

**COMMISSIONERS JOURNAL NO. 81 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD NOVEMBER 21, 2024**

THE BOARD OF COMMISSIONERS OF DELAWARE COUNTY MET IN REGULAR SESSION ON THIS DATE WITH THE FOLLOWING MEMBERS PRESENT:

Present:
Gary Merrell, President
Barb Lewis, Vice President
Jeff Benton, Commissioner

**1
RESOLUTION NO. 24-954**

IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD NOVEMBER 18, 2024:

It was moved by Mrs. Lewis, seconded by Mr. Benton, to approve the following:

WHEREAS, the Board of Commissioners of Delaware County, Ohio (the "Board") met in regular session on November 18, 2024; and

WHEREAS, the Clerk of the Board has certified, pursuant to section 305.11 of the Ohio Revised Code, that the entire record of the proceedings at that meeting is completely and accurately captured in the electronic record of those proceedings;

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves the electronic record of proceedings at the previous meeting.

Vote on Motion Mr. Merrell Aye Mr. Benton Aye Mrs. Lewis Aye

**2
PUBLIC COMMENT**

**3
RESOLUTION NO. 24-955**

IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR 1120, MEMO TRANSFERS IN BATCH NUMBERS MTAPR 1120, AND PROCUREMENT CARD PAYMENTS IN BATCH NUMBER PCAPR 1120:

It was moved by Mr. Benton, seconded by Mrs. Lewis, to approve Then and Now Certificates, payment of warrants in batch numbers CMAPR 1120, memo transfers in batch numbers MTAPR 1120, Procurement Card Payments in batch number PCAPR 1120, and Purchase Orders as listed below:

<u>Vendor</u>	<u>Description</u>	<u>Account</u>	<u>Amount</u>
PO' Increase			
P2401286 Alloway	Regional Sewer Contract Services	66211900-5301	\$8,600.00

<u>PR Number</u>	<u>Vendor Name</u>	<u>Line Description</u>	<u>Account</u>	<u>Amount</u>
R2404863	MICHAEL SCHUSTER ASSOCIATES INC	SERVICES BUILDING	42411477 - 5410	\$ 325,000.00
R2405248	MOTOROLA SOLUTIONS INC	RIVERVIEW SHELTER REPLACEMENT	21411306 - 5410	\$ 504,000.00
R2405253	MANAGEMENT ADVISORY GROUP LLC	ECONOMIC DEVELOPMENT CONSULTING	21011113 - 5301	\$ 25,000.00
R2405292	STRATFORD ECOLOGICAL CENTER	2024 COMMUNITY ENHANCEMENT GRANT	10011102 - 5602	\$ 25,161.00

Vote on Motion Mr. Benton Aye Mrs. Lewis Aye Mr. Merrell Aye

**4
RESOLUTION NO. 24-956**

IN THE MATTER OF PURCHASING A REPLACEMENT COMMUNICATION EQUIPMENT SHELTER, AND RELATED EQUIPMENT AND INSTALLATION SERVICES, FOR THE RIVERVIEW TELECOMMUNICATIONS TOWER SITE:

It was moved by Mrs. Lewis, seconded by Mr. Benton, to approve the following:

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WHEREAS, the Delaware County Director of Emergency Communications recommends the purchase of a replacement communication equipment shelter, and related equipment and installation services, for the Riverview telecommunications tower site; and

WHEREAS, the shelter and related equipment and installation services are available for purchase through the State of Ohio’s cooperative purchasing program (the “Program”); and

WHEREAS, the Board of County Commissioners (the “Board”) is a member of the Program and wishes to purchase the shelter, equipment, and services through the Program;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF DELAWARE COUNTY, STATE OF OHIO:

Section 1. The Board hereby approves the purchase of the shelter, equipment, and services from Motorola Solutions, Inc., a state-approved vendor under the Program, in accordance with the proposal dated October 1, 2024, at the total cost not to exceed \$504,000.

Section 2. The purchase approved in Section 1 of this Resolution shall be in accordance with the Program, pursuant to the contract and terms and conditions set forth in Index STS073, Contract # 573077-0, which are, by this reference, fully incorporated herein and of which the purchase order approved herein shall be made a part.

Section 3. The Board hereby approves a purchase order in the amount of \$504,000 to Motorola Solutions, Inc., from Fund Number 21411306.

Vote on Motion Mrs. Lewis Aye Mr. Merrell Aye Mr. Benton Aye

**5
PRESENTATION**

**JUSTIN VANDERHOFF, VICE PRESIDENT MISSION SERVICES GOODWILL INDUSTRIES
SERVING MARION, DELAWARE, UNION, CRAWFORD, AND MORROW COUNTIES**

**6
RESOLUTION NO. 24-957**

**IN THE MATTER OF APPROVING GRANT AWARDS FOR THE DELAWARE COUNTY TRAIL
ASSISTANCE PROGRAM:**

It was moved by Mr. Benton, seconded by Mrs. Lewis, to approve the following:

WHEREAS, Delaware County Board of Commissioners (the “Board”), through its Trail Committee, administers the Delaware County Trail Assistance Program to help further multi-use trail development throughout Delaware County; and

WHEREAS, the Trail Committee has received applications for grant funding assistance for the 2024 funding cycle as follows:

CONCORD TOWNSHIP	\$ 48,000.00
DELAWARE TOWNSHIP	\$ 3,738.75
ORANGE TOWNSHIP	\$100,000.00
VILLAGE OF OSTRANDER	\$ 20,000.00

WHEREAS, the Trail Committee reviewed the applications for compliance with the program’s defined Eligibility Requirements and Factors for Consideration; and

WHEREAS, the Trail Committee recommends the Board grant awards to the following applicants:

ORANGE TOWNSHIP	\$ 87,500.00
VILLAGE OF OSTRANDER	\$ 12,500.00

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Delaware County, State of Ohio:

Section 1. The Board hereby approves the grant awards through the Delaware County Trail Assistance Program funds as follows:

ORANGE TOWNSHIP	\$ 87,500.00
VILLAGE OF OSTRANDER	\$ 12,500.00

Section 2. The Board hereby authorizes the County Administrator to prepare, approve, and execute Recreational Trail Grant Agreements with the Orange Township Board of Trustees and the Village of Ostrander Council consistent with the awards approved herein.

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Vote on Motion Mr. Merrell Aye Mr. Benton Aye Mrs. Lewis Aye

7
RESOLUTION NO. 24-958

IN THE MATTER OF AUTHORIZING THE COUNTY ADMINISTRATOR TO PREPARE AND CAUSE DELIVERY OF NOTICES TO THE OLENTANGY LOCAL SCHOOL DISTRICT AND THE DELAWARE AREA CAREER CENTER, PURSUANT TO R.C. 5709.83, IN CONNECTION WITH THE PROPOSED EXTENSION OF TAX INCREMENT FINANCING EXEMPTIONS:

It was moved by Mrs. Lewis, seconded by Mr. Benton, to approve the following:

WHEREAS, on December 17, 2018, the Delaware County Board of Commissioners (the "Board") adopted Resolution No. 18-1395 (the "Slate Ridge II TIF Resolution"), declaring the improvement to certain parcels of real property to be a public purpose and exempt from taxation, establishing a redevelopment tax equivalent fund, providing for the collection and deposit of service payments into that fund, and specifying the public infrastructure improvements directly benefiting the parcels; and

WHEREAS, pursuant to section 5709.51 of the Revised Code, the Board may amend the Slate Ridge II TIF Resolution to extend, for a period not exceeding 30 additional years, the exemptions from taxation of improvements to the parcels granted pursuant to the Slate Ridge II TIF Resolution if certain conditions are met; and

WHEREAS, prior to final approval of the resolution extending the exemptions, the Board shall deliver notices to the Olentangy Local School District and the Delaware Area Career Center, pursuant to section 5790.83 of the Revised Code; and

WHEREAS, pursuant to section 305.30 of the Revised Code, the Board may authorize the County Administrator to perform such duties as the Board may determine or assign by resolution;

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of Delaware County, State of Ohio, that:

Section 1. The Board hereby authorizes the County Administrator to prepare and cause delivery of notices to the Olentangy Local School District and the Delaware Area Career Center, pursuant to section 5709.83 of the Revised Code, in connection with the proposed extension of the tax increment financing exemptions in the Slate Ridge II TIF Resolution.

Section 2. This Resolution shall take effect immediately upon adoption.

Vote on Motion Mr. Benton Aye Mrs. Lewis Aye Mr. Merrell Aye

8
RESOLUTION NO. 24-959

IN THE MATTER OF APPROVING AN AGREEMENT BY AND BETWEEN THE DELAWARE COUNTY BOARD OF COMMISSIONERS AND MICHAEL SCHUSTER ASSOCIATES, INC. FOR ARCHITECTURAL / ENGINEERING DESIGN SERVICES AS ARCHITECT-OF-RECORD FOR THE NEW SOCIAL SERVICES ADMINISTRATION FACILITY FOR DELAWARE COUNTY, OHIO:

It was moved by Mr. Benton, seconded by Mrs. Lewis, to approve the following:

WHEREAS, the Director of Facilities recommends approval of the Agreement by and between the Delaware County Board of Commissioners and Michael Schuster Associates, Inc. for Architectural / Engineering Design Services as Architect-of-Record for the New Social Services Administration Facility for Delaware County, Ohio;

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners approves the following Agreement by and between the Delaware County Board of Commissioners and Michael Schuster Associates, Inc. for Architectural / Engineering Design Services as Architect-of-Record for the New Social Services Administration Facility for Delaware County, Ohio:

**AIA Document B133-2019
Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor
Edition**

AGREEMENT made as of the day of November 18, 2024

BETWEEN the Architect's client identified as the Owner:

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Delaware County Board of Commissioners
91 North Sandusky Street
Delaware, Ohio 43015

Owner has retained the services of a third-party Owner Representative for administration and oversight of the Project on behalf of Owner, who will evaluate and advise the Owner Contact on Project-related issues and will monitor progress of the work.

The Third-Party Owner Representative is:

Pizzuti Solutions LLC
629 N. High Street, Ste. 500
Columbus, Ohio 43215

Subject to change in the Owner's sole discretion.

and the Architect:

Michael Schuster Associates, Inc
15 West Cherry Street, Suite #3
Columbus, Ohio 43215

The Architect was selected by the Owner following the qualification-based selection process required by Ohio Revised Code Sections 153.65, et seq. to provide professional design services to the Owner. The Owner reserves the right to add additional scope and services that are in accordance with the Request for Qualifications ("RFQ"), as further improvements are identified and funds are available.

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

for the following Project:

New Social Services Administration Facility Project
Located at: Delaware County
At the intersection of State Route 521 and Byxbe Parkway, Delaware, Ohio 43015

The Construction Manager ("CMR") (if known):

To be determined by Owner.

The Owner and Architect agree as follows.

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ARTICLE 1 INITIAL INFORMATION

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

§ 1.1.1 The Owner's program for the Project:

The Owner's initial program for the Project is set forth in the Request for Qualifications issued by the Owner. Additional details relating to the Owner's program for the Project may be set forth below:

The Project involves the construction of a new Social Services Administration Building, which will include offices and meeting space for Delaware County Job and Family Services, Ohio Means Jobs, the Delaware-Morrow Mental Health and Recovery Services Board, the Delaware County Board of Developmental Disabilities and other agencies (if any) directed by Delaware County. The primary program area is estimated at approximately 70,000-73,000 gross square feet. It is anticipated that there will only be one Guaranteed Maximum Price Amendment for the Project; however, multiple Guaranteed Maximum Price Amendments may be necessary.

§ 1.1.2 The Project's physical characteristics:

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

§ 1.1.3 The Owner’s budget for the Project:

The Owner’s budget for the Cost of the Work as defined in Article 6 is \$21,500,000

The Owner’s current total budget for the Project including the sum of the Cost of the Work as defined in Article 6 (including cost of construction, site improvements, construction manager fees, and appropriate contingencies) plus design fees, excluding legal and real estate acquisition fees is \$29,900,000.00.

Throughout the term of this Agreement, the Architect will perform its services based upon the Owner’s then current budget.

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

- .1 Design phase milestone dates are as follows:

«Task	Completed by Architect by
Design Development	March 28, 2025
Construction Documents	August 1, 2025
Bid and Award Support	September 26, 2025
Construction Administration	June 25, 2027
Post-Construction/Closeout	August 13, 2027

As part of its Basic Services, the Architect will assist with schedule development for the Project, as requested by the Owner. The Design milestone and completion dates stated herein shall only be changed by written, signed agreement between the Owner and Architect. Architect shall request and obtain conditional written approval from Owner at the completion of each design phase prior to commencement of next design phase. Architect shall prepare and distribute to Owner a written summary of any significant changes to the design scope since the previous written approval was received.

- .2 Anticipated Construction commencement date:
September, 2025

- .3 Anticipated Substantial Completion date or dates:
June, 2027

- .4 Other milestone dates:

§ 1.1.5 The Owner intends to retain a Construction Manager pursuant to the following agreement:

- AIA Document A133–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as modified by the Owner.
- AIA Document A134–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work plus a Fee without a Guaranteed Maximum Price.

§ 1.1.6 The Owner’s requirements for accelerated or fast-track design and construction, multiple bid packages or phased construction are set forth below:

Architect acknowledges that it is anticipated that there will be multiple separate bid packages to be determined with the Construction Manager and bid out by the Construction Manager in order to accommodate the Owner’s schedule for completion, and has taken this into account in its proposal. The Architect will assist the Owner with the bidding process by attending the pre-bid conference scheduled and conducted by the CMR and in providing clarifications and interpretations of the Bidding Documents for the CMR to issue to prospective subcontractor bidders for the Work. Fast-tracking or early bid packages for the Work may be approved in writing by the Owner.

§ 1.1.7 The Owner’s anticipated Sustainable Objective for the Project:

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

§ 1.1.7.1

§ 1.1.8 The Owner identifies the following representative in accordance with Section 5.4:

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Delaware County Commissioners Office
Mr. Jon Melvin, Director of Facilities
91 North Sandusky Street
Delaware, Ohio 43015
jmelvin@co.delaware.oh.us
740-833-2280

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

Pizzuti Solutions LLC
629 N High Street, Ste. 500
Columbus, OH 43215

§ 1.1.10 The Owner shall retain the following consultants and contractors, with assistance from the Architect as requested by the Owner:

.1 Construction Manager:

The Owner anticipates that it will engage a Construction Manager at Risk who will provide Preconstruction and Construction Services as well as hold the contracts for construction of the Project. The Construction Manager's Preconstruction Services are anticipated to include, but not be limited to: development and monitoring of the Project Schedule; development and monitoring the budget for the Cost of the Work; review of the Project design for constructability; obtaining bids or negotiated proposals for all work including the reproduction and distribution of bidding and Construction Documents; and preparing all subcontracts for construction. The Construction Manager's Construction Services are anticipated to include, but not be limited to: construction of the Project; administration of the construction process; review of subcontractors' cost proposals for changes in the Work; assembly of required contractors' submittals and review of same for conformance with the contract requirements; assembly of contractors' Applications for Payment; and Project closeout. The Architect and the Architect's consultants shall cooperate and coordinate delivery of their services with the Construction Manager as part of their Basic Services.

.2 Other consultants and contractors:

Subject to change in the Owner's sole discretion, the Owner has retained the services of a third-party Owner Representative for administration and oversight of the Project on behalf of Owner, who will evaluate and advise the Owner Contact on Project-related issues and will monitor progress of the work.

Third-party Owner's Representative:

Pizzuti Solutions LLC
629 N. High Street, Ste. 500
Columbus, Ohio 43215

The Architect acknowledges that the Owner has retained the services of a third-party Owner's Representative and agrees that it will work cooperatively with such Owner's Representative as directed by Owner and as provided in this Agreement. References to the Owner in this Agreement include the Owner's Representative, as the Owner's agent with responsibilities for overseeing and administering the Project on behalf of the Owner except that the Owner's Representative does not have authority to bind the Owner or make decisions related to the Project. The Architect shall copy the Owner's Representative on all communications or notices made to or documents provided to the Owner.

§ 1.1.11 The Architect identifies the following representative in accordance with Section 2.4:

Keith B Hall
15 West Cherry Street
Columbus, Ohio 43215
khall@msaarch.com

§ 1.1.12 The Architect shall retain the consultants identified in Sections 1.1.12.1 (and its subparagraphs) and 1.1.12.2:

§ 1.1.12.1 Consultants retained under Basic Services:

.1 Structural Engineer:

SMBH
1166 Dublin Road, Suite 200
Columbus, Ohio 43215

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- .2 Plumbing/Mechanical Engineer:
Korda Engineering
1650 Watermark Drive, Suite 200
Columbus, Ohio 43215
- .3 Electrical
Korda Engineering
1650 Watermark Drive, Suite 200
Columbus, Ohio 43215
- .4 Civil Engineer:
Kleingers Group
350 Worthington Road
Westerville, Ohio 43082
- .5 Landscape Architect:
Kleingers Group
350 Worthington Road
Westerville, Ohio 43082
- .6 Design Architect:
MSA Design
15 West Cherry Street
Columbus, Ohio 43215
- .7 Cost Estimating/Scheduling Consultant:
N/A
- .8 Land Surveyor:
Kleingers Group
350 Worthington Road
Westerville, Ohio 43082
- .9 Geotechnical Engineer:
TBD
- .10 Lighting Design:
N/A
- .11 A/V Acoustics Design:
Advanced Engineering Consultants
1405 Dublin Road
Columbus, Ohio 43215
- .12 FFE:
MSA Design
15 West Cherry Street
Columbus, Ohio 43215

§ 1.1.12.2 Consultants retained under Additional Services:

TBD based on award of RFP and Owner's Approval

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

- .1 If Architect must retain additional consultants not contemplated in this Agreement, such consultants are subject to the Owner's approval. Architect shall not contract with a proposed consultant with whom the Owner has made a reasonable and timely objection. If the Owner has a reasonable objection to a consultant proposed by the Architect, the Architect shall propose another consultant with whom the Owner has no reasonable objection at no additional cost to the Owner. The Architect shall not change a consultant previously selected and approved by the Owner, if the Owner makes a reasonable objection to the substitution.
- .2 The Owner reserves the right to review and approve staff proposed by the Architect to be assigned to the Project and any staff changes in key project roles, including those identified in the Architect's submitted Statement of Qualifications. The Architect will inform the Owner of any proposed staff assignments and changes in staffing before the change is implemented and obtain approval from the Owner, which will not be unreasonably withheld. The Architect shall not replace any of the representatives listed herein without the consent of the Owner while such representative is employed by the Architect, except with another representative who is satisfactory to the Owner. If the Architect proposes to change the representative, the Architect shall submit to the Owner a written request for the change, including the justification for the

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change and the name and qualifications for the proposed replacement. The Architect shall provide promptly any related additional information the Owner requests.

- .3 The Architect's agreements with its consultants and subcontractors must be consistent with the Architect's contractual obligations to Owner, include a provision incorporating the terms of this Agreement by reference, incorporate relevant portions of the Architect's scope of services for the Project, and name the Owner as a third-party beneficiary.
- .4 The Architect shall obtain, and unless otherwise approved in advance in writing by the Owner, shall require its consultants or subcontractors to maintain insurance coverage and workers compensation coverage in at least the same limits and specifications as the requirements set forth for Architect in Section 2.6, and to provide the Owner with an insurance certificate if so requested.
- .5 Unless otherwise agreed in writing, the Architect will respond to inquiries from the Owner, Owner's Representative, or Construction Manager within three (3) business days from the receipt of the inquiry. Each response will address the questions raised in the inquiry and, if requested, will be in writing; provided, however, that if three (3) business days is not an adequate period of time under the circumstances to prepare the response, the period for the response will be extended to give the Architect a reasonable amount of time to respond. If a decision or approval is required by the Owner under this Agreement, the Owner will have at least three (3) business days written notice in advance that its decision or approval is required and will be furnished with sufficient information from which a decision or approval can be made, provided, however that if the 3-day period is not sufficient under the circumstances, the period for the response will be extended to give the Owner a reasonable period of time to respond.

§ 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 may agree to appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation pursuant to a written, signed agreement between the Owner and Architect. 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 that may be agreed-upon.

§ 1.3 The parties may agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form.

§ 1.3.1

§ 1.4 During the design services, the Architect shall not deviate from the Owner's preliminary design documents, Initial Information, or other design criteria without prior written authorization from the Owner for such deviation.

§ 1.5 In the event of any inconsistency, the provisions of this Agreement shall control over any proposal, purchase order or separate terms and conditions. In the event of inconsistencies within or between parts of the Contract Documents or between the Contract Documents and applicable standards, codes and ordinances, the greater or more stringent obligation shall apply to the Architect's services. Terms used in this Agreement have the same meaning as defined herein or in the definitions of the modified AIA Document A201-2017, General Conditions of the Contract for Construction, as modified by the Owner.

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. The Architect shall comply with the Owner's rules, regulations, and policies. The Architect will provide professional services necessary for the design and documentation of the Project. The Architect agrees that the Basic Services compensation, as stated in Article 11, represents adequate and sufficient consideration for its provision of professional services, identified as Basic Services in this Agreement (including those of its consulting structural, mechanical, fire protection, plumbing, and electrical engineers and all other consultants under the Architect's responsibility) necessary to design the Project and prepare the documents that are necessary to fully indicate the requirements for construction, whether or not those services are individually expressed in this Agreement, the only exceptions to this being (1) the costs of those services that are provided by third parties and are expressly designated herein as being the "Owner's responsibility" or are "Owner-provided" and (2) the cost of those engineering or consulting services that become necessary as a result of a change in Project scope affecting the Architect and that are the subject of a written agreement between the Owner and the Architect, subject to the terms of this Agreement.

§ 2.2 Architect's Standard of Care. The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects licensed to practice in the State of Ohio experienced in the design of similar facilities and practicing in the same or similar locality under the same or similar circumstances (the "Standard of Care").

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The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. The Architect’s failure to comply with the Standard of Care shall be a material breach of the Agreement.

§ 2.2.1 If the Architect breaches any of its obligations under Section 2.2, the Architect will reimburse the Owner for its damages and expenses, including but not limited to attorneys’ and consultants’ fees and expenses, arising out of or related to such breach.

§ 2.3 The Architect shall provide its services in conjunction with the services of a Construction Manager as described in the agreement identified in Section 1.1.5. Except with respect to the Architect’s obligations for construction contract administration and observation of the Construction Manager’s Work, Architect shall not be responsible for actions taken by the Construction Manager.

§ 2.4 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project. Such representative shall be subject to the approval of the Owner.

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

§ 2.6 Insurance. The Architect shall maintain the following insurance. All policies shall be written by insurers acceptable to the additional insureds that have an A.M. Best’s Rating of A-, VII or higher and are authorized to conduct business in the State of Ohio.

§ 2.6.1 Commercial General Liability with policy limits of not less than (\$2 Million) for each occurrence and (\$4 Million) in the aggregate for bodily injury and property damage. A per project aggregate endorsement shall be included in the General Liability and shall provide that the general aggregate limit applies separately to the Project. This endorsement shall be Insurance Services Office, Inc. (ISO) endorsement CG 25 03, or equivalent.

§ 2.6.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than (\$ 1 Million) per claim and (\$2 Million) in the aggregate 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.

§ 2.6.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess 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 2.6.1 and 2.6.2, 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.

§ 2.6.4 Workers’ Compensation at statutory limits.

§ 2.6.5 Employers’ Liability with policy limits as required by State law.

§ 2.6.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits as set forth below:

Project Budget Defined in 1.1.3	Professional Liability Policy Limits Not Less Than	
	Per Claim	In Aggregate
\$0-\$5 Million	\$1 Million	\$2 Million
Greater than \$5 Million - \$10 Million	\$2 Million	\$2 Million
Greater than \$10 Million - \$50 Million	\$2 Million	\$4 Million
Greater than \$50 Million - \$100 Million	\$5 Million	\$10 Million
Greater than \$100 Million	\$10 Million	\$10 Million

§ 2.6.7 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 and Owner’s Representative as 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.

§ 2.6.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.6, upon execution of the Agreement. The certificates will show the Owner and Owner’s Representative as additional insured on all insurance policies except Professional Liability. The Architect shall deliver to Owner, upon request, copies of the actual insurance policies. Architect is required to notify Owner of any adverse material change in, or cancellation of, the policy or policies evidenced, via certified mail to Owner, and that 5 days after the renewal date, the Architect shall furnish Owner, with updated or replacement certificates of insurance that clearly evidence continuation of all coverages in the same manner, limits and protection, as required.

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§ 2.6.9

§ 2.6.10 If professional liability and/or commercial general liability coverage is claims-made coverage, coverage must be maintained in effect for ten (10) years after Final Completion of Work.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3, as set forth in the Owner's Request for Qualifications which is incorporated herein by reference to the extent not inconsistent with this Agreement, and as set forth in the Architect's Proposal attached hereto as **Exhibit A** to the extent not inconsistent with this Agreement, and include usual and customary civil, structural, mechanical, plumbing, electrical, and other engineering and consulting services necessary to design the Project. The Architect's design for the Project will comply with the Owner's planned objectives and program for the Project and the Owner's budget for the Project. Services not set forth in this Article 3 or elsewhere in this Agreement are Additional Services. Because the Project delivery method is anticipated to be construction manager at risk, in coordination with the Owner, Owner's legal counsel, and the CMR, the Architect will assist in the preparation of subcontractor bid packages, consider requests for substitutions if permitted, and prepare addenda identifying approved substitutions, as part of its Basic Services. The Owner may provide services from its consultants and suppliers for the Project. The Architect shall assist the Owner in the procurement of consultants and suppliers, as requested by Owner, and provide all required information and coordination of its services with the Owner and any of Owner's consultants and suppliers as part of its Basic Services. Services not set forth in this Agreement as Basic Services are Supplemental or Additional Services.

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

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner, the Construction Manager, and the Owner's consultants. If Owner performs work on the Project with separate consultants, equipment suppliers, or other vendors, Architect shall cooperate with and coordinate its design and activities with those of such separate consultants, equipment suppliers, or other vendors so that the Project can be completed in an orderly and coordinated manner without disruption. As applicable, the Architect shall review the reports and shop drawings from Owner's consultants, equipment suppliers, or other vendors and coordinate its design accordingly. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner, the Construction Manager, and the Owner's consultants. However, the Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, delay, or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit to the Owner and the Construction Manager (when selected by Owner) a schedule of the Architect's services for inclusion in the Project schedule prepared by the Construction Manager. The schedule shall include design phase milestone dates, anticipated dates when cost estimates or design reviews may occur, as well as the 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 Construction Manager's review, for the performance of the Construction Manager's Preconstruction Phase services, 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 cause, be exceeded by the Architect. 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 Throughout the Project, the Architect shall submit information to the Construction Manager and participate in developing and revising the Project schedule as it relates to the Architect's services. The Architect shall review and approve, or take other appropriate action upon, the portion of the Project schedule relating to the performance of the Architect's services. The Architect will work with the Construction Manager to develop the construction schedule for the Project; the Construction Manager is responsible for preparing the final construction schedule, subject to approval by the Owner.

§ 3.1.4.1 Once the Owner and Architect agree to the time limits established by the Project schedule, the Architect shall not exceed them, except for reasonable cause or as agreed pursuant to Section 1.1.4.1 of this Agreement.

- .1 If at any time the Architect believes the time for the completion of any component of the Project or any milestone will be exceeded by any party under contract with the Owner in connection with the Project, the Architect will notify the Owner promptly in writing of the situation and work with the Owner and Construction Manager to develop alternatives for maintaining the schedule for the applicable component of the Project.

§ 3.1.5 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming work, made without the Architect's approval. The Architect shall timely notify the Owner and Construction Manager of any objections it has to such substitution, in writing.

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§ 3.1.6 The Architect shall, at appropriate times, in coordination with the Construction Manager, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services. The Architect shall advise the Owner, in writing, of the results of these contacts and any impacts on Project requirements.

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

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

§ 3.1.9 In providing services under this Agreement, the Architect shall, in accordance with the Standard of Care, comply with all applicable federal, state, and local laws, regulations, and orders in effect at the time of submission of the Contract Documents to the governing building authority. The Architect shall respond in the design of the Project to requirements imposed by governmental authorities having jurisdiction over the project. The Plans and Specifications and the improvements, if built in accordance with them, shall conform to all currently applicable statutes, regulations, ordinances, and orders, except to the extent that the Architect has advised the Owner in writing that there is an ambiguity or an interpretation by a code official contrary to that by the Architect or that a variance shall be necessary. The Architect shall not be responsible for compliance of any contractor with currently applicable statutes, regulations, ordinances, and orders but shall report any known deviation therefrom to Owner in writing.

§ 3.1.10 The American with Disabilities Act (ADA) provides that designs of new facilities must meet the requirements of the ADA. The Owner has contracted with the Architect in reliance upon the Architect's skill and judgment in addressing the ADA requirements of the Project. The Architect will comply with the applicable ADA requirements as they apply to the Project.

§ 3.1.11 The Architect warrants and represents that it presently has, and will at all times during the term of this Agreement maintain: (i) all skills, experience, knowledge, staffing and resources necessary to perform the services set forth herein, and (ii) all required licenses, accreditations, certifications and registrations necessary to perform the services set forth herein.

§ 3.1.12 To the extent needed to provide its Basic Services and to the extent existing conditions are reasonably visible and accessible, the Architect shall investigate existing conditions or facilities, and shall incorporate relevant findings from reports prepared by others for this Project on behalf of the Owner when such reports are provided to the Architect by the Owner.

§ 3.2

Review of the Construction Manager's Guaranteed Maximum Price Proposal or Cost/Control Estimate

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare, for review by the Owner and Architect, and for the Owner's acceptance or approval, a Guaranteed Maximum Price proposal or cost estimate(s) (also referred to as a Control Estimate), as appropriate. As requested by the Owner, the Architect shall assist the Owner in reviewing the Construction Manager's GMP Proposal or estimate. The Architect's review is not for the purpose of discovering errors, omissions, or inconsistencies created by the Construction Manager; for the assumption of any responsibility for the Construction Manager's proposed means, methods, sequences, techniques, or procedures; or for the verification of any estimates of cost or estimated cost proposals. In the event that the Architect discovers any inconsistencies or inaccuracies in the information presented, the Architect shall promptly notify the Owner and Construction Manager in writing.

§ 3.2.2 Upon authorization by the Owner, subject to Sections 6.5, 6.6, and 6.7, the Architect shall update the Drawings, Specifications, and other documents to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment or Cost Estimate.

§ 3.3 Schematic Design Phase Services

For Schematic Design Phase Services, references to the Construction Manager apply only to the extent a Construction Manager has been selected.

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

§ 3.3.2 The Architect shall prepare a preliminary evaluation of the Owner's Project Requirements, M+A space program, schedule, budget for the Cost of the Work, Project site, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall review and validate the Owner provided space program based on in-person meetings with the agencies planned to occupy the facility for the

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purpose of confirming their needs and shall make any adjustments needed to finalize the space program. 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. The Architect will advise the Owner of design alternatives, which could result in savings to the Owner, including savings in the construction cost and the cost of operating the Project when completed.

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

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

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

§ 3.3.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, implications of sustainable code requirements enacted in the relevant jurisdiction, if any, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services not included as Basic Services, as an Additional Service subject to Owner's prior written authorization in accordance with this Agreement.

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

§ 3.3.6 The Architect shall submit the Schematic Design Documents to the Owner and the Construction Manager, including copies of any applicable design narrative and/or project manual. The Architect shall meet with the Construction Manager and Owner to review the Schematic Design Documents.

§ 3.3.7 Upon receipt of the Owner's comments and Construction Manager's review comments and Cost Estimate, if any, at the conclusion of the Schematic Design Phase, the Architect shall provide Owner with written response(s) to any design comment(s) made by Owner and take action as required under Section 6.5 and 6.6, and request the Owner's approval of the Schematic Design Documents. If revisions to the Schematic Design Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate the required revisions in the Design Development Phase.

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

§ 3.4 Design Development Phase Services

For Design Development Phase Services, references to the Construction Manager apply only to the extent a Construction Manager has been selected.

§ 3.4.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work pursuant to Section 5.3, the Architect shall prepare Design Development Documents for the Construction Manager's review and the Owner's approval. The Design Development Documents shall be based upon information provided, and estimates prepared by, the Construction Manager and shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels. Architect shall specify at least three acceptable manufacturers for each required product or material and confirm that such manufacturers are all a functional equivalent to the basis of the design and shall not require any significant change. The Architect shall coordinate and conduct Design Development meetings with the Construction Manager and Owner.

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§ 3.4.2 Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development Documents to the Owner and the Construction Manager, including copies of any applicable narrative and/or project manual, as requested by the Owner. The Architect shall meet with the Construction Manager and Owner to review the Design Development Documents.

§ 3.4.3 Upon receipt of the Owner's comments and Construction Manager's information and Cost Estimate at the conclusion of the Design Development Phase, the Architect shall provide Owner with written response(s) to any design comment(s) made by Owner and take action if required under Sections 6.5 and 6.6 and request the Owner's approval of the Design Development Documents.

§ 3.5 Construction Documents Phase Services

For Construction Documents Phase Services, references to the Construction Manager apply only to the extent a Construction Manager has been selected.

§ 3.5.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Construction Manager's review and 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 of materials and systems and other requirements for the construction of the Work. Architect shall specify at least three acceptable manufacturers for each required product or material and confirm that such manufacturers are all a functional equivalent to the basis of the design and shall not require any significant change. The Owner and Architect acknowledge that, in order to perform the Work, the Construction Manager 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.

§ 3.5.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents. The Architect will assist the Owner in connection with filing documents required for approval by governmental authorities having jurisdiction over the Project. The Architect shall secure the required structural, plumbing, HVAC, and electrical plan approvals. The Architect shall attend all intermediate and final inspections required for any permit applicable to the Work including the life safety inspection for occupancy permits.

§ 3.5.2.1 If applicable to the Project, the Architect shall secure the National Pollutant Discharge Elimination System ("NPDES") Storm Water general permit by submitting a Notice of Intent ("NOI") application form to the Ohio Environmental Protection Agency at least 45 days prior to the start of construction. The Construction Manager shall be a "co-permittee" if required under applicable law. The Architect shall prepare and certify a storm water pollution prevention plan to provide sedimentation and erosion controls at the Project and the Construction Manager shall implement and comply with the plan. The Architect shall submit the required Notice of Termination ("NOT") within the timeframe required by the NPDES permit.

§ 3.5.3 During the development of the Construction Documents, if requested by the Owner, the Architect shall assist and coordinate with the Owner, Owner's legal counsel, and Construction Manager in the development and preparation of a project manual that includes the Contract Documents.

§ 3.5.4 Construction Documents for GMP Proposal. Prior to the conclusion of the Construction Documents Phase, at the time specified in the agreement between the Owner and Construction Manager, the Architect shall submit the Construction Documents, including copies of any Design Intent Statement, other narrative, or project manual, to the Owner and the Construction Manager for the Construction Manager's use in preparing its GMP Proposal. In the event that Construction Documents are not 100% complete at the time the CMR prepares its Guaranteed Maximum Price Proposal, the Architect shall prepare a Design Intent Statement upon which the Construction Manager's Guaranteed Maximum Price Proposal may be based. The Design Intent Statement shall include the Architect's detailed listing of any incomplete design elements and the Architect's statement of intended scope with respect to such incomplete elements. The Architect shall meet with the Construction Manager and Owner to review the Construction Documents.

§ 3.5.5 Upon receipt of the Construction Manager's estimate(s) and upon receipt of a GMP Proposal during and at the conclusion of the Construction Documents Phase, the Architect shall take action as required under Section 6.5 and 6.6, and request the Owner's approval of the Construction Documents.

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§ 3.5.6 In addition to other terms to be included in the Contract Documents on behalf of the Owner, to the extent that the following items are within the scope of the Project, the Architect will (a) include in the Contract Documents test requirements for the following building systems: air conditioning system (which will be conducted during the summer months), heating system (which shall be conducted during the winter months), electrical system, plumbing system, fire protection system, communications system, security systems and other such systems as are reasonably requested by the Owner; (b) provide that the respective contractors participate in such series of systems tests; and (c) provide that such tests will be conducted during the first eleven (11) months following the date the Owner receives the occupancy permit and Substantial Completion. It is intended that the testing shall be a comprehensive series of operation tests designed to determine whether the systems, including hardware and software, are fully operational in accordance with the requirements of the Contract Documents.

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Construction Manager as set forth below and in AIA Document A201™-2017, General Conditions of the Contract for Construction, as modified by the Owner. The term “Contractor” as used in A201-2017 shall mean the Construction Manager.

§ 3.6.1.2 Subject to Section 4.2, the Architect’s responsibility to provide Construction Phase Services commences upon the Owner’s acceptance of the Construction Manager’s Guaranteed Maximum Price proposal or by a written agreement between the Owner and Construction Manager which sets forth a description of the Work to be performed by the Construction Manager prior to such acceptance or approval. Subject to Section 4.2, and except as provided in Section 3.6.6.5, the Architect’s responsibility to provide Construction Phase Services terminates on the date the Architect issues the final Certificate for Payment.

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

§ 3.6.1.4 Coordination of Responsibilities Regarding Underground Utility Facilities. The Architect, on behalf of and in the name of the Owner, will assist the Owner to give the notices required to be given by the Owner under Section 153.64(B), Revised Code. The Architect will include in the Drawings and Specifications the identity and location of existing underground utility facilities located in the construction area of the Project as provided by the Owner of the utility facility.

§ 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 Construction Manager, and (3) defects and deficiencies observed in the Work. The Architect shall memorialize its site visits in a written report to the Owner. The Owner may specify the format of the Architect’s written reports. Nothing in this section will relieve the Architect of its duty to use reasonable care to endeavor to protect the Owner from defective and non-conforming Work in accordance with its Standard of Care.

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

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

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response, and a summary of the response. The Architect will keep all correspondence and documentation related to such requests organized in a systematic manner and will make such documentation available to the Owner upon the Owner's request.

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

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

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

§ 3.6.3 Certificates for Payment to Construction Manager

§ 3.6.3.1 The Architect shall review and certify the amounts due the Construction Manager and shall issue certificates in such amounts. The Architect shall assist the Owner with the evaluation of Construction Manager's requests for use of contingency funds. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Construction Manager's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Construction Manager 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. The Architect will not certify any payment application to the extent the Construction Manager has not submitted appropriate waivers of claim, waivers of lien, or other documents required by the Contract Documents, except as provided herein.

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

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

§ 3.6.3.4 Consistent with its Standard of Care, the Architect will advise the Owner and the Owner's representative in writing, which writing may consist of notations in the job progress meetings, at the time of the delivery of each certification for payment of any known defects or problems with respect to the Work, which can be reasonably observed in the course of the Architect's observations, given the stage of completion of the Work. The Architect will not certify any payment application to the extent the Construction Manager has not submitted any waivers of claim under the Ohio Mechanic's Lien laws or other documents required by the Contract Documents for labor and/or materials listed on the attachment to the Contractor's previous applications for Payment or other documents required by the Contract Documents. Notwithstanding the foregoing, the Architect will have discretion to adjust the amount certified when missing documentation is deemed by the Architect, in consultation with the Owner's representative, to be relatively inconsequential or beyond the control of the Construction Manager such that holding all payment for those items would be detrimental to the Project or unfair to the Construction Manager.

§ 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Construction Manager's submittal schedule and shall not unreasonably delay or withhold approval 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 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon, the Construction Manager's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Construction Manager's responsibility. The Architect shall provide reasonable assistance to clarify certain dimensions if those indicated in the Contract Documents conflict with existing field conditions or because the dimensions in the Contract Documents

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contain erroneous, inconsistent, or incomplete information. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Construction Manager to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Construction Manager's design professional bear such professional's seal and signature when submitted to the Architect. The Architect shall notify the Owner and Construction Manager in writing of any inconsistencies or errors discovered by the review. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to Section 4.2, 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 **3 business days** unless otherwise agreed upon by the Owner, in writing. 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 Construction Manager in accordance with the requirements of the Contract Documents.

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect may 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. However, the Architect will notify the Owner and Construction Manager in writing, of such minor changes. Subject to Section 4.2, 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, including but not limited to, RFIs, Bulletins, Change Orders, Construction Change Directives, submittals, and Architect's Supplemental Instructions and upon completion, represent all changes in the Record Documents. The Architect will maintain a record of all change orders for the Project that shows the status of each change order, identifies known issues that could potentially be the basis for a change order, and includes the name of the contractor, the subject of the change order, the dates of approval, the estimated cost of the change order (if not approved), the number of days additional time requested by the contractor for the Work, and the number of days approved by the Architect and Owner to accomplish the Work. The Architect will furnish an updated copy of the change order record to the Owner upon request.

§ 3.6.5.3 The Architect shall review properly prepared, timely requests by the Owner or Construction Manager for changes in the Work, including adjustments to the Contract Sum or Contract Time. A properly prepared request for a change in the Work shall be accompanied by sufficient supporting data and information to permit the Architect to make a reasonable determination without extensive investigation or preparation of additional drawings or specifications. If the Architect determines that requested changes in the Work are not materially different from the requirements of the Contract Documents, the Architect may issue an order for a minor change in the Work or recommend to the Owner that the requested change be denied. The Architect will maintain a record of all change orders for the Project that shows the status of each change order, identifies potential change orders and includes the subject of the change order, the dates of approval, the estimated cost of the change order (if not approved), the number of days additional time requested by the Construction Manager for the Work and the number of days approved by the Architect and Owner to accomplish the Work. The Architect will furnish an updated copy of the change order record to the Owner upon request.

§ 3.6.5.4 If the Architect determines that implementation of the requested changes would result in a material change to the Contract that may cause an adjustment in the Contract Time or Contract Sum, the Architect shall make a recommendation to the Owner, who may authorize further investigation of such change. Upon such authorization, and based upon information furnished by the Construction Manager, if any, the Architect, shall estimate the additional cost and time that might result from such change, including any additional costs attributable to a Change in Services modification to the Architect's services. With the Owner's approval, the Architect shall incorporate those estimates into a Change Order or other appropriate documentation for the Owner's execution or negotiation with the Construction Manager.

§ 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;

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- .3 receive from the Construction Manager and forward to the Owner, for the Owner’s review and records, written warranties and related documents required by the Contract Documents and received from the Construction Manager; and
- .4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect’s knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

To the extent the Construction Manager has not completed its Work or there are defects or non-conforming Work following the date for Substantial Completion, the Architect in its role as design professional will work with the Owner to pursue the Construction Manager to complete its Work and correct any defective or non-conforming Work; however, the Architect is not a guarantor that the Construction Manager will complete its Work. The Architect will receive and review for compliance with the Contract Documents written guarantees and related documents required by the Contract Documents to be assembled by the Construction Manager and will issue when so warranted a Final Certificate of Payment.

§ 3.6.6.2 The Architect’s inspections shall be conducted with the Owner to (1) check conformance of the Work with the requirements of the Contract Documents and (2) verify the accuracy and completeness of the list submitted by the Construction Manager of Work to be completed or corrected.

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

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

§ 3.6.6.5 Upon request of the Owner, and 1 month 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. The Architect shall document deficiencies and notify the Construction Manager in writing with a copy to Owner, that corrective work is required, prior to the 1 year anniversary of Substantial Completion unless agreed upon otherwise.

3.6.6.6 Record Drawings. Before final payment is due the Architect and as part of its Basic Services, the Architect will prepare a set of Record Drawings for the Project, based upon the marked drawings received from the Construction Manager and including any annotations from the Architect to reflect changes to the Project issued through responses to RFIs or Change Orders. The Record Drawings, to the best of the Architect’s knowledge based upon the as-built drawings delivered to the Architect by the Construction Manager and the Architect’s knowledge of change orders and observations during the progress of the Project, will document the construction of the Project and contain such annotations by the Architect as may be necessary for someone unfamiliar with the Project to understand the changes made to the original plans. As part of the payment approval process for the Construction Manager during the course of the Project, the Architect will implement a system that requires the Construction Manager to update the working sets of drawings to reflect Work in progress. Because the Record Drawings are based on unverified information provided by other parties, which will be assumed reliable, the Architect cannot and does not warrant their accuracy. The Record Drawings will be provided in an electronic format that is acceptable to the Owner.

ARTICLE 4 OTHER BASIC SERVICES

§ 4.1 Basic Services

§ 4.1.1 The following are Basic Services, except where indicated below:

Services	Responsibility <i>(Architect, Owner, or not provided)</i>
§ 4.1.1.1 Assistance with Selection of Construction Manager	Architect Included as a Basic Service
§ 4.1.1.2 Programming	Architect, subject to Owner’s discretion; Included as a Basic Service
§ 4.1.1.3 Multiple Preliminary Designs	Architect Included as a Basic Service
§ 4.1.1.4 Measured drawings	Architect Included as a Basic Service
§ 4.1.1.5 Existing facilities surveys	Architect Included as a Basic Service
§ 4.1.1.6 Site evaluation and planning	Architect Included as a Basic Service
§ 4.1.1.7 Building Information Model management responsibilities	Architect Included as a Basic Service
§ 4.1.1.8 Development of Building Information Models for post construction use	Not Provided

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Services	Responsibility <i>(Architect, Owner, or not provided)</i>
§ 4.1.1.9 Civil engineering	Architect Included as a Basic Service
§ 4.1.1.10 Landscape design	Architect Included as a Basic Service
§ 4.1.1.11 Architectural interior design	Architect Included as a Basic Service. See Section 4.1.2.1.3 below
§ 4.1.1.12 Value analysis	Architect, as needed with the Owner's designated representative and CMR
§ 4.1.1.13 Cost estimating	Architect/Owner/ CMR
§ 4.1.1.14 On-site project representation	Architect Included as a Basic Service
§ 4.1.1.15 Conformed documents for construction	Architect Included as a Basic Service. See Section 4.1.2.1.1 below.
§ 4.1.1.16 As-designed record drawings	Architect Included as a Basic Service.
§ 4.1.1.17 As-constructed record drawings	Architect To be provided to the Owner per Section 3.6.6.6 and 4.1.2.1.2
§ 4.1.1.18 Post-occupancy evaluation (11 month walkthrough)	Architect Included as a Basic Service per paragraph 3.6.6.5
§ 4.1.1.19 Facility support services	Not Provided
§ 4.1.1.20 Tenant-related services	Not Provided
§ 4.1.1.21 Architect's coordination of the Owner's consultants	Architect The Architect shall provide all required information and coordination of its services with all of Owner's consultants and suppliers as part of its Basic Services
§ 4.1.1.22 Telecommunications/data design	Architect Included as a Basic Service
§ 4.1.1.23 Security evaluation and planning	Architect Included as a Basic Service; no separate agreement will be used
§ 4.1.1.24 Commissioning	Not Provided
§ 4.1.1.25 Sustainable Project Services pursuant to Section 1.1.7	Architect Included as a Basic Service
§ 4.1.1.26 Furniture, furnishings, and equipment design	Architect Included as a Basic Service; no separate agreement will be used. See Section 4.1.2.1.4 below
§ 4.1.1.27 Participating in community and Owner staff, meetings for input in planning the conceptual program/design for the Project	Architect Up to and including 3 meetings as a Basic Service

§ 4.1.2 Description of Basic Services

§ 4.1.2.1 Insert a description of any Basic Service designated in Section 4.1.1 if further description is needed
Refer to Exhibit A

«§ 4.1.2.1.1 After the last Bid Package has been released, the Architect shall assemble a complete, single set of Construction Documents which shall incorporate the drawings, specifications and Addenda for all of the various Bid Packages issued during the Bidding or Negotiation Phase. All documents shall be made current as of the date of issuance of the Conformance Set. An electronic copy of the Conformance Set shall be provided to the Owner and Construction Manager for distribution. The Architect shall provide any hard copies requested by the Owner in the size and quantity requested.

§ 4.1.2.1.2 The Architect shall compile and deliver to the Owner Record Documents which reflect the marked-up drawings and other data furnished to the Architect by the Construction Manager. The Documents shall be in the form of a set of prints and electronic CAD and pdf files on a USB flash drive. All RFI's and documented changes in Work will be represented on the Record Documents when appropriate.

§ 4.1.2.1.3 In consultation with the Owner, the Architect will develop interior design solutions for all spaces to be constructed, including selection of all interior finishes, materials, and colors of fixed components such as general casework, which are part of the specifications for the Project.

§ 4.1.2.1.4 Architect will provide services for furniture and equipment design, which may be purchased by the Owner. As part of its Basic Services, Architect will include the layout for furniture and equipment items to be purchased on the drawings and will include power and data for all furniture, fixtures, and equipment on the

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drawings for each component of the Project. Architect will coordinate with staff to design infrastructure for audio-visual and computer equipment. The Architect will review and inventory existing furnishings and equipment, design and specify new furnishings and fixtures to be selected, and provide oversight for installation and inspection of existing furnishings and fixtures during the Construction Administration Phase.

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

N/A

§ 4.1.3

§ 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 may entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule. However, nothing in this Agreement shall relieve the Architect of its professional duties related to this Project. If the Architect fails to timely provide notice under this Section 4.2 and its subsections, the Architect shall be deemed to have waived the right for compensation for performing the Additional Services.

§ 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 Subject to the limitations of Section 6.5 and 6.6, services necessitated by a material change in the Initial Information, previous instructions given by the Owner, approvals given by the Owner, or a material change in the Project including but not limited to size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method, or bid packages in addition to those listed in Section 1.1.6 which materially impact Architect's performance and services;
- .2 Making revisions in Drawings, Specifications, or other documents after execution of the GMP Amendment and 100% completion of the Construction Documents, subject to Section 6.7;
- .3 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .4 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .5 Services necessitated by decisions of the Owner or Construction Manager not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors which materially impact Architect's performance and services;
- .6 [Not Used.]
- .7 [Not Used.]
- .8 [Not Used.]
- .9 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .10 Consultation concerning replacement of Work resulting from fire or other cause, other than when caused by the act or omission of the Architect or a party for which it is responsible, during construction;
- .11 Assistance to the Initial Decision Maker, if other than the Architect; or
- .12 Services necessitated by replacement of the Construction Manager or conversion of the Construction Manager as constructor project delivery method to an alternative project delivery method.
- .13 [Not Used.]
- .14 [Not Used.]
- .15 [Not Used.]

§ 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 the Owner subsequently determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

- .1 [Not Used.]
- .2 Responding to the Construction Manager's extensive requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Construction Manager from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Construction Manager-prepared coordination drawings, or prior Project correspondence or documentation (the

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Architect shall identify to Owner and Construction Manager the location of the information in the foregoing documentation);

- .3 [Not Used.]
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker, unless any Claim is alleged to be a result of the Architect's errors or omissions; or
- .5 Evaluating extensive substitutions proposed by the Owner or Construction Manager and making subsequent material revisions to Instruments of Service resulting therefrom.

Should the Architect believe that the proposed Additional Services are essential for the performance of its professional responsibilities, the Architect shall clearly notify the Owner of that fact in writing, stating the objective basis for that belief. If the Owner determines that the proposed Additional Services (which the Architect has suggested are essential) are included in the Architect's Basic Services, the Architect shall perform them, submitting written notice to the Owner before performing those services, stating that the Architect disputes the Owner's determination that those services are Basic Services and that the Architect does not waive its right to seek compensation for those services by performing them.

§ 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 **Two (2)** reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Construction Manager
- .2 Visits to the site by the Architect over the duration of the Project during construction, as often as is appropriate for the Work that is under way, but not less than one (1) time every week
- .3 **Two (2)** inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 **One (1)** inspections for any portion of the Work to determine final completion

§ 4.2.4 [Not Used.]

§ 4.2.5 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, if the services covered by this Agreement have not been completed within **twelve (12)** months after the Date of Substantial Completion of the Project that is included in the CMR's GMP Amendment (subject to change as agreed-upon by the Owner in writing), through no fault of the Architect, the Architect may request additional compensation for the actual cost of performance to the extent the Architect demonstrates that such costs exceed the costs the Architect would have incurred in the absence of the delay.

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 anticipates that it will retain a Construction Manager to provide services, duties, and responsibilities as described in the agreement selected in Section 1.1.5. The Construction Manager shall be responsible for creating the overall Project schedule. The Owner shall coordinate with the Construction Manager to adjust the Project schedule, if necessary in the Owner's sole discretion, as the Project proceeds.

§ 5.3 . The Owner shall establish and may periodically update the Owner's budget for the Project in its sole discretion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect.

§ 5.3.1 [Not Used.]

§ 5.4 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.

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

§ 5.6 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating

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subsoil conditions, with written reports and appropriate recommendations. The Architect shall collaborate with the geotechnical engineer on the number and locations of such tests and borings.

§ 5.7 The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1.

§ 5.8 Not Used.

§ 5.9 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 may 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.

§ 5.10 The Owner shall furnish reasonably requested 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.

§ 5.11 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.

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

§ 5.13 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services.

§ 5.14 The Owner shall provide the Architect a copy of the executed agreement between the Owner and Construction Manager, including the General Conditions of the Contract for Construction, upon request by the Architect.

§ 5.15 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Construction Manager to provide the Architect reasonable access to the Work wherever it is in preparation or progress, unless there is a risk of delay to the Project or safety of individuals.

§ 5.16 [Not Used.]

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include all of the Construction Manager's construction phase compensation, contingency, general conditions costs, but exclude the Construction Manager's preconstruction fees and costs. The Cost of the Work does not include the compensation of the Architect, the compensation of the Construction Manager for Preconstruction Phase services; the costs of the land, rights-of-way, financing; 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 the Initial Information, and may be adjusted throughout the Project per Sections 5.3 and 6.5. Evaluations of the Owner's budget for the Cost of the Work represent the Architect's judgment as a design professional.

§ 6.3 The Owner shall require the Construction Manager to include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the Work. The Architect will review these detailed cost estimates for the Work prepared by the Construction Manager and will provide written comments on the cost estimates or acceptance of the cost estimates. The Architect shall report to the Owner, in writing, any material inaccuracies and inconsistencies noted during any such review.

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

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

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§ 6.4 [Not Used.]

§ 6.5 If the Construction Manager's estimate of the Cost of the Work (as defined in Section 6.1 herein) at the conclusion of the design development phase exceeds the Owner's budget for the Cost of the Work (as defined in Section 6.1 herein), the Owner may hold a review and value analysis meeting with Construction Manager and Architect to determine options to address the potential impact on the Guaranteed Maximum Price if any, and/or shall, in its sole discretion:

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

§ 6.6 If the Owner chooses to proceed under Sections 6.5.1, 6.5.3, or 6.5.4, the Architect, without additional compensation, shall incorporate the required modifications in the Schematic Design Documents, Design Development Documents, and/or Construction Documents, as applicable, as necessary to comply with the Owner's revised budget for the Cost of the Work, Project program, scope or other adjustments by Owner.

§ 6.7 After execution of the Guaranteed Maximum Price Amendment by Owner, and completion of 100% Construction Documents by the Architect, the Architect shall, after prior written authorization from Owner as an Additional Service, make any required revisions to the Drawings, Specifications or other documents necessitated by the Construction Manager's subsequent cost estimates, that exceed the Owner's budget for the Cost of the Work by more than 5% cumulatively, except when the excess is due to changes initiated by the Architect in scope, basic systems, or the kinds and quality of materials, finishes or equipment, or are a result of the Architect's error or omission.

ARTICLE 7 COPYRIGHTS AND LICENSES

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

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications. As payments are made by the Owner and accepted by the Architect, the Owner is hereby deemed the owner of the Architect's and the Architect's consultants' 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 Owner.

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner full ownership of the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain the necessary rights from the Architect's consultants consistent with this Agreement and the Owner's ownership of the Instruments of Service. The rights granted under this section permits the Owner to authorize the Construction Manager, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service for use in performing services or construction for the Project for the Owner. These full ownership rights shall survive any termination of this Agreement.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses or rights 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.

§ 7.5 The provisions of this Article 7 shall survive the termination of this Agreement.

§ 7.5 The Owner authorizes the Architect to furnish contractors and subcontractors, directly engaged in the Project, portions of the Construction Documents in digital data format for their convenience and use solely for their construction of the Project. The Architect cannot warrant the compatibility of digital data files with the hardware or software utilized by the contractors and subcontractors. The Architect does not warrant the accuracy of changes made by contractors and subcontractors to the digital files provided by the Architect.

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§ 7.6 Upon completion of the services, the Architect shall furnish to the Owner digital data files of the latest Construction Documents prepared by the Architect. The Architect shall correct any errors or discrepancies found in the digital data files and reported within 60 days of their receipt by the Owner.

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, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered and paid by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in the modified AIA Document A201–2017, (as prepared for the Project) General Conditions of the Contract for Construction, if applicable. The Owner or the Architect, as appropriate, shall require of the Construction Manager, contractors, consultants, agents and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 **Indemnification** Notwithstanding any other provision in this Agreement to the contrary, the Architect shall indemnify and hold the Owner and the Owner’s officers and employees harmless from and against liabilities arising from claims by third parties for death or injury, including costs of defense, reasonable attorneys’ fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Architect, its employees and its consultants in the performance of professional services under this Agreement. Such indemnification shall be in accordance with Ohio Revised Code Section 153.81 and shall only be for the liabilities incurred from the proportionate share of the tortious conduct, as determined pursuant to section 2307.23 of the Revised Code, of the professional design firm or any consultant, subcontractor, or other entity used by the professional design firm, in performing services under this Agreement. Nothing in this provision prohibits the Owner from commencing a civil action for damages against the Architect for the breach of this Agreement or for the breach of the Standard of Care.

§ 8.1.4 The Architect waives consequential damages for claims, disputes, or other matters in question arising out of or relating to this Agreement. This waiver is applicable, without limitation, to all consequential damages due to either party’s termination of this Agreement.

§ 8.2 Mediation

§ 8.2.1 Any claim, dispute, or other matter in question arising out of or related to this Agreement may be subject to mediation if agreed upon in writing by both parties. If such matter relates to or is the subject of a lien arising out of the Architect’s services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.1.1 Unless otherwise agreed in writing, the Owner shall maintain the Owner’s rights to the Architect’s Instruments of Service and the Architect shall continue to provide services and shall maintain progress during any mediation, arbitration or litigation proceedings, and the Owner shall continue to make payments to the Architect in accordance with this Agreement, however the Owner shall be under no obligation to make payments on or against any claim or amounts in dispute during the pendency of any mediation, arbitration or litigation proceeding to resolve those claims or amount in dispute.

§ 8.2.2 If the Owner and Architect endeavor to resolve claims, disputes and other matters in question between them by mediation, the parties shall mutually agree to a mediator, and the mediation shall be administered by a mediator that is mutually agreeable to the parties; however if the parties are unable to agree upon a forum or mediator, the parties will use the American Arbitration Association’s Construction Industry Mediation rules in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. The parties agree that a request for mediation will not be submitted to the American Arbitration Association until the parties are unable to agree on a different forum for mediation of the claim, dispute, or other matter in question between them.

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

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

[] Arbitration pursuant to Section 8.3 of this Agreement

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- Litigation in a court of competent jurisdiction, pursuant to Section 10.1
- Other: *(Specify)*

If the Owner and Architect do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.

- § 8.3 [Not Used.]
 § 8.3.1 [Not Used.]
 § 8.3.1.1 [Not Used.]
 § 8.3.2 [Not Used.]
 § 8.3.3 [Not Used.]
 § 8.3.4 [Not Used.]
 § 8.3.4.1 [Not Used.]
 § 8.3.4.2 [Not Used.]
 § 8.3.4.3 [Not Used.]
 § 8.4 [Not Used.]

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give twenty-one 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, and the period of suspension is more than 120 days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 120 cumulative days for reasons other than the fault of the Architect and within the control of the Owner, 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 In the event of termination not the fault of the Architect, the Architect shall be compensated for services actually performed prior to termination per paragraph 11.6, together with Reimbursable Expenses then due. .

§ 9.7 [Not Used.]

§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

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

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located. Any suit, which may be brought to enforce any provision of this Agreement or any remedy with respect hereto, shall be brought in Common Pleas Court in the county in which the Project is located, and each party hereby expressly consents to the jurisdiction of such court. The parties expressly waive the right to remove any litigation arising out of this Agreement to federal court.

§ 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 by the Owner. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

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

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§ 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. The Architect shall identify Owner as an express third party beneficiary in each agreement with Architect’s consultants and subcontractors and shall incorporate by reference all of Architect’s duties and obligations with respect to Owner in such agreements such that each consultant and subcontractor shall owe to Architect all obligations that Architect owes to Owner, as adjusted for the particular services provided to 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, unless the toxic materials or substances were brought to the Project by the Architect pursuant to the terms of the Contract Documents. Should the Architect become aware of the presence of hazardous materials or toxic substances on the Project Site, the Architect shall immediately report that presence to the Owner in writing.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect’s promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect’s materials shall not include the Owner’s confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Architect will not publish other information regarding the Project without the Owner’s prior written consent and the Owner agrees not to unreasonably withhold such consent. The Architect agrees to keep confidential and not to disclose to any third party (without the advance written consent of the Owner) any confidential, proprietary or privileged information or documentation of the Owner. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 If the Architect or Owner receives information specifically designated by the other party as “confidential” or “business proprietary,” the receiving party shall keep such information strictly confidential to the extent permitted by law and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information, or (4) to the extent required by law. If Architect wishes to protect such information from a public records request, Architect shall be responsible for initiating or pursuing any legal remedy at its own expense and shall indemnify Owner against any damages Owner may incur related to or arising out of such public records request. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 [Not Used.]

§ 10.9 **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.

§ 10.10 **Betterment.** If a required item or component of the Project is omitted from the Architect’s Construction Documents, the Architect shall not be responsible for paying the cost required to construct such item or component to the extent that such costs would have been incurred had Architect included such item or component in the Architect’s original Construction Documents (i.e., betterment), but Architect shall be responsible for paying any additional costs arising from the omission.

§ 10.11 The services provided under this Agreement include those commenced and previously authorized by the Owner within the scope of this Project. Fees paid prior to the execution of the Agreement shall be credited against the fees set forth in this Agreement

ARTICLE 11 COMPENSATION

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

.1 Stipulated Sum

The Architect’s compensation for its Basic Services actually performed shall be \$1,827,500 , plus Reimbursable Expenses as defined in paragraph 11.8, not to exceed \$85,000. »

For services not included in basic services, the following additional fees shall be applied:

Validate Programming	\$100,000>00	Allowance
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FF&E Design and Specifications	\$145,000.00	Stipulated Sum
Wayfinding/Environmental Graphics	\$125,000.00	Stipulated Sum
Traffic Study	\$13,900.00	Stipulated Sum
Building Commissioning	\$165,000.00	Allowance
Special Inspections	\$135,000.00	Allowance
Geotech	\$45,000.00	Allowance
Construction Progress Photos	\$120,000.00	Allowance
Design Changes	\$100,000.00	Allowance

~~.2 Percentage Basis
(Insert percentage value)~~

~~« » (« ») % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6, plus Reimbursable Expenses as defined in paragraph 11.8, not to exceed \$ _____.~~

~~.3 Other
(Describe the method of compensation)~~

§ 11.2 [Not Used.]

§ 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:

No Additional Services shall be performed without a prior written, signed agreement between the Owner and Architect. The Architect shall be compensated for Additional Services on the basis of hourly billing rates set forth in **Exhibit B**, unless a lump sum amount is mutually agreed upon between the Owner and Architect.

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants, shall be the amount invoiced to the Architect plus zero percent (0%), or as follows:

§ 11.5 The Architect shall invoice the Owner monthly in proportion to services performed in each phase of services. 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	\$182,750.00	percent (10	%)
Design Development Phase	\$274,125.00	percent (15	%)
Construction Documents Phase	\$822,375.00	percent (45	%)
Construction Phase	\$548,250.00	percent (30	%)

Total Basic Compensation	\$1,827,500.00	percent (100	%)
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§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work or the Cost of the Work in the executed Guaranteed Maximum Price Amendment, as applicable. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.

§ 11.6.1 When compensation is on a percentage basis of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services have been actually completed on those portions in accordance with the schedule set forth in Section 11.5 based on (1) the Cost of the Work in the Owner-accepted Guaranteed Maximum Price Amendment, or (2) if the Guaranteed Maximum Price proposal has not been accepted by the Owner, the most recent estimate of the Cost of the Work prepared by the Construction Manager for such portions of the Project to the extent such estimate has been approved by the Owner.

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

As set forth in Exhibit B

§ 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services, subject to 11.1, and include the normal and reasonable expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;

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- .3 Fees paid for securing approval of authorities having jurisdiction over the Project, provided that the Owner may pay these amounts directly if requested in sufficient time to process and issue the payment;
- .4 Printing, reproductions, plots, standard form documents, except that reproduction for internal coordination between the Architect and Owner and the Architect's consultants shall not be reimbursable;
- .5 Postage, handling, and delivery;
- .6 Employment of special consultants other than those listed in this Agreement if authorized in advance, in writing by the Owner; and
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 [Not Used.]
- .9 [Not Used.]
- .10 [Not Used.]
- .11 [Not Used.]
- .12 [Not Used.]

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

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

§ 11.9 [Not Used.]

§ 11.10 Payments to the Architect

§ 11.10.1 Initial Payments

§ 11.10.1.1 An initial payment of zero (\$ 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.

§ 11.10.1.2 [Not Used.]

§ 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 sixty (60) days after the date the invoice is approved by the Owner shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

Simple interest at the Ohio statutory rate. Architect shall give the Owner seven days written notice of late payment before interest shall begin to accrue.

§ 11.10.2.2 [Not Used.]

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

§ 11.10.2.4 The Architect shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's accountants shall be afforded access to the Architect's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Project, and the Architect shall preserve these for at least 4 years, or for such longer period as may be required by law. In the event that the Architect's records are not available at the agreed upon time or place, or in the event that Owner finds incomplete records or inaccurate accounting of paid expenses, the Architect must reimburse Owner for its time, travel, related expenses and Architect shall reimburse Owner the full amount of any discrepancies or overages.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

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

«§ 12.1 **Architect's Duties in General.** The Architect acknowledges that the Owner is entering this Agreement in reliance on the Architect's abilities to perform the Basic Services and any Additional Services requested under this Agreement on a timely basis. To the extent that any service hereunder shall be performed by consultants retained by the Architect, the term "Architect" as used in this Agreement shall be deemed to include any such consultant.

§ 12.2 The Architect acknowledges it will use its best professional skill and judgment to coordinate the design of the Project in order to (i) minimize disruption of the Owner's operations, and (ii) to ensure that the Project is coordinated as to phasing, timing, staging, design, and execution. However, it is understood that the

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Architect will neither have control over or charge of, nor be responsible for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the responsibility of the Construction Manager.

§ 12.3 The Architect's duties and obligations, as set forth herein, and any liabilities arising hereunder shall at no time be diminished or released by reason of any approval by the Owner of the Drawings and Specifications or any other documents prepared by the Architect.

§ 12.4 The Architect, consistent with its Standard of Care and professional skills, agrees, based upon the manufacturers' specifications or observations, that materials and equipment specified shall be adequate for the purposes for which they are specified and that specified construction materials are commercially available.

§ 12.5 Consistent with its Standard of Care, the Architect shall endeavor to anticipate problems related to zoning, building permits, building envelope including roofs and walls, availability of utilities, equipment and material shortages, proper balancing of the heating, ventilating, and air conditioning systems, security systems, and supplier delays.

§ 12.6 The Architect shall endeavor to maintain good working relations with the Owner, Construction Manager, contractors and subcontractors, shall further endeavor to solve problems and resolve disputes, if reasonably possible, promptly as they occur on the Project, and shall promptly advise the Owner of any action recommended with respect to the problems or disputes.

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

§ 12.8 Non-Discrimination. Architect agrees:

- .1 That in the hiring of employees for the performance of Work under this Agreement or in any subcontract, neither the Architect, 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 Architect, 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 Architect 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.

§ 12.9 Notices. A Notice is any written notice to the Owner or the Architect. Written Notice to the Architect shall be deemed to have been duly served if delivered in person to an officer or any other official of the Architect or if delivered to or sent by registered or certified mail, return receipt requested, to the last known business address of the Architect. Written Notice to the Owner shall be deemed to have been duly served if delivered in person or sent by registered or certified mail, return receipt requested to the Owner's representative identified in the Agreement. When sent by certified mail to either party, any written notice shall be considered properly delivered to the other party three (3) days after the date sent.

§ 12.10 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 Agreement.

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

§ 12.13 Findings for Recovery. The Architect is not subject to an unresolved finding for recovery under ORC Section 9.24. If this representation and warranty is found to be false, this Agreement is void, and the Architect will immediately repay to the Owner any funds paid under this Agreement.

§ 12.14 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 facsimile or via electronic mail. Facsimile or electronic signatures shall be effective as originals.
»

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 B133™–2019, Standard Form Agreement Between Owner and Architect, Construction Manager as Constructor Edition, as modified
- .2 [Not Used.]
- .3 Exhibits:
 - [X] Other Exhibits incorporated into this Agreement:
 - Exhibit A — Architect’s proposal dated 10/17/2024(to the extent not inconsistent with this Agreement)
 - Exhibit B – Architect’s Hourly Rates Schedule»
- .4 Other documents:
 - Owner RFQ issued July 16, 2024 is incorporated by reference to the extent not inconsistent with this Agreement

This Agreement entered into as of the day and year of execution by the Owner.

(A copy of this agreement is available in the Facilities’ Department and in the Commissioners’ Office until no longer of administrative value)

(Copy of exhibits available in the Facilities’ Department and in the Commissioners’ Office until no longer of administrative value)

Vote on Motion Mrs. Lewis Aye Mr. Merrell Aye Mr. Benton Aye

**9
RESOLUTION NO. 24-960**

IN THE MATTER OF APPROVING THE AMENDED AND RESTATED SUBDIVIDER’S AGREEMENT FOR NORTHSTAR IVY WOOD NEIGHBORHOOD SECTION 1:

It was moved by Mrs. Lewis, seconded by Mr. Benton, to approve the following:

WHEREAS, the Sanitary Engineer recommends approval of the Amended and Restated Subdivider’s Agreement for Northstar Ivy Wood Neighborhood Section 1;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners approve the following Amended and Restated Subdivider’s Agreement for Northstar Ivy Wood Neighborhood Section 1:

**AMENDED AND RESTATED SUBDIVIDER’S AGREEMENT
NORTHSTAR IVY WOOD NEIGHBORHOOD SECTION 1**

SECTION I: INTRODUCTION

This Amended and Restated Subdivider’s Agreement (the “Agreement”) is entered into on November 21, 2024, by and between Northstar Residential Development, LLC, hereinafter called “Subdivider”, and the Delaware County Board of Commissioners (hereinafter called “County Commissioners” or “County”), and fully amends and restates the Subdivider’s Agreement entered into by and between the Subdivider and the County on July 18, 2024 (the “Original Agreement”).

RECITALS

WHEREAS, the Original Agreement approved capacity for 160 single family residential equivalent connections to be constructed for “Sanitary Sewer Improvements Plans for Northstar – Ivy Wood Neighborhood”; and

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WHEREAS, the parties mutually desire to amend and restate the Original Agreement to only include Section 1 of the Northstar Ivy Wood Neighborhood Development;

NOW, THEREFORE, in consideration of the Recitals set forth herein, which are deemed to be an integral part of this Agreement, the Subdivider and the County mutually agree as follows:

The Subdivider is to construct, install or otherwise make all public improvements (the "Improvements") shown and set forth to be done and performed in compliance with the approved engineering drawings and specifications for Section 1 of the Sanitary Sewer Improvements Plans for Northstar – Ivy Wood Neighborhood, dated **April 10, 2024**, approved by the County on April 11, 2024, and revised on October 24, 2024 all of which are a part of this Agreement. The Subdivider shall pay the entire cost and expense of the Improvements.

SECTION II: CAPACITY

There are 64 single family residential equivalent connections approved with this Agreement. The Sanitary Engineer may, upon the Subdivider's request, approve a change in the number of single family residential connections, which change shall only be effective if given in writing signed by the Sanitary Engineer. Capacity shall be reserved for one year from the date of this Agreement, unless the County Commissioners grant an extension in writing. If the final Subdivision Plat is not recorded prior to expiration of the reservation deadline as set forth herein, the Subdivider agrees and acknowledges that capacity shall not be guaranteed.

SECTION III: FINANCIAL WARRANTY

For on-site improvements the following options for financial warranty apply:

OPTIONS:

- (1) Should the Subdivider elect to record the plat prior to beginning construction, The Subdivider shall execute bond, certified check, irrevocable letter of credit, or other approved financial warranties equal to the cost of construction (**\$533,528.00**) which is acceptable to the County Commissioners to insure faithful performance of this Agreement and the completion of all Improvements in accordance with the Subdivision Regulations of Delaware County, Ohio.
- (2) Should the Subdivider elect to proceed with construction prior to recording the plat, no approved financial warranties are necessary until such time as Subdivider elects to record the plat. At that time, the Subdivider shall execute bond, certified check, irrevocable letter of credit, or other approved financial warranties equal to the cost of construction remaining to be completed as determined by the Delaware County Sanitary Engineer.

The Subdivider hereby elects to use Option 2 for this project.

The Subdivider shall within thirty (30) days following completion of construction, and prior to final acceptance, furnish to the Delaware County Sanitary Engineer a five (5) year maintenance bond, or other approved financial warranties, equal to ten percent (10%) of the construction cost.

The Subdivider further agrees that any violations of or noncompliance with any of the provisions and stipulations of this Agreement shall constitute a breach of contract, and the County shall have the right to stop work forthwith and act against the performance surety for the purpose of proper completion of the Improvements for Section 1 of Sanitary Sewer Improvements Plans for Northstar – Ivy Wood Neighborhood.

SECTION IV: FEES

It is further agreed that the Subdivider has paid the Delaware County Sanitary Engineer three and one-half percent (3½%) of the estimated construction cost of the Improvements for plan review of Sanitary Sewer Improvements Plans for Northstar – Ivy Wood Neighborhood (\$18,673.48). The Subdivider has also paid the Delaware County Sanitary Engineer eight and one-half percent (8½ %) of the estimated construction cost of the Improvements for inspection during construction and cleaning and televising of the sewers and appurtenances of Sanitary Sewer Improvements Plans for Northstar – Ivy Wood Neighborhood (\$45,349.88). The Delaware County Sanitary Engineer shall in his or her sole discretion inspect, as necessary, the Improvements being installed or constructed by the Subdivider and shall keep records of the time spent by his or her employees and agents in such inspections and in the event the hours worked for inspection at a rate of \$75.00 per hour and for the camera truck at \$150.00 per hour exceeds the eight and one-half percent (8½%), the County may require, and the Subdivider shall pay, additional funds based on the estimated effort for completion as determined by the Sanitary Engineer in his or her sole discretion. In addition to the charges above, the Subdivider shall pay the cost of any third party inspection services for Sanitary Sewer Improvements Plans for Northstar – Ivy Wood Neighborhood as required by the County.

SECTION V: CONSTRUCTION

All public improvement construction shall be performed within one (1) year from the date of the approval of this Agreement by the County Commissioners, but extension of time may be granted if approved by the County Commissioners.

The Subdivider shall indemnify and save harmless the County, Townships, Cities, and/or Villages and all of their officials, employees, and agents from all claims, suits, actions and proceedings which may originate

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from or on account of any death, injuries or damages to persons or property received or sustained as a consequence of any action, or omissions of the Subdivider, and any of its contractors or sub-contractors, or from any material, method, or explosive used in the Work, or by or on account of any accident caused by negligence, or any other act or omission of the Subdivider, and any of its contractors or the contractors' agents or employees in connection with the Work.

The Subdivider shall have a competent representative who is familiar with the project on site during construction. The representative shall be capable of reading the plans and specifications and shall have authority to execute the plans and specifications and alterations required by the County. The representative shall be replaced by the Subdivider when, in the opinion of the County, the representative's performance is deemed inadequate.

If, due to unforeseen circumstances during construction activities, the Subdivider must install any of the Improvements to a different location than shown on the approved and signed construction plans, the Subdivider shall request a revision to the construction plans and the Delaware County Sanitary Engineer shall evaluate this request. If the request for a revision is approved in writing by the Delaware County Sanitary Engineer, then the Subdivider shall provide and record a revised, permanent, exclusive sanitary easement prior to the County's acceptance of the sewer. The language and dimensions of the revised, permanent, exclusive sanitary easements shall be subject to the approval of the Delaware County Sanitary Engineer.

The Subdivider shall, during the construction and maintenance periods, comply with all rules and regulations and conform to all procedures established by the County regarding submission of shop drawings, construction schedules, operation of facilities, and other matters incident to the construction and operation of the Improvements.

The Subdivider shall obtain all other necessary utility services incident to the construction of the Improvements and for their continued operation. The Subdivider shall be responsible for all utility charges and installation costs. The utility user charges shall be paid by the Subdivider and maintained in continuous use throughout the construction and testing phases until accepted for operation and maintenance by the County.

SECTION VI: EASEMENTS

The Subdivider shall provide to the County all necessary easements or rights-of-way required to complete the Improvements, all of which shall be obtained at the expense of the Subdivider. All Improvements, including, but not limited to, public sanitary sewers, force mains, manholes, and private laterals to offsite properties shall be located within a recorded, permanent, exclusive sanitary easement on file at the Delaware County Recorder's Office, the language of which shall be subject to approval by the Delaware County Sanitary Engineer. The dimensions of all easements shall be as shown on the approved engineering drawings. If any onsite easement or necessary right of way is not to be recorded as part of a subdivision plat, such easements and rights-of-way shall be recorded and provided to the Delaware County Sanitary Engineer before a preconstruction meeting will be permitted and before construction may begin on the Improvements. All offsite easements must be recorded prior to signing the plans unless otherwise permitted, in writing, by the Delaware County Sanitary Engineer.

SECTION VII: COMPLETION OF CONSTRUCTION

The County shall, upon certification in writing from the Delaware County Sanitary Engineer that all construction is complete according to the plans and specifications, by Resolution, accept the Improvements described herein and accept and assume operations and maintenance of the Improvements.

The Subdivider shall within thirty (30) days following completion of construction of the Improvements, and prior to final acceptance, furnish to the County as required:

- (1) "As built" drawings of the Improvements which plans shall become the property of the County and shall remain in the office of the Delaware County Sanitary Engineer and Delaware County Engineer and/or the City of Powell. The drawings shall be on reproducible Mylar (full size) and a digital copy in .PDF format.
- (2) An Excel spreadsheet, from a template as provided by the Delaware County Sanitary Engineer, shall accompany the plan submittal showing the locations of the manholes in Ohio State Plane North Coordinates NAD 1983 (NAVD 1988 datum) and other miscellaneous project data.
- (3) An itemized statement showing the cost of the Improvements.
- (4) An Affidavit or waiver of lien from all contractors associated with the project that all material and labor costs have been paid. The Subdivider shall indemnify and hold harmless the County from expenses or claims for labor or materials incident to the construction of the Improvements.
- (5) Documentation showing the required sanitary easements.

Should the Subdivider become unable to carry out the provisions of this Agreement, the Subdivider's heirs, successors or assigns shall complete and comply with all applicable terms, conditions, provisions, and requirements of this Agreement. Notwithstanding any other provision of this Agreement, the County shall have no obligation to construct any improvements contemplated herein, and any construction thereof on the part of the County shall be strictly permissive and within the County's sole discretion.

The Subdivider, for a period of five (5) years after acceptance of the Improvements by the County, shall be responsible for defective materials and/or workmanship. All warranties for equipment installed as a part of the Improvements shall be the same as new equipment warranties and shall be assigned to the County upon acceptance of the Improvements. A list of corrective items shall be provided to the Subdivider prior to expiration of the five (5) year period.

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After the acceptance of the Improvements, the capacity charge **and any surcharges** shall be paid by the applicant upon request to the Delaware County Sanitary Engineer for a tap permit to connect to the sanitary sewer. User fee charges will commence the day the sanitary tap is made, regardless of completeness of construction.

SECTION VIII: SIGNATURES

IN CONSIDERATION WHEREOF, the County Commissioners hereby grant the Subdivider or its agent the right and privilege to make the Improvements stipulated herein and as shown on the approved plans.

Vote on Motion Mr. Benton Aye Mrs. Lewis Aye Mr. Merrell Aye

**10
MONTHLY SANITARY APPROVAL UPDATE TO BOARD OF COMMISSIONERS**

**11
ADMINISTRATOR REPORTS**

CA Davies – acknowledged that Director Maag gave update to Harlem Township Trustees about Sanitary improvements.

DCA Huston – attended the Delaware County Transit Board meeting on 11/20/24

Attorney Hochstettler – nothing to report.

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COMMISSIONERS' COMMITTEES REPORTS**

Commissioner Lewis – attended the Opioid Task Force meeting to discuss available grants.

Commissioner Benton – will be attending the Land Bank meeting today and a CEBCO Board meeting on 11/22/24. He attended the Bridge Dedication on 11/18/24 for Fred Stoltz.

Commissioner Merrell – will be attending the Regional Planning meeting today and the Volunteer dinner for the “Wall That Heals” volunteers on 11/22/24. He toured the Preservation Parks southern districts on 11/19/24.

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RESOLUTION NO. 24-961**

IN THE MATTER OF ADJOURNING INTO EXECUTIVE SESSION FOR CONSIDERATION OF PENDING OR IMMINENT LITIGATION:

It was moved by Mr. Benton, seconded by Mrs. Lewis, to approve the following:

WHEREAS, pursuant to section 121.22(G) of the Revised Code, a public body may hold an executive session only after a majority of a quorum of the public body determines, by a roll call vote, to hold an executive session and only at a regular or special meeting for the sole purpose of the consideration of any of the matters specified in section 121.22(G)(1)–(7) of the Revised Code; and

WHEREAS, pursuant to section 121.22(G)(8) of the Revised Code, a public body may hold an executive session to consider confidential information related to the marketing plans, specific business strategy, production techniques, trade secrets, or personal financial statements of an applicant for economic development assistance, or to negotiations with other political subdivisions respecting requests for economic development assistance, provided that both of the following conditions apply:

- (1) The information is directly related to a request for economic development assistance that is to be provided or administered under any provision of Chapter 715., 725., 1724., or 1728. or sections 701.07, 3735.67 to 3735.70, 5709.40 to 5709.43, 5709.61 to 5709.69, 5709.73 to 5709.75, or 5709.77 to 5709.81 of the Revised Code, or that involves public infrastructure improvements or the extension of utility services that are directly related to an economic development project; and
- (2) A unanimous quorum of the public body determines, by a roll call vote, that the executive session is necessary to protect the interests of the applicant or the possible investment or expenditure of public funds to be made in connection with the economic development project;

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of Delaware County, State of Ohio:

Section 1. The Board hereby adjourns into executive session for consideration of Pending or Imminent Litigation.

Section 2. The Board hereby adjourns into executive session to consider confidential information related to the marketing plans, specific business strategy, production techniques, trade secrets, or personal financial statements of

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an applicant for economic development assistance, or to negotiations with other political subdivisions respecting requests for economic development assistance.

Vote on Motion Mrs. Lewis Aye Mr. Merrell Aye Mr. Benton Aye

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RESOLUTION NO. 24-962

IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:

It was moved by , seconded by to adjourn out of Executive Session.

Vote on Motion Mr. Merrell Aye Mr. Benton Aye Mrs. Lewis Aye

There being no further business, the meeting adjourned.

Jeff Benton

Barb Lewis

Gary Merrell

Jennifer Walraven, Clerk to the Commissioners