

**COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015**

**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**  
**Ken O'Brien, Commissioner**

**RESOLUTION NO. 15-729**

**IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD JUNE 15, 2015:**

It was moved by Mr. O'Brien, seconded by Mrs. Lewis to approve the following:

WHEREAS, the Board of Commissioners of Delaware County, Ohio (the "Board") met in regular session on June 15, 2015; and

WHEREAS, the Clerk of the Board has certified, pursuant to section 305.12 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            Mrs. Lewis            Aye            Mr. O'Brien            Aye

**RESOLUTION NO. 15-730**

**IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM WORK SESSIONS HELD JUNE 15 AND JUNE 16, 2015:**

It was moved by Mr. O'Brien, seconded by Mrs. Lewis to approve the following:

WHEREAS, the Board of Commissioners of Delaware County, Ohio (the "Board") met in work sessions on June 15 and June 16, 2015; and

WHEREAS, the Clerk of the Board has certified, pursuant to section 305.12 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 work session meetings.

Vote on Motion            Mrs. Lewis            Aye            Mr. Merrell            Aye            Mr. O'Brien            Abstain

**PUBLIC COMMENT**

**ELECTED OFFICIAL COMMENT**

**SHARON CREAMER, RETIREMENT RECOGNITION**

**RESOLUTION NO. 15-731**

**IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR0617 AND PROCUREMENT CARD PAYMENTS IN BATCH NUMBER PCAPR0617:**

It was moved by Mr. O'Brien, seconded by Mrs. Lewis to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR0617, Procurement Card Payments in batch number PCAPR0617 and Purchase Orders as listed below:

PR Number	Vendor Name	Line Desc	Line Account	Line Amount	Line
R1503809	NEW HORIZONS COMPUTER LEARNING CTR INC	COMPUTER TRAINING CLASSES	22311614 - 5348	\$ 19,200.00	0001

COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015

R1503812	FORTE HOLDINGS INC	ANNUAL SUBSCRIPTION RENEWAL	10011303 - 5320	\$ 20,845.00	0001
R1503836	BOARD OF DEVELOPMENTAL DISABILITIES	CLUSTER BILLING	22511607 - 5342	\$ 21,150.00	0001
R1503858	PYRINEX INC	NETWORK SWITCH	41711436 - 5450	\$260,935.00	0001
R1503860	SOFTWARE HOUSE INTL INC	(100) MICROSOFT LICENSE	10011102 - 5320	\$ 7,194.00	0001
R1503870	ANTAIRA TECHNOLOGIES LLC	(45) TRANSCEIVER FOR SWITCHES	40111402 - 5201	\$ 10,536.69	0001
R1503885	TRANE COMPANY INC	CHILLER AC UNIT REPAIR CHANNING ST DUE TO STORM	60111901 - 5370	\$ 18,000.00	0001

Vote on Motion Mr. O'Brien Aye Mr. Merrell Aye Mrs. Lewis Aye

**RESOLUTION NO. 15-732**

**IN THE MATTER OF APPROVING TRAVEL EXPENSE REQUESTS:**

It was moved by Mr. O'Brien, seconded by Mrs. Lewis to approve the following:

The County Administrator is requesting that Seiji Kille attend an Advanced GAAP Accounting Seminar in Put-in-Bay, Ohio from August 5-6, 2015 at the cost of \$742.60 (fund number 10011102).

The Director of Child Support Services is requesting to attend a Columbus District Meeting in Lancaster, OH on June 25, 2015 at no cost.

Vote on Motion Mr. Merrell Aye Mr. O'Brien Aye Mrs. Lewis Aye

**RESOLUTION NO. 15-733**

**IN THE MATTER OF APPROVING A CONTRACT OF SALE AND PURCHASE WITH MARK A. HOPE AND JULIE K. HOPE FOR PROPERTY NEEDED FOR THE SAWMILL PARKWAY EXTENSION:**

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

WHEREAS, the Delaware County Engineer recommends approval of a contract of sale and purchase with Mark A. Hope and Julie K. Hope for property needed for the Sawmill Parkway Extension;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of Delaware County, State of Ohio, hereby approves the following Contract:

**CONTRACT OF SALE AND PURCHASE**

**WITNESSETH:** On this 18th day of June, 2015, Mark A. Hope and Julie K. Hope, husband and wife, whose address is 1991 Ford Road, Delaware, Ohio 43015, hereinafter, the SELLER, in consideration of the mutual promises, agreements, and covenants herein do hereby grant, remise, and sell to the Board of County Commissioners of Delaware County, Ohio, whose address is 101 North Sandusky Street, Delaware, Ohio 43015, hereinafter the PURCHASER, the following described premises, hereinafter the PROPERTY, to wit:

See Attached Exhibit A (Property Description)  
Parcel 35-WD Sawmill Parkway Extension

By this reference, Exhibit A is incorporated herein and made a part hereof as if fully rewritten herein.

**TERMS OF PURCHASE:**

1. PURCHASER promises and agrees to pay to the SELLER the total sum of Twenty-Nine Thousand Five Hundred Dollars and Zero Cents (\$29,500.00), which total sum to be paid the SELLER pursuant to this CONTRACT shall be in exchange and constitute the entire compensation for all of the following:

**COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015**

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- (A) All title, rights, and interest in and to the PROPERTY; and,
- (B) For damages to any residual lands of the SELLER; and,
- (C) For SELLER's covenants herein; and,
- (D) For any supplemental instruments necessary for transfer of title.

It is understood and agreed that the SELLER is responsible for all delinquent taxes and assessments on the PROPERTY, including, but not limited to, penalties and interest and all other real estate taxes and assessments which are a lien on the PROPERTY on the date of closing. The current calendar year's taxes are to be prorated on an estimated basis to the date of acquisition of title or date of possession, whichever date is earlier. SELLER is also responsible for all future installments of special assessments levied and assessed against the PROPERTY, whether these special assessments have or have not been certified to the county auditor for collection, provided those installments are a lien on the PROPERTY at the date of transfer. The PURCHASER may hold in escrow a sufficient amount of the purchase money to satisfy the above items. Any balance remaining after taxes, assessments, etc. are discharged, shall be refunded to the SELLER and any deficiency shall be the responsibility of the SELLER.

2. Closing shall occur at a time and place agreed upon between the parties, but no later than thirty (30) days after notification of the SELLER by the PURCHASER that PURCHASER is ready to close. All title and interest in the PROPERTY shall transfer from the SELLER to the PURCHASER and closing shall occur within ninety (90) days. This date by which transfer and closing must occur may be modified via a signed writing mutually agreed upon by all parties to this CONTRACT.
3. SELLER agrees to transfer, sell, and convey, upon the fulfillment of all the obligations and terms of this CONTRACT, by a good and sufficient deed of general warranty of title, with full release of dower, to said PURCHASER, its successors and assigns, the PROPERTY in fee simple, together with all the appurtenances and hereditaments thereunto belonging and improvements now located thereon and all fixtures of every nature now attached or used with said land and improvements.
4. The SELLER and PURCHASER mutually acknowledge and agree that the SELLER shall retain all access rights to Clark-Shaw Road, during and after construction is completed, as the SELLER enjoyed prior to the PURCHASER's acquisition of the PROPERTY.
5. SELLER further agrees to execute supplemental instruments necessary for the construction and maintenance over, across, and upon the PROPERTY, necessary for the road, street, and/or highway project for which the PROPERTY was acquired.
6. SELLER further agrees to transfer, sell, and convey the PROPERTY with release of dower and warranting the same free and clear from all liens and encumbrances whatsoever, excepting zoning restrictions and public utility easements of record.
7. SELLER further agrees to assist wherever possible to procure, record, and deliver to the PURCHASER releases and cancellations of all interest in such title, including, but not limited to tenants, lessees or others now in possession, or in any manner occupying or having an interest in the PROPERTY, and all assessment claims against the PROPERTY.
8. Prior to acceptance by the PURCHASER, the execution of this CONTRACT by the SELLER shall constitute an offer to sell which shall continue for a period of twenty (20) days from the date of such execution. Upon acceptance of this CONTRACT by the PURCHASER within said period, it shall constitute a valid and binding CONTRACT of Sale and Purchase.
9. SELLER agrees that the PURCHASER may designate an escrow agent who shall act on behalf of both parties in connection with the consummation and closing of this CONTRACT.
10. SELLER also agrees that he will not destroy, change, alter, or damage the existing character of the PROPERTY. The SELLER understands and hereby assumes the risk of and any and all damage, change, or alteration that may occur to the PROPERTY between execution of this CONTRACT and the date the PURCHASER takes possession of the PROPERTY and hereby agrees to indemnify the PURCHASER for any and all such damage, change, or alteration that occurs.

In the event that any damage, change, alteration or destruction occurs to the PROPERTY resulting from any cause whatsoever, prior to the date possession is surrendered to the PURCHASER, the SELLER agrees to restore the PROPERTY to the condition it was in at the time of the execution of this CONTRACT by the SELLER, or to accept the purchase price consideration, hereinabove stated, less the cost of restoration. In the event the SELLER refuses to restore the PROPERTY to the condition it was in at the time of the execution of this CONTRACT by the SELLER or to accept the money consideration less the cost of such restoration as hereinabove stated, the PURCHASER may, at its option after discovery or notification of such destruction, change, alteration, damage, removal, or injury, terminate this CONTRACT by signed written notice to said SELLER. In addition to termination of the CONTRACT, PURCHASER hereby preserves and may exercise any and all legal options, actions,

**COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015**

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causes, or remedies that are or may be available to the PURCHASER. Nothing in this provision or this CONTRACT shall be interpreted to limit the PURCHASER from exercising any such available legal options, actions, causes, or remedies.

11. Until such time as the SELLER completely vacates the PROPERTY, the SELLER agrees to indemnify, save and hold the PURCHASER, and all of its officers, employees, agents, servants, representatives, and volunteers free and harmless from any and all claims of liability, whatever the source or nature, related to the SELLER's use and occupation of the PROPERTY and from any and all actions, claims, demands, judgments, damages, losses and expenses, including but not limited to attorney's fees, arising from any accident or occurrence related in any manner to the SELLER's use or occupation of the PROPERTY. The SELLER shall undertake to defend, at its own expense, any and all actions, claims, or demands brought against the PURCHASER or any of its officers, employees, agents, servants, representatives, and volunteers by reason of the things above specified, and to pay, settle, compromise and procure the discharge of any and all judgments, damages, losses and expenses, including but not limited to attorney's fees.
12. The SELLER hereby acknowledges that the compensation or consideration specified in this CONTRACT represents and is the full and total amount of compensation and consideration that the SELLER will and is entitled to receive from the PURCHASER in exchange for, in relation to, and in connection with the transfer of the PROPERTY. The SELLER and the SELLER's heirs, executors, administrators, successors, and assigns hereby forever release the PURCHASER from any and all claims for any damages, injuries, or any additional compensation or consideration than is expressly provided for in this CONTRACT. The SELLER hereby further forever releases the PURCHASER from any and all claims the SELLER, and the SELLER's heirs, administrators, executors, successors, and assigns may make as related to the transfer of the PROPERTY, costs associated with the transfer of the PROPERTY, for any damage to any residue property as a result of the transfer, or any other cost, damage, or injury, whatever the source or nature, associated with or the result of the transfer of the PROPERTY.
13. PURCHASER and SELLER mutually acknowledge that this CONTRACT is being made under threat of condemnation and to settle this matter without need for proceedings in furtherance thereof. If this CONTRACT were to be held unenforceable and SELLER refused to enter into this CONTRACT, PURCHASER would exercise its eminent domain authority over the PROPERTY.
14. This CONTRACT shall be binding upon the SELLER and the SELLER's heirs, executors, administrators, successors and assigns, and shall inure to the benefit of the PURCHASER, its heirs, successors and assigns.
15. If any item, condition, portion, or section of this CONTRACT or the application thereof to any person, premises, or circumstance shall to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition, provision, or section to persons, premises, or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this CONTRACT and all the terms, conditions, provisions, or sections hereof shall, in all other respects, continue to be effective and to be complied with.
16. This CONTRACT shall be governed by and interpreted in accordance with the laws of the State of Ohio. Any and all legal disputes arising from this CONTRACT shall be filed in and heard before the courts of Delaware County, Ohio.
17. This CONTRACT and its Attachments shall constitute the entire understanding and agreement between the SELLER and the PURACHER, shall supersede all prior understandings and agreements relating to the subject matter hereof, and may only be amended in writing with the mutual consent and agreement of the parties.
18. This CONTRACT shall be deemed to have been drafted by both parties and no purposes of interpretation shall be made to the contrary.
19. Payment of the sum set forth in Section 1 of this CONTRACT shall be issued to Goldman & Braunstein, LLP, for the benefit of Mark A. Hope and Julie K. Hope, and sent to the office of Goldman & Braunstein, LLP.

Vote on Motion                      Mrs. Lewis              Aye              Mr. O'Brien              Abstain      Mr. Merrell              Aye

**RESOLUTION NO. 15-734**

**IN THE MATTER OF APPROVING THE CONSTRUCTION MANAGER CONTRACT BETWEEN  
THE DELAWARE COUNTY BOARD OF COMMISSIONERS AND LEND LEASE (US)**

COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015

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**CONSTRUCTION INC. FOR THE SANDUSKY STREET COURTHOUSE AND RELATED  
PARKING FACILITY:**

It was moved by Mr. O'Brien, seconded by Mrs. Lewis to approve the following:

Whereas, the Manager of Facilities and the County Administrator recommend approval of the contract;

Now Therefore Be It Resolved, that the Delaware County Board of Commissioners approve the Construction Manager contract between the Delaware County Board of Commissioners and Lend Lease (US) Construction Inc. for the Sandusky Street Courthouse and Related Parking Facility:

**AIA Document A133™- 2009**

**Standard Form of Agreement between Owner and Construction Manager as Constructor where the basis  
of payment is the cost of the work plus a fee with Guaranteed Maximum Price**

**AGREEMENT** made as of the 18TH day of June in the year 2015  
*(In words, indicate day, month and year.)*

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

Delaware County Board of Commissioners  
101 North Sandusky Street  
Delaware, OH 43051-1732

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

Lend Lease (US) Construction Inc.  
250 Civic Center Drive, Suite 280  
Columbus, OH 43215

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

Sandusky Street Courthouse and Related Parking Facility  
North Sandusky Street  
Delaware, OH 43051-1732

The Architect:  
*(Name, legal status and address)*

The Owner's Designated Representative:  
*(Name, address and other information)*  
Jon Melvin  
Delaware County Board of Commissioners  
101 North Sandusky Street  
Delaware, OH 43051-1732

The Construction Manager's Designated Representative:  
*(Name, address and other information)*  
Gary R. Rutledge, AIA  
250 Civic Center Drive  
Suite 280  
Columbus OH 43215

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

The Owner and Construction Manager agree as follows.  
TABLE OF ARTICLES1 GENERAL PROVISIONS

**COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015**

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- 2      **CONSTRUCTION MANAGER'S RESPONSIBILITIES**
- 3      **OWNER'S RESPONSIBILITIES**
- 4      **COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES**
- 5      **COMPENSATION FOR CONSTRUCTION PHASE SERVICES**
- 6      **COST OF THE WORK FOR CONSTRUCTION PHASE**
- 7      **PAYMENTS FOR CONSTRUCTION PHASE SERVICES**
- 8      **INSURANCE AND BONDS**
- 9      **DISPUTE RESOLUTION**
- 10     **TERMINATION OR SUSPENSION**
- 11     **MISCELLANEOUS PROVISIONS**
- 12     **SCOPE OF THE AGREEMENT**

**ARTICLE 1 GENERAL PROVISIONS**

**§ 1.1 The Contract Documents**

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

**§ 1.2 Relationship of the Parties**

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's reasonable skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests as made known to the Construction Manager. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents. Notwithstanding the foregoing or any other provision of the Contract Documents, Construction Manager shall not be deemed a trustee or fiduciary of the Owner.

**§ 1.3 General Conditions**

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

**ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES**

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

**§ 2.1 Preconstruction Phase**

**§ 2.1.1** The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

**§ 2.1.2 Consultation**

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall consult with the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with

**COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015**

---

the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, and possible cost reductions.

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

**§ 2.1.4 Phased Construction**

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

**§ 2.1.5 Preliminary Cost Estimates**

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

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

**§ 2.1.6 Subcontractors and Suppliers**

The Construction Manager shall develop bidders' interest in the Project.

**§ 2.1.7** The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

**§ 2.1.8 Extent of Responsibility**

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

**§ 2.1.9 Notices and Compliance with Laws**

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

**§ 2.2 Guaranteed Maximum Price Proposal and Contract Time**

**§ 2.2.1** At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee.

**COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015**

---

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

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

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications, value engineering, qualification, exclusions and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee;
- .4 The Project Schedule upon which the proposed Guaranteed Maximum Price is based and a schedule of the Construction Documents issuance dates upon which the date of Substantial Completion is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.
- .6 A list of allowances and a statement of their basis.

**§ 2.2.4** In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs under Section 2.2.2 and other costs which are properly reimbursable as the Cost of the Work but not the basis for a Change Order. The contingency is included for the purpose of defraying unanticipated charges and additional expenses due to errors in estimating both time and money, but excludes expenses associated with concealed conditions not reasonably anticipated, design defects or deficiencies, overtime, or Change Orders/Scope of Work changes, which expenses shall be borne by the Owner. Construction Manager will be required to furnish documentation evidencing expenditures charged to the contingency and the reasons therefor.

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

**§ 2.2.6** If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

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

**§ 2.2.8** The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed-upon assumptions, qualifications, exclusions, value engineering and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager no later than ten (10) days after the approval of the Guaranteed Maximum Price. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications. If the value engineering contained in the GMP is not reflected in the Drawings and Specifications, then Construction Manager will be issued a Scope Change/Change Order to adjust the Contract Time and GMP accordingly. Nothing in this Agreement shall be deemed to require, or authorize, or permit Construction Manager to perform any act which would constitute design services, laboratory testing, inspection services, investigations, or the practice of architecture, professional engineering, certified public accounting or law. With the exception of the Guaranteed Maximum Price referred to in this Agreement, the recommendations, advice, budgetary information and schedules to be furnished by Construction Manager under this Agreement are for the sole use of Owner and shall not be deemed to be representations, warranties, or guarantees or constitute the performance of licensed professional services.

**§ 2.2.9** The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.



**COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015**

---

**§ 2.3 Construction Phase****§ 2.3.1 General**

**§ 2.3.1.1** For purposes of Section 8.1.2 of A201–2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

**§ 2.3.1.2** The Construction Phase shall commence upon the Owner’s acceptance of the Construction Manager’s Guaranteed Maximum Price proposal and the Owner’s issuance of a Notice to Proceed.

**§ 2.3.2 Administration**

**§ 2.3.2.1** If the Construction Manager intends and is permitted by the Owner to self-perform a portion of the Work to be performed, the Construction Manager shall submit a sealed bid for the portion of the Work prior to accepting and opening any bids for the same Work.

**§ 2.3.2.2** Those portions of the Work that the Construction Manager does not perform with the Construction Manager’s own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager, which shall be in the form prescribed in accordance with section 153.503 of the Ohio Revised Code. The Construction Manager shall establish criteria by which it will prequalify prospective bidders on subcontracts. The criteria established shall be subject to the approval of the Owner and shall be consistent with the rules adopted by the Ohio Facilities Construction Commission pursuant to section 153.503 of the Ohio Revised Code. For each subcontract to be awarded, the Construction Manager shall identify at least three prospective bidders that are prequalified to bid on that subcontract, except that the Construction Manager shall identify fewer than three if the Construction Manager establishes to the satisfaction of the Owner that fewer than three prequalified bidders are available. Within 10 days of receiving notification of the prequalified bidders, the Owner shall verify that each prospective bidder meets the prequalification criteria and may eliminate any bidder it determines is not qualified. Failure of the Owner to reply within the 10 day period shall constitute notice of no reasonable objection. Once the prospective bidders are prequalified and found acceptable by the Owner, the Construction Manager shall solicit proposals from each of those bidders. The solicitation and selection of a subcontractor shall be conducted under an open book pricing method. As used herein, "open book pricing method" has the same meaning as in section 9.33 of the Ohio Revised Code. Subject to Section 2.3.2.3 of this Agreement, the Owner may accept a subcontract awarded by the Construction Manager or may reject any such subcontract. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection, and the Construction Manager shall not be required to award a subcontract to a low bidder.

**§ 2.3.2.3** If the Owner has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor’s Work. If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

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

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

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

**§ 2.3.2.7** Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201–2007.

**§ 2.3.2.8** The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Construction Manager and Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information reasonably required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily

**COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015**

---

log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the Work, accidents, injuries, and other information reasonably required by the Owner.

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

**§ 2.4 Professional Services**

Section 3.12.10 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

**§ 2.5 Hazardous Materials**

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

**ARTICLE 3 OWNER'S RESPONSIBILITIES**

**§ 3.1 Information and Services Required of the Owner**

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

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

**§ 3.1.3** The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs, including changes in the Work and other costs which are the Owner's responsibility. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

**§ 3.1.4 Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness and at Owner's expense. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness and at Owner's expense after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner, including those described in Sections 3.1.4.1 through 3.1.4.6, but shall exercise proper precautions relating to the safe performance of the Work.

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

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

**§ 3.1.4.3** The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

**§ 3.1.4.4** Other laboratory and environmental tests, inspections and reports which are required by law.

**§ 3.1.4.5** The services of other consultants when such services are reasonably required by the scope of the Project.

**COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015**

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

**§ 3.2 Owner's Designated Representative**

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

**§ 3.2.1 Legal Requirements.** The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests. The Owner shall determine and advise the Construction Manager of any special legal requirements relating specifically to the Project which differ from those generally applicable to construction in the jurisdiction of the Project. The Owner shall furnish such legal services as are necessary to provide the information and services required under Section 3.1.

**§ 3.3 Architect**

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B103™-2007, Standard Form of Agreement Between Owner and Architect, including structural, mechanical and electrical engineering services and any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. Such services shall be provided in accordance with time schedules agreed to by the Owner, Architect and Construction Manager. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to said agreement.

**ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES**

**§ 4.1 Compensation**

**§ 4.1.1** For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

**§ 4.1.2** For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2: *(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)* One Hundred Forty-Five Thousand Six Hundred Forty-One Dollars and 00/100 (\$145,641.00) for all Preconstruction Phase personnel costs and reimbursable expenses identified in Exhibit "A" – List of Preconstruction and General Conditions Items.

**§ 4.1.3** If the Preconstruction Phase services covered by this Agreement have not been completed within nine (9) months of the date of this Agreement, through no fault of the Construction Manager, or if the originally contemplated scope of services is significantly modified, then the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

**§ 4.1.4** Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions and benefits.

**§ 4.2 Payments**

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

**§ 4.2.2** Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the place where the Project is located.

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

%

**ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES**

**§ 5.1** For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract. The Contract Sum is the Cost of the Work as defined in Article 6 plus the Construction Manager's Fee.

**§ 5.1.1** The Construction Manager's Fee:

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

**COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015**

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Two Percent (2%) of the stated cost of work of \$25,700,000 which is Five Hundred Fourteen Thousand Dollars and 00/100 (\$514,000).

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

Owner in writing may order changes in the Work consisting of: additions, deletions, and modifications in the Work specified in the Contract Documents upon which the Owner's approved budget for the Project was prepared; work which must be performed in respect of unforeseen conditions; changes in the intensity and pace of the Work; uncovering and covering of a portion of the Work, if such portion, upon uncovering, is found to be acceptable; and items which are specifically the responsibility of Owner under this Agreement, but are being handled and paid through Construction Manager as a matter of convenience to the Owner. Such changes shall be known as "Scope Changes" or "Change Orders". The events described in Section 8.3.1 of the General Conditions shall also result in the issuance of a Scope Change if said events lead to an increase in the GMP and/or the Cost of the Work. The amount of each Scope Change shall be the Construction Manager's best estimate of the cost of the Change in the Work. Scope Changes shall also include anticipated expenditures for Work and building permits if not explicitly included in the Guaranteed Maximum Price. Scope Changes will be initiated after either the Owner approves the Construction Manager's change proposal for scope change (which may include time and/or money) or by a written directive signed by the Owner authorizing Construction Manager to proceed with the work on a Time and Material plus Overhead and Markup basis (or other agreed to prompt reimbursement basis). The GMP shall be increased by the total amount of each and every Scope Change.

**§ 5.2 Guaranteed Maximum Price**

**§ 5.2.1** The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner. *(Insert specific provisions if the Construction Manager is to participate in any savings.)*

Upon substantial completion of the Work, if the total Cost of the Work (including the General Conditions Amount) plus the Construction Manager's Fee is less than the Guaranteed Maximum Price, as adjusted in accordance with this Agreement, then the difference shall be "savings". The savings shall be allocated as follows: (a) Seventy-Five (75%) to Owner and (b) Twenty-Five (25%) to Construction Manager. Owner shall pay Construction Manager's share of the savings as additional compensation promptly after substantial completion of the Project; provided, however, that savings shall not include any deletions from the scope of Work to be performed under this Agreement.

**§ 5.2.2** The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

**§ 5.2.3** The Guaranteed Maximum Price includes a stipulated sum of One Million Three Hundred Sixty-Four Thousand Eight Hundred Sixteen Dollars and 00/100 (\$1,364,816.00) as Contractor's total compensation for all General Conditions items identified in Exhibit "A" – List of Preconstruction and General Conditions Items (the "General Conditions Amount"). In the event that, as a result of Changes in the Work, Contractor incurs additional costs covered in Exhibit "A" – List of Preconstruction and General Conditions Items but which are not supervisory or administrative personnel costs as described in Section 6.2 herein, Owner and Contractor agree that Contractor shall be reimbursed for the actual costs plus a six percent (6%) markup to the extent such costs can be verified by Contractor. The General Conditions Amount shall be paid to Contractor in accordance with the Schedule of General Conditions Amount Payments included in Exhibit "A".

**§ 5.3 Changes in the Work**

**§ 5.3.1** The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201–2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Guaranteed Maximum Price and Contract Time as a result of changes in the Work.

**§ 5.3.2** Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201–2007, General Conditions of the Contract for Construction.

**§ 5.3.3** In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201–2007 and the term "costs" and a reasonable allowance for "overhead and profit" as used in Section 7.3.7 of AIA Document A201–2007 shall have the meanings assigned to them in AIA Document A201–2007 except as may be modified by Articles 5 and 6 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

**COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015**

---

**§ 5.3.4** In calculating adjustments to the Guaranteed Maximum Price, the terms “cost” and “costs” as used in the above-referenced provisions of AIA Document A201–2007 shall mean the Cost of the Work as defined in Article 6 of this Agreement and the term “fee” shall mean the Construction Manager’s Fee as defined in Section 5.1 of this Agreement.

**§ 5.3.5** If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager’s Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager’s Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

**ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE**

**§ 6.1 Costs to Be Reimbursed**

**§ 6.1.1** The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 6.

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

**§ 6.2 Labor Costs**

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

**§ 6.2.2** Wages or salaries of the following classification of Construction Manager’s supervisory and administrative personnel who provide services in connection with the Project: Officer-in-Charge, Project Executive, Project Manager, Assistant Project Manager(s), Estimator(s), Scheduler(s), General Superintendent(s), Project Superintendent(s), Assistant Superintendent(s), Site Safety personnel, Technical Support personnel, Mechanical/Electrical Project Manager(s) and Superintendent(s), Project Accountant(s), timekeepers, personnel referred to in Section 6.2.3, EEO personnel, insurance personnel, clerical and data processing personnel, and such other classes of personnel as are approved by the Owner. For any such personnel who devotes time to the Project during the payroll pay period, Owner will pay to Construction Manager an amount equal to the product of the following: (1) the bi-weekly salary paid to such personnel divided by the total number of hours that such personnel charged (whether to this Project, other projects, or otherwise) for the payroll period; and (2) the number of hours worked on this Project. Any increase in such staffing shall be approved by the Owner if it would increase the Guaranteed Maximum Price.

*(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager’s principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)*

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

**§ 6.2.4** Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and incentives, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3. For persons referred to in Sections 6.2.1 and 6.2.2, payroll taxes and statutory charges, fringe costs, allocations for shared services costs, allowances (if any) and supplemental compensation shall be calculated at an on-cost rate (the “On-Cost Rate”) specific to that person. The On-Cost Rate includes vacation days, holidays, sick and personal days, authorized time off (collectively referred to as “Benefit Days”), employee insurance (including health care, life and disability insurance) and employee incentives (including bonuses, retirement plan and general training courses), payroll taxes (FICA, FUTA and SUTA). The On-Cost Rate includes a technology charge associated with the support of computer/electronic project management systems and document management, visualization, collaboration and storage systems (including any Web enabled systems) used for the Project (whether such systems are located at the site or at a central location utilized by Construction Manager); and per hour allocations (maximum of 80 hours per pay period) of costs for payroll for direct labor on the Project and the Construction Manager’s human resources function necessary for direct labor on the Project. The On-Cost Rate includes costs for automobile and vehicle and housing allowances for those employees who receive them. Certain employees of Construction Manager or its affiliates may be eligible to participate in the bonus or incentive plans established for the benefit of employees of the Construction Manager and its affiliates, which are funded as part of the On-Cost Rate billed to the Owner as Cost of the Work. Construction Manager retains full discretion as to the amount, if any, of incentive compensation that will be paid to its employees. The components of the On-Cost Rate (some of which are estimates of cost) are fixed, agreed upon and not subject to further audit. Any additional Owner-funded incentive, if any, must be paid directly to the Construction Manager, and any payouts remain at the discretion and direction of Construction Manager. The On-Cost Rate shall be subject to annual adjustment (if

**COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015**

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appropriate) by Construction Manager. Anything in this Agreement to the contrary notwithstanding, workers compensation insurance will be reimbursed at an agreed upon fixed rate (“Agreed Worker’s Compensation Rate”) during the term of this Agreement. The Agreed Worker’s Compensation Rate is Construction Manager’s good faith estimate of the premiums and/or costs of worker’s compensation insurance based on policy rates in effect in the state where the Project is located and including adjustments for additional coverages, loss experience, loss control, loss adjustment expenses, broker fees, and any other state taxes and surcharges. Notwithstanding anything in the Contract Documents to the contrary, the foregoing On-Cost and Agreed Worker’s Compensation Rates are mutually agreed to by the parties and the Owner’s audit rights, if any, shall not extend to such Rates.

**§ 6.2.5** Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor.

**§ 6.3 Subcontract Costs**

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

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

**§ 6.4.1** Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

**§ 6.4.2** Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner’s property at the completion of the Work or, at the Owner’s option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

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

**§ 6.5.1** Costs of transportation, storage, installation, maintenance, taxes, insurance, repairs, unloading and return to point of origin, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

**§ 6.5.2** Rental and/or leasing of vehicles and automobiles, and rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof, storage, insurance, taxes, deposits, unloading and return to point of origin. Rates of Construction Manager owned equipment and quantities of equipment shall be subject to the Owner’s prior approval.

**§ 6.5.3** Costs of removal of waste and debris from the site of the Work and its proper and legal disposal.

**§ 6.5.4** Costs of document reproductions, photographs, messengers, facsimile transmissions and long-distance telephone calls, postage and parcel/express delivery charges, telephone service at the site, mobile phone and wireless mail-enabled device charges (including third-party management fees) reasonable petty cash expenses of the site office, Project-specific training, Project-specific hardware and software charges, heat, light, power, water, sanitary facilities, first aid facilities, safety protection, safety personnel and advisors, weather protection, elevator services and hoisting and all items ancillary to foregoing.

**§ 6.5.5** That portion of the reasonable expenses of the Construction Manager’s supervisory or administrative personnel and of ICT and/or TS personnel incurred while traveling in discharge of duties connected with the Work, including meetings and travel to yards and fabrication plants, except to the extent included in the General Conditions Amount.

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

**§ 6.6 Miscellaneous Costs**

**§ 6.6.1** That portion of insurance (including premiums, reserves for losses and related expenses) and bond premiums (including Subguard insurance) required by the Contract Documents that can be attributed to this Contract. The charges for such insurance are subject to semi-annual adjustment (if appropriate) by Construction Manager and a Scope Change shall be issued for such adjustment.

**§ 6.6.2** Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable.

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

**COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015**

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**§ 6.6.4** Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work which do not fall within the scope of Section 6.7.3.

**§ 6.6.5** Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent or other intellectual property rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201-2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

**§ 6.6.6** Costs for electronic equipment and software, directly related to the Work. Data processing costs related to the Work.

**§ 6.6.7** Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

**§ 6.6.8** Legal and accounting support costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

**§ 6.6.9** Expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel (including ICT and/or TS personnel) required for the Work.

**§ 6.6.10** Costs associated with compliance with, and all other items relating to, requirements of insurers and of safety, health, occupational, environmental and other laws, regulations, or rulings of governmental agencies, but nothing stated in this Agreement shall diminish the responsibility of the Subcontractors regarding site safety.

**§ 6.6.11** Amount paid out of the base amount referred to in Section 6.7.5.

**§ 6.7 Other Costs and Emergencies**

**§ 6.7.1** Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

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

**§ 6.7.3** Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers. Notwithstanding anything contained in this Agreement to the contrary, costs due to the breach or negligence of Construction Manager or its Subcontractors or suppliers, including but not limited to costs for the correction of damaged, defective or nonconforming Work, disposal and replacement of materials and equipment incorrectly ordered or supplied, and making good for damage to property not formerly part of the Work, may be paid for by Construction Manager prior to Final Completion of the Work from the Contingency and subsequent to Final Completion of the Work, from the Savings. When all such sums are exhausted, Construction Manager shall bear any remaining liability for the above.

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

**§ 6.8 Costs Not To Be Reimbursed**

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

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office, except as specifically provided in Sections 6.1 to 6.7;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the gross negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7 or in the Guaranteed Maximum Price;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price as adjusted to be exceeded; and

**COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015**

---

.8 Costs for services incurred during the Preconstruction Phase.

**§ 6.9 Discounts, Rebates and Refunds**

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

**§ 6.9.2** Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner upon Final Completion of the Project as a deduction from the Cost of the Work as determined by the parties prior to submittal of the final Application for Payment.

**§ 6.9.3** Notwithstanding anything to the contrary in Sections 6.9.1 and 6.9.2, and subject to Construction Manager's use of national vendor agreements, Owner acknowledges that Construction Manager may have national vendor agreements in place that may benefit the Project. These agreements provide for cost savings at the time of purchase as well as annual rebates based on annual overall volume. To the extent cost savings occur at the time of such purchase, such cost savings shall be for the benefit of the Owner. To the extent rebates are determined based on annual overall volume, such annual rebates shall be for the benefit of the Construction Manager.

**§ 6.10 Related Party Transactions**

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

**§ 6.10.2** Except as provided in Sections 6.1 through 6.7, if any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Section 2.3.2.

**§ 6.11 Accounting Records**

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy (at Owner's expense), the Construction Manager's records and accounts relating to the Cost of the Work, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

**§ 6.12 Reconciliation of Costs and Expenses**

Certain amounts requisitioned for, including, without limitation, certain miscellaneous General Conditions items and Subcontractor percentages of completion, are based upon good faith estimates using information available at the time that the monthly Application for Payment is submitted. All such estimates will be reconciled in subsequent Applications for Payment, and in no event later than the time of submittal of the Final Application for Payment as agreed upon by Owner and Construction Manager.

**ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES**

**§ 7.1 Progress Payments**

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

**§ 7.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

**§ 7.1.3** Provided that an Application for Payment is received by the Architect not later than the first day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the first day of the next month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than twenty (20) days after the Architect receives the Application for Payment.



**COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015**

---

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

**§ 7.1.4** With each Application for Payment, the Construction Manager shall submit petty cash accounts, receipted invoices or invoices with check vouchers attached copies of requisitions from Subcontractors and Suppliers (with a schedule of values attached thereto), partial or final (if applicable) releases of lien from all Subcontractors and Suppliers who were to be paid pursuant to the prior Application for Payment, which waivers and releases of liens shall cover payments made by Owner in connection with all prior Application for Payment, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment.

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

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

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

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Construction Manager's Fee. The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1. Add amounts charged by the Construction Manager in connection with items under Sections 6.2, 6.5, 6.6 and 6.7. Pending final determination of cost to the Owner of changes in the Work, add amounts which (i) have not yet been adjusted by Scope Change/Change Order but (ii) are not in dispute (as provided in Section 7.3.7 of the General Conditions);
- .4 Subtract the aggregate of previous payments made by the Owner;
- .5 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007, provided, however, that no amounts shall be subtracted from Construction Manager's general conditions items or Fee.

**§ 7.1.8** Payments to Subcontractors shall be subject to retention of ten percent (10%). However, when the Work of any particular Subcontractor is fifty percent (50%) completed, Construction Manager, at its election and on a Subcontractor-by-Subcontractor basis, shall be entitled to withhold no additional retention from payments to said Subcontractor. Retainage shall be paid on a Subcontractor-by-Subcontractor basis upon completion of a particular Subcontractor's Work. The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments and retention for subcontracts. There shall be no retention on Construction Manager's general conditions items or Fee.

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

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

**COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015**

---

in the sole interest of the Owner. The Owner's audit rights shall not extend to any lump sum prices, unit rates, established charges or fixed percentages or multipliers agreed to by the parties.

**§ 7.2 Final Payment**

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

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

The Parties agree that, in order to make a final determination of Cost of the Work to be reflected in the final Application for Payment and the Final Payment, the Parties shall meet to reconcile ("Reconciliation") all estimated costs and reimbursable expenses of the Project. The Parties agree that once the Reconciliation has been agreed by the Parties, all such costs and reimbursable expenses shall be deemed final. The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment.

**§ 7.2.2** The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201-2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

**§ 7.2.3** If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201-2007. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

**§ 7.2.4** If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

**ARTICLE 8 INSURANCE AND BONDS**

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201-2007. Such insurance shall be written for not less than the following limits, or greater if required by law:

*(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)*

**§ 8.1.1** Workers' Compensation and Employers' Liability meeting statutory limits mandated by state and federal laws.

**§ 8.1.2** Commercial General Liability including coverage for Premises-Operations, Independent Contractors, Products-Completed Operations, Contractual Liability, Personal Injury and Broad Form Property Damage (including coverage for Explosion, Collapse and Underground hazards):

- \$1,000,000 Each Occurrence
- \$3,000,000 General Aggregate
- \$1,000,000 Personal and Advertising Injury
- \$3,000,000 Products-Completed Operations Aggregate

- .1 Products and Completed Operations insurance shall be maintained for a minimum period of at least one (1) year after either 90 days following Substantial Completion or final payment, whichever is earlier.

**COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015**

---

- .2 The Contractual Liability insurance shall include coverage sufficient to meet the obligations in Section 3.18 of A201™–2007 subject to policy exclusions.
- .3 Construction Manager's Commercial General Liability insurance shall include Owner as Additional Insured.

**§ 8.1.3** Automobile Liability (owned, non-owned and hired vehicles) for bodily injury and property damage: **\$1,000,000** Each Accident

**§ 8.1.4** Other coverage:

Umbrella and Excess limits totaling \$100,000,000. Commercial General Liability and Automobile Liability limits may be attained by individual policies or by a combination of primary policies and Umbrella and/or Excess Liability policies.

Professional Liability and Contractor's Pollution Liability Insurance with a limit of at least \$5,000,000.

**§ 8.2 INSURANCE REQUIRED OF THE OWNER**

During both phases of the Project, the Owner shall purchase and maintain liability insurance, including waivers of subrogation, as set forth in Sections 11.2 and 11.3 of A201™–2007.

**ARTICLE 9 DISPUTE RESOLUTION**

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

**§ 9.2** For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be litigation before the courts of Delaware County, Ohio.

**§ 9.3 Initial Decision Maker**

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker. *(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*

**ARTICLE 10 TERMINATION OR SUSPENSION**

**§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price**

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

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

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

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

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

**COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015**

---

the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

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

**§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price**

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201–2007.

**§ 10.2.1** If the Owner terminates the Contract after execution of the Guaranteed Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

**§ 10.2.2** If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager’s Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.

**§ 10.3 Suspension**

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

**ARTICLE 11 MISCELLANEOUS PROVISIONS**

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

**§ 11.2 Ownership and Use of Documents**

Section 1.5 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

**§ 11.3 Governing Law**

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

**§ 11.4 Assignment**

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

**§ 11.5 Other provisions:**

**§ 11.6** If Construction Manager fails to achieve Substantial Completion of the Work within 30 days of the date set forth in this Agreement, as such date may be modified in accordance with the terms of the Agreement, Construction Manager shall pay Owner liquidated damages, and not as a penalty, in the amount of Three Thousand Dollars and 00/100 (\$3,000.00) per calendar day until Substantial Completion of the Work is achieved. The liquidated damages provided for herein shall be Owner’s exclusive remedy for Construction Manager’s failure to complete the Work on or before the date of Substantial Completion. Anything in this Agreement to the contrary notwithstanding, in no event shall the total liquidated damages exceed fifty percent (50%) of the Fee paid to Construction Manager by Owner. The Parties further acknowledge and agree that the aforesaid liquidated damages shall not be deemed to be consequential damages in connection with any waiver set forth in this Agreement.

COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015

**ARTICLE 12 SCOPE OF THE AGREEMENT**

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

§ 12.2 The following documents comprise the Agreement:

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

**EXHIBIT A**

**Delaware County Sandusky Street Courthouse and Related Parking Facility  
LIST OF PRECONSTRUCTION AND GENERAL CONDITIONS ITEMS**

<b>A. PRECONSTRUCTION PHASE</b>		
<b>1. PERSONNEL COST:</b>		<b>\$141,921</b>
<b>2. REIMBURSABLE EXPENSES:</b>		
Payment & Performance Bonds	\$ 846	
General and Professional Liability Insurance	\$1,502	
Commercial Activity Tax (CAT) on LL staff	\$ 372	
Printing and Miscellaneous	<u>\$1,000</u>	
<b>TOTAL Preconstruction Phase Reimbursables:</b>	<b><u>\$3,720</u></b>	
<b>TOTAL PRECONSTRUCTION PHASE SERVICES COMPENSATION:</b>		<b>\$145,641</b>
<b>B. CONSTRUCTION PHASE</b>		
<b>1. PERSONNEL COST:</b>		<b>\$769,530</b>
<b>2. REIMBURSABLE EXPENSES:</b>		
<b>Bonds, Insurance, BRI, and CAT</b>		
Builder’s Risk Insurance	\$19,465	
Payment & Performance Bonds	\$152,144	
General and Professional Liability Insurance	\$270,107	
Commercial Activity Tax (CAT)	<u>\$66,820</u>	
<b>TOTAL Bonds, Insurance, and CAT</b>	<b><u>\$508,536</u></b>	
<b>Field Office Expenses</b>		
Progress Photographs	\$1,500	
Jobsite Office Facility	\$12,750	
Jobsite Office Setup / Delivery	\$3,000	
Field Office Supplies	\$2,550	
Copier / Fax Machine	\$5,950	
Field Office Furniture	\$1,000	
Computer Hardware / Software	\$3,600	
Textura Account Processing	\$8,000	
Small tools	\$750	
Security System Installation	\$750	
Security System (Monthly Service)	\$2,550	
Electric Consumption (Field Office)	\$8,500	
Telephone System	\$1,500	
Telephone and Internet Set-up	\$2,500	
Telephone/ Internet Charges (Mo. Services)	\$10,200	
Cellular Communication Equipment	\$4,760	
Postage / Fed Ex Costs	\$1,700	
Progress & Bid Documents Printing for CM	\$1,440	
First Aid Supplies and Equipment	\$750	
Safety Program & Training	\$3,000	
Safety Award Program	\$3,750	
Quarterly Safety Audits	\$2,500	
Hard Hats	\$750	
Safety Signage	<u>\$3,000</u>	
<b>TOTAL Field Office Expenses</b>	<b><u>\$86,750</u></b>	
<b>TOTAL Construction Phase Reimbursable Expenses</b>	<b><u>\$595,286</u></b>	
<b>TOTAL CONSTRUCTION PHASE SERVICES COMPENSATION:</b>		<b>\$1,364,816</b>

COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015

AIA Document A201™-2007  
General Condition Of The Contract For Construction

for the following PROJECT:

(Name and location or address)

Delaware County Board of Commissioners  
101 North Sandusky Street  
Delaware OH 43051-1732  
Telephone Number 740.833.2104

THE OWNER:

(Name and address)

Delaware County Board of Commissioners  
101 North Sandusky Street  
Delaware OH 43051-1732

THE ARCHITECT:

(Name and address)

TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 OWNER
- 3 CONTRACTOR
- 4 ARCHITECT
- 5 SUBCONTRACTORS
- 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
- 7 CHANGES IN THE WORK
- 8 TIME
- 9 PAYMENTS AND COMPLETION
- 10 PROTECTION OF PERSONS AND PROPERTY
- 11 INSURANCE AND BONDS
- 12 UNCOVERING AND CORRECTION OF WORK
- 13 MISCELLANEOUS PROVISIONS
- 14 TERMINATION OR SUSPENSION OF THE CONTRACT
- 15 CLAIMS AND DISPUTES

INDEX

(Numbers and Topics in Bold are Section Headings)

Acceptance of Nonconforming Work

9.6.6, 9.9.3, **12.3**

Acceptance of Work

9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, **12.3**

Access to Work

**3.16**, 6.2.1, 12.1

Accident Prevention

10

Acts and Omissions

**COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015**

---

3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5, 10.2.8, 13.4.2, 13.7.1, 14.1, 15.2

Addenda

1.1.1, 3.11.1

Additional Costs, Claims for

3.7.4, 3.7.5, 6.1.1, 7.3.7.5, 10.3, 15.1.4

**Additional Inspections and Testing**

9.4.2, 9.8.3, 12.2.1, **13.5**

Additional Insured

11.1.4

**Additional Time, Claims for**

3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, **15.1.5**

**Administration of the Contract**

3.1.3, **4.2**, 9.4, 9.5

Advertisement or Invitation to Bid

1.1.1

Aesthetic Effect

4.2.13

**Allowances**

**3.8**, 7.3.8

All-risk Insurance

11.3.1, 11.3.1.1

**Applications for Payment**

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5.1, 9.6.3, 9.7.1, 9.10, 11.1.3

Approvals

2.1.1, 2.2.2, 2.4, 3.1.3, 3.10.2, 3.12.8, 3.12.9, 3.12.10, 4.2.7, 9.3.2, 13.5.1

**Arbitration**

8.3.1, 11.3.10, 13.1.1, 15.3.2, **15.4**

**ARCHITECT**

**4**

**Architect**, Definition of

**4.1.1**

Architect, Extent of Authority

2.4.1, 3.12.7, 4.1, 4.2, 5.2, 6.3.1, 7.1.2, 7.3.7, 7.4, 9.2.1, 9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1, 12.2.1, 13.5.1, 13.5.2, 14.2.2, 14.2.4, 15.1.3, 15.2.1

Architect, Limitations of Authority and Responsibility

2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2, 4.2.3, 4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4.1, 9.4.2, 9.5.3, 9.6.4, 15.1.3, 15.2

Architect's Additional Services and Expenses

2.4.1, 11.3.1.1, 12.2.1, 13.5.2, 13.5.3, 14.2.4

Architect's Administration of the Contract

3.1.3, 4.2, 3.7.4, 15.2, 9.4.1, 9.5

Architect's Approvals

2.4.1, 3.1.3, 3.5.1, 3.10.2, 4.2.7

Architect's Authority to Reject Work

3.5.1, 4.2.6, 12.1.2, 12.2.1

Architect's Copyright

1.1.7, 1.5

Architect's Decisions

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 6.3.1, 7.3.7, 7.3.9, 8.1.3, 8.3.1, 9.2.1, 9.4.1, 9.5, 9.8.4, 9.9.1, 13.5.2, 15.2, 15.3

Architect's Inspections

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 13.5

Architect's Instructions

3.2.4, 3.3.1, 4.2.6, 4.2.7, 13.5.2

Architect's Interpretations

4.2.11, 4.2.12

Architect's Project Representative

4.2.10

Architect's Relationship with Contractor

1.1.2, 1.5, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5.1, 3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.2, 4.1.3, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3.7, 12, 13.4.2, 13.5, 15.2

Architect's Relationship with Subcontractors

1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, 11.3.7

Architect's Representations

9.4.2, 9.5.1, 9.10.1

Architect's Site Visits

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.5

Asbestos

10.3.1

Attorneys' Fees

**COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015**

---

3.18.1, 9.10.2, 10.3.3

Award of Separate Contracts

6.1.1, 6.1.2

**Award of Subcontracts and Other Contracts for Portions of the Work**

**5.2**

**Basic Definitions**

**1.1**

Bidding Requirements

1.1.1, 5.2.1, 11.4.1

Binding Dispute Resolution

9.7.1, 11.3.9, 11.3.10, 13.1.1, 15.2.5, 15.2.6.1, 15.3.1, 15.3.2, 15.4.1

**Boiler and Machinery Insurance**

**11.3.2**

Bonds, Lien

7.3.7.4, 9.10.2, 9.10.3

**Bonds, Performance, and Payment**

7.3.7.4, 9.6.7, 9.10.3, 11.3.9, **11.4**

Building Permit

3.7.1

**Capitalization**

**1.3**

Certificate of Substantial Completion

9.8.3, 9.8.4, 9.8.5

**Certificates for Payment**

4.2.1, 4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7.1, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.3

Certificates of Inspection, Testing or Approval

13.5.4

Certificates of Insurance

9.10.2, 11.1.3

**Change Orders**

1.1.1, 2.4.1, 3.4.2, 3.7.4, 3.8.2.3, 3.11.1, 3.12.8, 4.2.8, 5.2.3, 7.1.2, 7.1.3, **7.2**, 7.3.2, 7.3.6, 7.3.9, 7.3.10, 8.3.1,

9.3.1.1, 9.10.3, 10.3.2, 11.3.1.2, 11.3.4, 11.3.9, 12.1.2, 15.1.3

**Change Orders, Definition of**

**7.2.1**

**CHANGES IN THE WORK**

2.2.1, 3.11, 4.2.8, **7**, 7.2.1, 7.3.1, 7.4, 7.4.1, 8.3.1, 9.3.1.1, 11.3.9

**Claims, Definition of**

**15.1.1**

**CLAIMS AND DISPUTES**

3.2.4, 6.1.1, 6.3.1, 7.3.9, 9.3.3, 9.10.4, 10.3.3, **15**, 15.4

Claims and Timely Assertion of Claims

15.4.1

**Claims for Additional Cost**

3.2.4, 3.7.4, 6.1.1, 7.3.9, 10.3.2, **15.1.4**

**Claims for Additional Time**

3.2.4, 3.7.46.1.1, 8.3.2, 10.3.2, **15.1.5**

**Concealed or Unknown Conditions, Claims for**

**3.7.4**

Claims for Damages

3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1, 11.3.5, 11.3.7, 14.1.3, 14.2.4, 15.1.6

Claims Subject to Arbitration

15.3.1, 15.4.1

**Cleaning Up**

**3.15**, 6.3

Commencement of the Work, Conditions Relating to

2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3, 6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.3.1, 11.3.6, 11.4.1, 15.1.4

**Commencement of the Work, Definition of**

**8.1.2**

**Communications Facilitating Contract Administration**

3.9.1, **4.2.4**

Completion, Conditions Relating to

3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1, 9.10, 12.2, 13.7, 14.1.2

**COMPLETION, PAYMENTS AND**

**9**

Completion, Substantial

4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2, 13.7

Compliance with Laws

1.6.1, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 10.2.2, 11.1, 11.3, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14.1.1,

14.2.1.3, 15.2.8, 15.4.2, 15.4.3

Concealed or Unknown Conditions



**COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015**

---

3.7.4, 4.2.8, 8.3.1, 10.3

Conditions of the Contract

1.1.1, 6.1.1, 6.1.4

Consent, Written

3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 11.3.1, 13.2, 13.4.2, 15.4.4.2

**Consolidation or Joinder**

**15.4.4**

**CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

1.1.4, 6

**Construction Change Directive**, Definition of

**7.3.1**

**Construction Change Directives**

1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3, **7.3**, 9.3.1.1

Construction Schedules, Contractor's

3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2

**Contingent Assignment of Subcontracts**

**5.4**, 14.2.2.2

**Continuing Contract Performance**

**15.1.3**

**Contract**, Definition of

**1.1.2**

**CONTRACT, TERMINATION OR SUSPENSION OF THE**

5.4.1.1, 11.3.9, **14**

Contract Administration

3.1.3, 4, 9.4, 9.5

Contract Award and Execution, Conditions Relating to

3.7.1, 3.10, 5.2, 6.1, 11.1.3, 11.3.6, 11.4.1

**Contract Documents, The**

**1.1.1**

Contract Documents, Copies Furnished and Use of

1.5.2, 2.2.5, 5.3

**Contract Documents**, Definition of

**1.1.1**

**Contract Sum**

3.7.4, 3.8, 5.2.3, 7.2, 7.3, 7.4, **9.1**, 9.4.2, 9.5.1.4, 9.6.7, 9.7, 10.3.2, 11.3.1, 14.2.4, 14.3.2, 15.1.4, 15.2.5

**Contract Sum**, Definition of

**9.1**

Contract Time

3.7.4, 3.7.5, 3.10.2, 5.2.3, 7.2.1.3, 7.3.1, 7.3.5, 7.4, 8.1.1, 8.2.1, 8.3.1, 9.5.1, 9.7.1, 10.3.2, 12.1.1, 14.3.2, 15.1.5.1, 15.2.5

**Contract Time**, Definition of

**8.1.1**

**CONTRACTOR**

**3**

**Contractor**, Definition of

**3.1, 6.1.2**

**Contractor's Construction Schedules**

**3.10**, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2

Contractor's Employees

3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3, 11.1.1, 11.3.7, 14.1, 14.2.1.1,

**Contractor's Liability Insurance**

**11.1**

Contractor's Relationship with Separate Contractors and Owner's Forces

3.12.5, 3.14.2, 4.2.4, 6, 11.3.7, 12.1.2, 12.2.4

Contractor's Relationship with Subcontractors

1.2.2, 3.3.2, 3.18.1, 3.18.2, 5, 9.6.2, 9.6.7, 9.10.2, 11.3.1.2, 11.3.7, 11.3.8

Contractor's Relationship with the Architect

1.1.2, 1.5, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5.1, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.3, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3.7, 12, 13.5, 15.1.2, 15.2.1

Contractor's Representations

3.2.1, 3.2.2, 3.5.1, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2

Contractor's Responsibility for Those Performing the Work

3.3.2, 3.18, 5.3.1, 6.1.3, 6.2, 9.5.1, 10.2.8

Contractor's Review of Contract Documents

3.2

Contractor's Right to Stop the Work

9.7

Contractor's Right to Terminate the Contract

14.1, 15.1.6

Contractor's Submittals

**COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015**

---

3.10, 3.11, 3.12.4, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2, 9.8.3, 9.9.1, 9.10.2, 9.10.3, 11.1.3, 11.4.2  
Contractor's Superintendent  
3.9, 10.2.6  
Contractor's Supervision and Construction Procedures  
1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.5, 7.3.7, 8.2, 10, 12, 14, 15.1.3  
Contractual Liability Insurance  
11.1.1.8, 11.2  
Coordination and Correlation  
1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1  
Copies Furnished of Drawings and Specifications  
1.5, 2.2.5, 3.11  
Copyrights  
1.5, **3.17**  
Correction of Work  
2.3, 2.4, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, **12.2**  
**Correlation and Intent of the Contract Documents**  
**1.2**  
**Cost**, Definition of  
**7.3.7**  
Costs  
2.4.1, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3, 7.3.3.3, 7.3.7, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6, 11.3, 12.1.2, 12.2.1, 12.2.4, 13.5, 14  
**Cutting and Patching**  
**3.14**, 6.2.5  
Damage to Construction of Owner or Separate Contractors  
3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 11.1.1, 11.3, 12.2.4  
Damage to the Work  
3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4.1, 11.3.1, 12.2.4  
Damages, Claims for  
3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1, 11.3.5, 11.3.7, 14.1.3, 14.2.4, 15.1.6  
Damages for Delay  
6.1.1, 8.3.3, 9.5.1.6, 9.7, 10.3.2  
**Date of Commencement of the Work**, Definition of  
**8.1.2**  
**Date of Substantial Completion**, Definition of  
**8.1.3**  
**Day**, Definition of  
**8.1.4**  
Decisions of the Architect  
3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 15.2, 6.3, 7.3.7, 7.3.9, 8.1.3, 8.3.1, 9.2.1, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.5.2, 14.2.2, 14.2.4, 15.1, 15.2  
**Decisions to Withhold Certification**  
9.4.1, **9.5**, 9.7, 14.1.1.3  
Defective or Nonconforming Work, Acceptance, Rejection and Correction of  
2.3.1, 2.4.1, 3.5.1, 4.2.6, 6.2.5, 9.5.1, 9.5.2, 9.6.6, 9.8.2, 9.9.3, 9.10.4, 12.2.1  
**Defective Work**, Definition of  
**3.5.1**  
Definitions  
1.1, 2.1.1, 3.1.1, 3.5.1, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 15.1.1, 5.1, 6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1  
**Delays and Extensions of Time**  
3.2., 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4.1, **8.3**, 9.5.1, 9.7.1, 10.3.2, 10.4.1, 14.3.2, 15.1.5, 15.2.5  
Disputes  
6.3.1, 7.3.9, 15.1, 15.2  
**Documents and Samples at the Site**  
**3.11**  
**Drawings**, Definition of  
**1.1.5**  
Drawings and Specifications, Use and Ownership of  
3.11  
Effective Date of Insurance  
8.2.2, 11.1.2  
**Emergencies**  
**10.4**, 14.1.1.2, 15.1.4  
Employees, Contractor's  
3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3.3, 11.1.1, 11.3.7, 14.1, 14.2.1.1  
Equipment, Labor, Materials or  
1.1.3, 1.1.6, 3.4, 3.5.1, 3.8.2, 3.8.3, 3.12, 3.13.1, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2  
Execution and Progress of the Work

**COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015**

---

1.1.3, 1.2.1, 1.2.2, 2.2.3, 2.2.5, 3.1, 3.3.1, 3.4.1, 3.5.1, 3.7.1, 3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.5, 8.2, 9.5.1, 9.9.1, 10.2, 10.3, 12.2, 14.2, 14.3.1, 15.1.3

Extensions of Time

3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4.1, 9.5.1, 9.7.1, 10.3.2, 10.4.1, 14.3, 15.1.5, 15.2.5

**Failure of Payment**

9.5.1.3, **9.7**, 9.10.2, 13.6, 14.1.1.3, 14.2.1.2

Faulty Work

(See Defective or Nonconforming Work)

**Final Completion and Final Payment**

4.2.1, 4.2.9, 9.8.2, **9.10**, 11.1.2, 11.1.3, 11.3.1, 11.3.5, 12.3.1, 14.2.4, 14.4.3

Financial Arrangements, Owner's

2.2.1, 13.2.2, 14.1.1.4

Fire and Extended Coverage Insurance

11.3.1.1

**GENERAL PROVISIONS**

**1**

**Governing Law**

**13.1**

Guarantees (See Warranty)

**Hazardous Materials**

10.2.4, **10.3**

Identification of Subcontractors and Suppliers

5.2.1

**Indemnification**

3.17.1, **3.18**, 9.10.2, 10.3.3, 10.3.5, 10.3.6, 11.3.1.2, 11.3.7

**Information and Services Required of the Owner**

2.1.2, **2.2**, 3.2.2, 3.12.4, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2.1, 11.4, 13.5.1, 13.5.2, 14.1.1.4, 14.1.4, 15.1.3

**Initial Decision**

**15.2**

**Initial Decision Maker, Definition of**

1.1.8

Initial Decision Maker, Decisions

14.2.2, 14.2.4, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

Initial Decision Maker, Extent of Authority

14.2.2, 14.2.4, 15.1.3, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

**Injury or Damage to Person or Property**

**10.2.8**, 10.4.1

Inspections

3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 12.2.1, 13.5

Instructions to Bidders

1.1.1

Instructions to the Contractor

3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.5.2

**Instruments of Service, Definition of**

**1.1.7**

Insurance

3.18.1, 6.1.1, 7.3.7, 9.3.2, 9.8.4, 9.9.1, 9.10.2, **11**

**Insurance, Boiler and Machinery**

**11.3.2**

**Insurance, Contractor's Liability**

**11.1**

Insurance, Effective Date of

8.2.2, 11.1.2

**Insurance, Loss of Use**

**11.3.3**

**Insurance, Owner's Liability**

**11.2**

**Insurance, Property**

10.2.5, **11.3**

Insurance, Stored Materials

9.3.2, 11.4.1.4

**INSURANCE AND BONDS**

**11**

Insurance Companies, Consent to Partial Occupancy

9.9.1, 11.4.1.5

Insurance Companies, Settlement with

11.4.10

Intent of the Contract Documents

1.2.1, 4.2.7, 4.2.12, 4.2.13, 7.4

**COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015**

---

**Interest****13.6****Interpretation**1.2.3, **1.4**, 4.1.1, 5.1, 6.1.2, 15.1.1

Interpretations, Written

4.2.11, 4.2.12, 15.1.4

Judgment on Final Award

15.4.2

**Labor and Materials, Equipment**1.1.3, 1.1.6, **3.4**, 3.5.1, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2

Labor Disputes

8.3.1

Laws and Regulations

1.5, 3.2.3, 3.6, 3.7, 3.12.10, 3.13.1, 4.1.1, 9.6.4, 9.9.1, 10.2.2, 11.1.1, 11.3, 13.1.1, 13.4, 13.5.1, 13.5.2, 13.6.1, 14, 15.2.8, 15.4

Liens

2.1.2, 9.3.3, 9.10.2, 9.10.4, 15.2.8

Limitations, Statutes of

12.2.5, 13.7, 15.4.1.1

Limitations of Liability

2.3.1, 3.2.2, 3.5.1, 3.12.10, 3.17.1, 3.18.1, 4.2.6, 4.2.7, 4.2.12, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 10.2.5, 10.3.3, 11.1.2, 11.2.1, 11.3.7, 12.2.5, 13.4.2

Limitations of Time

2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7, 5.2, 5.3.1, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2.1, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7.1, 9.8, 9.9, 9.10, 11.1.3, 11.3.1.5, 11.3.6, 11.3.10, 12.2, 13.5, 13.7, 14, 15

**Loss of Use Insurance****11.3.3**

Material Suppliers

1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.6, 9.10.5

**Materials, Hazardous**10.2.4, **10.3**

Materials, Labor, Equipment and

1.1.3, 1.1.6, 1.5.1, 3.4.1, 3.5.1, 3.8.2, 3.8.3, 3.12, 3.13.1, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2

Means, Methods, Techniques, Sequences and Procedures of Construction

3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2

Mechanic's Lien

2.1.2, 15.2.8

**Mediation**8.3.1, 10.3.5, 10.3.6, 15.2.1, 15.2.5, 15.2.6, **15.3**, 15.4.1**Minor Changes in the Work**1.1.1, 3.12.8, 4.2.8, 7.1, **7.4****MISCELLANEOUS PROVISIONS****13****Modifications**, Definition of**1.1.1**

Modifications to the Contract

1.1.1, 1.1.2, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7.1, 10.3.2, 11.3.1

**Mutual Responsibility****6.2****Nonconforming Work, Acceptance of**9.6.6, 9.9.3, **12.3**

Nonconforming Work, Rejection and Correction of

2.3.1, 2.4.1, 3.5.1, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4, 12.2.1

Notice

2.2.1, 2.3.1, 2.4.1, 3.2.4, 3.3.1, 3.7.2, 3.12.9, 5.2.1, 9.7.1, 9.10, 10.2.2, 11.1.3, 11.4.6, 12.2.2.1, 13.3, 13.5.1, 13.5.2, 14.1, 14.2, 15.2.8, 15.4.1

**Notice, Written**2.3.1, 2.4.1, 3.3.1, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 9.7.1, 9.10, 10.2.2, 10.3, 11.1.3, 11.3.6, 12.2.2.1, **13.3**, 14, 15.2.8, 15.4.1**Notice of Claims**3.7.4, 4.5, 10.2.8, **15.1.2**, 15.4

Notice of Testing and Inspections

13.5.1, 13.5.2

Observations, Contractor's

3.2, 3.7.4

Occupancy

2.2.2, 9.6.6, 9.8, 11.3.1.5

Orders, Written

**COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015**

---

1.1.1, 2.3, 3.9.2, 7, 8.2.2, 11.3.9, 12.1, 12.2.2.1, 13.5.2, 14.3.1

**OWNER**

**2**

**Owner, Definition of**

**2.1.1**

**Owner, Information and Services Required of the**

2.1.2, **2.2**, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.3.2, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2.1, 11.3, 13.5.1, 13.5.2, 14.1.1.4, 14.1.4, 15.1.3

**Owner's Authority**

1.5, 2.1.1, 2.3.1, 2.4.1, 3.4.2, 3.8.1, 3.12.10, 3.14.2, 4.1.2, 4.1.3, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3.1, 7.2.1, 7.3.1, 8.2.2, 8.3.1, 9.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1, 9.10.2, 10.3.2, 11.1.3, 11.3.3, 11.3.10, 12.2.2, 12.3.1, 13.2.2, 14.3, 14.4, 15.2.7

**Owner's Financial Capability**

2.2.1, 13.2.2, 14.1.1.4

**Owner's Liability Insurance**

**11.2**

**Owner's Loss of Use Insurance**

**11.3.3**

**Owner's Relationship with Subcontractors**

1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2

**Owner's Right to Carry Out the Work**

**2.4**, 14.2.2

**Owner's Right to Clean Up**

**6.3**

**Owner's Right to Perform Construction and to Award Separate Contracts**

**6.1**

**Owner's Right to Stop the Work**

**2.3**

**Owner's Right to Suspend the Work**

14.3

**Owner's Right to Terminate the Contract**

14.2

**Ownership and Use of Drawings, Specifications and Other Instruments of Service**

1.1.1, 1.1.6, 1.1.7, **1.5**, 2.2.5, 3.2.2, 3.11.1, 3.17.1, 4.2.12, 5.3.1

**Partial Occupancy or Use**

9.6.6, **9.9**, 11.3.1.5

**Patching, Cutting and**

**3.14**, 6.2.5

**Patents**

3.17

**Payment, Applications for**

4.2.5, 7.3.9, 9.2.1, **9.3**, 9.4, 9.5, 9.6.3, 9.7.1, 9.8.5, 9.10.1, 14.2.3, 14.2.4, 14.4.3

**Payment, Certificates for**

4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7.1, 9.10.1, 9.10.3, 13.7, 14.1.1.3, 14.2.4

**Payment, Failure of**

9.5.1.3, **9.7**, 9.10.2, 13.6, 14.1.1.3, 14.2.1.2

**Payment, Final**

4.2.1, 4.2.9, 9.8.2, 9.10, 11.1.2, 11.1.3, 11.4.1, 11.4.5, 12.3.1, 13.7, 14.2.4, 14.4.3

**Payment Bond, Performance Bond and**

7.3.7.4, 9.6.7, 9.10.3, 11.4.9, **11.4**

**Payments, Progress**

9.3, **9.6**, 9.8.5, 9.10.3, 13.6, 14.2.3, 15.1.3

**PAYMENTS AND COMPLETION**

**9**

**Payments to Subcontractors**

5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 11.4.8, 14.2.1.2

**PCB**

10.3.1

**Performance Bond and Payment Bond**

7.3.7.4, 9.6.7, 9.10.3, 11.4.9, **11.4**

**Permits, Fees, Notices and Compliance with Laws**

2.2.2, **3.7**, 3.13, 7.3.7.4, 10.2.2

**PERSONS AND PROPERTY, PROTECTION OF**

**10**

**Polychlorinated Biphenyl**

10.3.1

**Product Data, Definition of**

**3.12.2**

**Product Data and Samples, Shop Drawings**

3.11, **3.12**, 4.2.7

**COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015**

---

**Progress and Completion**

4.2.2, 8.2, 9.8, 9.9.1, 14.1.4, 15.1.3

**Progress Payments**

9.3, 9.6, 9.8.5, 9.10.3, 13.6, 14.2.3, 15.1.3

**Project, Definition of the****1.1.4**

Project Representatives

4.2.10

**Property Insurance**

10.2.5, 11.3

**PROTECTION OF PERSONS AND PROPERTY****10**

Regulations and Laws

1.5, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 9.9.1, 10.2.2, 11.1, 11.4, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14, 15.2.8, 15.4

Rejection of Work

3.5.1, 4.2.6, 12.2.1

Releases and Waivers of Liens

9.10.2

Representations

3.2.1, 3.5.1, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.8.2, 9.10.1

Representatives

2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.1, 4.2.2, 4.2.10, 5.1.1, 5.1.2, 13.2.1

Responsibility for Those Performing the Work

3.3.2, 3.18, 4.2.3, 5.3.1, 6.1.3, 6.2, 6.3, 9.5.1, 10

Retainage

9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3

**Review of Contract Documents and Field Conditions by Contractor****3.2**, 3.12.7, 6.1.3

Review of Contractor's Submittals by Owner and Architect

3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2

Review of Shop Drawings, Product Data and Samples by Contractor

3.12

**Rights and Remedies**

1.1.2, 2.3, 2.4, 3.5.1, 3.7.4, 3.15.2, 4.2.6, 4.5, 5.3, 5.4, 6.1, 6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.2, 12.2.4, 13.4, 14, 15.4

**Royalties, Patents and Copyrights****3.17**

Rules and Notices for Arbitration

15.4.1

**Safety of Persons and Property****10.2**, 10.4**Safety Precautions and Programs**3.3.1, 4.2.2, 4.2.7, 5.3.1, **10.1**, 10.2, 10.4**Samples, Definition of****3.12.3****Samples, Shop Drawings, Product Data and**3.11, **3.12**, 4.2.7**Samples at the Site, Documents and****3.11****Schedule of Values****9.2**, 9.3.1

Schedules, Construction

1.4.1.2, 3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2

Separate Contracts and Contractors

1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 11.4.7, 12.1.2

**Shop Drawings, Definition of****3.12.1****Shop Drawings, Product Data and Samples**3.11, **3.12**, 4.2.7**Site, Use of****3.13**, 6.1.1, 6.2.1

Site Inspections

3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.4.2, 9.10.1, 13.5

Site Visits, Architect's

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.5

Special Inspections and Testing

4.2.6, 12.2.1, 13.5

**Specifications, Definition of the****1.1.6**

**COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015**

---

**Specifications, The**1.1.1, **1.1.6**, 1.2.2, 1.5, 3.11, 3.12.10, 3.17, 4.2.14

Statute of Limitations

13.7, 15.4.1.1

Stopping the Work

2.3, 9.7, 10.3, 14.1

Stored Materials

6.2.1, 9.3.2, 10.2.1.2, 10.2.4, 11.4.1.4

**Subcontractor**, Definition of**5.1.1****SUBCONTRACTORS****5**

Subcontractors, Work by

1.2.2, 3.3.2, 3.12.1, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2, 9.6.7

**Subcontractual Relations****5.3**, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 11.4.7, 11.4.8, 14.1, 14.2.1

Submittals

3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.7, 9.2, 9.3, 9.8, 9.9.1, 9.10.2, 9.10.3, 11.1.3

Submittal Schedule

3.10.2, 3.12.5, 4.2.7

**Subrogation, Waivers of**6.1.1, 11.4.5, **11.3.7****Substantial Completion**4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, **9.8**, 9.9.1, 9.10.3, 12.2, 13.7**Substantial Completion**, Definition of**9.8.1**

Substitution of Subcontractors

5.2.3, 5.2.4

Substitution of Architect

4.1.3

Substitutions of Materials

3.4.2, 3.5.1, 7.3.8

**Sub-subcontractor**, Definition of**5.1.2**

Subsurface Conditions

3.7.4

**Successors and Assigns****13.2****Superintendent****3.9**, 10.2.6**Supervision and Construction Procedures**1.2.2, **3.3**, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.7, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.3

Surety

5.4.1.2, 9.8.5, 9.10.2, 9.10.3, 14.2.2, 15.2.7

Surety, Consent of

9.10.2, 9.10.3

Surveys

2.2.3

**Suspension by the Owner for Convenience****14.3**

Suspension of the Work

5.4.2, 14.3

Suspension or Termination of the Contract

5.4.1.1, 11.4.9, 14

**Taxes**

3.6, 3.8.2.1, 7.3.7.4

**Termination by the Contractor****14.1**, 15.1.6**Termination by the Owner for Cause**5.4.1.1, **14.2**, 15.1.6**Termination by the Owner for Convenience****14.4**

Termination of the Architect

4.1.3

Termination of the Contractor

14.2.2

**TERMINATION OR SUSPENSION OF THE CONTRACT****14****Tests and Inspections**3.1.3, 3.3.3, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 10.3.2, 11.4.1.1, 12.2.1, **13.5**

**COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015**

---

**TIME****8****Time, Delays and Extensions of**3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4.1, **8.3**, 9.5.1, 9.7.1, 10.3.2, 10.4.1, 14.3.2, 15.1.5, 15.2.5

## Time Limits

2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2, 4.4, 4.5, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 11.1.3, 11.4.1.5, 11.4.6, 11.4.10, 12.2, 13.5, 13.7, 14, 15.1.2, 15.4

**Time Limits on Claims**3.7.4, 10.2.8, **13.7**, 15.1.2

## Title to Work

9.3.2, 9.3.3

**Transmission of Data in Digital Form****1.6****UNCOVERING AND CORRECTION OF WORK****12****Uncovering of Work****12.1**

## Unforeseen Conditions, Concealed or Unknown

3.7.4, 8.3.1, 10.3

## Unit Prices

7.3.3.2, 7.3.4

## Use of Documents

1.1.1, 1.5, 2.2.5, 3.12.6, 5.3

**Use of Site****3.13**, 6.1.1, 6.2.1**Values, Schedule of****9.2**, 9.3.1

## Waiver of Claims by the Architect

13.4.2

## Waiver of Claims by the Contractor

9.10.5, 11.4.7, 13.4.2, 15.1.6

## Waiver of Claims by the Owner

9.9.3, 9.10.3, 9.10.4, 11.4.3, 11.4.5, 11.4.7, 12.2.2.1, 13.4.2, 14.2.4, 15.1.6

## Waiver of Consequential Damages

14.2.4, 15.1.6

## Waiver of Liens

9.10.2, 9.10.4

**Waivers of Subrogation**6.1.1, 11.4.5, **11.3.7****Warranty**

3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.4, 12.2.2, 13.7.1

## Weather Delays

15.1.5.2

**Work, Definition of****1.1.3**

## Written Consent

1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 11.4.1, 13.2, 13.4.2, 15.4.4.2

## Written Interpretations

4.2.11, 4.2.12

## Written Notice

2.3, 2.4, 3.3.1, 3.9, 3.12.9, 3.12.10, 5.2.1, 8.2.2, 9.7, 9.10, 10.2.2, 10.3, 11.1.3, 11.4.6, 12.2.2, 12.2.4, **13.3**, 14, 15.4.1

## Written Orders

**1.1.1, 2.3, 3.9, 7, 8.2.2, 11.4.9, 12.1, 12.2, 13.5.2, 14.3.1, 15.1.2****ARTICLE 1 GENERAL PROVISIONS****§ 1.1 BASIC DEFINITIONS****§ 1.1.1 THE CONTRACT DOCUMENTS**

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.



**COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015**

---

**§ 1.1.2 THE CONTRACT**

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. This Contract shall be deemed to have been drafted by both Parties and no purposes of interpretation shall be made to the contrary.

**§ 1.1.3 THE WORK**

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

**§ 1.1.4 THE PROJECT**

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

**§ 1.1.5 THE DRAWINGS**

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

**§ 1.1.6 THE SPECIFICATIONS**

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

**§ 1.1.7 INSTRUMENTS OF SERVICE**

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

**§ 1.1.8 INITIAL DECISION MAKER**

**The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2. § 1.2**

**CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS**

**§ 1.2.1** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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

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

**§ 1.3 CAPITALIZATION**

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

**§ 1.4 INTERPRETATION**

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

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

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

**§ 1.5.2** The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work.

**COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015**

---

All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

**§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM**

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

**ARTICLE 2 OWNER**

**§ 2.1 GENERAL**

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

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

**§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

**§ 2.2.1** Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor. In addition to Contractor's rights under Section 14.1, failure to provide such evidence shall permit Contractor to suspend the Work. Contractor shall resume performance of the Work upon the Owner providing such evidence, with the Contract Sum and Contract Time being equitably adjusted. Without limiting the foregoing, the Owner shall provide adequate evidence of financial arrangements when the aggregate of such changes in the Work exceed \$1,000,000. Any failure of the Contractor to request evidence of financial arrangements at any given time shall not be deemed a waiver of any right under the Contract Documents.

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

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

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

**§ 2.2.5** Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor, free of charge and without condition, such copies of the Contract Documents, electronic CAD files of all Drawings and Project Manuals as are reasonably necessary for execution of the Work.

**§ 2.3 OWNER'S RIGHT TO STOP THE WORK**

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

**§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK**

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the

**COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015**

---

Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

**ARTICLE 3 CONTRACTOR**

**§ 3.1 GENERAL**

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

**§ 3.1.2** The Contractor shall perform the Work in accordance with the Contract Documents.

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

**§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR**

**§ 3.2.1** Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local visible conditions under which the Work is to be performed.

**§ 3.2.2** Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional.

**§ 3.2.3** The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by the Contractor as a request for information in such form as the Architect may require.

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

**§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES**

**§ 3.3.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures. Nothing herein is intended to preclude the Contractor from delegating responsibility and control over construction means, methods, techniques, sequences and procedures to Subcontractors performing portions of the Work.

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

**COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015**

---

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

**§ 3.4 LABOR AND MATERIALS**

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

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

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

**§ 3.5 WARRANTY**

The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

**§ 3.6 TAXES**

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

**§ 3.7 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS**

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

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

§ 3.7.3 It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations, and lawful orders of public authorities. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate Modification. If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, building codes, rules and regulations, or lawful orders of public authorities applicable to performance of the Work, the Contractor shall assume appropriate responsibility for such Work and shall bear the proportionate costs attributable to correction.

§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

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

**COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015**

---

required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. There shall be equitable adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features.

**§ 3.8 ALLOWANCES**

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

**§ 3.8.2** Unless otherwise provided in the Contract Documents,

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

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

**§ 3.9 SUPERINTENDENT**

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

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

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

**§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES**

**§ 3.10.1** The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

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

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

**§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE**

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

**§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

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

**COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015**

---

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

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

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

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

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

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

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

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

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering. The Contractor shall not be required to provide professional services in violation of applicable law. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

**§ 3.13 USE OF SITE**

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

**§ 3.14 CUTTING AND PATCHING**

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

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

**§ 3.15 CLEANING UP**

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

**COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015**

---

**§ 3.15.2** If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

**§ 3.16 ACCESS TO WORK**

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

**§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS**

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

**§ 3.18 INDEMNIFICATION**

**§ 3.18.1** To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, and Owner's agents (excluding licensed professionals) and employees from and against claims, damages, losses and expenses, including but not limited to reasonable attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18 except as set forth in the Contract Documents.

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

**ARTICLE 4 ARCHITECT**

**§ 4.1 GENERAL**

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

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

**§ 4.1.3** If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

**§ 4.2 ADMINISTRATION OF THE CONTRACT**

**§ 4.2.1** The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate For Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

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

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

**COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015**

---

**§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION**

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

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

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

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

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

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

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

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

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

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

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

**ARTICLE 5 SUBCONTRACTORS**

**§ 5.1 DEFINITIONS**

**§ 5.1.1** A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in



**COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015**

---

number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

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

**§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK**

Subcontracts shall be awarded in accordance with the procedures set forth in the Contract Documents and applicable provisions of the Ohio Revised Code and the Ohio Administrative Code.

**§ 5.3 SUBCONTRACTUAL RELATIONS**

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

**§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS**

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

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

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

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

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

**ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

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

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

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

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

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

**COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015**

---

**§ 6.2 MUTUAL RESPONSIBILITY**

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

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

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

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

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

**§ 6.3 OWNER'S RIGHT TO CLEAN UP**

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

**ARTICLE 7 CHANGES IN THE WORK****§ 7.1 GENERAL**

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

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

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

**§ 7.2 CHANGE ORDERS**

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

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

Change Orders shall be considered a final and complete resolution of claims for adjustments to the Contract Sum and Contract Time and shall act as a bar for claims of "cumulative impact" or claims of a similar nature.

**§ 7.3 CONSTRUCTION CHANGE DIRECTIVES**

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

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

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

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

**COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015**

---

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

**§ 7.3.5** Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time, except that should a claim or dispute arise with respect to a potential increase in the Contract Sum, Contractor shall not be obligated to proceed with the Work that is the subject of the claim or dispute unless the Owner shall have provided financial evidence in accordance with Section 2.2.1 for such Work if the claim or dispute is resolved in Contractor's favor.

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

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

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Charges for premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel and general conditions items directly attributable to the change.

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

**§ 7.3.9** Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15. Notwithstanding anything in the Contract Documents to the contrary, including the foregoing Section 7.3, Contractor shall not be obligated to perform any changes in the Work that would require Contractor to incur unpaid costs in excess of \$500,000.00 while a dispute is pending.

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

**§ 7.4 MINOR CHANGES IN THE WORK**

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

**ARTICLE 8 TIME**

**§ 8.1 DEFINITIONS**

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

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

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

**COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015**

---

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

**§ 8.2 PROGRESS AND COMPLETION**

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

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

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

**§ 8.3 DELAYS AND EXTENSIONS OF TIME**

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, Acts of God, sabotage, vandalism, concealed conditions, hazardous materials, the requirements of laws, statutes, ordinances, codes, rules, regulations and other legal requirements, shortage or unavailability of materials, supplies, labor, equipment and systems, casualties requiring reconstruction or repair to the Work or Project or any parts thereof, or other causes beyond the Contractor’s control; or by delay authorized by the Owner pending negotiation; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for each day of delay and the Contract Sum shall be adjusted by Change Order for additional costs due to delay.

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

**ARTICLE 9 PAYMENTS AND COMPLETION**

**§ 9.1 CONTRACT SUM**

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

**§ 9.2 SCHEDULE OF VALUES**

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

**§ 9.3 APPLICATIONS FOR PAYMENT**

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

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

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

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

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor’s knowledge, information and belief, be free and clear of liens,

**COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015**

---

claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

**§ 9.4 CERTIFICATES FOR PAYMENT**

**§ 9.4.1** The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

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

**§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION**

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

- .1 defective Work not remedied after written notice and opportunity to cure;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment in accordance with the Subcontracts and provided Contractor's failure is not due to Owner's breach of its obligations to pay Contractor in accordance with the Contract Documents;
- .4 damage to the property of Owner or a separate contractor not covered by insurance;
- .5 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover direct damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents after written notice and opportunity to cure.

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

**§ 9.6 PROGRESS PAYMENTS**

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

**§ 9.6.2** The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

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

**§ 9.6.4** The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the

**COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015**

---

right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

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

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

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

**§ 9.7 FAILURE OF PAYMENT**

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

**§ 9.8 SUBSTANTIAL COMPLETION**

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

**§ 9.8.2** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

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

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

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

**§ 9.9 PARTIAL OCCUPANCY OR USE**

**§ 9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work

**COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015**

---

shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

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

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

**§ 9.10 FINAL COMPLETION AND FINAL PAYMENT**

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

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls for Contractor's employees, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

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

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

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

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

**ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

**§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS**

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor reserves the right to delegate responsibility for safety implementation and safety functions, including the obligations hereunder, to Subcontractors performing construction Work and who are responsible for directly creating, controlling and correcting conditions at the Work site.

**§ 10.1.2** Contractor will provide Owner with a site safety plan in accordance with Contractor's Global Minimum Requirements (the "Construction Safety Plan"). The Construction Safety Plan shall apply to all activities performed at the Project site. Owner shall contractually require all separate contractors that will be active on the Project site during any part of the duration of Contractor's performance under this Agreement to comply with the Construction Safety Plan. In the event that the Contractor becomes aware of any activities at the Project site that

**COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015**

---

are not in compliance with the Construction Safety Plan, Contractor may take such measures within its reasonable discretion required to assure full compliance with the Construction Safety Plan, including but not limited to stopping all or part of the Work ("Safety Remedial Measures"). Notwithstanding anything to the contrary in this Agreement, Safety Remedial Measures shall be considered a Cost of the Work and included in the GMP. Safety Remedial Measures arising from the Owner's or separate contractors' noncompliance with the Construction Safety Plan shall entitle Contractor to a Change Order for additional time and Costs of the Work. For the avoidance of doubt, Contractor shall be entitled to access the Contingency for Safety Remedial Measures arising from Contractor's Work.

**§ 10.2 SAFETY OF PERSONS AND PROPERTY**

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

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

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

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

**§ 10.2.4** When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

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

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

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

**§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY**

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

**§ 10.3 HAZARDOUS MATERIALS**

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

**§ 10.3.2** Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an



**COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015**

---

objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

**§ 10.3.3** *(Not used)*

**§ 10.3.4** The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

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

**§ 10.3.6** If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, such cost shall be treated as a Change in the Work in accordance with the Contract Documents and the Contract Sum and Contract Time shall be adjusted accordingly.

**§ 10.4 EMERGENCIES**

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

**ARTICLE 11 INSURANCE AND BONDS**

**§ 11.1 CONTRACTOR'S LIABILITY INSURANCE**

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

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage (excluding Contractor's employees);
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

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

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

**§ 11.1.4** The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner as additional insureds for claims caused in whole or in part by the Contractor's negligent

**COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015**

---

acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

**§ 11.2 OWNER'S LIABILITY INSURANCE**

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

**§ 11.3 PROPERTY INSURANCE**

**§ 11.3.1** The Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, builder's risk insurance on an "all-risk" policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project as named insureds.

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

**§ 11.3.1.2** *(Not used)*

**§ 11.3.1.3** If the Builder's Risk insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

**§ 11.3.1.4** This Builder's Risk insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

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

**§ 11.3.2 BOILER AND MACHINERY INSURANCE**

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

**§ 11.3.3 LOSS OF USE INSURANCE**

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

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

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

**§ 11.3.6** Before an exposure to loss may occur, the procuring party shall file with the other party a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the other party.

**COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015**

---

**§ 11.3.7 WAIVERS OF SUBROGATION**

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

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

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

**§ 11.3.10** The Contractor as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Contractor's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as provided in Article 15.

**§ 11.4 PERFORMANCE BOND AND PAYMENT BOND**

**§ 11.4.1** The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract. The bonds shall be in the form prescribed by applicable provisions of the Ohio Revised Code and Ohio Administrative Code, which are included in the Contract Documents and fully incorporated herein. Owner shall pay to Contractor the amounts charged to obtain such bonds and any increase in those costs due to changes in the Contract Price.

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

**§ 11.4.3** The Contractor will require Subcontractors whose subcontracts are over \$500,000 to furnish performance and payment bonds. The Contractor shall be the obligee on such performance and payment bonds. Notwithstanding the fact that parties in addition to the Contractor may be named as co-obligees on any such bond, the funds payable by the surety under any such bond shall be paid to the Contractor only unless the applicable subcontract has been assigned by the Contractor to one of the other co-obligees. If the Owner directs the Contractor not to require such bonds, the Owner (i) shall bear all risk for that Subcontractor's default, including all increased costs and charges and extension of Contract Time arising out of such default, and (ii) shall issue a Scope Change(s)/Change Order(s) for such increased costs and extensions of Contract Time. The Owner's issuance of such Scope Change(s)/Change Order(s) and the Owner's compliance with Section 2.2.1 in connection with such increased costs shall be conditions precedent to commencement or continuation of Work in connection with said Subcontractor's default.

**§ 11.4.4** In lieu of performance and payment bonds, Contractor may enroll qualified Subcontractors into Contractor's Subcontractor Default Insurance Program ("Subguard"). Whether or not a Subcontractor qualifies for Subguard shall be within the sole discretion of Contractor. Premiums for Subguard shall be charged to and paid as a Cost of the Work by the Owner at the mutually agreed upon rate of one percent (1%) of the value of all subcontract values included in the Cost of the Work. The Owner's audit rights, if any, shall not extend to this agreed upon rate. The Subguard premium shall be paid with the first progress payment made to Contractor after the establishment of the Guaranteed Maximum Price. At project close out, Contractor will perform a premium reconciliation to accurately determine the current value of all subcontract values included in the final Cost of the Work. Said premium reconciliation shall exclude those subcontracts for which payment and performance bonds have been secured. In the event the reconciliation indicates that the final Subguard premium amount is greater than the initial amount billed, then the Owner shall pay the difference to Contractor. In the event the reconciliation

**COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015**

---

indicates the final Subguard premium amount is less than the initial amount billed, then Contractor shall pay the difference to the Owner. Contractor will require Subcontractors that do not qualify for Subguard and whose subcontracts are valued over \$500,000 to furnish performance and payment bonds. Contractor shall be the obligee on such performance and payment bonds, and the Owner shall pay the premiums for such bonds as a part of the Cost of the Work. Contractor shall not waive the foregoing bond requirements. If any low bidder that is proposed to be included in the Guaranteed Maximum Price ("GMP") cannot provide a bond that is acceptable to Construction Manager or qualify for enrollment in the Subguard program, then either (i) the Owner shall agree in writing to waive such bonding and bear all risk for that subcontractor's default, including all increased costs and charges and extension of Project schedule arising out of such default; or (ii) if the Owner does not issue such a waiver, then Construction Manager will award the subcontract to a bidder that can provide a bond that is acceptable to Construction Manager and the GMP shall be increased by the difference between the price of the rejected bidder and the bidder ultimately approved for this trade item. Construction Manager does not guarantee that any bidder, including the lowest bidder, will meet the bonding criteria. Construction Manager shall not be required to contract with anyone as to whom Construction Manager has an objection.

**ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

**§ 12.1 UNCOVERING OF WORK**

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

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

**§ 12.2 CORRECTION OF WORK**

**§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION**

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

**§ 12.2.2 AFTER SUBSTANTIAL COMPLETION**

**§ 12.2.2.1** In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

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

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

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

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

**§ 12.2.5** Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to

**COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015**

---

establish the Contractor’s liability with respect to the Contractor’s obligations other than specifically to correct the Work.

**§ 12.3 ACCEPTANCE OF NONCONFORMING WORK**

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

**ARTICLE 13 MISCELLANEOUS PROVISIONS**

**§ 13.1 GOVERNING LAW**

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

**§ 13.2 SUCCESSORS AND ASSIGNS**

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

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

**§ 13.3 WRITTEN NOTICE**

Written notice shall be deemed to have been duly served if delivered in person to the individual to whom it is addressed or two (2) business days after deposit in the United States mail, if sent postage prepaid by United States registered or certified mail, return receipt requested. All notices shall be sent to the persons and addresses as follows:

<p><u>Owner:</u>                  Delaware County Board of Commissioners                  101 North Sandusky Street                  Delaware, OH 43051-1732                  Attention: Jon Melvin</p>	<p><u>Contractor:</u>                  Lend Lease (US) Construction Inc.                  250 Civic Center Drive, Suite 280                  Columbus, OH 43215                  Attention: Gary Rutledge, AIA,                  Vice President, Project Management &amp;                  Construction</p>
<p><u>With a copy to:</u>  <u>Thomas V. Giordano</u>  <u>Senior Vice President and General Counsel</u>  <u>Lend Lease (US) Construction Holdings Inc.</u>  <u>200 Park Avenue</u>  <u>New York, New York 10166</u></p>	

**§ 13.4 RIGHTS AND REMEDIES**

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

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

**§ 13.5 TESTS AND INSPECTIONS**

**§ 13.5.1** Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, building codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

**COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015**

---

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

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

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

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

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

**§ 13.6 INTEREST**

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

**§ 13.7 TIME LIMITS ON CLAIMS**

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 6 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

**§ 13.8 FINDINGS FOR RECOVERY**

The Contractor represents and warrants that it is not subject to an unresolved finding for recovery under ORC Section 9.24. If this representation and warranty is found to be false, the Contract is void.

**§ 13.9 DRUG FREE WORKPLACE**

The Contractor agrees to comply with all applicable federal, state, and local laws regarding drug-free and smoke-free workplaces and environments and shall have established and have in place a drug-free workplace policy. The Contractor shall make a good faith effort to ensure that all of its employees and subcontractors engaged in the work being performed hereunder will not purchase, transfer, use, or possess illegal drugs or alcohol, or abuse prescription drugs.

**§ 13.10 DISCRIMINATION**

The Contractor agrees that, in the hiring of employees for the performance of work under this contract or any subcontract, the Contractor, any subcontractor, or any person acting on the Contractor's or any subcontractor's behalf, shall not, by reason of race, creed, sex, disability or military status as defined in section 4112.01 of the Revised Code, or color, discriminate against any citizen of the state in the employment of labor or workers who is qualified and available to perform the work to which the employment relates. The Contractor further agrees that the Contractor, any subcontractor, or any person on the Contractor's or any subcontractor's behalf, shall not, in any manner, discriminate against or intimidate any employee hired for the performance of work under the contract on account of race, creed, sex, disability or military status as defined in section 4112.01 of the Revised Code, or color. The Contractor further agrees that any breach of this Section shall result in a forfeiture as provided in section 153.60 of the Ohio Revised Code, which, by this reference, is fully incorporated herein.

**§ 13.11 DELAWARE COUNTY POLICIES**

The Contractor shall adhere to the following applicable Delaware County policies: Discrimination Policy, Ethics Policy, Contractor Safety Policy. The Contractor shall require any and all of its boards, board members, officers, officials, employees, representatives, agents, and/or volunteers performing work under this contract and/or for or on behalf of the Owner to comply with the applicable Delaware County policies and shall be responsible for such compliance. The Owner may, in its sole discretion, immediately terminate this contract for failure of the Contractor to comply with this Section. Copies of the applicable policies are available upon request or online at <http://www.co.delaware.oh.us/index.php/policies>. The Owner reserves the authority to change, amend, replace, enact, repeal, and/or rescind any or all of the policies at any time and without notice.

**§ 13.12 INDEPENDENT CONTRACTOR**

The Parties acknowledge and agree that Contractor is acting as an independent contractor and that no agency, partnership, joint venture, or employment relationship has been or will be created between the Parties. Contractor also agrees that, as an independent contractor, Contractor assumes all responsibility for any federal, state,

**COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015**

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municipal, or other tax liabilities along with workers compensation, unemployment compensation, and insurance premiums that may accrue as a result of compensation received for services or deliverables rendered hereunder. Contractor hereby certifies that it has five or more employees and that none of the employees are public employees for purposes of Chapter 145 of the Ohio Revised Code.

**§ 13.13 SEVERABILITY**

If any item, condition, portion, or section of this Contract or the application thereof to any person, premises, or circumstance shall to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition, provision, or section to persons, premises, or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Contract and all the terms, conditions, provisions, or sections hereof shall, in all other respects, continue in full force and effect.

**ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT**

**§ 14.1 TERMINATION BY THE CONTRACTOR**

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

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

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

**§ 14.1.3** If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect (provided Owner does not cure within the seven day period), terminate the Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead and profit, costs incurred by reason of such termination (such as reasonable cancellation and demobilization costs), and damages.

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

**§ 14.2 TERMINATION BY THE OWNER FOR CAUSE**

**§ 14.2.1** The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors (except if such failure is due to Owner's breach of its obligation to pay Contractor in accordance with the Contract Documents);
- .3 repeatedly disregards applicable laws, statutes, ordinances, building codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

**§ 14.2.2** When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice (provided Contractor does not cure or commence the cure within the seven day period), terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and

**COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015**

---

- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

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

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

**§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE**

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

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

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

**§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE**

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

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

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

**§ 14.4.3** In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

**ARTICLE 15 CLAIMS AND DISPUTES**

**§ 15.1 CLAIMS**

**§ 15.1.1 DEFINITION**

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

**§ 15.1.2 NOTICE OF CLAIMS**

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

**§ 15.1.3 CONTINUING CONTRACT PERFORMANCE**

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

**§ 15.1.4 CLAIMS FOR ADDITIONAL COST**

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

**§ 15.1.5 CLAIMS FOR ADDITIONAL TIME**

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



**COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015**

---

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

**§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES**

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes, but is not limited to, all:

- .1 damages incurred by the Owner for rental expenses; for losses of use, income, profit, opportunities, revenue, funds, financing, business and reputation; for extended interest expenses, insurance premiums, supervisory costs and common area charges; for increased overhead costs; for carrying costs, maintenance costs, taxes, insurance deductibles and write-downs; and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses excluding, however, the compensation of personnel stationed there that are staffed on the Project; for losses of financing, business and reputation; and for loss of profit except anticipated profit arising directly from the Work.

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

**§ 15.2 INITIAL DECISION**

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

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

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

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

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

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

**§ 15.2.6.1** Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

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

COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015

Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

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

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the American Arbitration Association ("AAA") Construction Industry Mediation Procedures in effect on the date of the Agreement, but mediation shall not be administered by the AAA. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, 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.

§ 15.3.3 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.

§ 15.4 (NOT USED)

Vote on Motion Mr. O'Brien Aye Mr. Merrell Aye Mrs. Lewis Aye

RESOLUTION NO. 15-735

IN THE MATER OF APPROVING A TRANSFER OF FUNDS FOR JOB AND FAMILY SERVICES:

It was moved by Mr. O'Brien, seconded by Mrs. Lewis to approve the following:

Table with 2 columns: Fund Transfers From, To. Row 1: 22311611-5801, 22411603-4601. Row 2: Workforce Investment Act/Transfers, JFS Workforce/Interfund Revenues, \$ 79,315.49

Vote on Motion Mr. Merrell Aye Mrs. Lewis Aye Mr. O'Brien Aye

RESOLUTION NO. 15-736

IN THE MATTER OF APPROVING THE SANITARY SEWER IMPROVEMENT AGREEMENT FOR THE INN AT BEAR TRAIL:

It was moved by Mr. O'Brien, seconded by Mrs. Lewis to approve the following:

Whereas, the Director of Environmental Services recommends sanitary sewer improvement agreement for The Inn at Bear Trail;

Therefore be it resolved, that the Board of Commissioners approves sanitary sewer improvement agreement:

SANITARY SEWER IMPROVEMENTS AGREEMENT
DELAWARE COUNTY SANITARY ENGINEER

SECTION I: INTRODUCTION

This Agreement is entered into on this 18th day of June 2015, by and between Jerry McClain Companies, Inc., 29 W Locust Street, Newark, Ohio 43055, hereinafter called "Developer", and the Delaware County Board of Commissioners (hereinafter called "County Commissioners" or "County") as evidenced by the sanitary sewer improvements plan for The Inn At Bear Trail, and is governed by the following considerations and conditions, to wit:

The Developer 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 The Inn At Bear Trail, dated April 23, 2015, and approved by the County on May 21, 2015,

COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
 MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015

all of which are a part of this Agreement. The Developer shall pay the entire cost and expense of the Improvements.

**SECTION II: CAPACITY**

There are **12.17** single family residential equivalent connections approved with this Agreement. Capacity shall be reserved for one year from the date of this Agreement, unless the County Commissioners grant an extension in writing. Capacity is not guaranteed until the Commercial Tap Fee Application form has been submitted and the Capacity Fee has been paid to the Delaware County Sanitary Engineer.

**SECTION III: FINANCIAL WARRANTY**

For the construction of all Offsite Improvements, the Developer shall execute bond, certified check, irrevocable letter of credit, or other approved financial warranties equal to the cost of construction for Offsite Improvements (**\$28,216.71**) which is acceptable to the Delaware County Commissioners to insure faithful performance of this Agreement and the completion of all Improvements in accordance with the Regulations of Delaware County, Ohio.

For the construction of Onsite Improvements, the Developer has the following options:

- (1) Should the Developer elect to record the plat prior to beginning construction, the Developer shall execute bond, certified check, irrevocable letter of credit, or other approved financial warranties equal to the cost of construction for Onsite Improvements (**\$38,369.28**) which is acceptable to the Delaware County Commissioners to insure faithful performance of this Agreement and the completion of all Improvements in accordance with the Regulations of Delaware County, Ohio.
- (2) Should the Developer elect to proceed with construction prior to recording the plat, no approved financial warranties are necessary until such time as Developer elects to record the plat. At that time, the Developer 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 Developer hereby elects to use Option 2 for this project.

Initials \_\_\_\_\_ Date \_\_\_\_\_

The Developer 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 Developer 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 **The Inn At Bear Trail**.

**SECTION IV: FEES**

It is further agreed that upon execution of this Agreement, the Developer shall pay the Delaware County Sanitary Engineer three and one-half percent (3½%) of the estimated construction cost of the Improvements for plan review of **The Inn At Bear Trail (\$2,330.51)**. The Developer shall also deposit with the Delaware County Sanitary Engineer the sum of **\$5,659.81** estimated to be necessary to pay the cost of inspection for **The Inn At Bear Trail** by the Delaware County Sanitary Engineer. The Delaware County Sanitary Engineer shall in his or her sole discretion inspect, as necessary, the Improvements being installed or constructed by the Developer and shall keep accurate records of the time spent by his or her employees and agents in such inspections for which the Delaware County Sanitary Engineer shall be reimbursed from charges against the deposit. At such time as the fund has been depleted to a level of \$600.00 or less, as a result of charges against the fund at the rate of:

INSPECTOR \$75.00 per hour  
 CAMERA TRUCK \$150.00 per hour

for time spent by the Delaware County Sanitary Engineer or his or her staff, the Developer shall make an additional deposit of \$600.00 to the fund. Upon completion of all Improvements provided herein and acceptance of Improvements by the County, any unused portions of the inspection fund shall be repaid to the Developer less an amount equal to \$0.75 per foot of sewer which will be deducted to cover re-inspection.

In addition to the charges above, the Developer shall pay the cost of any third party inspection services for **The Inn at Bear Trail** 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

**COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015**

---

the County Commissioners.

The Developer 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 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 Developer, 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 Developer, and any of its contractors or the contractors' agents or employees in connection with the Work.

The Developer 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 Developer when, in the opinion of the County, the representative's performance is deemed inadequate.

If, due to unforeseen circumstances during construction activities, the Developer must install any of the Improvements to a different location than shown on the approved and signed construction plans, the Developer 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 Developer shall provide and record a revised, permanent, exclusive sanitary easements 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 Developer 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 Developer shall obtain all other necessary utility services incident to the construction of the Improvements and for their continued operation. The Developer shall be responsible for all utility charges and installation costs. The utility user charges shall be paid by the Developer and maintained in continuous use throughout the construction and testing phases until accepted for operation and maintenance by the County.

**SECTION VI: EASEMENTS**

The Developer 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 Developer. 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 Developer 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), two paper copies (one full size & one 11"x17"), and a Compact Diskette with the plans in .DWG format & .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 Developer 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.

**COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015**

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Should the Developer become unable to carry out the provisions of this Agreement, the Developer'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 Developer, 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.

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.

**SECTION VIII: SIGNATURES**

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

Vote on Motion                Mrs. Lewis                Aye                Mr. Merrell                Aye                Mr. O'Brien                Aye

**RESOLUTION NO. 15-737**

**IN THE MATTER OF APPROVING THE SANITARY SUBDIVIDER'S AGREEMENT FOR ENCLAVE AT THE LAKES:**

It was moved by Mr. O'Brien, seconded by Mrs. Lewis to approve the following:

Whereas, the Director of Environmental Services recommends approval of the Sanitary Subdivider's agreement:

Therefore, Be It Resolved the Board of Commissioners approve the Sanitary Subdivider's Agreement for Enclave at the Lakes;

**SUBDIVIDER'S AGREEMENT**  
**DELAWARE COUNTY SANITARY ENGINEER**

**SECTION I: INTRODUCTION**

This Agreement is entered into on this 18th day of June 2015, by and between **M/I Homes Inc., 3 Easton Oval, Columbus, Ohio 43219**, hereinafter called "Subdivider", and the Delaware County Board of Commissioners (hereinafter called "County Commissioners" or "County") as evidenced by the **Enclave at the Lakes** Subdivision Plat filed or to be filed with the Delaware County Recorder, Delaware County, Ohio, and is governed by the following considerations and conditions, to wit:

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 the sanitary sewer improvement plan for **Enclave at the Lakes**, dated **May 14, 2015**, and approved by the County on **May 28, 2015**, 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 **44** single family residential equivalent connections approved with this Agreement. Capacity shall be reserved for one year from the date of this Agreement, unless the County Commissioners grant an extension in writing. Capacity is not guaranteed until the final Subdivision Plat is recorded. 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**

**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 (**\$229,133.94**) 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

**COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015**

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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.

Initials \_\_\_\_\_

Date \_\_\_\_\_

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 the sanitary sewer improvement plan for **Enclave at the Lakes**.

**SECTION IV: FEES**

It is further agreed that upon execution of this Agreement, the Subdivider shall pay the Delaware County Sanitary Engineer three and one-half percent (3½%) of the estimated construction cost of the Improvements for plan review of **Enclave at the Lakes (\$8,019.69)**. The Subdivider shall also deposit with the Delaware County Sanitary Engineer the sum of **\$19,500.00** estimated to be necessary to pay the cost of inspection for **Enclave at the Lakes** by the Delaware County Sanitary Engineer. 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 accurate records of the time spent by his or her employees and agents in such inspections for which the Delaware County Sanitary Engineer shall be reimbursed from charges against the deposit. At such time as the fund has been depleted to a level of \$1,200.00 or less, as a result of charges against the fund at the rate of:

INSPECTOR \$75.00 per hour  
CAMERA TRUCK \$150.00 per hour

for time spent by the Delaware County Sanitary Engineer or his or her staff, the Subdivider shall make an additional deposit of \$1,200.00 to the fund. Upon completion of all Improvements provided herein and acceptance of Improvements by the County, any unused portions of the inspection fund shall be repaid to the Subdivider less an amount equal to \$0.75 per foot of sewer which will be deducted to cover re-inspection.

In addition to the charges above, the Subdivider shall pay the cost of any third party inspection services for **Enclave at the Lakes** 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 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.

**COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015**

---

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:

- "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), two paper copies (one full size & one 11”x17”), and a Compact Diskette with the plans in .DWG format & .PDF format.
- 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.
- An itemized statement showing the cost of the Improvements.
- 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.
- 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.

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.

**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. O'Brien      Aye      Mr. Merrell      Aye      Mrs. Lewis      Aye

**RESOLUTION NO. 15-738**

**IN THE MATTER OF APPROVING PERSONNEL ACTIONS:**

It was moved by Mr. O’Brien, seconded by Mrs. Lewis to approve the following:

**COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015**

The Director of Environmental Services is recommending a pay increase for Mark Chandler, Operations Superintendent, due to the additional responsibility of the Class IV Operator of Record;

Therefore Be it Resolved, the Board of Commissioners approve a pay increase for Mark Chandler, Operations Superintendent, due to the additional responsibility of the Class IV Operator of Record.

The Director of Child Support is recommending the promotion of Brandy Krouse to a Case Manager with CSEA; effective July 20, 2015.

Therefore Be it Resolved, the Board of Commissioners approve the promotion of Brandy Krouse to a Case Manager with CSEA; effective July 20, 2015.

Vote on Motion                      Mr. Merrell                      Aye                      Mr. O'Brien                      Aye                      Mrs. Lewis                      Aye

**RESOLUTION NO. 15-739**

**IN THE MATTER OF APPROVING THE JOB DESCRIPTION FOR THE CHIEF BUILDING OFFICIAL FOR THE CODE COMPLIANCE DEPARTMENT:**

It was moved by Mr. O'Brien, seconded by Mrs. Lewis to approve the following:

Whereas, the Assistant County Administrator/ Director of Administrative Services recommends approving the job description for the Chief Building Official for the Code Compliance Department;

Therefore Be it Resolved, the Board of Commissioners approve the job description for the Chief Building Official for the Code Compliance Department:

<b>Job Title:</b>	Chief Building Official	<b>Department:</b>	Code Compliance
<b>Position Type:</b>	Full-time Non-bargaining Unit	<b>Address:</b>	50 Channing St. Delaware, OH 43015
<b>Typical Work Schedule:</b>	8:00 a.m. – 5:00 p.m. Monday through Friday	<b>Pay Range:</b>	County Compensation Plan
<b>Contact Information:</b>	740-833-2120	<b>FLSA:</b>	Salary, Exempt
<b>How to apply:</b>	<a href="http://www.co.delaware.oh.us/index.php/employment">http://www.co.delaware.oh.us/index.php/employment</a>		
<b>Objectives</b>			
Individual is responsible for the consistent enforcement and administration of the codes, standards and county regulations pertinent to the adopted codes. Individual reports to Supervisor of Code Compliance.			
<b>Job Standards</b>			
High School diploma or GED and related work experience. Individual shall have the State Certification as a Building Official and Residential Building Official. Individual shall have 5 or more years of experience in building design and construction and an Ohio registration as an architect or professional engineer; or 10 or more years' experience as a construction contractor or superintendent of building construction combined with demonstrated capability in a supervisory/leadership role. Must possess a valid Ohio Driver's License and acceptable driving record. Must meet and maintain qualifications for driving on county business as a continued condition of employment. All required licenses and certificates must be maintained as a condition of continued employment.			
<b>Job Description</b>			
<b>ESSENTIAL JOB FUNCTIONS:</b>			
<ul style="list-style-type: none"> <li>• Directs the plans examination, structural, electrical, and mechanical inspection units;</li> <li>• Directs and reviews inspections, plans review, documentation and staff performance;</li> <li>• Assures adequate record keeping system for division records, plan review, and applications;</li> <li>• Writes orders, violation notices, and grants approvals and denials;</li> <li>• Interprets and implements Federal, State, and Local regulations;</li> <li>• Directs inspections of buildings for code compliance;</li> <li>• Addresses questions relating to compliance with building codes of the county and state, both in the office and at various locations throughout the County;</li> <li>• Performs all duties as required by adopted structural, electrical, mechanical, and construction codes as</li> </ul>			



**COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015**

defined by state law and regulations;

- Researches code related questions and provides interpretation of Building Code;
- Acts as Floodplain Administrator for Delaware County;
- Supports Code Compliance programs and other programs by working with local agencies to attend meetings, conferences, workshops, training sessions, and performs a variety of public relations duties;
- Devises correspondence, completing forms and developing reports associated with the Code Compliance operations;
- Handles client complaints and public inquiries regarding programs;
- Writes proposals for revising the adopted codes for Supervisor for approval;
- Performs plan review and inspections, as necessary;
- Demonstrates regular and predictable attendance;
- Attends various training sessions, video conferences, and workshops.
- Performs typing, word processing, and related computer operations;
- Works overtime and outside a typical work schedule/business hours, as required; and
- Performs other duties as required by the Supervisor.

**NON-ESSENTIAL JOB FUNCTIONS:**

Performs related Non-essential functions as required.

**I. JOB REQUIREMENTS**

**Equipment:**

Ability to operate a variety of equipment such as computers, copier, telephone, calculator, FAX machine, small hand tools, probe, tape measure, and other equipment necessary to perform the duties. Ability to use a motor vehicle is required.

**Critical Skills/Expertise:**

- Expert knowledge of applicable codes;
- Ability to read and understand blueprints, surveys, deeds and legal descriptions;
- Expert knowledge of general construction terminology and general materials and methods.
- Confers with County Prosecutor as to the legal interpretation of codes, resolutions and regulations.
- Ability to define and solve problems, collect data, establish facts, draw valid conclusions using judgment, and analytical skills;
- Thorough knowledge of and ability to apply effective supervisory skills to direct, motivate, manage, and lead subordinate personnel in a responsible manner
- Extensive knowledge of and ability to apply program policies and procedures to assist staff in the performance of their responsibilities;
- Ability to work effectively with clients who may be upset, distraught, irate, emotionally or mentally or otherwise unable to function within reasonable range of constructive behaviors;
- Ability to work independently, under pressures, and to set and achieve goals;
- Ability to motivate and counsel staff and clients;
- Ability to organize and maintain large volumes of information and paperwork;
- Ability to effectively program plan independently and in collaboration with other staff units and outside agencies;



COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015

**RESOLUTION NO. 15-740**

**IN THE MATTER OF APPROVING THE JOB DESCRIPTION FOR THE SUPERVISOR OF CODE COMPLIANCE DEPARTMENT:**

It was moved by Mr. O’Brien, seconded by Mrs. Lewis to approve the following:

Whereas, the Assistant County Administrator/ Director of Administrative Services recommends approving the job description for the Supervisor of Code Compliance;

Therefore Be it Resolved, the Board of Commissioners approve the job description for the Supervisor of Code Compliance:

<b>Job Title:</b>	Supervisor of Code Compliance	<b>Department:</b>	Code Compliance
<b>Position Type:</b>	Full-time Non-bargaining Unit	<b>Address:</b>	50 Channing St. Delaware, OH 43015
<b>Typical Work Schedule:</b>	8:00 a.m. – 5:00 p.m. Monday through Friday	<b>Pay Range:</b>	County Compensation Plan
<b>Contact Information:</b>	740-833-2120	<b>FLSA:</b>	Salary, exempt
<b>How to apply:</b>	<a href="http://www.co.delaware.oh.us/index.php/employment">http://www.co.delaware.oh.us/index.php/employment</a>		
<b>Objectives</b>			
Individual provides direction to staff personnel and the Code Compliance Department ensuring the consistent enforcement of codes, standards, and pertinent County regulations. Individual reports to Director of Environmental Services.			
<b>Job Standards</b>			
A Bachelor’s Degree in a related field of study or a high school diploma or GED and 10 or more years of related work experience. Individual shall have the State Certification as a Building Official and Residential Building Official. Must possess a valid Ohio Driver’s License and acceptable driving record. Must meet and maintain qualifications for driving on county business as a continued condition of employment. All required licenses and certificates must be maintained as a condition of continued employment.			
<b>Job Description</b>			
<b>ESSENTIAL JOB FUNCTIONS:</b>			
<ul style="list-style-type: none"> <li>• Oversees and insures the efficient operation of the Code Compliance Department;</li> <li>• Researches and answers code related questions of the general public;</li> <li>• Projects and recommends annual Department budget;</li> <li>• Responsible for approving purchases of all departmental needs, such as equipment, office equipment and supplies, service contracts;</li> <li>• Acts as the Zoning Inspector for townships under County zoning, researches and answers code related questions of the general public;</li> <li>• Interprets and implements applicable Federal, State and Local regulations;</li> <li>• Recommends, administers and enforces, in a consistent manner, departmental policies and procedures;</li> <li>• Establishes and maintains working relationships with the builders and other building industry entities;</li> <li>• Supports buildings regulations, zoning regulations, floodplain regulations, and other programs by working with local agencies to include recommending and monitoring contracts, attending meetings, conferences, workshops, training sessions, and performing a variety of public relations duties;</li> <li>• Supervises staff involved with departmental programs to include, but not limited to, assigning work, planning and estimating project completions, monitoring performance, training employees, interviewing staff, conducting annual evaluations and resolving problems, grievances and personnel situations;</li> <li>• Confers with the County Prosecutor as to the legal interpretations of codes, resolutions, and regulations;</li> <li>• Plans and coordinates departmental training;</li> <li>• Devises correspondence, completing forms and developing reports associated with department programs;</li> </ul>			

**COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015**

---

- Handles client complaints and public inquiries regarding programs;
- Assures completion of monthly reports;
- Tracks and schedules vehicle maintenance;
- Demonstrates regular and predictable attendance;
- Attends various training sessions, video conferences, and workshops;
- Performs typing, word processing, and related computer operations;
- Works overtime and outside of typical work schedule/business hours as required; and
- Performs other duties as assigned by the supervisor.

**NON-ESSENTIAL JOB FUNCTIONS:**

Performs related Non-essential functions required.

**I. JOB REQUIREMENTS**

**Equipment:**

Ability to operate a variety of equipment including, but not limited to: computer, copier, telephone, calculator, FAX machine, small hand tools, probe, tape measure, and other equipment necessary to perform duties. Ability to use a motor vehicle is required.

**Critical Skills/Expertise:**

- Thorough knowledge of the building codes, zoning regulations, and floodplain regulations;
- Ability to read and understand blue prints, surveys, deeds, and legal descriptions;
- Knowledge of general construction, terminology, and general materials and methods;
- Ability to define and solve problems, collect data, establish facts, draw valid conclusions using judgment, and analytical skills;
- Thorough knowledge of recruiting, interviewing, and counseling;
- Thorough knowledge of and ability to apply effective supervisory skills to direct, motivate and manage subordinate personnel;
- Extensive knowledge of and ability to apply program policies and procedures to assist staff in the performance of their responsibilities;
- Ability to work effectively with clients who may be upset, distraught, irate, emotionally or mentally or otherwise unable to function within reasonable range of constructive behaviors;
- Ability to work independently, under pressure, and to set and achieve goals;
- Ability to motivate and counsel staff and clients;
- Ability to organize and maintain large volumes of information and paperwork;
- Ability to effectively program plan independently and in collaboration with other staff units and outside agencies;
- Ability to communicate professionally and effectively with internal and external customers, both orally and in writing;
- Ability to organize and prioritize work assignments, multi task with accurate focus and refocus in a fast paced environment;
- Ability to efficiently operate computer programs such as, but not limited to, Microsoft Word, Excel, Outlook, and agency specific programs;

COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015

- Ability to deliver excellent customer service, externally and internally;
- Must possess a proficiency in grammar, writing, mathematical skills, spelling, and punctuation;
- Thorough knowledge of and adherence and aptitude to follow safety policies, procedures and practices; and
- Thorough knowledge of and adherence and aptitude to follow federal, state, county, and department policies and procedures, laws and regulations.

**II. DIFFICULTY OF WORK**

Work consists of complex, varied, standardized and non-standardized tasks requiring application of numerous laws, rules, regulations, and procedures. Individual is required to provide technical assistance to staff personnel on programs, policies, the interrelationship of programs, the computer system and the application of this under extremely complex and difficult situations. Position requires the individual to be continually aware of changes in statute and mandatory procedures, which must be learned and passed on to staff. Procedures must be developed for implementing changes at the local level.

**III. RESPONSIBILITY**

Individual supervises subordinates, assigning projects, checking on progress of work and evaluating results. Supervisor provides general guidance allowing the individual the ability to plan the procedures and methods to attain objectives. Individual makes choices or decisions without supervisory input on most daily activities, such as scheduling appointments, establishing priorities, making referrals to other agencies, and forming collaborative relationships with other service providers in the county. Individual operates independent of supervision in handling staffing and daily operations, normally receiving supervisor's input when needed. Errors in judgment, inaction, diminished proficiency in governmental administration issues and solutions, and inattentiveness to County interests could be detrimental to the County and the public. Decisions are made based upon laws, regulations and policies of the Board of County Commissioners.

**IV. PERSONAL WORK RELATIONSHIPS**

Contact is with co-workers, employees from public and private sector organizations and the public. The purpose of these contacts is to guide and direct, check on progress of work assigned, coordinating services, job development/referrals and handle questions about Department, programs and client concerns.

**V. PHYSICAL EFFORT AND WORK ENVIRONMENT**

**Physical Requirements:** The physical requirements of the position are identified as sedentary work, which may require the lifting of up to fifty (50) pounds. Individual must also be able to lift own body weight in and out of crawl spaces and up into attics, etc.

**Physical Activity:** The physical activity of the position is manual dexterity, talking, hearing, reaching, walking, crawling and climbing.

**Visual Activity:** The minimum visual activity of the seeing job is close to the eyes and also requires visual activity for mobile equipment operating.

**Job Location:** Individual works both inside and outside with exposure to temperatures below 32 degrees and above 100 degrees for periods of more than an hour. Individual is also exposed to noise and vibration as well as physical hazards. Individual may be exposed to atmospheric conditions such as fumes, dusts, odors, mist, gases, poor ventilation and oil.

**ACKNOWLEDGMENT FOR RECEIPT OF JOB DESCRIPTION**

I have received a copy of the Job Description and have read and understand its contents. I acknowledge that the above description is a representation of the major duties and responsibilities of this position.

Vote on Motion                      Mr. O'Brien      Aye      Mr. Merrell      Aye      Mrs. Lewis      Aye

**RESOLUTION NO. 15-741**

**IN THE MATTER OF APPOINTING A COUNTY ZONING INSPECTOR, ASSISTANT COUNTY ZONING INSPECTOR AND COUNTY FLOODPLAIN ADMINISTRATOR:**

It was moved by Mr. O'Brien, seconded by Mrs. Lewis to approve the following:

WHEREAS, pursuant to section 303.16 of the Revised Code, the Delaware County Board of Commissioners (the "Board") may establish and fill the position of county zoning inspector, together with such assistants as the Board considers necessary; and

WHEREAS, pursuant to Section 28.01 of the Delaware County Zoning Resolution, the Board shall appoint a County Zoning Inspector, together with such assistants as may be necessary; and

**COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015**

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WHEREAS, pursuant to Section 3.1 of the Delaware County Flood Damage Prevention Regulations, a floodplain administrator shall be appointed to administer and implement the Regulations;

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

Section 1. The Board hereby appoints Fred Fowler as the Delaware County Zoning Inspector.

Section 2. The Board hereby appoints Duane Matlack as Assistant Delaware County Zoning Inspector.

Section 3. The Board hereby appoints Duane Matlack as Delaware County Floodplain Administrator.

Section 4. This Resolution shall supersede any prior resolutions or official actions not consistent with the appointments made herein, which shall be deemed rescinded.

Section 5. This Resolution shall take effect immediately upon adoption.

Vote on Motion                      Mr. Merrell                      Aye                      Mrs. Lewis                      Aye                      Mr. O'Brien                      Aye

**RESOLUTION NO. 15-742**

**IN THE MATTER OF APPROVING A TRANSFER OF APPROPRIATIONS FOR THE SHERIFF OFFICE:**

It was moved by Mr. O'Brien, seconded by Mrs. Lewis to approve the following:

**Transfer of Appropriations**

<b>From</b>	<b>To</b>	
28631342-5004 LEAP Forward 2013 GAP/Overtime	28631342-5201 LEAP Forward 2013 GAP/General Supplies	\$7,370.78
28631342-5004 LEAP Forward 2013 GAP/Overtime	28631342-5260 LEAP Forward 2013 GAP/Inventoried Equipment	3,410.35
28631342-5365 LEAP Forward 2013 GAP/Grant Related Services	28631342-5260 LEAP Forward 2013 GAP/Inventoried Equipment	4,087.13
28631342-5365 LEAP Forward 2013 GAP/Grant Related Services	28631342-5450 LEAP Forward 2013 GAP/Capital Equipment	8,500.00

Vote on Motion                      Mrs. Lewis                      Aye                      Mr. Merrell                      Aye                      Mr. O'Brien                      Aye

**ADMINISTRATOR REPORTS**

**Tim Hansley**

-Would like the Board to look at June 29<sup>th</sup> for possible dates for them to interviews for the Director of Job and Family Services

**COMMISSIONERS' COMMITTEES REPORTS**

**Commissioner O'Brien**

-Attended and participated in a Regional Planning Executive Meeting yesterday. Good meeting.

**Commissioner Lewis**

-Toured the Ventures Academy building yesterday, along with the other commissioners. Met and spoke with the new Superintendent Kristine Hodge on the tour.

- A letter of thanks and support of the program will be drafted by Administrator Hansley

**Commissioner Merrell**

-Also met Kristine Hodge yesterday thinks she will be a great fit for the County.

-Mentioned the Budweiser Clydesdales will be a part of the All Horse Parade this year

**RESOLUTION NO. 15-743**

**IN THE MATTER OF ADJOURNING INTO EXECUTIVE FOR CONSIDERATION OF APPOINTMENT OF A PUBLIC EMPLOYEE OR PUBLIC OFFICIAL; FOR PENDING OR IMMINENT LITIGATION:**

It was moved by Mr. O'Brien, seconded by Mrs. Lewis to adjourn into Executive Session at 9:56 AM.

COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015

Vote on Motion Mr. O'Brien Aye Mr. Merrell Aye Mrs. Lewis Aye

**RESOLUTION NO. 15-744**

**IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:**

It was moved by Mr. O'Brien, seconded by Mrs. Lewis to adjourn out of Executive Session at 11:11 AM.

Vote on Motion Mr. Merrell Aye Mr. O'Brien Aye Mrs. Lewis Aye

**RESOLUTION NO. 15-745**

**IN THE MATTER OF ADJOURNING INTO EXECUTIVE SESSION FOR CONSIDERATION OF CONFIDENTIAL INFORMATION RELATED TO ECONOMIC DEVELOPMENT:**

It was moved by Mr. O'Brien, seconded by Mrs. Lewis to approve the following:

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 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.

Section 2. The Board hereby finds and determines that 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.

Section 3. The Board hereby finds and determines that the executive session is necessary to protect the interests of an applicant for economic development assistance or the possible investment or expenditure of public funds to be made in connection with the economic development project.

Vote on Motion Mrs. Lewis Aye Mr. O'Brien Aye Mr. Merrell Aye

**RESOLUTION NO. 15-746**

**IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:**

It was moved by Mr. O'Brien, seconded by Mrs. Lewis to adjourn out of Executive Session at 12:00 AM.

Vote on Motion Mr. O'Brien Aye Mr. Merrell Aye Mrs. Lewis Aye

There being no further business, the meeting adjourned.

COMMISSIONERS JOURNAL NO. 63 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD JUNE 18, 2015

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Ken O'Brien

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Barb Lewis

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Jennifer Walraven, Clerk to the Commissioners