authority of the public employer;

4117-9-05(K)(5). Any stipulations of the parties;

4117-9-05(K)(6). Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

BACKGROUND

City of Medina recognizes the Ohio Patrolmen's Benevolent Association as the bargaining representative for certain employees comprising three Bargaining Units. The three Bargaining Units involved in these proceedings are: 1) Patrol Officers, 2) Sergeants, and 3) Communications, each with twenty-nine, seven, and ten sworn members respectively. The Bargaining Units are duly certified by the State Employment Relations Board and each had a Labor Agreement in effect that expired on October 31, 2019.

The Parties agreed to joint bargaining with the City bargaining simultaneously with the three Units. When impasse was reached, the Parties requested the Factfinder convene a hearing,

attain relevant facts, and prepare a report and recommendations in keeping with ORC 4117 and related Rules and Regulations adopted by SERB. The hearing was convened on the date and in the City indicated above. At that time the parties were provided the opportunity to present evidence and argument in such a manner that would allow the Factfinder to render a report and make recommendations on the issues at impasse.

INTRODUCTION

The City is on a sound financial footing resulting from measures designed to curtail costs. The measures included layoffs and the elimination of a number of positions. Additionally, there has been a reduction in the number of hours of its sixty part-time Employees from thirty-five to twenty-nine per week. The City adds that it did not impose such cost-cutting measures on any of the members of the within three Bargaining Units. The City has also deferred capital improvements for the past ten years.

In 2004 the voters approved an income tax increase, and the City enjoyed a \$3 million increase in tax collections over the past four years. As a result, the City maintains favorable fund balances. The City does not assert an inability to pay, but maintains that its capital needs, which have gone unaddressed, require fiscal restraint.

The City claims that the three within Bargaining Units presented an aggressive plate of demands that rendered it impossible to resolve the negotiations while keeping within the bounds of fiscal reasonableness. As a result, the City states, it commenced negotiations with the Teamsters, representing the Employees of its Service Department.

That Bargaining Unit is comprised of thirty-two full-time Employees, versus twenty-nine Employees in the Patrol Officers Unit, the largest of the three Units of the within Fact-Finding. In addition to its size, there is nothing before this Factfinder indicating that the Teamsters Union was bargaining from a position of weakness.

Thus, if considering a pattern of internal comparisons, the City's Teamsters Union may be considered a "bell-cow" Union. It must be borne in mind, however, that the Teamsters is a strike-unit compared to the OPBA being no-strike with the requirement of conciliation as opposed to, some might argue, the less desirable alternative of striking should negotiations reach impasse.

Discussion below of the provisions at impasse will be in the order presented at the Fact-finding Hearing.

Article 16, Section 2
Patrol Officers

Duty Hours

Under the language of the preceding Collective Bargaining Agreement, if a Patrol Officer is assigned as the Officer-in-Charge, the Officer must work in that position for a full ten hours or more to be compensated at the 5% premium over his¹ normal salary, provided he actually works as the OIC. The Union points out that an Officer who actually works in the position of OIC for nine hours, only to be replaced by a Supervisor for the last hour, is compensated at his normal salary for the nine hours as OIC. The Union desires to remove the ten-hour requirement, permitting an Officer to be compensated for all time worked as OIC, regardless of the amount of time in that position.

The City is not totally opposed to the Union's proposal. The City's objection is based on the entire elimination of the length-of-time requirement. The City desires to avoid the added administrative burden, and concomitant costs, associated with an Officer being placed in the OIC position for a short period of time, as, for example, fifteen minutes. The City requests that if the Union's proposal is recommended, a minimum time requirement of two hours be used.

In the view of the Factfinder, both positions have merit for the reasons advanced by the Parties. It is the recommendation of the Factfinder that Article 16, Section 2 of the Patrol Officers Successor Agreement read:

Section 2. If a bargaining unit employee is assigned as the Officer-in-Charge (OIC), and actually serves as OIC for a full two (2) hours or more, then he will be paid for such hours actually worked as OIC at his normal salary plus a five percent (5%) premium. There shall only be one (1) person assigned as OIC per shift.

¹ As in the Predecessor Agreements, the use of the masculine gender herein is for convenience and is intended to encompass both genders.

Article 17, Section 2
Patrol Officers
Sergeants
Article 16, Section 2
Communications

Overtime Pay and Court-Time

The Predecessor Agreements, at the Articles and Sections noted immediately above, provide that that when a Patrol Officer, Sergeant, or Dispatcher is called back to work on a normal work day, on a regular day off, or on a holiday, the Patrol Officer, Sergeant, or Dispatcher is paid at the rate of time-and-a-half. The Union points out that Employees working a scheduled holiday are paid time-and-a-half and feels that Employees called in on an unscheduled holiday should be compensated at the double-time rate.

The City counters by noting that police work is a twenty-four-hour per day, seven day per week operation. Working holidays is a known requirement of police work, the City continues, of which applicants are aware when seeking employment. Double time, the City contends, is unusual in the public sector and is a waste of public funds. In support, the City presented comparators from seventeen jurisdictions and notes that of those seventeen only four have a double time provision for working holidays.

The Factfinder notes that of the four jurisdictions having a double time provision, one pays double time when working a scheduled holiday, and Medina Township pays double time when working the holidays of Christmas Day, July 4th, Thanksgiving Day, and New Year's Eve. The remaining two jurisdiction pay double time to Employees called in to work an unscheduled holiday. None of the thirteen jurisdictions, as the City points out, has a double time provision for Employees called in to work an unscheduled holiday. The Union counters by noting that the two jurisdictions in Medina County, Medina Township and Wadsworth, have double time provisions.

Both Parties presented cogent argument in support of their respective positions. The Factfinder is inclined to agree with the Union's proposal, in that, unscheduled time has the added benefit, in addition to time off to simply "decompress," of permitting family time. This is especially so on holidays, as, for example, Christmas, or other holidays where family time is especially desirable. Unscheduled Employees called in on such days deserve compensation at a rate above the contractual normal rate of holiday pay.

It is the recommendation of the Factfinder that Article 17, Section 2 of the Patrol Officers and Sergeants Successor Agreements read:

Section 2. All time worked when called back after normal daily working hours or on a regular day off, and actual time spent engaged in appropriate police work within the City of Medina which requires immediate action, shall be compensated at the rate of one and one-half times his regular rate of pay, or the employee may elect to receive compensatory time, pursuant to Section 3. Employees called in to work on an unscheduled holiday shall receive double time for each hour worked on the holiday. Employees on medical-related or personal leave (excluding vacation, holiday, personal day or comp-time) for three (3) or more consecutive days shall not receive any additional compensation for appearing for court time or other work-related call-in, until such date on which the employee is cleared to return to work. Employees appearing for court time or call-in time during such leave shall not have sick time deducted for the actual time of appearance.

It is the further recommendation of the Factfinder that Article 16, Section 2 of the Communications Successor Agreement read:

Section 2. All time worked when called back after normal daily working hours or on a regular day off shall be compensated at the rate of one and one-half times his regular rate of pay, or the employee may elect to receive compensatory time, pursuant to Section 3. Employees called in to work on an unscheduled holiday shall receive double time for each hour worked on the holiday.

Article 17, Section 6
Patrol Officers
Sergeants
Article 16, Section 6
Communications

Overtime Pay and Court-Time

In the Predecessor Agreements, the three sections provide for call-in pay of two hours. The Union proposes modifying call-in pay to three hours. The City feels two hours is adequate.

In the view of the Factfinder, insufficient background was provided for the Factfinder to recommend the requested increase in call-in pay. The Factfinder recommends that the language of the of the Predecessor Agreements in the Sections noted immediately above be carried forward into the Successor Agreements.

Article 17, New Section 7
Patrol Officers
Sergeants

Overtime Pay and Court-Time

The City staffs three Detectives and one Detective Sergeant. The Department's four Detectives are required to be in on-call status between eleven and thirteen weeks per year. When in on-call status, Detectives are required to respond to calls in a timely manner. The

Union notes a Detective receives the minimum two hours call-in pay, however, this does not account, nor compensate, for the inability to travel out of the area or consume alcohol of any kind during social events, and so forth.

The City argues the Detective position is a sought-after assignment by Patrol Officers due not only to the interesting work, but also resulting from Detectives being assigned to a Monday through Friday day-shift schedule. Patrol Officers are aware of the working conditions of a Detective and are not required to apply for, nor accept, the position. At the time of the last Detective vacancy, five Patrol Officers applied to fill the position, and only one resigned from the Detective position and that was at the request of the City to fill a different position.

The City points out that the Detective who lives farthest from the City of Medina is about one-half hour away. This is the approximate distance to the City of Cleveland, and the City continues, permits a Detective a wide geographic area while on call. The City also points out that if a Detective wants to attend a function where alcohol may be consumed, as a wedding reception for example, the Detective can trade the on-call time with another Detective. Moreover, the City concludes, a Detective is assigned an unmarked City vehicle for travel to and from work.

The Factfinder is of the opinion that the City's arguments outweigh those of the Union's. The perquisites associated with the position of Detective, the Monday through Friday day shift schedule, the use of an unmarked City vehicle, the ability to trade on-call time, and the wide geographic area a detective may travel while in on-call status, far outweigh the requirements raised by the Union as being undesirable aspects of the position. The Factfinder recommends the Union's proposed new Article 17, Section 7, not be incorporated into the Patrol Officer's Successor Agreement.

Article 18, Section 3
Patrol Officers
Sergeants
Article 17, Section 3
Communications

Holidays

The Parties' Predecessor Agreements provide payment for working all holidays established by the City at the regular rate of pay, and, in addition, holiday pay not to exceed eight hours. The Union proposes increasing the cap of eight hours to ten. This additional time, the

Union argues, is consistent with the ten-hour schedule and permits those Employees to receive holiday pay for their entire shift.

The City notes that Patrol Officers have been on ten-hour shifts for decades, and the current system of compensation for holidays has likewise been in place for decades. There are eleven recognized holidays for City Employees, and, the City points out, Officers working a five-day per week schedule receive more holidays off than a shift Officer. If a holiday falls on a Monday, the five-day per week Employee receives the eight hours off. The shift Employee receives his regular pay plus the holiday rate for eight hours. What the Union is asking for, the City argues, is an additional twenty-two hours of pay per year for shift Employees.

Moreover, the City points out that ten-hour shifts were strongly supported by the membership when first negotiated into the Labor Agreements. Part and parcel to the change in schedules was the understanding that the change would not result in an increase in Officers' holiday hours. The City argues that now that time has elapsed, Union is now renegeing on that commitment.

While it seems the removal of the eight-hour cap is consistent with the hours actually worked on a holiday, the Fact-Finder finds more compelling the City's argument that the eight-hour cap on holiday pay retains the parity between shift Employees and Monday through Friday Employees. The Factfinder recommends the removal of the eight-hour cap not be implemented, and the language of the above three Sections of the Parties' Predecessor Agreements be carried forward into the Successor Agreements.

Article 20, Section 4

Patrol Officers

Article 20, Section 3

Sergeants

Article 19, Section 3

Communications

Sick Leave

The above Sections of the Predecessor Agreements provide for annual paid sick leave for all absences resulting from injury or occupational disease sustained or contracted in the course of employment for the City. The City initially argued this benefit should be deleted from the Successor Agreements, stating that it is unaware of any other jurisdiction providing this benefit and that Employees have Workers' Compensation as well as accrued sick leave in

the event of injury or illness. At the Hearing the City changed its position to clarify that this benefit be used after accrued sick leave has been depleted.

In order to prevent a future dispute over usage of this benefit, the Factfinder agrees clarifying language is called for and recommends the following sentence be inserted at the end of the above Sections:

The additional sick leave provided in this Section is to be used only after accumulated sick leave as provided elsewhere in this Article has been depleted.

Article 20, New Section 6
Patrol Officers
Article 20, New Section 5
Sergeants
Article 19, New Section 5
Communications

Sick Leave

The Union proposes a new Section to the Articles of the Successor Collective Bargaining Agreements providing for Sick Leave. The proposal provides that Employees who have accumulated six-hundred or more hours of Sick Leave be permitted to cash in up to eighty hours each year to be paid in June. Additionally, the Union notes, at the time of retirement Employees can cash in 37.5% of their unused sick leave up to four-hundred hours.

The Union argues that its proposals would act as an incentive for Employees to use less Sick Leave for illness of a less serious nature. This, the Union contends, would result in the City expending less money by cutting down on overtime costs. Other Cities in the county provide for such a benefit, the Union states, with the City of Wadsworth providing for a 100% cash-in at retirement of unused Sick Leave up to a maximum of 1,280 hours.

The City points out that the current Labor Agreements provide for two Stress Days per year. That is, the City notes, in addition to Sick Leave, Employees may call off two days per year even if not sick. Moreover, the City continues, even if Employees are not sick, they are entitled to convert two days of unused Sick Leave to Stress Days every six months the Employee does not use Sick Leave.

The Factfinder notes that the City of Wadsworth, while providing for a 100% cash-in of sick leave upon retirement, applies that benefit to Employees hired prior to February 1, 2013. For Employees hired after that date, the cash-in is capped at three-hundred hours. Thus, it

appears the City of Wadsworth modified its Sick Leave cash-in to be more in the area of Medina's current policy. Absent any further argument for the increase in expenditure of taxpayer funds caused by the insertion of the new Section into the Sick Leave Articles of the Successor Labor Agreements, this Factfinder recommends the new Section proposed by the Union not be included.

Article 20, New Section
Patrol Officers
Sergeants
Article 19, New Section 3
Communications

No-Fault Attendance Policy

The use of No-Fault Attendance Policies is widespread in private industry, and the City proposes adding a No-Fault Attendance Policy to the Successor Agreements. It is difficult to discipline anyone for sick leave abuse, the City feels, almost requiring fraud to be established. The Union states there is no problem of sick leave abuse, and there is no reason to change the existing policy. The City counters by stating that if there is no abuse of sick leave, the Union should have no problem with a No-Fault Policy.

The Union also points out that the Teamster Labor Agreement does not have a No-Fault Attendance Policy, even though such a policy was proposed during the last round of negotiations. The City argues the proposal was withdrawn during the Teamsters negotiations as part of the give-and-take of negotiations, and agreements on other outstanding issues being resolved.

The City offered four public sector Collective Bargaining Agreements for review. Two of the four Collective Bargaining Agreements provide for the right to establish No-Fault Attendance Policies after negotiations with the Union. Should negotiations fail to result in agreement, the Parties will submit to matter to arbitration. The third grants the public Employer the right to implement a No-Fault Policy, with the Union having the right to grieve its reasonableness. The fourth Labor Agreement has a No-Fault Policy in effect.

In that, at present, there is no problem with sick leave abuse, and in that the Parties have numerous other issue upon which to focus during this round of Factfinding and possibly Conciliation, the Factfinder is of the opinion implementation of a No-Fault Attendance Policy is best left unaddressed until the next round of negotiations at the expiration of the Successor Agreements.

The Factfinder recommends against adding a No-Fault Attendance Policy to the Successor Agreements.

Article 21, Sections 1 through 3
Patrol Officers
Sergeants
Article 20, Sections 1 through 4
Communications

Stress Days

The Parties Predecessor Agreements permit Employees, with prior approval of the Chief, to take two Stress Days per annum, with the opportunity to earn four additional Stress Days per annum pursuant to the Sick Leave provisions of Article 20 for Patrol Officers and Sergeants, and pursuant to the Sick Leave provisions of Article 19 for Dispatchers.

The City feels and proposes the additional Stress Days be deleted from the Successor Agreements. The Union indicates that this is an earned benefit for Employees and feels this benefit should be left in place in the Successor Agreements.

As with the No-Fault Attendance Policy, there is no record of abuse of this policy, and no compelling reason was presented for removal of the Stress Days provisions. The Factfinder recommends carrying the Stress Days provisions of the Predecessor Contracts forward into the Successor Labor Agreements.

Article 25, Section 7
Patrol Officers
Sergeants
Article 24, Section 7
Communications

Travel, Telephone and Educational Benefits

The Parties' Predecessor Labor Agreements for Patrol Officers and Sergeants provide that Police Patrolmen or Officers who have earned an associate degree in law enforcement or a four-year baccalaureate degree from an accredited university, receive an additional annual stipend of \$350.00. For Communications, the Predecessor Labor Agreement contains the same provision for associate or baccalaureate degrees, and also for a Communications Employee having earned and maintained an EMT certification.

The Union proposes the additional annual stipend of \$350.00 be deleted, and alternate compensation be inserted. The alternate stipend is proposed to be forty cents per hour added to base pay for the associate degree, eighty cents per hour for the baccalaureate degree, and eighty

cents per hour for honorably discharged veterans who served three or more years in any branch of the United States military, three or more years on reserve duty, or three or more years in the Ohio National Guard.

The Union argues that its proposal places Officers with military service on a par with those Employees who have post-secondary education. The ex-military Employees, the Union believes, have experience, education, and discipline gained from their military service consistent with the benefits gained from additional schooling. The Union also points out that the City places emphasis on military service along with college during the hiring process.

The City states that Civil Services provides extra points as an assist in hiring to applicants who are military veterans and applicants with desired education. This does not mean those applicants should receive additional pay. Moreover, the City continues, this benefit will affect a large number of Employees, and is tantamount to a wage increase. Eighty cents per hour, the City points out, costs-out to \$1,600.00 per year, up from a benefit of \$350.00. Finally, the City notes that of its list of seventeen comparable jurisdictions, none has additional compensation for military service.

The Factfinder notes that of the City's seventeen comparable jurisdictions, eight provide an additional stipend for associate's and bachelor's degrees and, as the City noted, not one for military service. The Factfinder is also aware, however, that in light of the ongoing engagement in combating terrorism for close to two decades, through the use of the military, and the sacrifice of members of the military, more and more recognition in various forms is provided to our military veterans. Furthermore, in that the work of our civilian safety forces is to some extent based on military procedure, military experience is not without application to police work.

The Factfinder is also mindful of the City's emphasis on the increased costs for each Employee affected by deleting of the \$350.00 annual stipend and substituting eighty cents per hour in its stead. The Factfinder agrees with the City's argument that this \$1,600.00 per annum, per affected Employee, is tantamount to a pay increase and amounts to more than an ancillary benefit. The Factfinder believes a compromise between the two positions is called for, and recommends the following language be inserted as the new section in the three Successor Agreements:

Section 7. Upon receipt of, or proof of having earned, an associate degree in the law enforcement field, a four (4) year baccalaureate degree from an accredited university, or upon proof of an honorable discharge after having served three (3) or more years in a branch of the United

States military; or upon proof of having served three (3) or more years on reserve duty for a branch of the United States military or three (3) or more years in the Ohio National Guard, a police patrolman or officer shall receive additional compensation in the amount of Three Hundred Fifty Dollars (\$350) payable semi-annually in July and December of each contract year.

For clarification, the Factfinder notes that the Patrol Officers Collective Bargaining Agreement contains a typo in that there are two Article 25 sections enumerated as Section 6. It is the Factfinder's recommendation that the above recommended Section 7 be inserted as the replacement for the second Section 6 in the Patrol Officers Successor Agreement.

Article 26, Section 1
Patrol Officers
Sergeants
Article 25, Section 1
Communications

Group Hospitalization

A Wellness Program has been established as part of the City's Group Hospitalization Plan. Pursuant to the Predecessor Agreements, Employees participating in the Wellness Program contribute 12% toward the hospitalization premiums, while non-participating Employees contribute 16%. These 12% and 16% levels have been in effect since 2017. Effective January 1, 2018 and January 1, 2019, and in the event the City's premium costs increased by 1%, the Labor Agreements provided for a 1% increase in Employee contribution.

The Union notes that not only have the premiums for the City not increased, they have actually gone down. According to an email from the Mayor commending Employees for their participation in the Wellness Program, and emphasizing the success of the Program, it was noted that the 2019 premium decreased 4.5% from 2018 and 7.5% over the period of 2016 to 2018 for a total of 12%. The Union points out that, despite facing 1% premium increases each year for 2018 and 2019 and despite the 12% reduction in premium costs to the City, its membership did not enjoy the same decrease in its premium costs.

The Union points to SERB data for cities with population of 25,000 to 99,000, and notes the Employee contribution is 12.4%. This coincides with its proposal of maintaining the same 12% Employee contribution for Wellness participants over the duration of the Successor Agreements. Non-participants contribution will be 18%. In summary, the Union argues, when premiums went down, Employee contribution remained the same, and, now that premiums are increasing, Bargaining Unit Members should continue the same 12% to make up for not having shared in the benefit of the previous premium decreases. Moreover, Union concludes, with

Employee contribution of 13% the City will be contributing less than its current 88%, and Employees continuing their 12% contributions will not cause a hardship for the City.

The City points out that historically Employee Health Care contributions have been uniform among the City's unions. The City proposes for the three OPBA Bargaining Units the same contribution levels ratified by its Teamsters Union. Regarding the decrease in premiums since 2016, the City points out that Employee contribution is a percentage, thus when the City's contribution decreased, Employee contribution also decreased.

With its Wellness Program, the City contends, the objective is a healthy workforce, and premium savings is a secondary benefit. Compliance with the Wellness program is not difficult to meet, the City states, in that compliance is not outcome oriented, but is based on participation. That is, an Employee is not, for example, required to participate in a marathon for compliance, but simply must participate in certain activities as well as have a blood test.

The City never sees the results of the blood test, which the Employee can have drawn at a local hospital or by his own physician. The benefit of the blood test, the City states, is that unknown health problems are brought to the Employee's attention, as, for example, high blood pressure or pre-diabetes. The Wellness Program activities, enumerated in Appendix B of the Predecessor Agreements, are educational. The Employee must complete three seminars of his choice over the time periods provided in Appendix B. Thus, the Wellness Program accommodates Employees who are unable to meet the challenges of certain physical activities.

The City proposes that commencing April 1, 2020 participants in the Wellness Program contribute 13% of Group Hospitalization premium costs, with the City the remaining 87%. Non-participants are to contribute 20% and the City is to pay the remaining 80%. Each succeeding year for the duration of the Agreements, if the City's premium costs increase by 1% or more, Employee contribution is to increase by 1% with contribution capped at 14% and 20% for Wellness participants and non-participants respectively. As in the Predecessor Agreements, the requirements of the Wellness Program must be met by September 1 of the preceding year and compliance is to be based on the same Appendix B.

The City points out that statewide averages for Employee contribution are slightly over 13%, and that its proposal of up to 14% is a little over averages for cities of comparable population. However, the City emphasizes, its Group Plan provides vision and dental benefits, and the Plans in the comparators gathered by SERB do not. Also, the out-of-pocket maximums

paid are on the low side compared to statewide averages, and on the low side for City averages within the state. Deductibles are \$500 and \$1,000, which appear to be mid-range compared to in- and out-of-network averages.

The City argues that there is no reason for an Employee not to participate in its Wellness Program and to enjoy the lower premium contribution. In that regard, the Factfinder notes that the Union presented no reasons for non-participation, nor were the number of Employees affected by the 20% contribution noted. Taking that into consideration, along with the benefit to Employees in being made aware of previously unknown health issues, or potential health issues, coupled with the City's unobtrusive posture regarding the Wellness Program, it is the view of the Factfinder that participation is to be encouraged.

Additionally, maintaining a semblance of uniformity between the City's Unions is desirable from the standpoint of maintaining labor peace and Employee satisfaction across Unions. Other than the Union addressing it not receiving decreases in premium contribution as did the City, no real reason was advanced for breaking from following the agreement reached by the Teamsters. The Factfinder notes that as the premiums decreased, in that Employees contribution was based on a percentage, the dollar contributions of Bargaining Unit Members also would have decreased although, it is noted, not in the same amount had the contribution been lowered by a percentage point. All told, the arguments advanced by the City hold sway with the Factfinder and the City's proposals are recommended, to wit:

Section 1. The City shall provide group hospitalization, surgical and dental insurance coverages or options to bargaining unit employees (except short-term temporary employees and those employed less than thirty (30) hours per week). A summary of insurance benefits that the City shall provide is set forth in Attachment A.

The premiums for such plan shall be paid as follows:

- A. Effective April 1, 2020, the City shall pay eighty percent (80%) of the premium costs, and the bargaining unit member shall pay twenty percent (20%) of the premium costs through payroll deduction. Employees who satisfy the wellness program obligations (see, Attachment B) will be eligible for a "wellness" discount and will pay thirteen percent (13%) as their premium contribution for 2020. In order to qualify for the reduced premiums in 2021 and 2022 the employee must satisfy the wellness components identified in Attachment B by September 1st of the preceding year.
- B. Effective January 1, 2021, if the City's insurance premium costs increase by one percent (1%) or more, employees satisfying the wellness program obligations shall pay fourteen percent (14%) of the premium costs through payroll deduction. Employees failing to satisfy the wellness program obligations will not be eligible for a "wellness" discount and will pay twenty percent (20%) as their premium contribu-

tion. The employee premium contribution percentage shall remain at the 2020 percentage (13% or 20%) for 2021 if the City's insurance premium costs do not increase or increase by less than one percent (1%).

- C. Effective January 1, 2022, if the City's insurance premium costs increase by one percent (1%) or more, and the employees are still paying a thirteen percent (13%) premium contribution, the employees satisfying the wellness program obligations shall pay a premium contribution one percent (1%) higher than the 2021 rate (an increase to 14%) of the premium costs through payroll deduction. Employees failing to satisfy the wellness program obligations will not be eligible for a "wellness" discount and will pay twenty percent (20%) as their premium contribution. The employee premium contribution percentage shall remain at the 2021 percentage for 2022 if the City's insurance premium costs do not increase or increase by less than one percent (1%).
- D. Newly hired employees are not eligible for the reduced Wellness premium rate until the January 1st following successful completion of the September 1st to August 31st Wellness requirements.

The remaining Sections of Article 26 are recommended to remain as in the Predecessor Agreements.

Article 27, Sections 1 through 3
Patrol Officers
Article 27, Section 1
Sergeants
Article 26, Section 1
Communications

Wages

The Union points out that the City contracted with the contiguous Township of Lafayette to provide police coverage. Lafayette Township, with a population of 5,827, added 23.7 square miles to the Police patrol area. This added to the workload and responsibilities of the Department. Arrests increased from 738 in 2017 to 797 in 2018, and motor vehicle accidents increased to 770 in 2018 from 701 in 2017.

The workload of the Communications Center likewise increased, from 28,620 calls for Police in 2017 to 43,010 in 2018. The Center is also responsible for Fire Department dispatch in Medina, although calls for the Fire Department have decreased from 1,474 in 2017 to 1,338 in 2018. The complement of Dispatchers is budgeted for ten and is understaffed at nine. An additional Dispatcher, however, is scheduled to be added to the complement on March 1, 2020, and, as of the date of this Report, that Dispatcher should be in place.

Normally, there are three Patrol Officers per shift, the Union states, now a fourth Officer is patrolling the entire area of Lafayette Township alone. Response times for backup or other

emergency assistance have increased, making the job more hazardous. Thus, the Union emphasizes, the City of Medina is paid by Lafayette Township for the added coverage, placing more responsibility and stress on Employees without additional recompense.

The Union proposes three annual wage increases of 3%, commencing January 1, 2020. The Union notes that while the Teamsters settled for 2.5%, 2.5%, and 2.75%, their workload did not increase, while the workload of OPBA members did. Moreover, SERB data shows that for 2018, the statewide average for Police wage settlements was at 2.5%. With the increased workload and responsibilities, the Union believes, its proposal of three 3% increases over the life of the Successor Agreements is reasonable.

The City points out that most of Lafayette Township is rural, and the rural population is generally in the western area of the Township. It is the eastern portion of Lafayette that is contiguous to the Medina City patrol area, and it is that area where most of the population resides. Moreover, the City points out that the Highway Patrol responds to injury accidents on state routes, and there are multiple surrounding jurisdictions to respond if Officer backup or assistance is needed. Additionally, the number of Patrol Officers, while down in the past, is at the full complement of twenty-nine. While Police work is hazardous, during shift overlap as many as eleven Officers are on duty during the evening and early morning hours, the busiest and most hazardous times. The City pointed out that roadworkers in the Teamsters face hazards on the job as well.

The City notes that the Union presented a proposal of three 3% increases along with numerous other enhancements, and emphasizes the Teamsters ratified a Successor Agreement at 2.5%, 2.5%, and 2.75% without added enhancements. Moreover, the City points to the same SERB data as the Union, noting that its, the City's, proposal of three increases at 2.5% is in keeping with the statewide average for Police. Of nine comparable jurisdictions in Medina County, the City notes, Medina ranks second in 2019 Top Level Wages and Other Benefits for Patrol Officers. Of seventeen jurisdictions from surrounding areas, Medina Patrol Officer ranked fifth in 2019.

For Dispatchers, of four jurisdictions in Medina County, Medina Dispatchers ranked second in Top Level Wages and Other Benefits in 2019. Of seven comparators in the surrounding area, Medina Dispatcher ranked third. The City believes that the Union has not made a case warranting the large wage increase proposed. For Dispatchers, as with the Police, the City

proposes annual wage increases of 2.5%

As the City points out, the number of Patrol Officers and Dispatchers, while down in the past, is now at the full complement for both Bargaining Units. Thus, the increase in workload is spread over a larger number of Employees. Furthermore, as the City noted, Medina Patrol Officers are not responsible for injury accidents on state routes, and there are multiple jurisdictions to respond in Lafayette Township in the event Officer backup or assistance is needed.

The City also presented nine Medina County comparators for Wage Increases in 2020 and 2021. For 2020, three had "n/a" for the 2020 wage increase. Of the six remaining, not one was over 2.5%. For 2021, wage increases were listed for three of the comparators, and each was at 2.5%. The same result carries forward for seventeen comparators from the surrounding area, that is, no wage increase is above 2.5%. Finally, a February 13, 2020 Factfinder Report involving the Medina County Sheriff's Office shows a recommendation of three annual increases of 2.5% for 2020, 2021, and 2022.

Based on the evidence before this Factfinder, 2.5% wage increases are the norm. The 2.5% norm notwithstanding, to maintain parity between the City's Unions, as in the case of Employee contributions toward Group Health, the Factfinder feels that, despite enhancements recommended for these Employees, the same wage increases granted to the Teamsters should also be recommended for these Bargaining Unit Members. The Factfinder recommends, retroactive to January 1, 2020, a wage increase of 2.5%, 2.5% again on January 1, 2021, and 2.75% on January 1, 2022.

The Union also proposes modifying Section 1 of the Sergeants Labor Agreement to increase the Rank Differential between Sergeants and the top step of a Patrol Officer from fifteen percent to fifteen-and-one-half percent. No rationale was provided for the increase, and, in light of the general wage increase, the Factfinder recommends the current language of Article 27, Section 1 of the Sergeants Predecessor Agreement be carried forward into the Successor Agreement.

Article 27, New Section 5
Patrol Officers
Sergeants

Detective Pay

The Union proposes that Officers assigned to the Detective Bureau receive an additional \$1.00 per hour added to their base pay. Detectives, while working under the Job Description of a Patrol Officer, in reality perform different functions, from handling background checks for new applicants to investigating sexual assaults, as well as the other myriad duties a Detective performs. Moreover, the Union continues, the Detective case load has increased from 329 in 2018 to 417 in 2019.

The Union argues that there is a substantial stress level associated with the position of Detective. The stress level of a Detective is sustained, the Union states, with the Detective constantly thinking of cases being investigated. This, the Union argues, differs from the short-term stress faced by Patrol Officers.

The Union also argues that an Officer loses money by transferring to the Detective Bureau. This is the result of a loss in overtime and shift differential. Also, a Patrol Officer works four days per week, while a Detective works five. A Patrol Officer, the Union points out, can work a side job while remaining in a five-day workweek. To work a side job, a Detective works a six-day week. Additionally, the Union concludes, in that court time occurs during a Detective's normal working hours, overtime for court appearances is lost.

The City points out that a Patrol Officer is more likely to be assaulted while on duty than is a Detective, and a Patrol Officer faces the additional hazard of being in traffic while responding to vehicular accidents. Detectives, the City points out, work a five-day week on day shift, which, the City believes, is more desirable than working rotating shifts. The City also points out that there were five applicants from Patrol Officer for the last Detective opening, and Detectives do not request being placed back on Patrol.

The City also contends that Detectives do, in fact, work overtime and off-duty details. Additionally, when Patrol Officers are compensated above their normal rate for court appearances, it is the result of working added hours outside of their normal shift hours. The City also notes that Detectives are permitted to work overtime on basic Patrol.

The evidence adduced at the hearing convinces this Factfinder that the Detective position is desirable. The City has no difficulty filling a Detective position when a position opens,

and there is no evidence of Detectives voluntarily leaving the Detective bureau, despite the increased stress level and lack of outside job opportunities argued by the Union. The City also presented comparators from seventeen jurisdictions. Of the seventeen, only one had additional compensation for Detectives.

Considering the presentations of the Parties, the Factfinder recommends the additional \$1.00 per hour added to Detective base pay not be added to the Successor Agreements.

Article 27, New Section 6
Patrol Officers
Sergeants

Duty Weapon and Badge Buyout

The Union proposes that Employees covered by these Labor Agreements who retire at full pension or through a disability pension, be permitted to purchase their badge and service weapon for a cost of \$1.00. The Employee is not eligible if the retirement is based on a mental condition or disability. The Union points out that this language was just negotiated into the Medina County Sheriff Collective Bargaining Agreement.

The badge and weapon have value, the City argues, and the weapon is reassigned upon an Employee's retirement. The value of a weapon is roughly \$600.00, and no justification exists for exchanging a \$600.00 weapon and badge for \$1.00. The City points out that both the badge and weapon can currently be purchased at replacement value.

In the view of the Factfinder, there is insufficient evidentiary support for the addition of the Union's proposal to the Parties' Successor Agreements, and the Factfinder recommends the Union's proposal not be added.

Article 29, Section 1
Patrol Officers
Article 28, Section 1
Sergeants
Communications

Shift Differential

The Union proposes increasing Shift Differential from thirty-five cents per hour to eighty for Employees on the second and third shifts. The City objects to the increase, offering seventeen comparators, and notes that while the City is on the low end in the amount of the Differential, only four entities of the seventeen provide Differential while the remainder do not.

During the discussion regarding the Union proposal that Detectives receive an addition \$1.00 per hour, the City emphasizes, the Union argued day shift was not necessarily the most

desirable shift, and, that being the case, the City now asks, why a shift differential at all? The City also projects costs of the Shift Differential to be \$69,555 over the three years of the Successor Agreements.

The Factfinder feels that with the recommended wage increase, a Shift Differential in the amount of eighty cents per hour is too high. No rationale was offered to support an eighty cents per hour increase, however, a modest increase to account for inflation, is, in the opinion of the Factfinder, warranted. The Factfinder recommends an increase in Shift Differential from thirty-five cents per hour to fifty cents for Employees working second and third shifts.

Article 5
Patrol Officers
Sergeants
New Article
Communications

Management Rights

The Patrol Officers and Sergeants Agreements, the City believes, have somewhat limited Management Rights Articles, and, the City notes, the Communications Labor Agreement is lacking a Management Rights Article entirely. The language of the Management Rights Articles in the Predecessor Patrol Officers and Sergeants Agreements are identical, and the City proposes what it terms as modest proposals. The City emphasizes that the Rights requested are Rights the City already has.

The Union disagrees and contends the City is requesting new Rights without negotiating anything in return. For example, the Union states, current language of Article 5, Paragraph 2 provides, "Direct, supervise, Evaluate, or hire employees," to which the City desires to add, "and to determine when and under what circumstances a vacancy exists." The City also proposes a new Paragraph to, "Require employees to use or refrain from using specified uniforms or other tools of duty."

The Union states the new section regarding uniforms is the result of the City desiring to prevent some Patrol Officers from wearing baseball caps. This is already covered by Departmental Policy, and Patrol Officers are not permitted to deviate from the Policy. Other new Rights are, "Privatize or subcontract services," and "The City reserves the right to implement new or revised existing policies or practices which do not conflict with the express terms of this Contract."

While the right to implement new policies not in conflict with the Labor Agreement is

an existing right, the Rights to Privatize and Subcontract services is not, and, in the view of the Factfinder, too broad to be recommended. Those Rights, the Factfinder believes, encompass too many areas of a Collective Bargaining Agreement to be recommended for inclusion absent lengthy negotiations between the Parties where the numerous ramifications of Privatization and Subcontracting are thoroughly discussed. Privatization and Subcontracting, the Factfinder also believes, are potential grounds for numerous disputes as well as engendering ill will among the Employees should the City exercise those rights.

For the Patrol Officers and Sergeants Successor Agreements, the Factfinder recommends Article 5, Management Rights, be carried forward as is.

For the Communications Successor Agreement, the Factfinder recommends the language of the Patrol Officers and Sergeants be inserted therein, to wit:

Unless otherwise agreed herein, the City maintains the right and responsibility to:

1. Determine matters of inherent managerial policy which include, but are not limited to areas of discretion or policy such as functions and programs of the public employer, standards of service, its overall budget, utilization of technology, and organizational structure;
2. Direct, supervise, evaluate, or hire employees;
3. Maintain and improve the efficiency and effectiveness of governmental operations;
4. Determine the overall methods, process, means, or personnel by which governmental operations are to be conducted;
5. Suspend, discipline, demote, or discharge for just cause of lay off, transfer, assign, schedule, promote, or retain employees;
6. Determine the adequacy of the work force;
7. Determine the overall mission of the employer as a unit of government;
8. Effectively manage the work force;
9. Take actions to carry out the mission of the public employer as a governmental unit.

Article 16, Section 1

Patrol Officers

Sergeants

Article 15, Section 1

Communications

Duty Hours

Pursuant Article 16, Section 1 of the Patrol Officers and Sergeants Predecessor Agreements, Patrol Officers and Sergeants are assigned to four ten-hour working days per workweek. In the event the staffing level drops below eighteen, including both Patrol Officers and Sergeants, the City has the discretion to change the schedule to five eight-hour days per workweek. The Communications Predecessor Agreement simply provides for a forty-hour workweek.

The City desires to modify the language to allow for scheduling to better fit within a

twenty-four-hour day. Mid-term in the Predecessor Agreements the City approached the Union with a proposal for twelve-hour shifts. This, the City states, was rejected by a close vote.

The City argues, that when ten-hour shifts were negotiated, the City was in financial crisis. Officers were laid off and the City was concerned more Officers would be lost if eight-hour shifts were maintained. The City indicates that a middle ground of ten hours was reached. The Union is opposed and notes that ten-hour shifts have been in place since at least 1983. In transitioning to twelve-hour days, the Union believes, Articles 17, 18, 19, 20, 21, 24, among others, would require renegotiation.

The Union presented studies, wherein it was posited that twelve-hours shifts in police work result in more accidents, not only while on duty but also as Officers are returning home after completion of a twelve-hour tour. It was concluded that ten-hour shifts improve the quality of life of Officers, having a positive effect on family life and second jobs. The benefit to the city was decreased overtime. Improvements, however, did not carry forward to twelve-hour shifts. The amount of Officer sleep decreased, and fatigue increased. Overtime also increased. Twelve hour shifts also potentially have a deleterious affect on a spouse's job as well as child-care.

The City counters by pointing out that shifts are bid every six months and are seniority based. Senior Officers can change shifts via bid. Furthermore, the City points out that Officers work extended shifts when working overtime, generally in four-hour increments.

The Factfinder has given deference to the studies, and believes further study is needed before recommending the City have the right to compel Officers to work twelve hours shifts. The Factfinder recommends the Duty Hours language of the Predecessor Agreements be carried forward into the Successor Agreements.

Article 34
Patrol Officers
Article 33
Sergeants
Article 32
Communications

Injury Leave/Wage Continuation

In lieu of Workers' Compensation Lost Time benefits, the Predecessor Agreements provide for full pay and benefits for on-the-job, i.e., compensable, injuries or illnesses. This benefit has been in the Parties' Labor Agreements for decades and recognizes the inherent hazards of

police work. Hazardous duty injuries, the City believes, should include, for example, being shot, injury during a police chase, and so forth.

The problem, the City continues, is that the Agreements provide full pay and benefits for any on-the-job injury or illness. An Employee would receive full pay and benefits for twisting an ankle walking to his car. In 2018, an Employee was off for thirty-five days at full pay and benefits after an on-duty injury during a Police Athletic League basketball game. With this type of benefit, the City argues, there is less incentive for an Employee to return to work.

The City feels this benefit should only apply for injuries sustained while engaged in what is considered hazardous police duty. Employees recovering from other types of on-the-job injuries should rely on Workers' Compensation for remuneration. Agreements in other jurisdictions provide for full pay and benefits only for injuries sustained during hazardous types of police work, and the City provided copies of Labor Agreements from four jurisdictions for the Factfinder's review.

Dispatchers, the City continues, do not face hazardous duty, and this benefit should be deleted in its entirety from the Communications Successor Agreement. Moreover, the Teamsters have no such provision and those Employees face hazards on-the-job when, for example, performing road repair. Those Employees must rely on Workers' Compensation for benefits.

The Union stresses that of the Labor Agreements provided for the Factfinder's review, unless an injury is not as expressly enumerated, the benefit does not apply. In that event, the benefit for non-enumerated injuries is at the sole discretion of the Employer. The Union also objects to modification of this benefit in that when an Employee must rely on Workers' Compensation, nothing is contributed toward his pension.

Regarding the within Labor Agreements, this is a benefit that has been in existence for decades. The Factfinder is of the view, in that only the 2018 PAL basketball injury was cited as problematic, sway holds against the City's desire to modify the benefit as currently provided. As the Union points out, the Labor Agreements offered as comparators only provide for full compensation for the injuries expressly enumerated. Modification of the benefit in the Successor Agreements, or deletion entirely for the Dispatchers, would amount to a pay cut for some Employees during periods of recovery.

Additionally, the City is not claiming an inability to pay, and the cost of providing the benefit is not before the Factfinder and the Factfinder assumes the cost not to be that great. The

Factfinder recommends against modifying or deleting the benefit in the Parties' Successor Collective Bargaining Agreements.

Article 24, New Sections 8 and 9
New Article
Communications

For the Communications Successor Agreement, the Union proposes a new Section 8, providing Training Officers receive an additional \$2.50 per hour for each hour spent training. Additionally, due to the increase in workload created in assuming dispatch duties for multiple jurisdictions, the Union proposes a new Section 9 providing that each Dispatcher receive a bonus of \$500.00 the first pay period after June 1, 2020, a bonus of \$600.00 the first pay period after June 1, 2021, and a bonus of \$700.00 the first pay period after June 1, 2022.

There was insufficient rationale developed at the Factfinding Hearing upon which the Factfinder can base recommending the Union's proposed two new sections. The Factfinder recommends proposed new Sections 8 and 9 not be included in the Communications Successor Agreement.

The Union also proposed a new Article wherein the Terminal Agency Coordinator, who audits LEADS input information, receive a forty cents per hour premium. As with the new Sections 8 and 9, sufficient rationale in support was not developed at the Hearing, and the Factfinder recommends against the new Article being added to the Successor Agreement.

ISSUES OF TENTATIVE AGREEMENT

In addition to the issues at impasse, the parties have made proposals, concessions, and withdrawal of proposals in the course of bargaining. Tentative Agreement has been reached on the following issues:

Article 4, Fair Share Fee

Article 19, Section 1, Vacation Accrual

Article 20, Section 1, Sick Leave

Article 25, Section 6, Education Pay

Article 35, Duration

At the request of the parties that the above Tentative Agreements be incorporated into this Report, to which request the Factfinder agrees, it is recommended that the above identified

issues of Tentative Agreement be included in the parties' Labor Agreements. With the exception of the above issues at impasse and the Tentative Agreements, it is further recommended that the remainder of the Successor Agreements remain the same as in the Predecessor Agreements.



Colman R. Lalka, Factfinder

Dated: March 16, 2020
Madison, Lake County, Ohio

RCA 20074-3/23
Finance

ORDINANCE NO.

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH THE BOARD OF COMMISSIONERS OF MEDINA COUNTY, OHIO TO SHARE COSTS OF PROFESSIONAL DESIGN, PLANNING AND CONSTRUCTION MANAGEMENT SERVICES FOR THE JOINT CONSTRUCTION AND MANAGEMENT OF A COUNTY-CITY COURTHOUSE, AND REPEALING ORDINANCE NO. 98-19, PASSED JUNE 24, 2019 AND ORDINANCE NO. 49-20, PASSED MARCH 9, 2020.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEDINA, OHIO:

- SEC. 1:** That the Mayor is hereby authorized and directed to enter into an Agreement to Share Costs of Professional Design, Planning and Construction Management Services for the Joint Construction and Management of a County-City Courthouse.
- SEC. 2:** That in accordance with Ohio Revised Code §5705.41(D), at the time that the contract or order was made and at the time of execution of the Finance Director's certificate, sufficient funds were available or in the process of collection, to the credit of a proper fund, properly appropriated and free from any previous encumbrance.
- SEC. 3:** That a copy of the Architect Agreement (Brandstetter and Carroll Architects is marked Exhibit A, attached hereto and incorporated herein.
- SEC. 4:** That a copy of the CMAR Agreement is marked Exhibit B, attached hereto and incorporated herein.
- SEC. 5:** That the funds to cover the Agreement in the amount not to exceed \$171,000.00 to the Board of Commissioners of Medina County are available as follows: \$85,500.00 in Account No. 169-0705, and \$85,500.00 in Account No. 301-0707.
- SEC. 6:** That Ordinance No. 98-19, passed June 24, 2019 and Ordinance No. 49-20, passed March 9, 2020 are hereby repealed.
- SEC. 7:** That it is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with the law.

XXK-20

SEC. 8: That this Ordinance shall be in full force and effect at the earliest period allowed by law.

PASSED: _____

SIGNED: _____
President of Council

ATTEST: _____
Clerk of Council

APPROVED: _____

SIGNED: _____
Mayor

 **AIA** Document B101™ – 2017

Exh. A

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the ____ day of May in the year 2019

BETWEEN the Architect's client identified as the Owner:

Medina Ohio Board of Commissioners
144 North Broadway Street
Medina, Ohio 44256

and the Architect:

Brandstetter Carroll Inc.
1220 West Sixth Street
Cleveland, Ohio 44113

for the following Project:

Renovations & Additions to the existing Medina County Courthouse to include the City of Medina Municipal Court.

The Owner and Architect agree as follows.

The Owner intends to construct additions and renovations to the existing Medina County Courthouse to include County and Municipal Court functions. For the purposes of this Agreement, the cost of the work shall not exceed \$30,000,000, unless modified by the Owner via contract amendment.

ADDITIONS AND DELETIONS:

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

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

Init.

TABLE OF ARTICLES

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- 11 COMPENSATION
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- 13 SCOPE OF THE AGREEMENT

ARTICLE 1 INITIAL INFORMATION

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

See Architect's Feasibility Study dated February 2019.

§ 1.1.1 The Owner's program for the Project:

See Architect's Feasibility Study dated February 2019.

§ 1.1.2 The Project's physical characteristics:

See Architect's Feasibility Study dated February 2019.

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

\$38,000,000

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

.1 Design phase milestone dates, if any:

To be Determined.

.2 Construction commencement date:

To be Determined.

.3 Substantial Completion date or dates:

To be Determined.

.4 Other milestone dates:

To be Determined.

§ 1.1.5 The Owner intends the following procurement and delivery method for the Project:

Construction Manager at Risk.

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:

To be Determined

§ 1.1.7 The Owner identifies the following representative in accordance with Section 5.3:

To be Determined

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

To be Determined

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

.1 Geotechnical Engineer:

To be Determined

.2 Land Surveyor:

To be Determined

§ 1.1.10 The Architect identifies the following representative in accordance with Section 2.3:

Nancy K. Nozik, AIA
Brandstetter Carroll Inc.
1220 W. 6th street, Suite 300
Cleveland, Ohio 44113

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§ 1.1.11 The Architect shall retain the consultants identified in Sections 1.1.11.1

(.1 Structural Engineer) (.2 Mechanical Engineer) (.3 Electrical Engineer) and 1.1.11.2:

§ 1.1.11.1 Consultants retained under Basic Services:

.1 Structural Engineer:

To be Determined

.2 Mechanical Engineer:

To be Determined

.3 Electrical Engineer:

To be Determined

§ 1.1.11.2 Consultants retained under Supplemental Services:

To be Determined

§ 1.1.12 Other Initial Information on which the Agreement is based:

See Architect's Feasibility Study dated February 2019.

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

§ 2.2 With reference to the Project, Architect agrees with Owner as follows: (a) in the performance of services Architect shall utilize Architect's professional efforts, skill, judgment and abilities in accordance with the common law standard of care for Architects and in manner which is consistent with locally accepted standards for professional skill and care; (b) Architect shall perform services with respect to the Project and take into account applicable laws, regulations, codes and orders of governmental bodies having jurisdiction; to the extent of a conflict in the code the

Architect will use his best judgment. The Architect represents to the Owner that the Architect is financially solvent and possesses sufficient license, authority and personnel to complete the services required hereunder. Architect will correct those services not performed consistent with the foregoing standard without any additional compensation of any sort.

Architect has submitted prior to entering into this Agreement a Project organization chart setting out Architect's personnel, and their responsibilities in connection with this Project, which Architect proposes to use in connection with the performance of its services on this Project. If, at any time after entering into this Agreement, Owner has any reasonable objection to any personnel or consultant employed by Architect proposed to be used in connection with this Project, Architect shall promptly propose substitutes to whom the Owner has no reasonable objection.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project. Owner shall have the right to rely on all communications of such representative without any further inquiry or investigation by Owner.

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

§ 2.5 The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains. The cost shall be considered part of the basic services fee.

§ 2.5.1 Commercial General Liability with policy limits of not less than Two Million (\$ 2,000,000) for each occurrence and at least Two Million (\$ 2,000,000) in the aggregate for bodily injury and property damage.

§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than One Million (\$ 1,000,000) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 2.5.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.5.1 and 2.5.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.5.4 Workers' Compensation at State of Ohio statutory limits.

§ 2.5.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than Two Million (\$ 2,000,000) per claim and \$2,000,000 (\$ 2,000,000) in the aggregate.

§ 2.5.6 Each insurance policy shall be:

1. Issued by insurance companies authorized to do business in the State of Ohio.
2. Currently rated by A.M. Best as A - IX or better.
3. Until such time as the insurance is no longer required by the Owner and Agency, Architect shall provide the Owner with renewal or replacement evidence of insurance no less than thirty (30) days before the expiration or replacement of the required insurance. If at any time during the period when insurance is required by the Architect, an insurer or surety shall fail to comply with the requirements of this contract,

as soon as Architect has knowledge of any such failure, Architect shall immediately notify the Owner and Agency and immediately replace such insurance with insurance meeting the contract requirements.

§2.5.7 Evidence of Insurance: Prior to the start of any work the architect must provide the following documents to the Owner:

1. Certificate of Insurance
2. Additional Insured Endorsements
3. Policy Cancellation Endorsements

§ 2.5.8 Additional Insured Obligations. To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 2.5.9 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.5.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

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

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

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

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

§ 3.1.5 The Architect shall contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. In designing the project the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

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

§3.1.7 The Architect shall take into account project planning, design, sustainability, operations and procedural standards of the Owner, and will not deviate from these standards unless agreed upon in writing by the Owner.

3.1.8 The Architect shall assist in preparing the request for qualifications for the construction manager at risk and all aspects of the statutory process outlined in Ohio Administrative Code Section 153:1-6-01 and other Sections of the Ohio Administrative Code and Ohio Revised Code to the selection of the construction manager at risk.

3.1.8.1 The Architect shall cooperate with the construction manager at risk during all phases of the project.

§ 3.2 Schematic Design Phase Services

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

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

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project including the feasibility of incorporating environmentally responsible design approaches in accordance with best practices. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

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

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider environmentally responsible and sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.1.

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

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

§ 3.3 Design Development Phase Services

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

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§ 3.3.2 The Architect shall update the estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

§ 3.4 Construction Documents Phase Services

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work prepared in accordance with Section 6.3.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

§ 3.5 Procurement Phase Services

§ 3.5.1 General

Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner and Construction Manager in construction procurement.

§ 3.5.2 Competitive Bidding

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner and Construction Manager in bidding the Project by:

- .1 facilitating the distribution of Bidding Documents to prospective bidders requesting their return upon completion of the bidding process and maintaining a log of distribution and retrieval and amounts of deposits if any, received from and returned to prospective bidders;
- .2 procuring the reproduction of bidding documents;
- .3 attending a pre-bid conference for prospective bidders
- .4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda.

§ 3.5.2.3 If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an a basic service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5...2.4 If the Proposal Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as Basic Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective contractors.

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™-2017, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201-2017, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

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

§ 3.6.1.3 Subject to Section 4.2 and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and 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.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not 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.

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

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

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201-2017, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.3 Certificates for Payment to Contractor

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the

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Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's 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 (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum. The Architect's certification for payment constitutes a recommendation to Owner and is not legally binding on Owner.

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

§ 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.

§ 3.6.4.2 The Architect shall 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. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or unless otherwise specifically stated by Architect of construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by Contractor design professionals.

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

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

§ 3.6.5 Changes in the Work

§ 3.6.5.1 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 shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

1. conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
2. issue Certificates of Substantial Completion;
3. receive from Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and,
4. issue a final Certificate for Payment based upon a final inspection indicating that, the Work complies with the requirements of the Contract Documents.

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

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

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

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

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect's responsibility. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

Supplemental Services

Responsibility

--

§ 4.1.1.1 Programming

Architect (See Feasibility Report DATED February 2019)

[Redacted]

§ 4.1.1.2 See Article 12.2

Architect Included in basic services

[Redacted]

§ 4.1.1.3 Intentionally Left Blank

[Redacted]

§ 4.1.1.4 Existing facilities surveys

Owner

[Redacted]

§ 4.1.1.5 Site evaluation and planning

Architect (Article 3.1) Included in basic services

[Redacted]

§ 4.1.1.6 Building Information Model management responsibilities

NP

[Redacted]

§ 4.1.1.7 Development of Building Information Models for post construction use

NP

[Redacted]

§ 4.1.1.8 Civil engineering

Architect (Article 3.1) Included in basic services

[Redacted]

§ 4.1.1.9 Landscape design

Architect (Article 3.1) Included in basic services

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§ 4.1.1.10 Architectural interior design excluding furniture and decor
Architect included in basic services

§ 4.1.1.11 Value analysis

NP

§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3
By Construction Manager

§ 4.1.1.13 On-site project representation weekly
Architect included in basic services

§ 4.1.1.14 Intentionally Left Blank

§ 4.1.1.15 Intentionally Left Blank

§ 4.1.1.16 As-constructed record drawings
Architect included in basic services

§ 4.1.1.17 Post-occupancy evaluation

NP

[Redacted]

§ 4.1.1.18 Facility support services

NP

[Redacted]

§ 4.1.1.19 Tenant-related services

NP

[Redacted]

§ 4.1.1.20 Architect's coordination of the Owner's consultants

NP

[Redacted]

§ 4.1.1.21 Telecommunications/data design

NP

[Redacted]

§ 4.1.1.22 Security evaluation and planning

NP

[Redacted]

§ 4.1.1.23 Commissioning

NP

[Redacted]

§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3

NP

[Redacted]

§ 4.1.1.25 Fast-track design services

NP

Init.

[Redacted]

§ 4.1.1.26 Multiple bid packages
By Construction Manager

[Redacted]

§ 4.1.1.27 Historic preservation
NP

[Redacted]

§ 4.1.1.28 Furniture, furnishings, and equipment design
NP

[Redacted]

§ 4.1.1.29 Other services provided by specialty Consultants
NP

[Redacted]

§ 4.1.1.30 Other Supplemental Services
None

[Redacted]

[Redacted]

§ 4.1.2 Description of Supplemental Services

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Architect's responsibility is provided below.

See Section 4.1.1

Inf.

§ 4.2 Architect's Additional Services

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

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

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Changes or editing of previously prepared instruments of service necessitated by the enactment or revision of codes, laws or regulations.
- .3 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .4 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;
- .5 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .6 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .7 Consultation concerning replacement of Work resulting from fire or other cause during construction; or,
- .8 Assistance to the Initial Decision Maker, if other than the Architect.

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

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule approved by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker; or,
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom.

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

- .1 () No limit on reviews. There shall be enough reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor to complete the project.
- .2 Minimum of One hundred fifty (150) plus enough additional visits to complete the project visits to the site by the Architect during construction including meetings with Owner.
- .3 () No limit on inspections. There shall be enough inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents and complete the project.
- .4 () No limit on inspections. There shall be enough inspections for any portion of the Work to determine final completion and complete the project.

§ 4.2.5 Services covered by this Agreement are anticipated to be completed within Forty Eight (48) months of the date of this Agreement. However, if Architect's services extend beyond that time Architect shall not be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

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

§ 5.2 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

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

§ 5.4 The Owner shall furnish for itself surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

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

§ 5.7 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials unless the Architect is required to furnish such test inspection or report in occurrence with this Agreement.

§ 5.8 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.9 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.10 The Owner shall include the Architect in all communications with the Contractor 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.

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

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

ARTICLE 6 COST OF THE WORK (See Article 12.1)

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

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work, prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials, or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques.

§ 6.4 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality, or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.5 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work or;
- .2 authorize rebidding of the Project within a reasonable time or;
- .3 terminate in accordance with Section 9.5 or;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or,
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.5.4, the Architect without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.5.1. The

Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

ARTICLE 7 COPYRIGHTS AND LICENSES

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

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants. However, Owner is granted a nonexclusive license to use the documents for any purpose the Owner deems necessary.

§ 7.3 The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service for purposes of constructing, using, maintaining, altering and adding to the Project, or any future project of the Owner provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums when due, under this agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material, equipment and other suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, for use in performing services or construction for the Project and any future project of Owner.

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

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, within the period specified by applicable law.

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

§ 8.2 Mediation

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation in accordance with paragraph 8.2.2. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be by using the Medina County Court of Common Pleas mediation process. A request for mediation shall be in writing, delivered to the other party who shall accept or reject the request within fourteen (14) days.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

Litigation in a court of competent jurisdiction

Other:

ARTICLE 9 TERMINATION OR SUSPENSION

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

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services only if the interruption is not the result of the fault of the Architect. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

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

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

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, together with reimbursable expense then due. The Owner shall without any additional fee be allowed continued use of the Architect's Instruments of service for completing, using and maintaining the project and for any further and/or future projects by Owner.

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

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the laws of the State of Ohio.

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User Notes:

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2017, General Conditions of the Contract for Construction as modified.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors and assigns, to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other. If either party attempts to make such an assignment without consent, such assignment shall not be effective and shall constitute a default under the Contract. Any party assigning its interest pursuant to a properly granted consent of the other party shall nevertheless remain legally responsible for all obligations under the Contract.

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

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

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

§ 10.8 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, Ohio Sunshine Law, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement 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 Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

§ 10.10 No Waiver: No action or failure to act by the Owner or Architect shall constitute a waiver of any right or duty afforded under this agreement, nor shall any such action or failure to act constitute any approval of or acquiescence in any breach hereunder, except as may be specifically agreed in writing.

§ 10.11 Counterparts: This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same Agreement.

§10.12 No Limitation: Unless expressly stated otherwise herein, the duties and obligations imposed upon the parties under this agreement, and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties imposed or available at law or in equity.

§10.13 This Agreement constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, understandings and negotiations with respect to the subject matter thereof.

§10.14 Architect shall advise Owner where any royalties and license fees required to be paid for the use of a particular design, process or product required by the Design and/or Contract Documents. Architect shall provide alternative and recommendations to accomplish the Project objectives without the use of a particular design, process or a product that requires any royalties and license fees required to be paid. Where any royalties and license fees are required to be paid, Architect shall account for these costs in all cost estimates for the Project. If Architect's or its Consultants services require the payment of any royalty or license fees, these royalties or license fees shall be a part of the Architect's Basic Services Fee and Compensation.

§ 10.10 Betterment

The Architect will not be responsible for any of the cost or expense related to upgrades or enhancements to the Project added at the owner's discretion.

ARTICLE 11 COMPENSATION

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

1. A Fixed Fee of Two Million Six Hundred Sixty Thousand Dollars (2,660,000). This fee is based on a project construction cost of Thirty Eight Million Dollars \$38,000,000. If construction cost exceeds \$38,000,000 or is less than \$38,000,000 the Architect's compensation shall remain at a fixed fee of (\$2,660,000).
2. The project is anticipated to be a joint project between the City of Medina and County of Medina. Should the City not participate in the project the Architect and Owner will negotiate a new fixed compensation for the Architect based on the change in scope of the project.
3. Should the Owner decide to expand the project beyond the Medina County Courthouse the Owner and Architect will negotiate a new fixed compensation for the Architect based on the change in scope of the project.

§ 11.2 For the Architect's Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect as follows:

Does not apply.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:

See Section 11.6.

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus 0 percent (0 %), or as follows:

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

Schematic Design Phase	\$532,000 20)
Design Development Phase	\$399,000 15)
Construction Documents Phase	\$1,064,000 40)
Procurement Phase	\$133,000 5)
Construction Phase	\$532,000 20)

Init.

Total Basic Compensation

\$2,660,000
100
%)

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

Employee or Category
Rate (\$0.00)

Principal
\$180.00

Senior Registered Architect
\$130.00

Senior Registered Landscape Architect
\$130.00

Senior Professional Engineer
\$130.00

Registered Architect

Int.

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User Notes:

24

(1833130082)

\$110.00

Professional Architect
\$110.00

Landscape Architect
\$110.00

City Planner
\$ 95.00

Engineer-in-training
\$ 75.00

Intern Architect
\$ 65.00

Intern Landscape Architect
\$ 65.00

Engineering Designer
\$ 65.00

Init.

Resident Inspector
\$ 60.00

Auto CAD/GIS Operator
\$ 65.00

Drafter
\$ 55.00

Clerical
\$50.00

§ 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable expenses are in addition to compensation for basic and additional services which include expenses incurred by the Architect and Architect's consultants directly related to the project. Reimbursable expenses are to be billed against the budget for reimbursable expenses. The budget for reimbursable expenses is _____ and the said reimbursable expenses shall not exceed the _____ budget. The expenses to be reimbursed under this section are as follows, to be billed against the identified budget of _____.

- .1 Transportation and authorized out-of-state travel and subsistence as authorized by owner in writing;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .5 Postage, handling, and delivery;
- .6 All taxes levied on professional services and on reimbursable expenses; and
- .7 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus 0 percent (0 %) of the expenses incurred.

§ 11.10 Payments to the Architect

§ 11.10.1 Initial Payments

Init.

§ 11.10.1.1 An initial payment of 0 (\$ 0) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.2 Progress Payments

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid Thirty (30) days after the invoice date shall bear interest at the rate entered below.

0% zero

§ 11.10.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect.

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

§ 11.10.2.4 Notwithstanding anything contained in this Agreement to the contrary, Owner shall not be obligated to make any payment (whether a monthly payment or Final Payment) to the Architect hereunder after notification in writing to the Architect, within 30 days of receipt of the Owner's receipt of the Architect's approved invoice, of the existence of any one or more of the following conditions and the failure of the Architect to cure such condition(s) within 14 days of such notification: (1) Architect is in default of any of its material obligations hereunder or otherwise in default under this Agreement; (2) any part of such payment attributable to services which are not performed in accordance with this Agreement; (3) Architect has failed to make payment promptly to consultants or other third parties used in connection with the services for which Owner has made payment to the Architect; Architect agrees or has been found liable for the amounts in binding dispute resolution proceeding; or (4) Owner, in its good faith judgment, reasonably determines that the portion of the compensation then remaining unpaid for a particular phase of the services of the Architect shall not be sufficient to complete the phase in accordance with the Agreement. No additional payments will be due Architect hereunder unless and until Architect, at its sole cost, performs a sufficient portion of the services so that such portion of the compensation then remaining unpaid is reasonably determined by Owner to be sufficient to so complete the services. All amounts not in dispute shall be timely paid to Architect per 11.10.2 herein. If Owner fails to timely dispute any invoice per the terms herein, then the invoices shall be timely paid in full.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

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

§ 12.1 The responsibility for estimates for Cost of the Work lies with the Construction Manager. Architect to assist and provide recommendations to Construction Manager and Owner.

§ 12.2 Multiple preliminary designs will be developed during the Schematic.

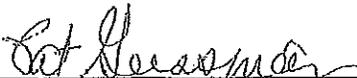
ARTICLE 13 SCOPE OF THE AGREEMENT

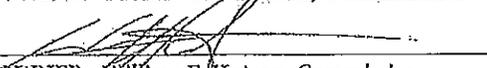
§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Architect.

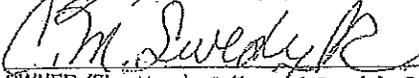
§ 13.2 This Agreement is comprised of the following documents identified below:

- 1 AIA Document B101™-2017, Standard Form Agreement Between Owner and Architect as amended.

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


OWNER - Patricia G. Geisman, Commissioner


OWNER - William F. Hutson, Commissioner


OWNER (Signature) Colleen M. Swedyk, Commissioner

ARCHITECT (Signature)


Benjamin E. Brandstetter, P.E., President

(Printed name and title)

(Printed name, title, and license number, if required)

EXH. B
CMAR Contract

 **AIA** Document A133™ – 2009

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

AGREEMENT made as of the ____ day of February in the year 2020
(In words, indicate day, month and year.)

BETWEEN the Owner:
Board of Commissioners of Medina County
144 North Broadway Street
Medina, Ohio 44256

and Construction Manager:
Gibane Building Company
950 Main Avenue Suite 1410
Cleveland, OH 44133

for the following Project:
Medina Courthouse Project
93 Public Square
Medina, Ohio 44256

The Architect:
Brandstetter Carroll Inc.
1220 West Sixth Street
Cleveland, Ohio 44113

The Owner's Designated Representative:
Scott Miller, County Administrator
Board of Commissioners of Medina County
144 N. Broadway
Medina, Ohio 44256

The Construction Manager's Designated Representative:
Kyle Merrill, Vice President
Gibane Building Company
950 Main Avenue Suite 1410
Cleveland, OH 44133

The Architect's Designated Representative:
Nancy Nozik AIA, Division Principal
Brandstetter Carroll Inc.
1220 West Sixth Street
Cleveland, Ohio 44113

The Owner and Construction Manager agree as follows.

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

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

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

ARTICLE I GENERAL PROVISIONS

§ 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. In the event inconsistencies, conflicts, or ambiguities between or among the Contract Documents are discovered after execution of the Agreement, Construction Manager shall provide the better quality or greater quantity of Work or comply with the more stringent requirements.

§ 1.2 Relationship of the Parties

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

§ 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™-2017, General Conditions of the Contract for Construction, as modified, (hereafter, "A201-2017") shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2017, which document is incorporated herein by reference. The term "Contractor" as used in A201-2017 and all other contract documents, shall mean the Construction Manager.

§ 1.4 The Owner is an intended third-party beneficiary of Construction Manager's agreements with the Consultants, and Subcontractors, and Consultants' and Subcontractors' agreements with their Sub-Consultants, and Sub-Subcontractors. The Construction Manager shall incorporate the obligations of this Agreement into its respective agreements and subcontracts.

§ 1.5 [Not Used.]

§ 1.6 [Not Used.]

§ 1.7 If Building Information Modeling ("BIM") will be used for the Project, the Construction Manager will be familiar with and conform to any BIM requirements and processes established by the Owner and Architect.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager shall provide all construction management services necessary for the proper management and construction of the Project. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project. The team assigned by the Construction Manager during the Construction Phase to work cooperatively with the Owner and Design Professional shall be the same team identified in Construction Manager's proposal and assigned to the Project during the Preconstruction Phase. The Owner's total budget for the Project (including, but not limited to, all preconstruction costs & fees, administrative fees and permits, land acquisition and demo costs, furniture, fixture, and equipment, construction costs, design fees, and Construction Manager at Risk fees) is estimated to be \$38,000,000.00. The Construction Manager will perform such duties, including but not limited to budgeting, value engineering, and scheduling, consistent with the Owner's program, schedule, and current budget. If, at any time, the Construction Manager's estimates of the Cost of the Work exceed the latest approved Project budget, the Construction Manager shall inform the Owner and Architect in writing and make recommendations for corrective action.

§ 2.1 Preconstruction Phase

§ 2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other. As set forth in this Agreement, the Construction Manager will be responsible for performing the following duties including, but not limited to, cost estimating, budgeting, value engineering, constructability review, scheduling, identifying inconsistencies or omissions that might affect the GMP, and preconstruction planning throughout the Preconstruction Phase, without assuming responsibility for design.

§ 2.1.2 Consultation

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

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

§ 2.1.4 Phased Construction

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

§ 2.1.5 Preliminary Cost Estimates

§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements, at the conclusion of the schematic design, design development, and construction documents phases, using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. The Construction Manager's cost estimates of the Cost of the Work shall be provided in a format acceptable to the Owner. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at each design phase and all other appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

§ 2.1.6 Subcontractors and Suppliers

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

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

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

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

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

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

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

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

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

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

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

- .1 the Construction Manager and the Subcontractor to be mutually bound to the terms of the Contract Documents;
- .2 the Construction Manager to assume toward the Subcontractor the rights, remedies, obligations, and responsibilities that the Owner has and assumes toward the Construction Manager;
- .3 the Subcontractor to assume toward the Construction Manager the rights, remedies, obligations, and responsibilities that the Construction Manager assumes towards the Owner; and,

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

§2.1.6.7.3 Intended third party beneficiary: The subcontract form used for the contract with Subcontractors, Sub-Subcontractors, Consultants, and Sub-Consultants shall contain a provision indicating that the Owner is an intended third party beneficiary of the subcontract, entitled to enforce any rights thereunder for its benefit.

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

§ 2.1.6.7.5 Right to audit: The subcontract form shall contain a provision entitling the Owner and any agents designated by the Owner to have access to and the right to audit and copy, at the Owner's reasonable cost, all of the Subcontractor's and Sub-Subcontractor's books, records, contracts, correspondence, instructions, drawings, receipts, vouchers, purchase orders and memorandum relating to the Work for not less than ten (10) years following completion of the Work.

§ 2.1.6.7.6 Indemnification: The subcontract form shall contain a provision requiring the Subcontractor and its Sub-Subcontractors to indemnify, defend and hold harmless, to the fullest extent permitted by law, the Owner, its consultants, and employees from all claims and expenses for bodily injury and property damage other than to the work itself that may arise from the performance of the subcontract work, but only to the extent caused by the negligence of the Subcontractor, its Sub-Subcontractors or a person or entity for whom the Subcontractor or Sub-Subcontractor may be liable. The subcontract form shall not require a Subcontractor to waive its immunity under the workers' compensation laws of this state from claims brought

against the Subcontractor by the Subcontractor's employees. The indemnification required by this provision is in addition to, and not a limitation of, the other indemnification requirements in the Contract Documents.

§ 2.1.6.7.7 Prompt payment: The subcontract form shall contain a provision requiring the Construction Manager, notwithstanding a contingent payment clause, to make payments to the Subcontractor in accordance with applicable law, including section 4113.61 of the Ohio Revised Code, and that progress payments to the Subcontractor for satisfactory performance of the subcontract work shall be made no later than ten days after receipt by the Construction Manager of payment from the Owner for that subcontract work.

§ 2.1.6.7.8 Retainage: The subcontract form shall contain a provision requiring that retainage shall be at a rate equal to or less than the percentage retained from the Construction Manager's payment by the Owner for subcontract work.

§ 2.1.6.7.9 Warranty: The subcontract form shall contain a provision requiring that the Subcontractor fully warrant, for the benefit of the Owner, that all materials and equipment shall be new unless otherwise specified, of good quality, in conformance with the Contract Documents and free from defective workmanship or materials.

§ 2.1.6.7.10 Nondiscrimination: The subcontract form shall contain a provision specifically requiring the Subcontractor to comply with applicable law regarding equal employment opportunity and, to the extent applicable, all executive orders issued by the Governor of the state of Ohio.

§ 2.1.6.7.11 Dispute resolution: The subcontract form shall require the contract between the Construction Manager and Subcontractor to contain a dispute resolution provision that is comparable to the dispute resolution provision in the contract between the Construction Manager and the Owner.

§ 2.1.6.8 The Construction Manager shall be responsible to the Owner for acts and omissions of the Construction Manager's employees, Consultants, Sub-Consultants, Subcontractors, Sub-Subcontractors and their agents and employees, and other persons or entities performing any portion of the Construction Manager's obligations under the Contract Documents.

§ 2.1.6.9 Construction Manager has a duty to inspect the Work of its Subcontractors, Sub-Subcontractors, Consultants and Sub-Consultants for appropriate design and conformance with the Contract Documents and assumes responsibility to Owner for the proper performance of the Work of Subcontractors, Sub-Subcontractors, Consultants, and Sub-Consultants and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights except that the Owner is an intended third-party beneficiary of Construction Manager's agreements with its Consultants, Sub-Consultants, Subcontractors, Sub-Subcontractors and suppliers.

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

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

§ 2.1.6.12 [Not Used.]

§ 2.1.7 Procurement Schedule: The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. The Construction

Manager will not unreasonably withhold its consent. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 2.1.8 Extent of Responsibility

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

§ 2.1.9 Notices and Compliance with Laws

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

§ 2.1.10 Communications with Local and Government Officials. The Construction Manager shall assist the Owner and Architect in communications with and addressing local and government officials with jurisdiction over the Project. Because of the sensitive nature of these communications, the Construction Manager agrees and acknowledges that all communications will be at the direction of and in the discretion of the Owner.

§ 2.2 Guaranteed Maximum Price Proposal and Contract Time

§ 2.2.1 Upon execution of this Agreement, Construction Manager shall begin the Preconstruction Phase services on the Project, as provided in the Contract Documents, including Paragraph 2.1 and 2.2 herein. Within 14 calendar days of the Architect issuing 80% complete drawings for construction, the Construction Manager shall submit its Guaranteed Maximum Price (GMP) proposal to the Owner, based upon the approved Construction Documents, in accordance with the Contract Documents and using the GMP Proposal form included in the Owner's RFP. Submission by the Construction Manager of a GMP Proposal that attempts to modify or alter the Construction Fee, At-Risk Fee, General Conditions, or Contingency submitted with its Original Proposal submitted in response to the Owner's RFP shall be a material breach of this Agreement by the Construction Manager. In addition, any attempt by the Construction Manager to alter the terms of the modified A133 or modified A201 that was included in the Owner's RFP as a condition or assumption of the GMP Proposal shall be a material breach of this Agreement by the Construction Manager. At the Owner's request, the Construction Manager, Owner and the Design Professional (along with selected engineers and consultants) shall meet to reconcile any questions, discrepancies or disagreements relating to the GMP qualifications and assumptions, and the GMP. Any qualifications and assumptions shall be documented in writing and approved in writing by Owner.

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

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

- .1 An acknowledgement of all of the Architect's Drawings and Specifications, including all Addenda thereto, the content of the RFP, the Conditions of the Contract, and all other documentation that forms the basis of the GMP;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Architect's Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, in accordance with the Owner's RFP and in the form attached to the Owner's RFP or other form acceptable to the Owner, including the Cost of the Work, Construction Fee, At-Risk Fee, General Conditions, and Contingency. Construction Manager

- shall also provide a breakdown of the estimated Cost of the Work organized by trade categories or systems and list of any allowances included in the Cost of the Work;
- .4 The Construction Schedule, including the Date of Substantial Completion and Date of Final Completion, upon which the proposed Guaranteed Maximum Price is based; and
- .5 [Not Used]
- .6 A list of subcontractors proposed to be used on the Project and to the extent available, a copy of each proposed subcontractor's proposal for its respective work on the Project.

§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order.

§ 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 2.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, in Owner's sole discretion, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which is attached hereto as Exhibit A. The Owner shall provide a copy of the executed Guaranteed Maximum Price Amendment to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based. If the parties cannot agree on a GMP for the Project, the Owner may terminate the Contract for convenience or the Owner may elect to change the project delivery method to construction manager agency.

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

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

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

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

§ 2.3 Construction Phase

§ 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201-2017, the date of commencement of the Work shall mean the date of execution of the Guaranteed Maximum Price Amendment by the Owner.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's execution of the Guaranteed Maximum Price Amendment.

§ 2.3.2 Administration

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection. Notwithstanding the foregoing, the Construction Manager acknowledges and agrees that Ohio law imposes certain requirements upon the Construction Manager for establishing criteria for subcontractors, for obtaining the Owner's approval of the criteria, for prequalifying prospective Bidders for the work to be performed, for soliciting bids from prequalified prospective Bidders, for obtaining the Owner's approval of Subcontractors, and for the terms in Construction Manager's subcontract agreements

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

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

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

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

§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201-2017.

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, in a format acceptable to the owner, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in a format acceptable to the Owner, in accordance with Section 2.3.2.7 above.

§ 2.4 Professional Services

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

§ 2.5 Hazardous Materials

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

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

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

§ 3.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect.

§ 3.1.3 [Not Used.]

§ 3.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, to the extent available to the Owner, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. The Construction Manager may not rely upon or make any Claim against the Owner or Design Professional, or any of their agents or employees, with respect to any interpretation by the Construction Manager of or conclusion drawn from any technical data or any such other data, interpretations, opinions, or information.

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

§ 3.1.4.2 Unless otherwise provided in the Contract Documents, the Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark. Construction Manager shall be responsible for independently confirming the location of utility lines and exercising reasonable care related thereto. Notwithstanding the foregoing, the Owner may, at its option, require Construction Manager to obtain such surveys and same shall be included in the Cost of the Work.

§ 3.1.4.3 Unless otherwise provided in the Contract Documents, the Owner will furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations. The documents produced by the geotechnical engineers are not Contract Documents. Construction

Manager may not rely upon or make any Claim against the Owner or Design Professional, or any of their agents or employees, with respect to any of the following:

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

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

§ 3.2 Owner's Designated Representative

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

§ 3.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 3.3 Architect

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

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

§ 4.1.1 For the Construction Manager's Preconstruction Phase services described in the Contract Documents including Sections 2.1 and 2.2, the Owner shall compensate the Construction Manager as follows:

§ 4.1.2 Preconstruction Fee. The Preconstruction Fee is the combination of compensation for all services, labor, direct personnel expenses, equipment, material, home office overhead and profit for such services provided during the Preconstruction Phase of the Project as defined in the Contract Documents. The Construction Manager's Preconstruction Fee for the Project is \$149,100. (Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.) Preconstruction Fee shall not be included in the GMP to be provided by the Construction Manager in the GMP Amendment.

§ 4.1.3 [Not Used]

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

§ 4.1.5 Additional Services. Any Additional Services outside of the scope of preconstruction services set forth in this Agreement will be compensated based upon written, signed Amendments between the Owner and Construction Manager authorizing such additional services and setting forth the agreed-upon price. Before the Construction Manager incurs any time or expenses on any activity that may be an additional service the Construction Manager shall

provide verbal notice to the Owner's Representative followed immediately by written communication to the Owner's Representative. No additional services shall be performed without written, signed agreement between the Owner and Construction Manager, prior to the performance of such services.

§ 4.2 Payments

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

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

(Paragraphs deleted)

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

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

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

§ 5.1.1 The Construction Manager's Fee is 1.35% of the cost of the Work and shall be fixed at the time of GMP.; *(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)*

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

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

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

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

§ 5.1.4 Reasonable rental costs for certain non-owned heavy or specialized machinery and equipment, exclusive of hand tools, minor equipment, simple scaffolds, etc., may be invoiced as a component of GMP up to the actual, documented rental cost. Downtime due to repairs, maintenance and weather delays shall not be allowed. The Construction Manager shall submit copies of actual paid invoices to substantiate rental costs. Charges for Construction Manager-owned, heavy, or specialized equipment will not be allowed. No recovery will be allowed for hand tools, minor equipment, simple scaffolds, etc. The longest period of time that the equipment is to be required for the Work shall be the basis for the pricing and period of rental eligible to be invoiced as part of GMP. Downtime due to repairs, maintenance, and weather delays shall not be allowed.

§ 5.1.5 Unit prices, if any:

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

None Identified Prior to Construction.

Item	Units and Limitations	Price per Unit (\$0.00)
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§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The GMP shall be established upon execution of the Guaranteed Maximum Price Amendment (Exhibit A). The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by changes in the Work as provided in the Contract Documents. The only exception to the Guaranteed Maximum Price will be for changes with Owner's prior approval, in writing. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.

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

init.

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

- .1 Construction Fee. The Construction Fee is the combination of overhead, including but not limited to, home office overhead, and profit for services provided during the construction phase of the Project as defined in the Contract Documents. The Construction Fee includes the At-Risk Fee which is defined as the fee amount attributable to the risk the Construction Manager assumes by agreeing to be responsible for the performance of the work. Such At-Risk Fee must be consistent with the At-Risk Fee set forth in the Construction Manager's proposal. Construction Manager shall not be entitled to any additional At-Risk Fee beyond the At-Risk Fee included in the Guaranteed Maximum Price. The amount of the Construction Manager Fee, including the At-Risk Fee, for the Project is identified in the GMP Amendment (Exhibit A).
- .2 General Conditions. The General Conditions are the Construction Manager's costs for materials, services and equipment necessary to perform the work on the Project but that are not incorporated into the Project. The amount of the Construction Manager's General Conditions costs for the Project is identified in the GMP Amendment (Exhibit A). The Construction Manager's General Conditions costs, to the extent applicable to the Project, will include:
 - .1 Construction Manager's home office management personnel, (e.g., President, General Manager, Operations Manager, Business Development Manager, Corporate Counsel, Health and Safety Director, Procurement Manager, Finance and Accounting Manager, Quality Assurance Manager, Estimators);
 - .2 Project Management personnel (e.g., Project Executive, Project Manager, Deputy Project Manager, Construction Manager, Deputy Construction Manager, Resident Engineer, Safety Officer, Project Controls staff, superintendents, Quality Manager, contract administration staff, procurement staff, general clerical and administrative support staff, legal staff, estimators, finance and accounting staff);
 - .3 progress scheduling;
 - .4 compliance notices;
 - .5 contract and subcontract administration;
 - .6 trash removal for construction office;
 - .7 project record keeping, documentation, document control, and status reporting;
 - .8 Ohio Utilities Protection Services/Dig Safe program notice and coordination;
 - .9 Project health and safety program including but not limited to equipment, supplies, training, record keeping, plan development, incentives, audits and drills;
 - .10 taxes, subject to paragraph 2.2.9 of this Agreement;
 - .11 staff expense allowances;
 - .12 personnel and site vehicle rental/mileage, fuel and maintenance;
 - .13 relocation and temporary lodging and per diem expense;
 - .14 ice and water;
 - .15 drug testing;
 - .16 communications equipment;
 - .17 field/project offices including furnishings, office equipment, utilities, heat, office supplies, telephones, facsimile machines, Internet connections, computers/networks/Cadd machinery, janitorial, mail and shipping, security systems, temporary fencing and barricades, office mobilization and demobilization;
 - .18 badging and site security;
 - .19 photography/progress photos;
 - .20 tool trailer and hand tools;
 - .21 project signage;
 - .22 portable toilets, lockers and washrooms;
 - .23 temporary power;
 - .24 business licenses;
 - .25 patent fees and royalties;
 - .26 training and recruiting;
 - .27 premiums for that portion of insurance and bonds required by the Contract Documents that can be attributed to this Agreement, (self-insurance for full amounts of the coverages required by the Contract Documents may be included, with the Owner's prior approval). In lieu of

Subcontractor Payment & Performance bonds, Construction Manager will utilize Subcontractor Default Insurance (SDI) which will be billed to the Owner at a fixed rate of 1.2% of the Subcontracted work. Construction Manager reserves the right to exclude any subcontractor from the program. Any subcontractor excluded from the program shall be required to provide a performance and payment bond, charged at cost. The premium charges will be set forth as a line item in the Itemized General Conditions attached hereto as Exhibit C.

The General Conditions costs shall not include costs for any of the items listed above that are included in subcontract agreements. Notwithstanding any other provisions to the contrary, Construction Manager has represented that the Itemized General Conditions attached hereto as Exhibit C Upon the acceptance of the Guaranteed Maximum Price, Contractor will submit actual anticipated monthly costs for General Conditions at the time GMP is established. Based on estimated actual costs, subject to Owner's approval, a set amount will then be established for General Conditions to be paid as a regular, monthly amount, payable on a day of the month as agreed between the parties. If actual costs of General Conditions increase or decrease, the Construction Manager will promptly notify the Owner and propose an adjustment to the monthly payment. The Construction Manager will provide documentation to justify any proposed change in monthly General Conditions payments. The Owner will adjust the monthly General Conditions payments when reasonably justified.

- 3 Contingency. The "Contingency" is a component of the GMP, the amount of which is identified in the Guaranteed Maximum Price Amendment (Exhibit A), which is available for the Construction Manager's use for costs that are incurred in performing the Work that are not included in a specific line item or the basis for a Change Order under the Contract. In no event shall Construction Manager be permitted to use the Contingency for any additional costs or expenses caused by: (a) the breach of this Contract by Construction Manager; (b) the breach of any agreement by and between subcontractor and Construction Manager; (c) the negligence of Construction Manager or any Consultant or Subcontractor who has an agreement with the Construction Manager, unless approved in writing by the Owner; or (d) changes to pre-approved equipment. Any use of the funds in the Contingency must be for permitted Cost of the Work and any recoveries shall be used to replenish the Contingency. The Construction Manager shall provide Owner with reasonable notice of all anticipated charges against the Contingency. All claims for application of Contingency funds must be demonstrated with a full line item accounting approved by Owner in writing in advance of incurring costs Construction Manager claims to be eligible for Contingency payment. The Construction Manager shall not be entitled to any additional overhead, profit or other markup on any Contingency expenditure as the parties acknowledge that the Construction Manager's Fee covers such overhead, profit and other markup. With each Application for Payment, the Construction Manager shall provide Owner an accounting of the Contingency, including all reasonably foreseen uses or potential uses of the Contingency in the upcoming one (1) months. Unless agreed by the Construction Manager or otherwise provided in the Contract Documents, Construction Manager's Contingency is not for use by the Owner for scope increases or design changes.

Construction Manager agrees that with respect to any expenditure from the Contingency for which insurance or a bond may provide reimbursement, Construction Manager will in good faith exercise all efforts to obtain recovery from any surety or insurance company. Construction Manager agrees that if contingency funds are advanced to Construction Manager and Construction Manager subsequently recovers said costs from a collateral source, then said recovery will be credited back to the Contingency.

Notwithstanding any other provisions of this Agreement, contingency funds shall not be available to the Construction Manager to cover any loss to the extent that insurance coverage or reimbursement is adversely affected by the failure of the Construction Manager to give timely notice pursuant to the policy terms, including any endorsement.

The use of the Contingency by the Construction Manager is subject to open book pricing in accordance with Section § 11.5.13 of this Agreement.

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

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

§ 5.2.2 [Not Used]

§ 5.3 Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in the Contract Documents. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 5.3.2 [Not Used.]

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201-2017 and the term "costs" as used in Section 7.3.7 of AIA Document A201-2017 shall have the meanings assigned to them in AIA Document A201-2017 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201-2017 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in this Agreement.

§ 5.3.5 Allowances.

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

§ 5.3.5.2 All Allowances include the cost to the Construction Manager (less any applicable trade discounts) of materials and equipment required by the Allowances to be delivered at the Site, and all applicable taxes, less applicable trade discounts.

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

§ 5.3.5.4 Before final payment, an appropriate Change Order will be issued to reconcile the Contract Sum so that it reflects actual amounts due to the Construction Manager on account of Work covered by Allowances including an associated adjustment on account of the Construction Manager's Fee. Remaining Allowances amounts not due to the Construction Manager on account of Work covered by the Allowances shall be retained by the Owner and shall not be included in any Savings.

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed Under the GMP

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

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

§ 6.1.3 The amounts included in Article 6 are subject to open book pricing in accordance with Section 11.5.13 of this Agreement. Notwithstanding the foregoing, any lump sum amounts or fixed rates shall not be subject to audit once general conditions are established hereunder.

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

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

§ 6.2.2 [Not Used.]
(Paragraph Deleted)

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

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

(Paragraph deleted)

§ 6.3 Subcontract Costs

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

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

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

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

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

§ 6.5.1 To the extent not included in the Construction Manager's General Conditions, actual costs, without mark-up, of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be included in the General Conditions costs.

§ 6.5.2 Subject to 5.1.4, actual rental charges, without mark-up, for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed twenty-five percent (25%) of the market value of that item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

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

§ 6.5.4 Actual costs, without mark-up, of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

§ 6.5.5 [Not Used.]

§ 6.5.6 Actual costs without mark-up, of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

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§ 6.6 Miscellaneous Costs

§ 6.6.1 [Not Used.]

§ 6.6.2 [Not Used.]

§ 6.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

§ 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201-2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

§ 6.6.5 [Not Used.]

§ 6.6.6 [Not Used.]

§ 6.6.7 [Not Used.]

§ 6.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld. This shall not include claims brought against the Construction Manager for negligence or misconduct, but shall be restricted to necessary actions to further the project in the interest of the Owner.

§ 6.6.9 [Not Used.]

§ 6.7 Other Costs and Emergencies

§ 6.7.1 Other actual costs, without mark-up incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 6.7.2 Actual costs, without mark-up incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201-2017.

§ 6.7.3 Costs of repairing or correcting damaged or nonconforming work Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recoverable by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201-2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

§ 6.8 Costs Not To Be Reimbursed

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

- .1 Construction Manager's Fee, (including costs which are included in the Construction Manager's General Conditions and At-Risk Fee) which includes salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;

- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .8 Costs for services incurred during the Preconstruction Phase.
- .9 Computers (desktop, laptop, tablet, etc.) and software;
- .10 Corporate accounting, data and check processing, and similar business transaction related costs related to the Work are part of Construction Manager's overhead business expenses and should have been included in Construction Manager's Fee;
- .11 All taxes, including those identified in paragraph 2.2.9 of this Agreement;
- .12 Consultants to the Construction Manager not previously approved in writing by the Owner;
- .13 Unless otherwise provided in the Agreement, Owner shall not reimburse the Construction Manager for rental charges more than two weeks prior to and one week after such temporary facilities, machinery and equipment that are needed to be used directly in the Work; and
- .14 Relocation and temporary living allowances of personnel required for the Work.

§ 6.9 Discounts, Rebates and Refunds

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

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

§ 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

§ 6.11 Accounting Records

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

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

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

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

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

§ 7.1.3 Provided that an Application for Payment is received as required by the Contract Documents, the Owner shall make payment as set forth above.
(Federal, state or local laws may require payment within a certain period of time.)

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

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

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

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

- .1 Take that portion of the Cost of Work properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Cost of the Work allocated to that portion of the Work in the schedule of values;
- .2 Add that portion of the Cost of the Work properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Subtract retainage of eight percent (8%) of the Cost of the Work (including the Work of Subcontractors and that portion of the construction Work that the Construction Manager self performs) and subtract retainage of 8% for the materials and equipment set forth in paragraph .2 above, for the first 50% of the Work, in accordance with the Ohio Revised Code; , retainage will not be held on the Contractor's Fee, staff, general conditions, insurance, or bond;
- .4 Add the Construction Fee and At-Risk Fee which shall be computed upon the Cost of the Work at the rate stated in Section 5.1;

- .5 Add General Conditions earned since previous Application for Payment;
- .6 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2017.

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

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

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 7.1.11 Construction Manager's first Application for Payment is considered incomplete unless in addition to the requirements described in Sections 7.1.1 through 7.1.8 and AIA® A201™ - 2017 Article 9.3.3, all of the following completed items are also included with the Application for Payment: (1) Performance and Payment Bonds, if required; (2) Certificates of Insurance, as required; (3) Affidavits that the surety and insurance company or companies meets the requirements in AIA® A201™ - 2017 Article 11.4; (4) Construction Schedule for the Project; (5) Completed Schedule of Values for the Project.

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

§ 7.2 Final Payment

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

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect.

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

§ 7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Owner by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-2017. The time periods stated in this Section supersede those

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

§ 7.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201-2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 7.2.4 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8, and subject to the limitation of 6.7.3, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price.

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

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

ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds before construction begins, as set forth in Article 11 of AIA Document A201-2017.

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

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

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

ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201-2017. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201-2017, the method of binding dispute resolution shall be as follows:

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

- Arbitration pursuant to Section 15.4 of AIA Document A201-2017
- Litigation in the Medina County Court of Common Pleas. The parties expressly waived the right to remove any litigation to federal court.
- Other: (Specify)

§ 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2017 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker. (If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination for Convenience by Owner.

§ 10.1.1 The Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201-2017.

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

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

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

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

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the

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subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination, but only for work actually performed under said subcontractor purchase order on the Project for restocking fees or other nonrefundable costs incurred by Construction Manager to its subcontractors or suppliers in reliance on Owner approval.

§ 10.2 [Not Used]

(Paragraph deleted)

§ 10.2. [Not Used.]

§ 10.2.2 [Not Used]

§ 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2017. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201-2017, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

ARTICLE 11 MISCELLANEOUS PROVISIONS

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

§ 11.2 Ownership and Use of Documents

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

§ 11.3 Governing Law

Section 13.1 of A201-2017 shall apply to both the Preconstruction and Construction Phases.

§ 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201-2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 11.5 Other provisions:

§ 11.5.1 Modification. No modification or waiver of any of the terms of this Agreement or of any other Contract Documents will be effective against a party unless set forth in writing and signed by or on behalf of a party. Under no circumstances will forbearance, including the failure or repeated failure to insist upon compliance with the terms of the Contract Documents, constitute the waiver or modification of any such terms. The parties acknowledge that no person has authority to modify this Agreement or the other Contract Documents or to waive any of its or their terms, except as expressly provided in this paragraph.

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

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

§ 11.5.4 Partial Invalidity. If any term or provision of this Agreement is found to be illegal, unenforceable, or in violation of any laws, statutes, ordinances, or regulations of any public authority having jurisdiction, then,

notwithstanding such term or provision, this Agreement will remain in full force and effect and such term will be deemed stricken; provided this Agreement will be interpreted, when possible, so as to reflect the intentions of the parties as indicated by any such stricken term or provision.

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

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

§ 11.5.7 Liquidated Damages. If the Construction Manager does not have its Work on the Project substantially complete by the Date for Substantial Completion contained in the applicable GMP, the Construction Manager shall pay the Owner (and the Owner may set off from sums coming due the Construction Manager) liquidated damages in the amount of seven thousand dollars (\$7,000.00) per day for each day beyond the Date for Substantial Completion that the Work fails to be substantially complete. The accumulation of liquidated damages will end upon achieving substantial completion, and the total accumulation of liquidated damages shall not exceed the total Construction Fee (1.35% of GMP) payable to the Construction Manager. The Construction Manager acknowledges that such amount of liquidated damages represents a reasonable estimate of the actual damages that the Owner will incur if the Work is not substantially complete by the Date for Substantial Completion. The Liquidated Damages set forth in the table are not intended to compensate the Owner for any damages the Owner incurs on account of (1) any claims attributable to the Construction Manager that are brought by others including separate consultants and separate contractors or (2) any failure of the Construction Manager to timely, properly, and completely perform the Contract other than the failure to achieve the Milestones within their associated Contract Times. ~~(We request a mutual waiver of consequential damages)~~ — *LM*

If the Construction Manager does not have its Work on the Project finally complete by the Date of Final Completion contained in the applicable GMP, the Construction Manager shall pay the Owner liquidated damages in the per diem amount of one thousand dollars (\$1,000.00).

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

§ 11.5.9 Discrimination. Construction Manager agrees:

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

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

§ 11.5.11 Open Book Pricing. Construction Manager acknowledges that this Agreement is to be administered on an "open book" arrangement relative to Costs of the Work. Construction Manager shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. The Owner and the Owner's accountants shall be afforded access to review and audit the Construction Manager's records as set forth in the AIA Document A201-2017, General Conditions of the Contract for Construction, as modified with exception of the any lump sum or fixed rates defined herein.

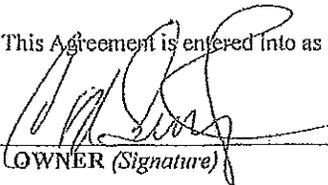
ARTICLE 12 SCOPE OF THE AGREEMENT

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

§ 12.2 The following documents comprise the Agreement:

- .1 AIA Document A133-2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor, as modified, where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A201-2017, General Conditions of the Contract for Construction
- .3 RFQ issued by Owner dated July 31, 2019 and RFP issued by Owner dated November 5, 2019.
- .4 Gilbane's Proposal Dated December 2, 2019.
- .5 Other documents:
 - GMP Amendment to be entered into at end of pre-construction phase
 - Payment and Performance Bonds, as prescribed by OAC153:1-4-02
 - Itemized General Conditions
 - The following forms will be required as prescribed and approved by Owner:
 - Notice of Claim Form
 - Affidavit with List of Subcontractors and Suppliers with Amounts Withheld
 - Progress Payment Waiver and Release Affidavit Exhibit H Subcontractors & Suppliers Progress
 - Payment Waiver and Release Affidavit
 - Construction Tax Exemption Certificate Exhibit
 - Final Lien Waiver and Release Agreement

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



OWNER (Signature)

Colleen Swedyk, President
(Printed name and title)



CONSTRUCTION MANAGER (Signature)

Kyle Merrill, Vice President
(Printed name and title)