

DRAFT – Subject to change at County’s sole discretion.

DESIGN-BUILD AGREEMENT

by and between

THE COUNTY OF CUYAHOGA, OHIO

and

Dated as of ____, 2015

DRAFT

DESIGN-BUILD AGREEMENT

THIS DESIGN-BUILD AGREEMENT (this "Agreement") is made as of the ____ day of _____, 2015 (the "Effective Date"), by and between THE COUNTY OF CUYAHOGA, OHIO, a body corporate and politic and a political subdivision of the State of Ohio organized and existing under the Charter of Cuyahoga County effective January 1, 2010, as same may have been amended, modified, and supplemented to the effective date hereof, (the "County"), and _____, a _____ ("Design-Build Team" or "DBT"). The County and DBT agree as follows:

GENERAL

1.1 Defined Terms. In addition to other terms defined throughout this Agreement, as used in this Agreement, the following terms shall have the meanings set forth below:

"Adjacent Property" shall mean the land, railroads and roads over which the Project will be constructed and built, the adjoining and surrounding the Site, including streets, sidewalks, public infrastructure and buildings adjoining the Site.

"Affiliate" of any specified person or entity means any other person or entity directly or indirectly controlling or controlled by or under direct or indirect common control with such specified person or entity, or which is a director, officer, employee, or partner (limited or general) of such specified person or entity. For the purpose of this definition, "control", when used with respect to any specified person or entity, means the possession, direct or indirect, of the power to vote 5% or more of the securities having ordinary voting power for the election of directors or the power to direct or cause the direction of the management and policies of such person or entity, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Agreement" shall mean this Agreement between the County and DBT, including all Exhibits attached hereto.

"Applicable Laws" or "applicable laws" shall mean any applicable law, enactment, statute, code, ordinance, charter, resolution, order, rule, regulation, guideline, authorization, or other direction or requirement of any Governmental Authority enacted, adopted, promulgated, entered or issued (including the requirements of the Americans with Disabilities Act) and environmental laws relating to the Project) in force as of the date the action was taken applicable to the Project or the Work, or its design or construction

"As-Built Drawings" shall mean the Construction Drawings and Specifications revised to show the "as-built" condition of the Project and other changes made during the construction process.

"Auditable Records" shall mean all accounting records for the expenditures relating to the services and Work provided under this Agreement, including records, books, papers, documents,

subscriptions, recordings, agreements, purchase orders, invoices, equipment leases, contracts, commitments, arrangements, notes, daily diaries, reports, receipts, vouchers, and similar documents reasonably requested by the County.

"CAE Subconsultants" shall mean, collectively, those architectural and engineering consultants engaged by CAE as identified on Exhibit B.

"Change Order" shall mean a written instrument signed by the County and DBT, and approved by such entities as the County may request from time to time, relating to a change in the Work, GMP or Construction Schedule.

"City" shall mean the City of Cleveland.

"Claim" shall mean any claim, demand or assertion as a matter of right for additional compensation, a change in the GMP, extension of time or other relief with respect to any of the terms of the Contract Documents.

"Claims and Damages" shall mean all liabilities, losses, expenses (including attorneys' fees and expenses), costs, damages, claims, demands, suits, causes of action, and includes, without limitation, any liens, judgments, penalties, interest, court costs, arbitration costs, and other legal fees incurred in connection with any of the foregoing.

"Commissioning and Close-Out Plan" shall mean the commissioning and close-out plan prepared by DBT or the County in accordance with industry standards that addresses the close-out and turnover of the Project, including the following: use or occupancy prior to Substantial Completion; Substantial Completion and Final Completion inspections, equipment testing and start-up; completion of Punch List items; training of employees for operation and maintenance of any major systems and equipment; submittal of warranties from manufacturers and Suppliers; turnover of spare parts and acquired excess materials; turnover of all Project documents; and issuance of temporary and permanent certificates of occupancy for the Project, as applicable.

"Construction Change Directive" shall mean a written order by the County to DBT directing a change in the Work prior to final agreement on the adjustment, if any, to the GMP or Construction Schedule.

"Construction Contingency" shall mean the construction contingency established through the process set forth in Section 8 of this Agreement.

"Construction Cost" shall mean the total cost to the County for labor, material and equipment for the construction of all elements of the Project designed or specified by the Design Team, and shall include the Cost of the Work at current market rates of labor and materials, plus the Construction Contingency. Construction Cost does not include compensation of CAE/Engineer or other the County consultants, rights-of-way costs, financing costs or County furnished furniture, fixtures or equipment.

"Construction Cost Limitation" shall mean _____ Dollars (\$_____).

"Construction Drawings and Specifications" shall mean the final working drawings and specifications and addenda thereto describing the size, design, character, appearance, functionality, design, construction, materials, finishes, structure and mechanical, electrical and all other systems and components of the Project produced by DBT pursuant to Section 5.1.

"Construction Plan" shall have the meaning set forth in Section 5.

"Construction Schedule" shall mean a detailed and comprehensive schedule prepared by the DBT and consistent with all agreed upon milestone dates set forth in the Master Project Schedule, utilizing a critical path method (CPM) network that is in conformance with accepted industry standards for projects of this size, scope and complexity and that: (a) shows cost and all major elements and phases of the Project with no activity having a duration greater than thirty (30) working days (including any County-provided design or construction, utility provider design or construction, Governmental Authority approvals and design or construction by any third party in connection with the Project); (b) breaks down each element or phase by trade; (c) shows duration of each task; (d) shows manpower and cost loading for each trade or task that has a cost defined as within the Cost of the Work; (e) shows early and late start dates so that all "float" time will be accurately identified; and (f) otherwise is in a form satisfactory to the County.

"Consultants" shall mean Architect, Engineer (including EOR) and/or all consultants and other professionals employed or retained by DBT, as applicable, to provide services with respect to the Project, including those firms or entities identified on Exhibit A.

"Contract Documents" shall mean (a) this Agreement, (b) the General Conditions, (c) the final Construction Drawings and Specifications when approved by the County, (d) any executed Change Orders, (e) the Project manual (if any), and (f) any duly executed amendments to any of the foregoing.

"Contract Sum" shall have the meaning set forth in Section 8.1.1.

"Cost of the Work" shall have the meaning set forth in Section 8.3.

"County" shall mean the County of Cuyahoga, Ohio.

"County's Representative" shall mean Parsons Brinckerhoff ("PB").

"Criteria Architect/Engineer" or "CAE/Engineer" or "CAE" shall mean "PB", or such other architecture/engineering firm identified by the County in writing as the Criteria Architect/Engineer.

"Criteria Design Documents" shall mean the design documents of the Project, prepared by CAE, illustrating the scale and relationship of the various Project components.

"Damages" shall mean all liabilities, losses, expenses (including attorneys' fees and expenses), costs, damages, claims, demands, suits, causes of action, and includes, without limitation, any liens, judgments, penalties, interest, court costs, arbitration costs, and other legal fees incurred in connection with any of the foregoing.

"Day" or "day" shall mean a calendar day.

"Defective Work" shall mean any Work that does not comply with the requirements of the Contract Documents.

"Delay Liquidated Damages" shall have the meaning set forth in Section 6.2.

"Design Documents" shall refer to, as applicable, the Criteria Design Documents, the GMP Documents or the Construction Drawings and Specifications.

"Design-Build Team" or "DBT" shall mean _____ and shall include the EOR as defined herein.

"DBT Team's Fee" shall have the meaning set forth in set forth in Section 8.4.2.

"Design Team" shall mean, collectively, DBT and CAE and all other consultants engaged by them or the County to contribute to the design of the Project.

"Engineer" or "EOR" shall mean the engineer-of-record that shall prepare the Construction Drawings and Specifications pursuant to an Agreement with DBT.

"Equipment" shall mean all equipment, tools (other than small tools), machinery, implements, and other items used in connection with the temporary or permanent Work, but not incorporated into the permanent Work.

"Final Completion" or "finally complete" shall mean the stage in the progress of the Work when the Work is completed in accordance with the terms of the Contract Documents and DBT has satisfied all of its obligations under this Agreement and the Contract Documents, including (a) all Governmental Authorities have issued any written approvals or certificates as are necessary for the use of the Project by the general public, (b) all Punch List items have been completed or corrected, and (c) DBT has completed the Project close-out requirements in accordance with the Commissioning and Close-Out Plan and the other Contract Documents.

"Force Majeure" shall mean an act of God, fire, tornado, hurricane, named storms, flood, earthquake, explosion, war, terrorism, embargoes, civil disturbance or riot, industry-wide (and not Project-specific) labor strikes, and unusually severe weather that is abnormal and unforeseeable for the time of year in question.

"General Conditions" shall mean the General Conditions of the Contract for Construction prepared by the DBT and approved by the County, as contained in Exhibit C, which shall govern all construction activities at the Project.

"General Conditions Work" shall mean the services to be provided by DBT as identified on Exhibit D attached hereto.

"GMP" shall mean the guaranteed maximum price of _____ Dollars (\$ _____), which amount includes guaranteed limits for the DBT's Fee, the General

Conditions Work, the Construction Contingency and the Cost of the Work, as may be adjusted in accordance with the terms of the Contract Documents.

"GMP Documents" shall mean the Design Documents, qualifications and assumptions, schedule of values and other documents contained or listed in Exhibit F.

"Governmental Authority" shall mean any federal, state, county, municipal or other governmental department, entity, authority, commission, board, bureau, court agency, or any instrumentality of any of them having jurisdiction with respect to the Work, the Project or the Site.

"Guaranteed Substantial Completion Date" shall mean _____, as the same may be amended from time to time pursuant to the terms of this Agreement.

"Hazardous Materials" shall mean any hazardous waste, toxic substance, asbestos containing material, petroleum product, or related materials including substances defined as "hazardous substances" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sec. 9061 *et seq.*; Hazardous Materials Transportation Act, as amended, 49 U.S.C. Sec. 1802 *et seq.*; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Sec. 6901 *et seq.*; and the corresponding regulations (as amended) issued pursuant to these acts.

"Identified Claims" shall mean all Claims that (a) have been asserted against the County, DBT, or the Project, (b) if valid, are payable from the Construction Contingency, and (c) have been identified by the claimant in writing (both in terms of the description of the Claim and the amount asserted) and supported with reasonable documentation detailing the elements and amount of the underlying Claim (or if the claimant has not asserted the Claim in writing or backup documentation is not otherwise available, then DBT must identify in writing, to the extent then known, the description, basis and amount of the Claim with such specificity as is reasonably satisfactory to the County). "Identified Claims" shall also include potential Change Orders as identified in DBT's potential Change Order log.

"Indemnitees" shall mean the County, the City of Cleveland, Group Plan Commission, and their respective officers, shareholders, public officials, affiliates, subsidiaries, parent companies, members and employees, together with the constituent partners, members and shareholders of each of the foregoing.

"Instruments of Services" shall mean all documents generated by DBT or their respective Consultants relating to the performance of the Services, including the designs, drawings, specifications, preliminary plans, models, renderings and other documents prepared by DBT, EOR and/or their respective Consultants, whether hard copy or on electronic media.

"Legal Requirements" shall mean all requirements and directives set forth in Applicable Laws.

"Lender" shall mean any bank, insurance company, trust, corporation, association, firm, partnership, person, or other entity that has, directly or indirectly, loaned or agreed to lend or otherwise provide funds or credit enhancement to enable the County to build the Project.

"Life Cycle Cost Analysis" shall mean an assessment on the capital and operational cost of a particular construction item, system or equipment during the estimated useful life of the permanent improvements comprising the Project.

"Master Project Schedule" shall mean a project schedule using a critical path method, prepared by the DBT and approved by the County, that identifies, coordinates and integrates the anticipated design and construction schedules, the County's responsibilities, Government Authority reviews and other activities as are necessary for the timely completion of the Project, including all preconstruction activities, design development, trade package preparation and release, building department approvals and other Project approvals.

"Materials" shall mean all materials, supplies, appliances, equipment, fixtures and other items to be incorporated into the Work or consumed in connection with the Work.

"Progress Report" shall mean a monthly progress report prepared by the DBT that shall contain the following: (a) listing of actual costs for completed activities and estimates for uncompleted tasks for each component of the Work; (b) identification of variances between actual and budgeted or estimated costs; (c) the updated Construction Schedule; (d) any change in the critical path of the Project; (e) approved revisions to the Construction Schedule as of the end of each reporting period; (f) progress photos; (g) an executive summary; (h) a discussion of pending items and existing or anticipated problems; (i) status of Requests For Information ("RFIs"); (j) a safety and accident report; (k) information on each Subcontractor and each Subcontractor's work as well as the entire Work, showing percentages of completion and the number and amounts of Change Orders, Construction Change Directives and relating such information to the Construction Schedule and the GMP; (l) a discussion of all material issues relating to the design, construction, furnishing, equipping and development of the Project, along with proposed solutions for each issue; (m) a list of all Identified Claims, any threatened Claims and issues that, in the reasonable judgment of the DBT, may potentially become Claims; (n) status of the Construction Contingency; (o) significant plans and actions for the next month; and (p) such other relevant information as may be required by the County from time to time.

"Project" shall mean the design and construction of Pedestrian/Bicycle Bridge "Bridge" in Downtown Cleveland, Ohio and associated work, as described on Exhibit K.

"Project Development Team" shall mean, collectively, the County, the County's Representative, the City of Cleveland, the Group Plan Commission, the Design Team, the DBT, and other persons or entities that the County may designate from time to time.

"Project Report" shall mean the monthly report to be prepared by the DBT in the form approved by the County pursuant to Section 5.6.3.

"Punch List" shall mean the list prepared by the DBT and approved by the County that contains minor items of incomplete Work not impacting Substantial Completion and to be completed or corrected after Substantial Completion.

"Schedule of Values" shall mean the statement furnished by the DBT reflecting the portions of the Contract Sum allocated to the various portions of the Work and, when approved by the County, used as the basis for reviewing Applications for Payment.

"Self-Performed Work" shall mean such Work in which a substantial portion thereof (*i.e.*, in excess of 60% of the Work or \$600,000 in contract/subcontract value) is performed directly by DBT's own labor forces or the labor forces of any Affiliate of DBT (including the joint venture partners of DBT, if any), and not through Subcontracts or purchase orders with third party contractors or suppliers.

"Separate Contractors" shall mean any persons or firms performing work for the Project that are under direct contract with the County.

"Site" shall mean the area of land on which the Project is to be located and described on Exhibit Q.

"Subcontract" shall mean any subcontract or purchase order for the various categories of Work between the DBT and a Subcontractor.

"Subcontractor" shall mean a person or entity that has a direct contract with the DBT to perform any portion of the Work (including Equipment leases and Material purchase agreements) at the Site. The term Subcontractor includes Suppliers, but does not include any Separate Contractor or subcontractors of such Separate Contractors unless expressly assigned in writing to DBT by the County.

"Submittals" shall mean drawings, diagrams, illustrations, schedules, performance charts, shop drawings, product data, illustrations, standard schedules, performance charts, instructions, brochures, diagrams, samples, and other data specifically prepared for the Project by DBT or any Subcontractor, manufacturer, supplier or distributor, and if prepared by a Subcontractor, manufacturer, supplier or distributor, then reviewed by CAE for completeness and correctness, which illustrate how specific portions of the Work shall be fabricated or installed.

"Substantial Completion" or "Substantially Complete" shall mean the Work (or separable areas, units or phases as provided in the Contract Documents) is complete in accordance with the Contract Documents, such that the Project is ready for use and enjoyment by the general public, including, to the extent applicable to the Work, the following: all materials, equipment, systems, controls, features, facilities, accessories and similar elements are installed in the proper manner and in operating condition, inspected and approved; surfaces have been painted; masonry and concrete cleaned with any sealer or other finish applied; utilities and systems connected and functioning; lighting and electrical systems installed, operable and controlled; and other work performed to a similar state of essential and satisfactory completion. In no event shall Substantial Completion be deemed to have occurred unless (a) all necessary approvals by the

appropriate Governmental Authorities have been obtained, and (b) all Work shall have been approved and accepted by the County subject only to items set forth on the Punch List.

"Sub-subcontractor" shall mean any person or entity, including Suppliers, suppliers and vendors, who has a direct contract with a Subcontractor to perform any of the Work.

"Supplier" shall mean a person or entity who has an agreement with DBT or its Subcontractors or sub-subcontractors to supply by sale or lease, directly or indirectly, any Materials or Equipment for the Work.

"Value Engineering" shall mean an analysis of the feasibility of alternative systems, equipment and materials to identify such alternative systems, equipment and materials of equivalent quality (including Life Cycle Cost Analysis), and having equivalent characteristics to those specified in the Design Documents that can be fully specified, obtained and installed at a lower price without diminishing the quality or architectural design concept reflected in the Design Documents or, in the sole judgment of the County, more-desirable operating characteristics or greater functionality or any combination of these.

"Work" shall mean the construction, design and other services required by the Contract Documents, and includes the furnishing of all Material, labor, detailing, layout, Equipment, supplies, plants, tools, scaffolding, transportation, temporary construction, superintendence, demolition, and all other services, facilities and items, reasonably necessary for the full and proper performance and completion of the requirements of the Contract Documents and items reasonably inferable from and consistent with the Contract Documents for the proper execution and completion of the Contract, whether provided or to be provided by DBT or a Subcontractor, or any other entity for whom DBT is responsible, and whether or not performed or located on or off of the Site.

1.2 Other Terms. Unless otherwise defined herein, terms in this Agreement shall have the same meaning as those in the General Conditions and words that have well-known technical or construction industry meanings are used in this Agreement with such recognized meanings.

1.3 Context. As the context may require, defined terms in the singular shall include the plural (and vice versa) and the use of feminine, masculine or neuter pronouns shall each include the other. Wherever the word "including" or any variation thereof, is used herein, it shall mean "including, without limitation," and shall be construed as a term of illustration, not a term of limitation. Wherever the word "or" is used herein, it shall mean "and/or".

1.4 Calculation of Time. Unless otherwise stated, all references to "day" or "days" shall mean calendar days. If any time period set forth in this Agreement expires on other than a business day, such period shall be extended to and through the next succeeding business day.

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RELATIONSHIP OF THE PARTIES

2.1 Project Overview. The County is engaging the DBT to provide design and construction services for the Project in accordance with this Agreement.

2.2 Cooperation with Project Development Team and the County.

2.2.1 The DBT shall coordinate its services and Work with the other members of the Project Development Team. The County may from time to time designate in writing other persons or entities as being part of the Project Development Team. The DBT and the County agree to use their best efforts to fully communicate and cooperate with each other and the Design Team during the design and construction of the Project.

2.2.2 The DBT shall cooperate with and, as reasonably required by the County, meet with the operators and managers of the Adjacent Property in order to assure adequate coordination of the design, construction and planning of the Project with the operations of the Adjacent Property. The DBT recognizes that the design and planning phase of this Project will require significant, ongoing and active coordination.

2.2.3 DBT acknowledges the critical public function of the Project and shall participate in meetings, as directed by the County, with community and neighborhood groups, including the City of Cleveland, the Group Plan Commission and other parties having an interest in the Project.

2.2.4 It is acknowledged by the DBT that the County, the County's Representative, and such other parties as the County may determine from time to time shall have access at all reasonable times to the Work and all Contract Documents and shall have the right to review and copy the same during normal business hours.

2.3 Engineer of Record's Services.

2.3.1 EOR shall be duly licensed to perform the services required by this Agreement and shall not be changed without the prior written approval of the County. Notwithstanding anything herein to the contrary, EOR's services shall be performed in accordance with, and judged against, that standard of professional care, skill, diligence and quality that prevails among professional design firms engaged in the planning, design, construction and administration of large scale and complex projects of similar type, use, scope, function, size, quality, complexity and detail including the design and construction of pedestrian/bicycle bridges in major metropolitan areas in the United States.

2.3.2 The DBT hereby conditionally grants, transfers and assigns to the County all the rights, title and interest of the DBT in, to and under the contract between EOR and the DBT relating to the Project (the "EOR Subcontract"). The foregoing assignment shall be exercisable by the County, at its election, in the event that the County has exercised its right to terminate this Agreement in whole or in part or to take control of, or cause control to be taken of, the Work, or any portion thereof. The County may reassign the EOR Subcontract to another DBT, general contractor or any other person or entity, and such assignee may exercise the County's rights in the EOR Subcontract. DBT shall obtain the consent of the EOR to the foregoing assignment and the agreement of the EOR that, upon written notice from the County and the exercise by the County of its rights under this Agreement, EOR shall, as so requested by the County, continue to perform all of its obligations, covenants and agreements under the EOR Subcontract.

2.3.3 The DBT hereby accepts design responsibility for all services and work that EOR and any Consultant performs for this Project, whether performed prior to the Effective Date or after the Effective Date., including, without limitation, design/engineering services for the Project previously provided by such CAE and the Consultants on behalf of the County.

2.4 Project Partnering. The DBT shall participate in multiple project facilitation processes involving members of the Project Development Team. The project facilitation process shall be developed by the DBT, but shall be subject to the approval of the County. Each participant shall bear its own cost and expense of attendance. Sessions will include major Subcontractors identified by the parties. The County shall pay the costs of the facilitator and any rental for the facility where the partnering session will be held.

2.5 County's Ethical Standards. The County has adopted ethical standards that govern contractors and service providers doing business with the County. Those standards are available at: <http://council.cuyahogacounty.us/>. The County shall have the right to terminate this Agreement if the DBT, EOR, their respective Consultants, Subcontractors, Sub-subcontractors, or any of their respective employees or agents engages in any of the acts that would permit termination of a contractor or service provider under such ethical standards.

2.6 Conflict-of-Interest. The DBT covenants that no prior or present services that DBT or EOR provided to third parties conflicts with the interests of the County in a manner that would adversely affect the Project or its development, except as shall have been expressly disclosed in writing to, and consented by, the County. The DBT shall promptly notify the County of any potential conflict that may arise during the course of the DBT's services or Work under this Agreement.

2.7 Confidentiality. The DBT acknowledges that certain valuable, confidential, and proprietary information of the Project Development Team may come into the DBT's possession. Accordingly, the DBT agrees to hold in strictest confidence, and shall require EOR and Subcontractors to hold in the strictest confidence, all information it obtains from or about the Project Development Team and their respective Affiliates and parent companies (whether obtained directly from the such parties or through any agent, employee or consultant of a member of the Project Development Team), not to use such information other than for the performance of this Agreement, and to cause all of its employees and Consultants to whom such information is transmitted to be bound to the same obligation of confidentiality to which the DBT is bound. The DBT shall not communicate the information of the Project Development Team in any form to any third party without the County's prior written consent. In the event of any violation of this provision, the applicable member of the Project Development Team shall be entitled to preliminary and injunctive relief, without the necessity of showing irreparable harm, as well as to an equitable accounting of all profits or benefits arising out of such violation, which remedy shall be in an addition to any other rights or remedies to which such party may be entitled. The provisions of this Section shall survive the termination of this Agreement. Confidential information does not include any information that: (a) was at the time of disclosure, or thereafter became, part of the public domain through no act or omission of the recipient; (b) became available to the recipient from a third party who did not acquire such information under an obligation of confidentiality either directly or indirectly from the disclosing party; or

(c) is, in the opinion of the recipient's outside legal counsel, required to be disclosed by law; provided, however, the applicable member of the Project Development Team shall be given prior written notification of recipient's intent to so disclose any such proprietary information.

2.8 Communications with Media. The DBT shall not communicate with any person affiliated with any print or broadcast media regarding the Project, and shall not publish any information relating to the Project, including its costs, status, funding, or development, without the prior written consent of the County. All media communications regarding the Project or this Agreement shall be made through a designee of the County, or such other person or persons as the County shall designate in writing to the DBT. The DBT shall be responsible for compliance with the terms of this Section by its officers, directors, and employees. The DBT shall require compliance with the terms of this Section by the EOR, Consultants and Subcontractors, and their respective officers, directors, employees and subconsultants in DBT's agreements with such parties, and the DBT shall be jointly liable with them for any breach of this obligation.

2.9 Financing. The DBT shall provide such assistance as the County may request in connection with the Project financing. The DBT agrees that it will make available to the County, its Lenders, any bond trustees and rating agencies, information relating to the Project, including information relating to the construction progress and expenditures, as any Lenders or bond trustees may request. The DBT shall furnish such consents to assignments and certifications addressed to the County, its Lenders any bond trustees and rating agencies, as may be, requested and as are commercially reasonable and customary for construction projects of similar size, scope and complexity as the Project. The DBT shall cooperate with the independent contractors, if any, of any Lenders or bond trustees. The County shall endeavor to obtain from its lenders, and supply to the DBT, the proposed forms of such certificates and assignments as promptly as practicable.

2.10 Cooperation with Governmental Authorities. The DBT shall work and cooperate with any and all Governmental Authorities in the conduct of the Work and shall, at all times, accommodate all Legal Requirements of these authorities as they relate to schedule, means and methods. The DBT shall meet with the County and Governmental Authorities to ascertain any requirements that may affect the sequence, timing, schedule or means and methods of construction and to fully include and recognize the requirements of Governmental Authorities in any and all of the DBT's scheduling, estimating and other work product required under the terms of this Agreement.

2.11 Limitation of Authority. The DBT shall not have any authority to bind the County for the payment of any costs or expenses without the express prior written approval of the County. The DBT shall have authority to act on behalf of the County only to the extent provided in this Agreement or in the General Conditions. In the event of an emergency affecting the safety of persons, the Project or Adjacent Property, the DBT, without special instruction or authorization, shall act reasonably to prevent or minimize any threatened damage, injury or loss. The DBT's authority to act on behalf of the County shall be modified only by an amendment in accordance with the terms hereof.

2.12 Representations. DBT warrants and represents to the County that DBT is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete the Work; that the DBT is able to furnish the plant, tools, Materials, supplies, Equipment and labor, and is experienced in and competent to perform the Work; that DBT is qualified to do the Work and is authorized to do business in the State of Ohio; and that the DBT holds, or will obtain, a license, permit, or other special license to perform the Work, as and if required by Applicable Laws.

2.13 Investigation of Site and Adjacent Property. By execution of this Agreement, the DBT represents that the DBT has visited the Site and become familiar with local conditions under which the Work is to be performed. By execution of this Agreement, the DBT represents and warrants that, to the extent reasonably practicable and observable, it has investigated and familiarized itself with all land adjoining and surrounding the Site, including the Adjacent Property, streets, sidewalks, and buildings adjoining the Site and the operations of the same and, to the extent reasonably practicable, has ascertained the materials and construction of the Adjacent Property, and the DBT shall be governed thereby for the necessary, thorough, safe and satisfactory execution of all Work called for in the Contract Documents.



STANDARD OF CARE; PERSONNEL

3.1 The DBT's Standard of Care. The DBT covenants with the County to further the County's interests in the Project by furnishing the DBT's best skill and judgment to the County and the Project Development Team. The DBT shall furnish efficient business administration and supervision and shall furnish at all times an appropriate and adequate supply of workers and Materials to complete the Project in an expeditious and economical manner consistent with the Contract Documents. The DBT shall perform its services under this Agreement and shall cause the entire Work described in the Contract Documents to be executed in accordance with the standard of care and skill for contractors, construction managers, and design/engineering professionals experienced and specializing in the design, engineering, construction and construction management of pedestrian/bicycle bridges in major metropolitan areas in the United States.

3.2 DBT's Personnel. The DBT shall assign sufficient numbers of duly qualified professional and technical personnel to the Project to the extent necessary to ensure that its obligations under this Agreement are timely carried out with respect to the performance of the Work. Such personnel shall include all of the personnel described in Exhibit G attached hereto, all of whom have been approved by the County. The approval by the County of any Project personnel shall not relieve the DBT of any responsibility for such personnel. The personnel identified in Exhibit G shall devote their full energies to the Project during the Project while employed by the DBT unless the County gives prior written consent for such personnel to undertake other responsibilities, and such personnel will not be removed or replaced by the DBT without the County's prior written consent unless such personnel becomes incapacitated or ceases to be employed by the DBT. The DBT shall promptly replace any personnel assigned to the Project at the instruction of the County if the County in its sole discretion determines that such removal would be in the best interests of the Project. In no event shall the staffing of the

Project reflected in Exhibit G (including the rates and duration of personnel) be changed or adjusted without the County's prior written approval.

3.3 Consultants.

3.3.1 The firms identified on Exhibit A, or firms later added by amendment to this Agreement, are part of the DBT's design/engineering team and shall not be changed without the prior written approval of the County. The DBT acknowledges that certain of the Consultants in Exhibit A have previously provided design/engineering services to the Project and are pre-qualified by the County to provide engineering/construction services. By pre-approving such consultants, the County does not acquire any responsibility for the Consultant or its qualifications. The DBT has investigated, for its own benefit, the reputation and qualifications of such firms and has satisfied itself of their ability to satisfactorily perform the work or services assigned.

3.3.2 In general, communications by and with the EOR and the Consultants shall be through the DBT, but it is expressly understood that the County may, at any time, directly communicate with, although not direct the work of, any of EOR's employees or the employees of any Consultants. The County shall not have, nor be deemed to have, any direct contractual relationship with EOR or any Consultant, and shall not be obligated to pay, nor be liable for the nonpayment of, the fees, costs, and expenses of any EOR or any Consultant; all such fees, costs, and expenses being the obligation of the DBT.

3.3.3 EOR and each of the Consultants shall be bound by the terms of this Agreement and shall assume toward the DBT all of the obligations and responsibilities that the DBT by the terms of this Agreement assumes toward the County. The DBT acknowledges that the DBT shall be fully responsible to the County for all actions or inactions of EOR, the Consultants and their employees.

3.4 Non-Discrimination; Participation and Inclusion Goals.

3.4.1 The DBT shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, national origin, age, disability, ethnic group or Vietnam-era or disabled veteran status. The DBT shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to race, religion, color, sex, sexual orientation, national origin, age, disability, ethnic group, or Vietnam-era or disabled veteran status. As used in this Section, "treated" means and includes the following: recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for training, including apprenticeship, promoted, upgraded, demoted, downgraded, transferred, laid off and terminated. The DBT shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the hiring representatives of DBT setting forth the provisions of this nondiscrimination clause.

3.4.2 The DBT shall, in all solicitations or advertisements for employees placed by or on behalf of the DBT, state that the DBT is an equal opportunity employer and shall post

copies of the notice in conspicuous places available to employees and applicants for employment.

3.4.3 It is the policy of the County to promote full and equal access in contracting and procurement opportunities for all businesses in Cuyahoga County. The County has established the following Small Business Enterprise ("SBE") and local residency goals for the Project: (a) 30% in value of subcontracts to SBEs certified by the County, (b) 40% of the construction workers are to be Cuyahoga County residents, and (c) 20% of the construction workers are to be City of Cleveland residents, and 4% of the construction workers are to be "Low-Income Person", as defined in Chapter 188 of the City of Cleveland Codified Ordinances). All SBE firms must be certified by Cuyahoga County, and in order to count towards SBE compliance, the work must be subcontracted to an SBE firm. The SBE program is administered and enforced by the County's Office of Procurement and Diversity, and DBT shall comply with the requirements set forth in the County's Small Business Enterprise Program Policies and Procedures Manual (revised January 1, 2012), which include documentation and other reporting requirements.

3.4.4 The DBT and its Subcontractors shall pay to all laborers and mechanics performing Work the prevailing wage rates of the Project locality, in accordance with the most current schedule published by the State of Ohio, Department of Commerce, Division of Labor and Worker Safety, Wage and Hour Bureau. DBT shall comply with the provisions, duties, obligations, and is subject to the remedies and penalties of, Chapter 4115 of the Ohio Revised Code. DBT shall obtain the prevailing wage rates from the Ohio Bureau of Employment Services, Wage & Hour Division. DBT shall maintain at the Project site copies of the payrolls for the Project. The payroll reports shall be certified that they are correct and complete and the wage rates shown are not less than those required by Chapter 4115 of the Ohio Revised Code. The payroll reports shall also state the name of the union or plan to which the withheld or unpaid fringes are to be paid. DBT shall be responsible for submitting all payroll reports of Subcontractors to the County. With each Application for Payment, DBT and each Subcontractor shall submit a letter certifying that they have complied with the requirements of Chapter 4511 of the Ohio Revised Code. An affidavit executed by DBT and its Subcontractors certifying compliance with the requirements of Chapter 4115 of the Ohio Revised Code shall be a condition precedent to final payment under this Agreement. Forms of the affidavit and certified payroll reports can be found at the following website: <http://www.com.ohio.gov/laws>.

3.4.5 The DBT is encouraged to promote full and equal access in contracting and procurement opportunities for firms certified by the City of Cleveland as minority business enterprises ("MBE") and female business enterprises ("FBE"). The DBT will develop a program for increasing MBE and FBE participation in the Project, which program shall include participation guidelines and monthly reporting of progress, and shall submit such program to the County for its review and comment.

PRECONSTRUCTION PHASE

4.1 Preliminary Design. The DBT acknowledges that it has reviewed the Criteria Design Documents and found them adequate and achievable in terms of the GMP and schedule requirements. The DBT recognizes that its involvement in the design process is critical to the Project's success and the DBT agrees that it has and will continue to fully employ and bring to bear its extensive bridge construction experience, along with all appropriate estimating, scheduling and in-house peer review resources during the preconstruction phase. The DBT has, and shall continue to, work and collaborate with the County, owners, operators and managers of the Adjacent Property, the City, the Group Plan Commission, and such other persons or entities as designated by the County, in devising a phasing plan in such a way as to assure a rational, logical and coherent sequencing of construction that minimizes any impact on the operation of the Adjacent Property during the construction phase of the Project.

4.2 Project Schedules.

4.2.1 The Master Project Schedule is attached hereto as Exhibit P. Prior to commencement of construction, the DBT shall prepare and deliver a Construction Schedule, which shall be date-specific for each of the tasks contained therein, for the County's review and approval. The DBT shall investigate and recommend a schedule for the purchase of materials and equipment requiring long lead time procurement, and shall coordinate the procurement schedule with the preparation of the Construction Schedule. The Construction Schedule shall be updated and distributed monthly throughout the duration of the Project to accurately reflect progress to date, remaining durations and any new or revised logic or activities. The DBT shall supply, on a monthly basis, graphic representation of the Construction Schedule, together with such reports as requested by the County that are typically available through the use of industry standard software programs approved by the County. The monthly updates of the Master Project Schedule and Construction Schedule required under this Section 4.2 shall be included in the monthly Project Report.

4.2.2 The DBT recognizes that it shall be asked to propose, review and evaluate various alternative schedules during the preconstruction phase and that this scheduling process is a part of the DBT's responsibilities. The DBT further agrees that it will use its best efforts to faithfully estimate any schedule-related impact on costs during the evaluation of any alternative schedules. The DBT shall, from time to time and as requested by the County, update such Master Project Schedule to incorporate any such alternative schedules.

4.3 Value Engineering. As and when requested by the County, the DBT will provide Value Engineering analysis on major construction components. The Value Engineering analysis will be summarized in report forms and distributed to the County and CAE. The DBT will conduct a series of Value Engineering and analysis workshop during both the Schematic Design and Design Development phase of the Project to develop cost-saving ideas for the Project. The formal reports will be prepared following these workshop and distributed to CAE and the County. As part of this process, the DBT shall include experienced personnel from its other offices to offer Value Engineering suggestions. The DBT shall provide the County with a

written report identifying the persons who participated and setting forth the suggestions discussed.

4.4 GMP Documents; Construction Cost Limitation; Contingency.

4.4.1 The GMP is based on the GMP Documents attached hereto as Exhibit F in accordance with the Schedule of Values attached hereto as Exhibit E. DBT understands and agrees that the GMP constitutes the fixed limit of Construction Cost available for the Project. DBT acknowledges that the GMP Documents were incomplete at the time the GMP was established, but that DBT had sufficient involvement with the Project to understand the program requirements and Project scope as expressed in the GMP Documents. As DBT has experience in the design and construction of pedestrian/bicycle bridges, DBT acknowledges that the GMP Documents describe general design intent, and that it is DBT's responsibility, through the EOR, to prepare final Construction Drawings and Specifications for the Project that reflect the design intent and all other matters reasonably inferable from the GMP Documents. The Construction Drawings and Specifications prepared by EOR will include additional or more fully developed plans, sections or details not included in the GMP Documents. DBT shall make no claim against the County for an increase in the GMP based upon such additional or more fully developed plans, sections or details or based upon any new understanding of the GMP Documents developed by DBT subsequent to the Effective Date.

4.4.2 The GMP shall be revised only upon the issuance of a properly authorized Change Order. The GMP shall be based upon completion of the Work pursuant to the dates for Substantial Completion and Final Completion set forth in the Master Project Schedule attached hereto as Exhibit P.

4.4.3 The GMP includes a separate guaranteed maximum price in the amount of _____ Dollars (\$ _____) for the DBT's General Conditions Work, which General Conditions Work is separately identified on Exhibit D. The total amount payable for all General Conditions Work shall not exceed the separate guaranteed maximum price therefor, as may be adjusted pursuant to the terms of this Agreement.

4.4.4 The GMP contains an initial Construction Contingency in the amount of _____ Dollars (\$ _____).



FINAL DESIGN AND CONSTRUCTION PHASE

5.1 Construction Drawings and Specifications.

5.1.1 DBT shall cause EOR to produce and deliver Construction Drawings and Specifications to the County for review and approval. Notwithstanding any review or approval by the County, DBT shall be solely responsible for all design and other elements of the Work.

5.1.2 The Construction Drawings and Specifications shall comply with all Applicable Laws.

5.1.3 The Construction Drawings and Specifications shall consist of those drawings necessary to describe the size and character of the Project and its design, construction, materials, finishes, fixtures, structures, and electrical systems, all in a manner consistent with the GMP Documents.

5.1.4 DBT's obligation to provide specific products, systems or items of equipment, as required or referred to in the Contract Documents shall include the provision of all customary ancillary devices necessary for the installation or operation of the equipment. When standards, codes, manufacturer's instructions and guarantees are required by the Contract Documents with no edition specified, the current edition as of the Effective Date shall apply. References to standards, codes, manufacturer's instructions and guarantees shall apply in full, except (a) they do not supersede more stringent standards set out in the Contract Documents and (b) any exclusions or waivers that are inconsistent with the Contract Documents do not apply.

5.1.5 The County and CAE shall review the Construction Drawings and Specifications for conformance with the design concept expressed in the GMP Documents. Regardless of whether such parties review drawings, specifications or other documents prepared by DBT, DBT shall make no change in nor omit any of the Work shown or reasonably implied in the GMP Documents, unless the County shall approve in writing such change or omission.

5.1.6 DBT shall submit partially completed Construction Drawings and Specifications when 50% complete overall and, with respect to each trade bid package, 90% complete per package, for review by the County. These submittal reviews shall not be the basis for a postponement of the time for completion of the Construction Drawings and Specifications. The County and DBT shall mutually develop a submittal schedule that will set forth the period for review by the County and CAE of the Construction Drawings and Specifications and will be incorporated into the Master Project Schedule.

5.1.7 Failure to review the Construction Drawings and Specifications by the County or CAE shall not relieve DBT of its obligation to prepare the Construction Drawings and Specifications properly and completely in accordance with the terms of the Contract Documents. Should the County or CAE discover any error or omission in the Construction Drawings and Specifications, such error or omission shall be brought promptly to DBT's attention. In such event, DBT shall, at its sole cost and expense, complete, correct and modify the Construction Drawings and Specifications in question and shall resubmit such Construction Drawings and Specifications to the County so as not to adversely impact the Construction Schedule, but there shall be no extension of the dates in the milestone dates of the Master Project Schedule.

5.1.8 DBT's design and construction shall fully take into account the results of any and all tests and investigations so that the Project will be structurally stable, suitable for the County's intended purposes, and in compliance with all Applicable Laws and the GMP Documents. The County shall provide to DBT true and complete copies of any soil tests, geotechnical exploration reports, foundation reports and environmental reports relating to the Project that are in the County's possession. With respect to such reports or recommendations that may be commissioned by DBT or prepared for DBT, DBT shall provide to the County true

and complete copies of any such reports or recommendations as soon as possible after DBT receives such tests, reports or recommendations.

5.1.9 DBT shall be responsible to implement any changes or revisions to Applicable Laws affecting the Construction Drawings and Specifications. To the extent such changes or revisions result in a material increase in DBT's scope of services, DBT may submit a Claim under Article 16.

5.1.10 The County shall have the right, after reasonable prior notice, to enter DBT's and/or EOR's offices at any time during business hours to observe work and services in progress.

5.2 Subcontract Bidding Phase.

5.2.1 DBT shall verify that all separation of the Project into trade contracts is done in accordance with all Applicable Laws. DBT shall assure that the Construction Drawings and Specifications provide that (a) the Work of the separate Subcontractors is coordinated, (b) all requirements for the Project have been assigned to the appropriate trade, (c) the likelihood of jurisdictional disputes has been minimized, and (d) proper coordination has been provided for phased construction. DBT shall assure that the Work under all Subcontracts, when aggregated, will be complete and sufficient for the entire construction of the Project. With the County's prior consent, to be exercised in the County's sole discretion upon DBT's presentation of the benefits to the Project, DBT may subcontract with design-assist or design-build Subcontractors. DBT shall actively develop Subcontractors' interest in the Project and will participate in community outreach programs to develop interest among SBE firms.

5.2.2 Prior to the award of any Subcontract with an estimated subcontract value of \$50,000 or more, DBT shall submit to the County for approval the qualifications that a subcontractor must have in order to perform the Work of such Subcontract, and a list of at least three prospective Subcontractors that DBT believes meet the qualifications. All Subcontractors shall be reputable, qualified firms with an established record of successful performance in their respective trades. The County may eliminate from the list those prospective Subcontractors that the County believes are not qualified, based on the criteria mentioned in the scope of services, or to which the County has other reasonable objections. DBT shall revise the list in accordance with the County's eliminations. The County shall inform DBT of its eliminations of any prospective Subcontractor within ten (10) business days after the County's receipt of the list. If the County disapproves of a prospective Subcontractor, then its written notice to DBT shall set forth the County's objections to the prospective Subcontractor. DBT shall not solicit bids or proposals from any prospective Subcontractor to whom the County has made objections. By accepting prospective Subcontractors pursuant to this Section 5.2.2, the County does not acquire any responsibility for the selection of such Subcontractor or its qualifications. The County's elimination of any prospective Subcontractor under this Section 5.2.2 shall be final and not subject to appeal except to the Board of Control on grounds of fraud or collusion in accordance with Section 504.04(E) of the County Code.

5.2.3 After DBT and the County have agreed upon an acceptable list of prospective Subcontractors, DBT shall solicit at least three competitive bids or proposals (including design-

assist bids or proposals) from prospective Subcontractors on the list. All bids or proposals submitted shall be sealed and shall not be opened before the bid opening date set forth in the solicitation.

5.2.4 On the date set forth in the solicitation, DBT shall open, in the presence of the County, all bids or proposals. The County shall have the right to be present at all post-opening scope review meetings of DBT and the prospective Subcontractors.

5.2.5 Giving consideration to the price and the qualifications of each prospective Subcontractor submitting a bid or proposal, DBT shall recommend for award the prospective Subcontractor whose bid or proposal represents the best value, and such recommendation shall be submitted to the County with a written report setting forth the reasons supporting the recommendation. The County shall have the right to object to the proposed award if the County determines that the prospective Subcontractor does not represent the best value. If the County objects to the proposed award, it shall do so by sending written notice of such objection within ten (10) days after the County's receipt of DBT's recommendation report, and such written notice shall set forth the County's reasons for objecting. If the County does not disapprove the prospective Subcontractor recommended by DBT, then DBT shall award the Subcontract to the prospective Subcontractor.

5.2.6 Notwithstanding the foregoing, Subcontracts with an award value less than **\$50,000**, may be awarded by DBT using any selection method selected by DBT with the approval of the County.

5.2.7 Subcontracts shall be awarded on a lump sum or a guaranteed maximum price basis and no Subcontract shall be awarded on the basis of cost, plus a fee or time and materials, without the prior written consent of the County. DBT will cause each Subcontract to contain each of the following:

5.2.7.1 An agreement that each of the County is a third-party beneficiary of the Subcontract, entitled to enforce any rights thereunder for its benefit, and that the County shall have the same rights and remedies vis-a-vis such Subcontractors that DBT shall have, including the right to be compensated for any Claims and Damages incurred by the County resulting from any breach of such Subcontract by the Subcontractor, any breach of representations and warranties, if any, implied or expressed, arising out of such agreements and any error, omission or negligence of such Subcontractor in the performance of any of its obligations under such Subcontract;

5.2.7.2 A provision that the County may, at reasonable times, contact, but not direct the work of, the Subcontractor to discuss, or obtain a written report of, the Subcontractor's services; provided that in no event, prior to any assignment of the Subcontract to the County, shall the Subcontractor take instructions directly from the County;

5.2.7.3 A requirement that the Subcontractor promptly disclose to the County and DBT any defect, omission, error or deficiency in the Construction Documents or the Work of which it has knowledge;

5.2.7.4 A provision that permits DBT's rights and duties under the Subcontract to be assigned, at the same price, to the County or the County's designee after termination of this Agreement upon written notice thereof given by the County to both DBT and the Subcontractor;

5.2.7.5 A provision requiring the Subcontractor to maintain insurance in accordance with the Contract Documents;

5.2.7.6 A provision that the Subcontract shall be terminable for default or for convenience upon ten (10) days' written notice by DBT, or, if the Subcontract has been assigned to the County, by the County;

5.2.7.7 A provision that neither DBT nor such Subcontractor shall have the right to require arbitration of any disputes in those cases where the County (or its assignee) is a party, except at the sole election of the County (or its assignee);

5.2.7.8 A provision that Subcontractor shall promptly notify the County of any default of DBT under the Subcontract, whether as to payment or otherwise;

5.2.7.9 A provision that the Subcontractor comply with and pass down to sub-Subcontractors the requirements of the General Conditions;

5.2.7.10 A provision that the Subcontractor will comply with the confidentiality provisions of Sections 2.8; and

5.2.7.11 A provision that Subcontractor shall comply with all of the County's ethics and contracting requirements as set forth in Sections 2.5, 2.6 and 2.7.

5.3 Self-Performed Work.

5.3.1 Generally. To the extent permitted by Applicable Laws, DBT or its Affiliates shall be permitted to propose on categories of Self-Performed Work with the County's prior written consent. If approved by the County, DBT or its Affiliates shall follow the procedures set forth in this Section 5.3.

5.3.2 Bidding. If required by the County, DBT or its Affiliates shall be permitted to submit a sealed proposal for such Self-Performed Work pursuant to the competitive procedures applicable to all Subcontractors; provided, however, that DBT or its Affiliates must submit its bid or proposal for Self-Performed Work one (1) day before the deadline for other Subcontractors to submit their proposals. In such instance, the opening, review and advice with respect to award or rejection of such bids or proposals shall be managed by the County. In such instances, the following requirements shall also apply: (a) if DBT or its Affiliates desire to propose on Self-Performed Work, then DBT or its Affiliates shall review such Work (including the subcontracting packaging plan) with the County prior to finalizing the subcontracting package; (b) there shall be a strict separation of the personnel involved with subcontracting the Self-Performed Work and DBT's other personnel involved in the Project, and DBT shall, by written policy distributed to all affected personnel (a copy of which shall be distributed to the County), strictly prohibit any communication prior to subcontracting award among personnel

involved with the estimating, subcontracting, management or other services in connection with the Self-Performed Work and personnel working on other aspects of this Project pursuant to this Agreement (other than such communication as is permitted by all subcontractors); (c) if less than two other proposals from responsible subcontractors are submitted for Self-Performed Work, then the County may, at its option, disqualify DBT or its Affiliates from award of the Self-Performed Work and, in the County's discretion, cause the subcontracting package to be re-bid; (d) DBT shall not participate in the analysis or recommendations with respect to the award of the Subcontract for any Self-Performed Work, and all inquiries shall be forwarded to the County; (e) DBT shall not be permitted to use Construction Contingency for Self-Performed Work; (f) DBT or its Affiliates shall not, in its bid or proposal, use any of the General Conditions Work to support the Self-Performed Work or use the General Conditions Work for Self-Performed Work on any terms or conditions different from the terms or conditions on which such General Conditions Work are made available to all other Subcontractors; and (g) the solicitation for bids or proposals on Self-Performed Work shall specifically state that DBT or its Affiliates shall have the right to submit a sealed bid or proposal on Self-Performed Work. If the foregoing procedures are not strictly followed, then the County shall have the right to reject the bid or proposal of DBT or its Affiliates for Self-Performed Work. In addition, if the bid or proposal by DBT or its Affiliates for any Self-Performed Work is higher than the most recent estimate of the Cost of the Work for such Self-Performed Work, then the County shall have the right to reject DBT's or its Affiliates' bid or proposal. Any rejection of a bid or proposal or required re-bid under this Section 5.3.1.1 shall not be the basis for an increase in the GMP or adjustment to the Master Project Schedule.

5.3.3 No Bidding. The County has the option, in its sole discretion, to waive in writing the bidding requirements set forth in Section 5.3.2 for any Self-Performed Work. In such event, the following shall apply: (a) EOR shall have prepared the completed Construction Drawings and Specifications for such Self-Performed Work; (b) all permits and other approvals necessary to commence Work on such Self-Performed Work shall have been issued; (c) DBT or its Affiliates shall have submitted, and the County shall have approved in writing, a "not to exceed" Cost of the Work for the Self-Performed Work, which amount shall include DBT's or its Affiliate's fee and general conditions costs for such Self-Performed Work; (d) all labor shall be paid by the County at cost as verified by evidence of actual labor rates (including certified payrolls) and all equipment shall be charged at pre-approved rates, all subject to the "not to exceed" Cost of the Work for the Self-Performed Work; (e) DBT or its Affiliates shall have submitted, and the County shall have approved, a detailed construction schedule for the Self-Performed Work; (f) DBT or its Affiliates shall not be permitted to use any of the Construction Contingency for the Self-Performed Work, but its bid or proposal may contain a separate construction contingency applicable only to the Self-Performed Work; and (g) such Self-Performed Work shall be performed pursuant to all other terms and conditions of this Agreement and the General Conditions.

5.4 Performance and Payment Bond.

5.4.1 DBT shall furnish and maintain a performance and payment bond in the full amount of the GMP. The bond shall name the County as co-obligee thereunder. The bonds will be in the form of Exhibit H. The bonds shall be written through a surety company (a) authorized

to do business in the State of Ohio, (b) having a rating of not less than "A," and Class size of "XIII" in the latest version of Best's Insurance Guide, published by A.M. Best & Company, and (c) is listed by the United States Treasury Department as acceptable for bonding Federal projects and that the bond amount is within the limit set by the Treasury Department as the net limit on any single risk. The performance bond shall cover all warranties and guarantees applicable to the Work.

5.5 Assignment of Subcontracts.

5.5.1 DBT hereby conditionally grants, transfers and assigns to the County all the rights, title and interest of DBT in, to and under any and all Subcontracts that are now or hereafter entered into by DBT in connection with the performance of the Work. The foregoing assignment shall be exercisable by the County, at its election, in the event that the County has exercised its right to terminate this Agreement in whole or in part or to take control of, or cause control to be taken of, the Work, or any portion thereof, provided that the County pays DBT for all undisputed amounts due under this Agreement for Work performed in accordance with the Contract Documents. The County may reassign the Subcontracts to another DBT, general contractor or any other person or entity, and such assignee may exercise the County's rights in the Subcontracts.

5.5.2 DBT agrees that each Subcontract entered into by DBT in connection with the Work shall contain the consent of each Subcontractor to the foregoing assignment and the agreement of each such Subcontractor that, upon written notice from the County and the exercise by the County of its rights under this Agreement or portion thereof applicable to the Materials, Equipment or services being furnished by such Subcontractor, such Subcontractor shall, as so requested by the County, continue to perform all of such party's obligations, covenants and agreements under Subcontractor's Subcontract with DBT for the benefit of the County.

5.6 Meetings; Reports; Schedule Updates.

5.6.1 DBT shall schedule and conduct pre-construction, construction and progress meetings to discuss such matters as procedures, progress, problems and scheduling. DBT shall hold progress and coordination meetings with the County and such members of the Project Development Team as may be designated by the County from time to time at least bi-weekly throughout the construction period. DBT shall have, at a minimum, monthly meetings with selected Subcontractors to review the following with each Subcontractor (as applicable): (a) actual construction progress as compared against Subcontractor's schedule, (b) status of major components of Subcontractor's Work, (c) progress made on critical activities of Subcontractor's Work, (d) explanation for any lack of work on any critical path items, (e) explanation of critical path activities to be performed in the subsequent thirty (30) to sixty (60)-day period, (f) status of major Materials and Equipment procurements, (g) explanation for any delays during the reporting period, (h) Subcontractor's current construction schedule, (i) design issues and progress, (j) permit processing issues and progress, (k) safety issues, (l) quality control, testing and inspection issues, and (m) SBE and residency goals progress. DBT shall prepare and promptly distribute minutes of all meetings to the County and to all other persons in attendance.

The County will be notified in writing sufficiently in advance and may, at its option, attend any meetings.

5.6.2 DBT shall update and distribute, on a monthly basis, the Master Project Schedule and Construction Schedule incorporating the activities of Subcontractors and Sub-subcontractors on the Project, including processing of Submittals and similar required documents and delivery of products requiring long lead time procurement and showing current conditions and revisions required by actual experience.

5.6.3 DBT shall submit to the County a form of the monthly Project Report for use on the Project for the County's review, comment and acceptance. Upon acceptance by the County, the form of monthly Project Report shall establish the standard for detail required for the remainder of the Project. At a minimum, the monthly Project Report will contain the following: (a) listing of actual costs for completed activities and estimates for uncompleted tasks; (b) identification of variances between actual and budgeted or estimated costs; (c) the updated Master Project Schedule and Construction Schedule; (d) progress photos (aerial and ground); (e) an executive summary; (f) a discussion of pending items and existing or anticipated problems, status of RFIs; (g) a safety and accident report; (h) a summary of the SBE status for the Project; (i) information on each Subcontractor and each Subcontractor's work as well as the entire Project, showing percentages of completion and the number and amounts of Change Orders and relating such information to the Construction Schedule and the GMP; (j) a list of all Identified Claims, any threatened Claims and issues that, in the reasonable judgment of DBT, may potentially become Claims; (k) status of Construction Contingency; and (l) such other relevant information as may be required by the County from time to time. The Project Report shall be indexed, bound and tabulated in a manner acceptable to the County. Delivery of the Project Report shall be a condition precedent to payment of the next Application for Payment.

5.6.4 DBT shall keep a daily log containing a record of weather, Subcontractor's Work on the Site, number of workers, Work accomplished, problems encountered, and other similar relevant data as the County may require. This log shall be available to the County at the jobsite. Contractor shall each day enter the number of workers at the Site, classified by Subcontract, into a spreadsheet in a format acceptable to the County, and shall provide an updated, electronic copy of such spreadsheet weekly. The manpower data entered into the spreadsheet shall be current within one week of the weekly date of publication.

5.6.5 DBT shall continuously inspect the Work and shall maintain an ongoing log of non-conforming Work and problematic Work that has been installed. The log shall record any items that have been noted as non-conforming by Governmental Authorities or the County. Such log shall be continuously available and shall be included in DBT's monthly Project Report.

5.6.6 DBT shall maintain a log of (1) recordable OSHA incidents and (2) recordable lost-time accidents comparing the project's trade-by-trade experience to OSHA trade-by-trade experience rates for Ohio, all in a format that is acceptable to the County. Such log shall be available to the County upon request. If any Subcontractor obtains a monthly accident rate that exceeds the national average for that particular trade, DBT shall promptly take measures to

assure that such conduct (or the conditions causing such conduct) is abated and to notify the County of the measures taken.

5.7 Construction Plan. DBT shall develop and submit to the County, no later than sixty (60) days prior to the start of construction, a construction plan that will include: (a) the construction staging plan setting forth construction scheduling, lay down areas and storage, trailer areas, trailer locations, priorities as to site use, ingress/egress and other similar site logistic matters for the Project; and (b) procedures for the assignment of responsibilities for safety precautions and programs ("Construction Plan").

5.8 Construction.

5.8.1 DBT, with the assistance of the County, if required, shall assure that any required notices of commencement are properly filed before construction commences.

5.8.2 DBT shall cause the Work to be performed in accordance with the requirements of the Contract Documents and all Applicable Laws. DBT shall protect the County against defects and deficiencies in the Work.

5.8.3 DBT shall provide and update the schedules and reports required pursuant to Section 5.6. DBT shall provide administrative, management and related services as required to coordinate, supervise and direct the performance of the Work by all Subcontractors with each other and with the activities and responsibilities of the County to complete the Project in accordance with the Contract Documents. DBT shall be responsible for implementing the Construction Plan. DBT shall coordinate all aspects of the Project with all Governmental Authorities. DBT shall be responsible for timely notification to, and coordination with, all utility companies in connection with all utility services to be provided to the Project. DBT shall inform the County at once when the County's participation is required. Connections for utilities required for the Work are the responsibility of DBT to the extent set forth in the GMP Documents.

5.8.4 DBT shall provide sufficient organization, personnel and management to carry out the requirements of this Agreement. DBT shall take all steps necessary and appropriate to enforce agreements with Subcontractors and Sub-subcontractors for the benefit of the County. DBT shall be responsible to the County for acts and omissions of EOR, Consultants, Subcontractors and their respective employees and agents. The County shall at all times have complete access to all Instruments of Services, work product, files, communications, meeting minutes, telephone logs or websites relating to the Project, whether produced or created by DBT, EOR or any of their respective Consultants or Subcontractors.

5.8.5 DBT recognizes and acknowledges that the County is relying on DBT's experience and capabilities in the area of bridge construction.

5.8.6 DBT shall promptly notify the County of any default or potential default of a Subcontractor (including its inability to maintain its schedule) and shall consult with the County regarding available courses of action when the non-performing party will not take satisfactory corrective action. DBT shall develop a system to allow the County to identify potential problems

that could result in Change Orders or claims by Subcontractors, and shall make recommendations for avoidance of claims and Change Orders.

5.8.7 DBT shall provide and supervise the General Conditions Work.

5.8.8 DBT shall provide reasonable protection to prevent damage, injury or loss to (a) employees and other persons who may be affected by construction activities at the Site; (b) the Work and materials and equipment to be incorporated therein; and (c) other property at or adjacent to the Site, including the Adjacent Property and utilities not designated for removal, relocation or replacement in the course of construction. DBT has overall responsibility for Project safety and shall implement the safety and fire prevention program on the Project developed by DBT as part of the Construction Plan and shall require all Subcontractors and Sub-subcontractors to adhere to such program. DBT shall review the safety programs of each of the Subcontractors and Sub-subcontractors and make appropriate recommendations regarding their implementation. As between the County and DBT, DBT is responsible to the County for any and all the safety issues relating to the Work on the Project. DBT shall administer and manage the safety program. DBT shall monitor the establishment and execution of effective safety practices known to the industry and compliance with all applicable regulatory and advisory agency construction safety standards.

5.8.9 DBT shall be responsible to the County for the adequacy of all construction means, methods, techniques and procedures employed in the performance of the Work, and for coordinating all portions of the Work. DBT shall keep the Site and surrounding areas free from accumulation of waste materials or rubbish caused by DBT's operations. DBT shall implement daily Site cleaning. At the completion of the Work, DBT shall remove from and about the Site and surrounding areas DBT's tools, construction equipment, machinery, surplus materials, waste materials and rubbish.

5.8.10 DBT shall prepare, obtain and pay applicable fees (if any) for all necessary permits and approvals from Governmental Authorities having jurisdiction over the Project.

5.8.11 DBT shall coordinate all testing provided by others as required by the technical sections of the Specifications and Applicable Laws. DBT shall keep an accurate record of all tests, inspections conducted, findings, and test reports.

5.8.12 DBT shall develop, in conjunction with the County, procedures acceptable to the County for implementing, documenting, reviewing and processing field questions and responses, field variance authorizations and directives, minor changes, Construction Change Directive and Change Orders. DBT shall cooperate with the County to develop an "online" system to be used by DBT and the County to facilitate quick and accurate communications and to provide for an up-to-date Submittal log accessible to the Project Development Team, which system shall be the ProLog Project Management software or such other system as approved by the County. All requests for information by DBT shall be submitted to the County in good faith and shall contain DBT's proposed solution to the request.

5.8.13 DBT shall receive from each Subcontractor, review for conformance, approve or take other appropriate action and submit to CAE for approval or "approved as noted", together with copies to the County, such Submittals, As-Built Drawings and other documents as set forth in the Submittal schedule agreed to by the parties. DBT shall not be relieved of responsibility for errors or omissions in Submittals or similar documents by the County's review thereof. DBT (including EOR and Consultants) shall stamp or take such other appropriate action with respect to all Submittals and other documents to verify the review, approval or other action thereon. DBT's stamp shall constitute its verification that the submitted item conforms with the Construction Drawings and Specifications and is coordinated with other related Work. In collaboration with the County, DBT shall establish and implement procedures for expediting the processing and approval of Submittals and other documents, but in no event shall the time period for the County's turn-around of a single Submittal exceed fourteen (14) days after delivery to the County, except as may be otherwise agreed to by the parties in the Submittal schedule. The County's review of Submittals by DBT shall be limited to review of an initial submittal and two re-submittals. DBT shall pay (without any increase in the GMP) for the reasonable costs and expenses incurred by the County in connection with any resubmittals beyond the initial submittal and two resubmittals, including compensating the County for additional services of its consultants rendered in connection with reviewing such re-submittals. DBT shall provide informational copies of all Submittals to the County and other parties designated by the County. The County's review of Submittal is for information only, and DBT shall not be relieved of responsibility for errors or omissions in Submittals or similar documents by County's review thereof.

5.8.14 DBT shall maintain at the Site (or such other place as approved by the County), on a current basis: A record copy of all contracts (including this Agreement and all Subcontracts), the Construction Drawings and Specifications, Addenda, Change Orders and other Modifications, in good order and marked to record all changes made during construction; Submittals; As-Built Drawings; the most recent Master Project Schedule and Construction Schedule; applicable handbooks; maintenance and operating manuals and instructions; all reports, meeting minutes and logs required in Section 5 and other related documents that arise out of the contracts or the Work. The foregoing shall be organized and maintained using a comprehensive and understandable filing system. DBT shall maintain a current roster of all Subcontractors who have or are working on the Project with names and telephone numbers of key personnel and shall deliver this list to the County monthly. DBT shall make all records available to the County at all times. At the completion of the Project, DBT shall deliver to the County a reproducible set of As-Built Drawings that shall be provided in paper copy and in computer readable format in such version of CADD as agreed to by the County and DBT. Such As-Built Drawings shall be delivered to the County no later than sixty (60) days after Final Completion.

5.8.15 DBT shall perform comprehensive surveys of the concrete and steel components of the Project verifying, to the County's satisfaction, that the structure has been built in complete conformance with all dimensional requirements of the Contract Documents and Applicable Laws.

5.8.16 DBT shall arrange for delivery and on-site storage (in a commercially reasonable manner), protection and security for County-furnished/contractor-installed materials, systems and equipment identified in the GMP Documents. Off-site storage of County-furnished materials, systems and equipment shall be the County's responsibility.

5.9 Inspections. DBT shall develop, in conjunction with the County, a schedule setting forth anticipated dates for inspections of various portions of the Work by the County in order to determine Substantial Completion and Final Completion of the Work or designated portions thereof. It is anticipated that the County shall make an initial visit and one re-inspection for each area of the Work designated on the schedule developed by DBT and the County. If, after making such re-inspections, the County determines that the Work or such portion thereof is not substantially complete or finally complete (as the case may be) or that the Punch List has not been completed, then DBT shall pay (without any increase in the GMP) for the reasonable costs and expenses incurred by the County in connection with any such additional inspections, including compensating the County for additional services of its consultants rendered in connection with the performance of such additional inspections, to the extent such consultant expended more time for such inspections than initially budgeted or scheduled.

5.10 Testing.

5.10.1 The County may engage the services of an independent testing agency to verify compliance with the Applicable Laws and the testing requirements contained in the Contract Documents. The activities of the County's testing laboratories are solely at the discretion of the County and in no way shall relieve DBT for maintaining the QM/QA Program required by Section 5.11. The County's testing laboratories will perform independent inspections and tests, interpret and evaluate the results of such tests for compliance with the Contract Documents, record observations and submit reports. DBT shall, regardless of whether such testing and inspection services are performed at the expense of the County or DBT, be responsible to:

5.10.1.1 notify the County's testing laboratories and the County at least two (2) days before installing Work to be tested;

5.10.1.2 furnish incidental or casual labor and facilities (*e.g.*, personnel hoisting) at the Site necessary to facilitate the County's testing;

5.10.1.3 furnish samples and provide access to all materials and component parts of the Work as required for testing; and

5.10.1.4 furnish storage facilities for the material test samples.

5.10.2 DBT shall coordinate the activities of all entities conducting tests and shall cooperate fully with such agencies to facilitate all tests and inspections.

5.10.3 Testing by the County shall be at the County's cost and expense. If any test by the County indicates Defective Work and DBT disagrees with the County's conclusions based on the County's test, the County shall have the right to require additional testing of the part of the

Work in question. Such additional tests shall be paid for by the County in the event such additional tests prove that no Defective Work exists. However, should such additional tests indicate Defective Work, DBT shall, without adjustment to the GMP: (a) correct the Defective Work in accordance with the provisions of the Contract Documents and (b) pay all costs related to such additional tests.

5.10.4 When deemed necessary by the County, and prior to installation of any item specifically made subject to a performance standard or regulatory agency standard under any provision of the Contract Documents, DBT shall furnish proof of conformance to the County. Proof of conformance shall be in the form of (a) an affidavit from the manufacturer certifying that the item is in conformance with the applicable standard, (b) an affidavit from a testing laboratory certifying that the product has been tested within the past year and is in conformance with the applicable standard, or (c) such further reasonable proof as is required by the County.

5.11 Quality Management; QM/QA Plan.

5.11.1 Prior to commencement of construction, DBT shall prepare a quality control matrix, in a format approved by the County, based upon the requirements of the Construction Drawings and Specifications and Applicable Laws and listing all testing, inspections and Submittals relating to the Work with specific reference to the source of the requirement. Such matrix shall be updated as appropriate during the course of the Project. The maintenance of such matrix shall be part of DBT's duties in connection with implementing the QM/QA Plan.

5.11.2 DBT shall develop and implement a comprehensive Construction Quality Management and Assurance Plan (the "QM/QA Plan"). The goal of the QM/QA Plan shall be to ensure that construction of the Work is in accordance with the requirements of the Contract Documents. The QM/QA Plan shall also ensure that appropriate procedures are implemented to verify and document compliance with the Contract Documents. The QM/QA Plan shall include, but shall not be limited to, the following: (a) allocation of quality control and assurance responsibilities to the various participants in the Project; (b) an inspection and testing plan for each critical component of the Work; (c) field monitoring and inspection reports, documenting the results of inspection; (d) audit plan to audit Subcontractor's quality control and assurance efforts; (e) identification and reporting procedures for non-conforming Work; and (f) tracking system to monitor correction of non-conforming Work.

5.11.3 As part of the QM/QA Plan, DBT shall review the Work of Subcontractors to determine if the Work of each Subcontractor is being performed in accordance with the requirements of the Contract Documents, and to determine if there are any defects and deficiencies in the Work. DBT shall promptly bring all such defects and deficiencies to the attention of the applicable Subcontractor and the County. Communications between DBT and Subcontractors with regard to quality management and assurance shall not in any way be construed as releasing DBT or its Subcontractors from performing their Work in accordance with the terms of the Contract Documents.

5.12 Substitutions.

5.12.1 When a particular manufacturer's product or process is specified for an item of Work, no substitution shall be made, and any substitution is unacceptable except as provided herein. However, if, in the judgment of DBT, one of the conditions enumerated below exists with respect to any item so specified, DBT may offer for the County's consideration a substitute product or process other than that specified in the Contract Documents that completely fulfills the requirements of the Contract Documents ("Substitution"). Substitutions will only be considered if DBT submits a written request to the County and only under the following circumstances: (a) when the specified product or process is discontinued and not available from the manufacturer or supplier; and (b) when such Substitution is, in the opinion of the County, otherwise in the best interests of the County.

5.12.2 Requests for Substitutions of products or processes other than those specified in the Contract Documents shall be timely, fully documented in writing and will be accompanied by evidence about the proposed Substitution including: (a) quality and serviceability of the specified item; (b) changes in details and construction of related work; (c) design and artistic effect; and (d) any impact of the proposed Substitution on the Project schedule or costs or cost of maintenance or expected service life. Each request for Substitution shall be accompanied by complete descriptive literature and performance data upon both the specified item and the proposed Substitution, plus any samples required by the County. DBT's submission of a request for Substitution shall be deemed its representation that the Substitution meets or exceeds the standards and qualities of the specified item being substituted (including scope and length of warranty or guaranty periods). Adjustments to the GMP, if any, shall be described in an accompanying request for a Change Order. DBT shall furnish with its request such drawings, specifications, samples, performance data and other information as required to assist the County in making its decision.

5.13 Use of Hazardous Materials. DBT shall not use, in connection with the Work, any Hazardous Materials in such manner as would violate any Applicable Laws or cause liability to the County. The foregoing shall not be deemed to prohibit DBT from using in the Work any item specified by name in the Construction Documents so long as such item is handled and used in accordance with all Applicable Laws.

5.14 Adjacent Property/Ongoing Operations.

5.14.1 DBT shall provide reasonable protection to prevent damage, injury or loss to (1) employees and other persons who may be affected by construction activities at the Site; (2) the Work and materials and equipment to be incorporated therein; and (3) other property at or adjacent to the Site, including Adjacent Property and utilities not designated for removal, relocation or replacement in the course of construction.

5.14.2 DBT shall manage and coordinate the Work of all Subcontractors so as not to disrupt the operations of such Adjacent Property. DBT further acknowledges and agrees that modifications or disruptions to the Work arising from the Adjacent Property will be considered in preparing the Master Project Schedule and the overall management and coordination of the Work. DBT shall manage and coordinate Subcontractors in order that the continued operations

of such facilities do not become the basis for claims for damages or time extensions. Without limiting the generality of the foregoing, DBT agrees as follows:

5.14.2.1 To use only those entrances or routes for the transportation of materials and access of workers to the Site and to otherwise comply with a comprehensive transportation management plan, all as jointly determined by the County and DBT prior to commencement of construction. DBT acknowledges that some portions of the transportation management plan will need to incorporate requirements of Governmental Authorities and DBT agrees to incorporate (and abide by) any such requirements;

5.14.2.2 To take customary construction precautions and erect such partitions, barricades, fencing, walkways and other devices and other installations as are reasonably necessary to separate areas where the Work is being performed from areas being used by patrons, tenants, employees, guests, licensees, travelers and invitees of the Adjacent Property, including owners, managers and tenants, the County, the City or others; and

5.14.2.3 To coordinate, supervise and schedule all construction activities in accordance with this Agreement and the Contract Documents, including service interruptions, in advance and with the approval of the County.

5.15 Punch List Work. When DBT considers the Work or a designated portion thereof substantially complete, DBT shall prepare a draft of the Punch List for review and approval by the County. The Punch List will be complete, detailed and thorough, contain scheduled final completion dates for each item and shall be in a form and level of detail approved by the County. DBT shall promptly complete, or have completed, all items of incomplete Work and perform, or have performed, any corrective Work as required by the Punch List.

6 TIME

6.1 Time is of the Essence.

6.1.1 Time is of the essence of this Agreement. DBT shall cause the Work to meet the dates set forth in the Master Project Schedule, including and the dates for Substantial Completion and Final Completion, as those dates may be amended from time to time pursuant to the terms of this Agreement. The dates set forth in the Master Project Schedule shall not be altered except in accordance with the terms of this Agreement.

6.1.2 DBT shall maintain the progress of all Work in accordance with the currently approved Construction Schedule. If at any time the Work is not proceeding in accordance with the critical path of the Construction Schedule, then the County shall have the right to require DBT to take such measures or adopt such methods as may be necessary in the County's opinion (including ordering DBT to work overtime or extra shifts) to maintain adherence to the Construction Schedule, without any increase to the GMP; however, failure of the County to require DBT to take such measures shall not relieve DBT of its obligations to adhere to the Construction Schedule.

6.2 Delay Liquidated Damages.

6.2.1 If the date of Substantial Completion of the Work occurs after the Guaranteed Substantial Completion Date, as that date may be extended pursuant to the terms of the Contract Documents, then DBT shall pay to the County (by direct payment or offset from the Contract Sum) **\$25,000** per day for each day after the Guaranteed Substantial Completion Date through and including the date when Substantial Completion of the Work actually occurs. All liquidated damages referenced in this Section 6.2.1 are collectively referred to herein as the "Delay Liquidated Damages." The Delay Liquidated Damages shall be payable upon demand at the time they accrue.

6.2.2 The Delay Liquidated Damages commence on the day after the Guaranteed Substantial Completion Date and shall accumulate until the date that Substantial Completion of the Work is achieved. The parties acknowledge and agree that because of the unique nature of the Project and the expense involved in delayed opening of the Bridge, it is difficult or impossible to determine with precision the amount of damages that would or might be incurred by the County as a result of DBT's failure to achieve Substantial Completion on or before the Guaranteed Substantial Completion Date. It is understood and agreed by the parties that: (a) the County shall be damaged by failure of DBT to meet such obligations; (b) it would be impracticable or extremely difficult to fix the actual damages resulting therefrom; (c) any sums that would be payable under Section 6.2.1 are in the nature of liquidated damages, and not a penalty, and are fair and reasonable; and (d) such payment represents a reasonable estimate of fair compensation for the losses that may reasonably be anticipated from such failure, and shall, without duplication, be the sole and exclusive measure of damages with respect to any failure by DBT to achieve Substantial Completion on or before the Guaranteed Substantial Completion Date. The Delay Liquidated Damages are intended only to cover damages suffered by the County as a result of delay and shall not be deemed to cover the cost of completion of the Work or damages resulting from Defective Work.

6.3 Extensions of Time. If the performance by DBT of any obligation hereunder shall be delayed because of (a) events of Force Majeure, (b) by an act or neglect of the County or any separate contractor employed by the County, (c) by changes ordered in the Work, or (d) by unforeseen conditions or unavoidable casualties beyond the control of DBT, Subcontractors, Sub-subcontractors or any other person or entity for whose acts they may responsible, then the time for the performance thereof (and, if applicable, the Guaranteed Substantial Completion Date) shall be extended as provided in this Agreement, provided that in each instance the conditions and requirements set forth in Article 6 are satisfied. No extension of time shall be granted to DBT unless the delay affects the critical path of the Project and then only to the extent that the delay affects the critical path unless DBT can demonstrate a greater impact to the Construction Schedule. No extension of time shall be granted for delays on account of, or resulting from, weather conditions unless DBT demonstrates, by the presentation of statistical data, that such conditions were extraordinary for the period in question when comparing such to the weather of the past five (5) years as set forth in the U.S. National Oceanic and Atmosphere records for Cleveland, Ohio. DBT shall not be granted any time extension due to DBT's financial inability to perform.

6.4 Remedies for Failure to Prosecute Work. If, in the reasonable judgment of the County, DBT shall (a) fail, refuse or neglect to supply a sufficiency of workers or to deliver the Materials or Equipment with such promptness as to prevent the delay in the progress of the Work, (b) fail in any respect to commence and diligently prosecute the Work and proceed to the point to which DBT shall proceed in accordance with the Construction Schedule in order to achieve Substantial Completion in accordance with the Construction Schedule, (c) fail to commence, prosecute, finish, deliver or install the different portions of the Work on time as herein specified in accordance with the Construction Schedule, or (d) fail in the performance of any of the material covenants of the Contract Documents, then the County shall have the right to direct DBT to accelerate the Work to comply with the Construction Schedule, including, providing additional labor or expediting deliveries of Materials, performing overtime, additional shifts or re-sequencing the Work without adjustment to the GMP. The County shall, after having provided DBT written notice and a reasonable opportunity to cure, and without waiving any other rights or remedies, have the right to withhold progress payments and supplement DBT's forces with Separate Contractors or to seek other redress for DBT's default.



COUNTY'S RESPONSIBILITIES

7.1 County's Representative.

7.1.1 The County has designated the County's Representative as its agent and representative authorized to act on the County's behalf with respect to the Project. The County reserves the right to change its representative, and the County shall notify DBT in writing within seven (7) days of such change. The County's Representative has no design or construction management responsibilities of any nature and none of the activities of the County's Representative supplant or conflict with any services or responsibilities customarily furnished by EOR or required of DBT. All instructions by the County to DBT relating to services performed by DBT will be issued or made through the County's Representative in writing. All communications and Submittals of DBT to the County shall be issued or made through the County's Representative unless the County's Representative shall otherwise direct. The County's Representative shall have authority to establish procedures, consistent with this Agreement, to be followed by DBT and Subcontractors.

7.1.2 The County shall render approvals and decisions within the time frame set forth in this Agreement or any schedules approved by the County or, in the absence thereof, with reasonable promptness to avoid delay in the orderly progress of DBT's services and the Work of DBT. It shall be DBT's responsibility to timely advise the County of all time requirements and restraints with respect to such approvals and decisions.

7.1.3 It is acknowledged and agreed that no provision of the Contract Documents that provides for any approval, review or similar participation by the County shall be construed or interpreted to limit DBT's obligations and responsibilities pursuant to the Contract Documents.

7.1.4 The County represents and warrants that: (a) this Agreement constitutes a valid, legal and binding obligation of the County, enforceable in accordance with the terms hereof except as the enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, or other similar laws affecting creditors' rights generally; (b) there are no actions, suits or proceeding pending or, to the County's knowledge, threatened against or affecting the County before any court or administrative body or arbitral tribunal that might materially adversely affect the ability of the County to meet and carry out its obligations under this Agreement; and (c) the execution, delivery and performance by the County of this Agreement has been duly authorized by all requisite corporate action, and will not contravene any provision of, or constitute a default under, any other agreement or instrument to which it is a party or by which it or its property may be bound.

7.2 Work by Separate Contractors.

7.2.1 The County reserves the right to hire Separate Contractors in connection with the Project. DBT shall afford Separate Contractors reasonable opportunity for the introduction and storage of their materials and for the execution of their services, and shall properly connect and coordinate the Work with the services of such Separate Contractors. With respect to each part of the Project as to which the County may enter into separate contracts with Separate Contractors, DBT shall, as part of the Work, cooperate with the County and Separate Contractors in the scheduling and coordination of services to be performed by such Separate Contractor with the Work to be performed by DBT or its Subcontractors. DBT shall cooperate with the County and all Separate Contractors, their subcontractors and any other entity involved in the performance of any separate services for the Project. In order to cause the Work and any separate services to be performed by Separate Contractors to be completed in an expeditious manner, DBT agrees that it will use all reasonable efforts to ensure that such Separate Contractors have a reasonable opportunity to complete their services as and when required.

7.2.2 If any part of the Work depends upon the proper performance of work of any Separate Contractor, then DBT shall, prior to proceeding with that portion of the Work, inspect and measure the work of the Separate Contractor and promptly report to the County any apparent discrepancy or defects in such other work except for latent or concealed defects. DBT's failure to inspect and make such report shall constitute an acceptance of the Separate Contractor's work as fit and proper for the proper execution of the Work.

7.2.3 If DBT causes damage to the Work or the property of the County, then DBT shall promptly remedy such damage. If DBT causes damage to the work or property of any Separate Contractor, then DBT shall promptly attempt to settle any resulting dispute or claim with such Separate Contractor. If a Separate Contractor or its subcontractor shall assert any claim against the County on account of any damage or loss alleged to have been sustained as a result of the fault or negligence of DBT, or by anyone for whom DBT is responsible, then the County shall notify DBT and DBT shall indemnify the County from and against any and all such claims, damages, losses and expenses, including attorneys' fees, arising from the assertion of any such claim.

7.2.4 If a dispute arises among DBT, Separate Contractors and the County as to the responsibility under the respective contracts for maintaining the Site and Adjacent Property free from waste, materials and rubbish, the County may clean up, or cause such clean-up to be completed, and may allocate the cost among those responsible as the County determines to be just.

8
PAYMENT

8.1 Contract Sum; Construction Contingency.

8.1.1 Except as otherwise provided herein, the County shall pay at the times and in the manner provided for in this Article 8, amounts constituting the Cost of the Work, Construction Contingency (to the extent used to pay any Cost of the Work) and DBT's Fee (the Cost of the Work, Construction Contingency and DBT's Fee are collectively referred to as the "Contract Sum"), which amount shall not exceed the GMP. DBT shall be responsible for all costs in excess of the GMP.

8.1.2 The Construction Contingency shall be adjusted, as the case may require, to reflect savings ("Buy-Out Savings") or losses ("Buy-Out Losses") resulting from the award of Subcontracts. If DBT is able to achieve any Buy-Out Savings on a Subcontract award as compared against the amount in the Schedule of Values attached hereto as Exhibit E applicable to the Work to be performed under such Subcontract, then the amount of such Buy-Out Savings shall be credited to the Construction Contingency and shall increase the amount of the Construction Contingency by the amount of such Buy-Out Savings. All Buy-Out Savings shall be returned to the County and the Construction Contingency reduced in accordance with Section 8.1.3. If the amount of the actual Subcontract award exceeds the amount shown in the Schedule of Values, and there is no other basis under this Agreement for DBT to request an increase in the GMP, then the amount of such excess shall be payable out of the Construction Contingency and, if the amount of such excess exceeds the balance of the Construction Contingency, the remaining balance shall be payable out of the DBT's Fee. All Buy-Out Savings and Buy-Out Losses shall be shown on the monthly Progress Report.

8.1.3 The Construction Contingency shall be reduced as follows:

Contingency Reduction Date/Event	Contingency Amount
Buy-out of bid packages representing 80% of the estimated value of all subcontract work	All Buy-Out Savings, if any, subtracted from Construction Contingency. Construction Contingency reduced to ____% of estimated Cost of the Work, plus Identified Claims

Completion of _____	Construction Contingency reduced to _____% of estimated Cost of the Work, plus Identified Claims
Substantial Completion	Construction Contingency reduced to zero (0), plus Identified Claims.

At the applicable times set forth above, any amounts in the Construction Contingency greater than the amounts set forth above shall be promptly released to the County by a Change Order reducing the GMP in accordance with the procedures set forth in the Contract Documents.

8.1.4 Provided that DBT obtains the prior written approval of the County, DBT may expend funds from the Construction Contingency for Cost of the Work incurred for completion of the Project; provided, however, that with respect to any Construction Contingency expenditure relating to a Consultant or Subcontractor negligence or default, DBT shall first demonstrate, to the County's reasonable satisfaction, that DBT has in good faith exercised reasonable steps to obtain performance by such Consultant, Subcontractor or Subcontractor's surety, as the case may be, and that the claim is not covered by insurance. For purposes of this Agreement, the term "covered by insurance" shall mean that the event or claim underlying DBT's request for the use of Construction Contingency is an insured claim under any policy of insurance carried by DBT or any Consultant or Subcontractor. In no event shall DBT be permitted to use the Construction Contingency for any additional costs or expenses caused by: (a) the breach of this Agreement by DBT; (b) the breach of any agreement by either DBT or any Consultant or Subcontractor under the agreements by and between such parties; or (c) the negligence of DBT or any Consultant or Subcontractor. Any use of the funds in the Construction Contingency must be for permitted Cost of the Work and any recoveries shall be used to replenish the Construction Contingency

8.1.4.1 There are no shared savings of the Construction Contingency under this Agreement and all unused Construction Contingency shall inure to the benefit of the County.

8.1.4.2 DBT shall show the status of the Construction Contingency in the monthly Project Report and shall review with the County such status prior to the release dates set forth in Section 8.1.2. DBT shall use its best efforts to ascertain actual or known potential claims against it or actual or reasonably anticipated events that constitute permissible uses of the Construction Contingency.

8.1.4.3 As set forth on Exhibit F, the County and DBT have identified additions to the Project for pricing as add alternates and for later inclusion into the Project to be funded by County-initiated Change Orders from available Construction Contingency in accordance with this Section 8.1. The schedule of add alternates specifically states the start dates for notification to proceed with the add alternate and the add alternate pricing shall remain valid through such dates.

8.1.4.4 Any expenditures of the Construction Contingency shall be evidenced by written authorization signed by the County and DBT.

8.2 Allowances.

8.2.1 The GMP contains allowances for items of Work that the County agrees are not detailed enough for DBT to provide a definitive price ("Allowances"). Such allowances, if any, are set on Exhibit F. For these Allowances, DBT may propose estimates of costs that are properly reimbursable as Costs of the Work. By inclusion of Allowance items in the GMP, DBT represents to the County that each such Allowance is a reasonable estimate, using DBT's best skill and professional judgment based upon the typical cost for the Allowance item in other comparable pedestrian/bicycle bridges and accounting for the unique features of this Project, its location, available information and local labor rates. The Cost of the Work for any Allowance in the GMP shall include all labor, material, equipment, taxes, transportation, general conditions costs and all Subcontractor overhead and profit. To the extent any Allowance is inconsistent with the standards set forth above, DBT shall provide to the County a written explanation of the basis for the difference. The amounts listed in Exhibit F as Allowances represent the respective amounts that the County will pay for the items listed therein unless changed as set forth below.

8.2.2 DBT shall develop a final price for portions of the Work covered by Allowances promptly after the County has finalized its selection of items. DBT shall give notice to the County of the final amount. The County thereafter shall promptly elect to either:

8.2.2.1 Issue a Change Order increasing the GMP by the amount agreed upon by DBT and the County to furnish or construct the Allowance item beyond the Allowance amount already included within the GMP, and the GMP shall only be increased or decreased by the amount of delta from actual cost and the allowance amount; and

8.2.2.2 Direct DBT to undertake the redesign of the Allowance item or any other item of Work in such a manner that the Allowance item can be installed without the GMP being exceeded or the Construction Schedule being extended. If the County elects to so redesign, DBT agrees to cooperate with the County in order to reduce the cost of constructing or furnishing the Allowance item or any other item of Work.

8.2.3 If the Cost of the Work of any Allowance item is less than the Allowance for that item, DBT shall promptly notify the County in writing and an appropriate Change Order shall be prepared reducing the GMP and a corresponding reduction in DBT's Fee.

8.3 Cost of the Work.

8.3.1 DBT shall be responsible for, and shall pay without reimbursement from the County, all Cost of the Work in excess of the GMP, as may be adjusted by Change Order.

8.3.2 Each cost described in this Section 8.3.2 shall be a reimbursable Cost of the Work, subject to the GMP. The following, to the extent incurred in connection with services rendered and Work performed hereunder, and only the items specifically and expressly described below, shall be "Cost of the Work":

8.3.2.1 Subcontracts: All costs incurred in connection with Work performed and Materials provided (including Self-Performed Work) pursuant to Subcontracts procured under

the terms and conditions of Section 5.2. All costs incurred in connection with other subcontracts for services provided in connection with the Project (including the fees and reimbursable expenses of DBT's Consultants).

8.3.2.2 Personnel Expenses:

(a) Actual wages paid by DBT for labor in DBT's direct employ under the salary or wage schedule attached hereto as Exhibit I, as may be amended from time to time due to new labor agreements covered by the Project Labor Agreement (if applicable) or revisions to the City's Wage Rate Schedule. Cost of the Work shall include benefits payable under collective bargaining agreements with respect to the wages described in the preceding sentence. DBT shall provide the County with a list of any off-site personnel whose services it proposes to charge as a portion of the Cost of the Work and to document, at the County's request, at such intervals the County may deem appropriate, the services related to the Project performed by such personnel. The wages, rates or salaries of any of DBT's staff or personnel not listed on Exhibit I are not a reimbursable Cost of the Work. The rates on Exhibit I may be increased not more often than annually to reflect customary increases implemented on a company-wide basis by the respective employer. DBT shall give the County prior written notice of such increases.

(b) Actual, direct taxable salaries of the all staff engaged on the Project while on-site (or off-site with the County's approval) and performing services directly related to the Project to the extent of hours devoted to the Project pursuant to the Rate Schedule attached hereto as Exhibit J. If DBT and the County agree that the Cost of the Work can be decreased by reducing DBT's staff without affecting the timely completion or quality of the Work or in any way diminishing the performance of all contract requirements, DBT shall so decrease its staff. With respect to DBT's employees described in this item (b) of this Section 8.3.2.2, Cost of the Work shall include the pro rata portion of the cost of mandatory and customary contributions and benefits as required by law, any applicable collective bargaining agreement or the company-wide policy of DBT related to the direct salaries of such employees, including employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions, profit sharing, *per diem* allowances, bonuses, car allowances and similar benefits per the agreed upon rates contained within Exhibit J, Rate Schedule.

(c) Except with the County's prior written approval and except for craft labor and hourly administrative workers (e.g., file clerks, clerks of record or similar functions), actual wages and direct salaries of employees to the extent directly employed in connection with the services or Work of DBT shall not include any premium for overtime, holidays or shift differential work, but it shall include all straight time compensation (if any) actually paid for such work.

8.3.2.3 Equipment and Materials: The amounts DBT paid for Equipment and Materials, whether for a permanent or temporary use, purchased by DBT directly relating to the Work, including transportation thereof, cost of inspection, testing, storage or handling, on a competitive or negotiated basis approved by the County in accordance with reasonable procedures to be agreed upon by the County. DBT shall furnish the County with all documentation required to enable the County to obtain the benefit of all warranties and

guarantees with respect to such Equipment and Materials. Compensation for materials stored off-site shall be subject to the County's compliance with the requirements set forth in the Project Administration Forms. To the extent possible, DBT shall store all equipment and materials for the Project on-site, and, in any case, shall not incur expenses for any off-site storage of materials and equipment without the prior written consent of the County.

8.3.2.4 Taxes: Sales or gross receipts tax, payroll taxes and state, county and municipal taxes, business and occupancy taxes, fees or other charges incurred as a direct consequence of the performance of the Work (but not franchise taxes or taxes based on income). There shall be excluded from reimbursed taxes any sales tax on materials and equipment incorporated into the Project as part of the Work if exempt from sales tax. Prior to purchase of such materials and equipment, the County shall provide DBT with a sales tax exemption certificate for such equipment and materials, and DBT shall assure that each Subcontractor receives such certificate in sufficient time to take advantage of the sales tax exemption.

8.3.2.5 Rental Equipment and Tools: Rental charges of all necessary machinery, equipment and tools to the extent used at the Site directly in connection with the Work, including installation, repair and replacement, dismantling, removal, cost of lubrication, transportation and delivery costs thereof. With respect to Equipment owned by DBT and rented to the Project, rental charges shall not exceed the market value of the machinery and Equipment at the time of their commitment to the Project and shall be consistent with the then-current prevailing rental cost of such equipment in Cleveland, Ohio, but in no event shall such rates exceed 80% of the published rates based upon the "Compilation of Nationally Averaged Rental Rates," most current edition, of the Associated Equipment Distributors unless otherwise agreed to in writing by the County.

8.3.2.6 Equipment Operation, Maintenance and Repair: All costs for the operation, maintenance and repair of DBT's Equipment or of Equipment rented from third parties that is used directly in connection with the Project, including (a) the cost of all preventive maintenance, fuel, oil, grease and other service to such equipment, and (b) minor repairs wherein the parts necessary to effect repairs to such equipment cost \$1,000 or less. Above normal maintenance, major repairs or the overhaul of equipment are not allowable as Cost of the Work.

8.3.2.7 Transportation: Except as hereinafter provided, all loading, unloading, freight, express, trucking and demurrage charges directly incurred for the Project, including costs of assembling, erecting, moving and dismantling construction equipment at the Site.

8.3.2.8 Applicable Laws: All costs of compliance with all Applicable Laws directly related to the Project, including permit fees, licenses, royalties, inspection and testing costs, tests, except any liability for payment of any citation or penalty imposed as the result of an act or omission by DBT, any Subcontractor or their respective employees, licensees or agents.

8.3.2.9 Temporary Facilities, Supplies and Utilities: Costs of fuel, power, light and water used for performance of the Work at the Site, temporary fences, guard rails, scaffolding, hoists, temporary storage, temporary protection and repairs to Adjacent Property, office and sanitary facilities used in connection with the Work.

8.3.2.10 Administrative Expenses. Cost of the Work shall include job-related expenses incurred such as rental of property for storage, job office or other purposes, rental of temporary office space and utility expenses associated with maintaining a temporary office complex, long distance telephone calls, office equipment, computers, software, supplies, furniture, telephone service at the Site, expressage, blueprinting or other reproduction expenses, postage, messenger service, progress photographs, fees, permits, surveys and rental deposits.

8.3.2.11 Bonds/Insurance: Premium costs of the performance and payment bond of DBT or the insurance required to be furnished by DBT or any Subcontractor under Article 14.

8.3.2.12 Cleaning: Cost of removal of waste material or rubbish from the Site.

8.3.2.13 Emergencies: Costs not reimbursed by insurance that are reasonably incurred due to any emergency affecting the safety of persons and property, provided that such emergency is not caused by the negligence or failure to fulfill a specific responsibility of DBT to the County set forth in the Contract Documents or the failure of DBT's personnel to supervise adequately the Work of the subcontractors or suppliers or otherwise capable of being prevented through timely notice of an unsafe condition to the County.

8.3.2.14 Casualty Losses: Costs reasonably incurred in connection with any casualty loss, including personal injury or property damage, affecting the Project, to the extent such costs are not compensated by insurance.

8.3.2.15 Corrective Work: Costs of repairing damaged or nonconforming Work that was not caused by DBT's or its Subcontractors' negligence or failure to fulfill a specific responsibility of the DBT or Subcontractor (as applicable), but only to the extent the cost of the repair or replacement is not recoverable by DBT from Subcontractors, suppliers, sureties or available insurance.

8.3.2.16 Miscellaneous County-Approved Cost Items: Miscellaneous expenditures not otherwise covered in this Section 8.3.2 that are incurred or payable in connection with the rendering of services or the performance of the Work and that are not excluded under Section 8.3.3, if in each instance the County has approved in writing the cost thereof prior to DBT incurring such expenses.

8.3.3 Costs Not Reimbursable. Except as otherwise expressly agreed to by the County in writing or otherwise permitted under Section 8.3.2, costs incurred in connection with the following shall not be Cost of the Work and no payment shall be made by the County in connection therewith other than as part of DBT's Fee:

8.3.3.1 The services and related expenses, except as otherwise provided in Section 8.3.2.2, of any officers or corporate office supervisory personnel of DBT and of personnel in DBT's human resources, accounting, legal, labor relations, insurance and tax departments and all other costs of doing business, services and related expenses required to maintain and operate DBT's corporate offices and any established branch offices.

8.3.3.2 Overhead expense, general expenses and home office expense of DBT and expenses related to any company-owned aircraft.

8.3.3.3 Expenses (including interest) of DBT's capital employed for the Project.

8.3.3.4 Professional or business licenses of DBT or any Subcontractor, architect, consultant, agent or other contractor of DBT or expenses associated with any employee training or corporate meetings not specifically related to the Project.

8.3.3.5 Amounts required to be paid by DBT for federal, state or local income or franchise taxes.

8.3.3.6 Penalties for DBT's failure to comply with applicable laws and regulations, unless the penalties are the result of DBT's compliance with the Contract Documents.

8.3.3.7 Loss or expense caused by the failure on the part of DBT, or its other representatives, employees or personnel charged with the supervision or direction of the Project, to exercise good faith or the standard of care normally exercised in the conduct of the business of DBT, and losses and expenses sustained by DBT or Subcontractors due to infidelity or dishonesty on the part of any employee of DBT or its Subcontractors.

8.3.3.8 Costs incurred to the extent that such costs result in the GMP being exceeded.

8.3.4 Notwithstanding the breakdown or categorization of any costs to be reimbursed in this Article 8 or elsewhere in the Contract Documents, there shall be no duplication of payment if any particular item for which payment is requested can be characterized as falling into more than one of the types of compensable or reimbursable categories.

8.3.5 Whenever overtime, extra shift work or similar premium Work is used on the Project, DBT shall give the County prior notice thereof and DBT shall, in any event, implement such Work in a cost efficient manner by employing extra shifts or additional crews before using overtime. Prior to implementation, DBT shall present for the County's review and approval a reasonable plan for scheduled premium time. The County's review or approval of any plan shall not be deemed to imply that DBT is entitled to an extension of time or an increase in the GMP.

8.3.6 Whenever DBT has been paid, as a Cost of the Work, amounts that are recoverable from any other source (*e.g.*, a Subcontractor, an insurer or other third parties), DBT shall diligently pursue such recovery and shall credit the County with any amounts recovered.

8.3.7 The actual Cost of the Work shall be adjusted to reflect any and all discounts, including trade and cash discounts, rebates, refunds and other similar considerations, provided that the County provides any funds when needed to obtain such considerations. DBT shall provide the County sufficient opportunity to furnish funds necessary to obtain such potential discounts, rebates or refunds within the County's normal billing cycle. Such considerations shall accrue exclusively to the benefit of the County, not DBT, and DBT agrees to use its best efforts to secure such considerations on behalf of the County.

8.3.8 Amounts received from sales of surplus materials and equipment shall accrue to the County, unless materials were contained within a lump sum bid amount, and DBT shall make provisions so that they can be secured. Amounts that accrue to the County in accordance with the foregoing provisions shall be credited to the County as a deduction from the Cost of the Work.

8.3.9 Upon Substantial Completion, DBT shall submit a list of any tools or equipment purchased for the Project that have been paid by the County as a Cost of the Work. If the County so elects, any tools or extra materials purchased for the Project that have been paid for by the County as a Cost of the Work shall be returned to the County at the end of the Project. If the County elects not to take title to any such tools or equipment, then the County shall be credited with the fair market value thereof as a deduction to the Cost of the Work.

8.4 DBT's Fee. DBT shall be paid a fee, which shall be a fee of ___% of the Cost of the Work ("DBT's Fee"). In calculating Design Builder's Fee, the following Cost of the Work shall be excluded: the General Conditions Work, Construction Contingency, permit fees, premium costs for insurance, and premium costs for bonds. Payments of DBT's Fee shall commence with the start of construction, shall be billed to the County monthly in proportion to the percentage of completion of the Work, and shall be paid monthly at the same time the County pays Cost of the Work.

8.5 Progress Payments.

8.5.1 DBT shall submit to the County Applications for Payments for Work completed as set forth below. The County shall make progress payments on account of the Contract Sum as provided below and elsewhere in the Contract Documents. Each Application for Payment shall be certified as true and correct by DBT. Each Application for Payment shall also contain the certification of CAE to the County that the quality of the Work is in accordance with the Contract Documents and the Work has generally progressed to the percentage of completion set forth in the Application. The County shall have the right to approve the form of the Application for Payment.

8.5.2 Each Application for Payment shall be based upon the most recent Schedule of Values submitted by DBT and approved by the County in accordance with the Contract Documents. The Schedule of Values set forth in Exhibit E allocates the entire GMP among the various portions of the Work, except that DBT's Fee, the General Conditions Work and the Construction Contingency are shown as separate line items. The Schedule of Values shall, unless objected to by the County, be used as a basis for reviewing DBT's Applications for Payment.

8.5.3 Applications for Payment shall show the actual percentage completion of each portion of the Work of each trade as of the end of the period covered by the Application for Payment. The percentage completion shall be the lesser of (a) the percentage of that portion of the Work that has actually been completed or (b) the percentage obtained by dividing (i) the expense that has actually been incurred by DBT on account of that portion of the Work for which DBT has made or intends to make actual payment prior to the next Application for Payment by

(ii) the share of the GMP allocated to that portion of the Work in the then current Schedule of Values. Applications for Payment shall also include a statement showing in detail the Cost of the Work completed, less retainage withheld under Section 8.5.7.

8.5.4 DBT shall furnish with each Application the following:

8.5.4.1 a certification by DBT of the satisfactory completion of the Work for which claim is made.

8.5.4.2 a partial waiver of claims and lien for itself effective through the date of the current application, as well as a similar waiver for each Subcontractor effective through the date of the prior application to the extent of payment received from the County;

8.5.4.3 a statement listing (a) the names of all parties furnishing materials, labor or services in connection with the Work in excess of \$25,000 in the current application, (b) the materials, labor or services to be furnished by each such party throughout their entire subcontract, (c) the amounts actually paid to date to each party furnishing materials, labor or services, and (d) the amounts due or to become due to each such party in the current application;

8.5.4.4 upon the County's request, payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the County to demonstrate that cash disbursements being made by DBT on account of Cost of the Work equal or exceed (a) progress payments already received by DBT less (b) an amount equal to the sum of (i) that portion of those payments attributable to DBT's Fee, (ii) payrolls for the period covered by the present Application for Payment, and (iii) retainage provided in Section 8.5.7 applicable to prior progress payments;

8.5.4.5 a statement by DBT certifying that, to the best of its information and belief, there are no Change Orders outstanding, no person or entity has a claim for payment or has asserted a claim for payment arising from or in connection with the Work, other than any claim that has been fully paid and duly released or is included in the current Application for Payment, or, if DBT knows or believes such a Change Order exists or that a claim has or may be asserted or made, the statement shall fully disclose the amount of the Change Order and disclose the claim by stating the name of the claimant or potential claimant, a description of the Work for which payment is claimed and the amount of such claim;

8.5.4.6 the updated Schedule of Values showing all committed contracts and expenses of DBT to date; and

8.5.4.7 the monthly Project Report, the updated Master Project Schedule and the updated Construction Schedule.

8.5.5 The County shall have the right to approve the forms of the lien waivers and affidavits. DBT shall obtain from each of its Subcontractors and make available as required or requested by the County or CAE, a duly executed statement from each Subcontractor for whom payment is sought that provides the same information with regard to each such Subcontractor as is required for DBT in this Section.

8.5.6 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month. On or before the 25th day of each month, DBT shall submit to and review with the County a preliminary, draft version of DBT's Application for Payment, together with the required supporting data (the "Pencil Draft"). On or before the 1st day of the following month, DBT and the County shall meet to review the Pencil Draft. DBT shall revise the Pencil Draft in accordance with any objection or recommendation of the County that is consistent with the requirements of the Contract Documents. Such revised Pencil Draft shall be resubmitted by DBT to the County as the Application for Payment due on or before the 5th day of the month immediately following the month in which the Pencil Draft was first submitted. DBT shall also submit with each Application for Payment, a written narrative describing the basis for any item set forth in the Application for Payment that does not conform to instructions of the County in connection with any applicable Pencil Draft. On or before the last day of the month in which the County receives the approved Application for Payment, the County shall deliver to DBT payment and DBT shall, within the Ohio statutory requirements from DBT's receipt of payment from the County, make available to each Subcontractor its payment for its respective application for payment.

8.5.7 Except as hereinafter provided, the County will retain 10% from all payments of the Contract Sum otherwise due and payable until 50% of the Work is in place. There shall not, however, be retainage on DBT's Fee, the fees of EOR and its consultants or the Cost of the Work relating to the General Conditions Work items listed on Exhibit D. After 50% of the Work is in place, the County shall refrain from withholding additional retainage on future payments unless the County determines that DBT or any Subcontractor is not making satisfactory progress or that DBT or any Subcontractor is in default under any of the terms and provisions of the Contract Documents. If the County determines that DBT or any Subcontractor is not making satisfactory progress or that DBT or any Subcontractor is otherwise in default under the terms of the Contract Documents, then the County may continue or reinstate retainage of up to 10% of the subcontracted amount to the extent reasonably based upon the subject default. Upon written request of DBT after satisfactory completion of the Work performed by a particular Subcontractor, the County may, in its reasonable discretion, release from retainage a sum sufficient to increase the total payments to 100% of the cost of the portion of the Work performed by such Subcontractor. Within thirty (30) days after Substantial Completion of the Work, the County will release all retainage less an amount equal to 150% of the amount determined by the County for unsettled claims or liens, Punch List work or other incomplete Work. Thereafter, the County shall pay DBT monthly the amount retained for such items as each item is completed.

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

8.5.8.1 Take that portion of the GMP properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the GMP allocated to that portion of the Work in the Schedule of Values.

8.5.8.2 Add that portion of the GMP 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 County, suitably stored off-site at a location agreed upon in writing.

8.5.8.3 Add DBT's Fee, computed in accordance with Section 8.4.2.

8.5.8.4 Subtract the aggregate of previous payments made by the County.

8.5.8.5 Subtract the shortfall, if any, indicated in the documentation required by Section 8.4.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the County in such documentation.

8.5.8.6 Subtract amounts, if any, for which the County is entitled to withhold payment under the Contract Documents.

8.5.8.7 Subtract retainage in accordance with Section 8.5.7.

8.5.9 Payment for materials stored off-site shall be conditioned upon DBT's compliance with the procedures and requirements set forth in the Contract Documents.

8.5.10 Payments due but unpaid shall bear interest from the date that is thirty (30) days after the payment due date until such time payment is received by DBT at the rate the County is paying on its construction loan at the time or at the current "prime rate" as published in The Wall Street Journal, whichever is higher, plus two (2) points.

8.6 Final Payment. Final payment shall not be due DBT until it has furnished the following items to the County:

8.6.1 an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the County, or the Project might be responsible or encumbered (less amounts withheld by the County) have been paid or DBT has made satisfactory arrangements for payment;

8.6.2 a certificate evidencing that any insurance required to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the County;

8.6.3 a written statement that DBT knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents;

8.6.4 all warranties, guaranties, operations and maintenance manuals, training manuals, and such other documents and records as are required by the Contract Documents to be provided to the County upon the completion of the Work (all of the foregoing to be provided in both paper copy and in computer readable format);

8.6.5 one reproducible copy of the As-Built Drawings and approved Submittals required by the Contract Documents (all of the foregoing to be provided in both paper copy and in computer readable format);

8.6.6 consent of surety, if any, to final payment;

8.6.7 a final waiver and release of mechanics' liens (conditioned upon receipt of payment) and other claims by Subcontractors; and

8.6.8 other data establishing payment or satisfaction of obligations, to the extent and in such form as may reasonably be designated by the County.

Final payment shall not be due to DBT until it provides all of the foregoing items. Acceptance of final payment shall constitute a waiver of Claims by DBT except those previously made in writing and identified by DBT as unsettled at the time of the final Application for Payment.

8.7 The County's Right to Withhold Payment.

8.7.1 Any provision hereof to the contrary notwithstanding, the County may withhold partial payment to DBT hereunder to the extent necessary to protect the County or the Project for any one or more of the following reasons:

8.7.1.1 DBT is in material default of any of its obligations hereunder or otherwise is in default under any of the Contract Documents.

8.7.1.2 Any of the Work is defective or is not performed in accordance with the Contract Documents.

8.7.1.3 DBT or a Subcontractor has failed to make timely payments due to their respective subcontractors or others or for material or labor used in the performance of Work for which the County has made payment.

8.7.2 If the County, in its reasonable discretion, determines that the portion of the GMP then remaining unpaid will not be sufficient to complete the Work in accordance with the Contract Documents, then no additional payments will be due hereunder unless and until DBT, at no cost to the County, performs (or causes to be performed) a sufficient portion of the Work so that the portion of the GMP then remaining unpaid is, in the County's reasonable judgment, sufficient to complete the Work in accordance with the Contract Documents. Notwithstanding the foregoing, DBT and each Subcontractor shall continue to diligently pursue the Work and DBT shall make all undisputed payments due and owing to Subcontractors subject to terms and conditions under their respective Subcontracts.

8.7.3 No payment by the County shall be construed as final acceptance or approval of any part of the Work. The presence of the County (or its representatives, including the County Representative) at the Site does not imply acceptance or approval of the Work.

8.8 No Creation of Liens. DBT shall not directly or indirectly create, incur, assume or suffer to be created by it or any Subcontractor, employees, laborers, materialmen or other Suppliers of goods or services, any claim, lien, charge or encumbrance on the Project, or any part thereof or interest therein, and DBT shall promptly pay or discharge, and discharge of record or provide a bond or other form of security to protect the County reasonably acceptable to the County, any such claim, lien or encumbrance for labor, materials, Suppliers or other charges, that, if unpaid, might be or become a lien upon the Project or any component thereof.

8.9 Warranty of Title. DBT warrants and guarantees that title to all Work, materials, and equipment covered by an Application for Payment, regardless whether then incorporated in the Project, will pass to the County upon DBT's receipt of payment, free and clear of all liens, claims, security interests or encumbrances.

8.10 Project Suspension or Abandonment. If the Project is suspended or abandoned in whole or in part by the County for more than one hundred twenty (120) consecutive days during the pre-construction phase of the Project, or more than ninety (90) consecutive days during the construction phase of the Project, then DBT shall be compensated for all services performed prior to receipt of written notice from the County of such suspension or abandonment, together with Cost of the Work then due, including retainage (in the case of abandonment), reasonable and actual demobilization costs and DBT's Fee earned to the date of such suspension or abandonment. If the Project is resumed after being suspended beyond the applicable time periods set forth above, and DBT is re-engaged by the County, then DBT's compensation shall be equitably adjusted (including any demobilization and remobilization costs), but there shall be no adjustment in the GMP if the suspension is less than the applicable time periods set forth above.



RECORDS; AUDITING

9.1 Public Records. DBT and the County agree that all records and reports that DBT provides to the County pursuant to this Agreement or that the County obtains from DBT pursuant to this Agreement shall be considered public records unless exempted from disclosure pursuant to Ohio's public record laws (including O.R.C. 149.43, O.R.C. 1333.61(D) and applicable common law), and that the County shall have the right to copy and, subject to Section 9.2, disclose the same.

9.2 Trade Secrets.

9.2.1 DBT may consider certain records with regard to the design, of the Project as containing "trade secret" information under O.R.C. 1333.61(D), which is exempt from disclosure as a public record. If the County receives a public records request for a record (a) that DBT has made available or provided to the County pursuant to this Agreement or that the County has obtained from DBT pursuant to this Agreement, and (b) that C DBT has designated in writing as

containing trade secret information, then the County shall advise the requestor that the records requested are considered to contain trade secret information, and shall promptly notify DBT of the request. Thereafter DBT shall have sole responsibility for initiating or defending such legal action as it deems necessary to prevent public disclosure of such information, and shall pay all costs and expenses associated therewith, including any legal fees or expenses incurred by the County.

9.2.2 The County shall, to the extent legally permissible without being required to initiate legal action, maintain the confidentiality of such requested information until the matter is resolved by legal action, provided that DBT agrees to indemnify, defend and hold harmless the County from any Claims and Damages incurred by the County as a result thereof. DBT and the County agree that the provisions set forth in this Section 9.2 shall not apply to information maintained by DBT and provided to the County pursuant to Section 9.3.

9.3 Auditable Records Retention. DBT shall maintain, and shall require by written agreements with EOR and their respective Consultants and Subcontractors to maintain, all Auditable Records. For the purposes of this Article 9, each person obligated to maintain Auditable Records as provided herein is referred to as a "Reporting Person." Such Auditable Records shall include hard copy and computer readable data. All Auditable Records shall be retained by each Reporting Person for a period of five (5) full years from the date of Substantial Completion of the Project.

9.4 Audit.

9.4.1 The County will have the right to designate an independent auditor to audit the Auditable Records from time to time.

9.4.2 The County shall have full access in a timely manner during regular business hours (for inspection, review and audit) to all Auditable Records for purposes of reviewing compliance with this Agreement, subject to establishing mutually agreeable audit protocols. Such Auditable Records shall be made available at the Reporting Person's local place of business or at another local location upon reasonable notice to the Reporting Person or the County, as applicable. The direct cost of copying any Auditable Records, excluding any overhead costs, shall be at the expense of the County. The County shall have reasonable access to the Reporting Person's facilities, may interview all current and former employees of the Reporting Person to discuss matters pertinent to the performance of this Agreement or any contract with EOR, a Consultant or a Subcontractor, and shall have adequate and appropriate work space in order to conduct audits. In those situations where Auditable Records have been generated from computerized data (whether mainframe, mini-computer, or PC based computer systems), the County shall be provided with extracts of data files in computer readable format on data disks or suitable alternative computer exchange formats.

9.4.3 If any audit or inspection by the County discloses overpricing or overcharges (of any nature) to the County in connection with charges or expenses submitted pursuant to this Agreement or any contract with EOR, a Consultant or a Subcontractor, then the amounts of such overpricing or overcharges shall be reimbursed to the County. If such overpricing or

overcharges are in excess of one-half of one percent (0.5%) of the total contract billings for such contract or agreement, then DBT shall cause the reasonable actual cost of the audit to be reimbursed to the County by the person committing such overcharges. Any adjustments or payments that must be made as a result of any such audit or inspection of the Reporting Party's invoices, records and supporting documents shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of the audit to the Reporting Party.

9.5 Limitations. It is acknowledged and agreed that the provisions of this Article 9 relate to records of services and Work performed in accordance with this Agreement and the design or construction of the Project only; and that this Article 9 is not intended to and shall not extend to matters relating to other projects or services undertaken by DBT.

CHANGES

10.1 Change Orders. All Change Orders shall be executed in writing by the County and DBT, shall be in the form approved by the County and shall contain full particulars of the changes, and any adjustments of the GMP, Guaranteed Substantial Completion Date and any other modification to this Agreement. Except as otherwise provided in Section 10.7, no changes to the scope of Work, Guaranteed Substantial Completion Date, or GMP shall be made except in accordance with a duly issued Change Order executed by both parties authorizing such changes. Except in the event of an emergency, DBT acknowledges and agrees that it shall neither seek, nor be entitled to receive, payment for any extra or additional work unless DBT receives, prior to performing such work, a written direction to proceed with such extra or additional work, signed by an authorized agent of the County. All Change Order having a value in excess of \$50,000 require the approval of the Cuyahoga County Board of Control pursuant to Cuyahoga County Code §501.04(B)(4), and, in certain circumstances described in Cuyahoga County Code §501.04(A)(1)(h), approval of the Cuyahoga County Council.

10.2 Changes Directed by the County. The County may direct a change that would alter, add to or deduct from the scope of Work, by submitting to DBT a written request setting forth in reasonable detail the nature of the requested change. If DBT determines in good faith and demonstrates that such change directed by the County will (a) increase or decrease DBT's cost of performing the Work, (b) adversely affect or enhance DBT's ability to meet the Guaranteed Substantial Completion Date, or (c) adversely affect DBT's ability to comply with the warranties provided in this Agreement, then DBT shall furnish the County with the information specified in Section 10.8 with respect to such changed Work. If the County then elects to proceed with the changed Work, then it shall issue a Change Order to DBT authorizing such modification as shall have been agreed to by the County and DBT.

10.3 Changes other than County-Directed Changes.

10.3.1 Notice. DBT shall give timely written notice to the County of any Claim for extension of time or any Claim for additional compensation, which notice shall, to the extent practicable, specify the length of delay in the Guaranteed Substantial Completion Date and, as applicable, the additional compensation claimed and shall substantiate the same to the reasonable

satisfaction of the County. Such notice shall be issued promptly, but in no event later than within fourteen (14) days following actual knowledge of the event giving rise to the Claim by any of DBT's Project Manager, Senior Project Manager, Senior Project Engineer, Design Manager or General Superintendent. If it is impracticable to specify the length of such delay or amount of the Claim at the time the notice referred to in the preceding sentence is delivered, then DBT shall provide the County with periodic supplemental notices during the period over which the event continues. Such supplemental notices shall keep the County informed of any change, development, progress or other relevant information concerning the event of which DBT is aware. It is a condition precedent to the consideration or prosecution of any Claim that the foregoing procedures be strictly adhered to in each instance, and if DBT fails to comply, DBT shall be deemed to have waived such Claim.

10.3.2 Concealed or Unknown Conditions. If conditions are encountered at the Site that are (a) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (b) 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, then notice by the observing party shall be given to the other party promptly before conditions are disturbed (to the extent practicable) and in no event later than three (3) days after first observance of the conditions. The County will promptly investigate such conditions and, if they differ materially and cause an increase in the cost of, or time required for, performance of any part of the Work, DBT will be entitled to equitable adjustment in the GMP, Construction Schedule or both. If the County determines that the conditions at the Site are not materially different from those indicated in the Contract Documents and that no change is justified, then the County shall so notify DBT in writing stating the reasons for such decision. Claims in opposition to such determination must be made within fourteen (14) days after the County has given notice of its decision. If the County and DBT cannot agree on an adjustment in the GMP or Construction Schedule, then the adjustment shall be submitted to dispute resolution as provided in Article 16.

10.4 County Review of Request. If the County accepts DBT's finding as to an event of delay, then, subject to the provisions of Section 6.3, the County shall issue a Change Order adjusting the Guaranteed Substantial Completion Date by extending the time for performance of DBT's obligations under this Agreement for a period equal to the delay in completion of the Project or such time as DBT shall demonstrate as reasonable in the County's sole discretion. If the County does not accept DBT's findings, then the propriety of a Change Order for such event may be submitted to dispute resolution as provided in Article 16.

10.5 Damage for Delays. Provided that notice is given pursuant to Section 10.3.1 and all other conditions precedent to asserting a Claim under this Agreement are satisfied, DBT shall be entitled to reimbursement for actual Cost of the Work incurred in the field (but not home office overhead or profit) during any excusable delays caused by the County; otherwise, the only remedy available for delays, hindrances, obstructions or interferences with the Work shall be an extension of time as permitted pursuant to this Article 10.

10.6 Mitigation of Event. DBT shall use its best efforts to remove, relieve and minimize the effect of any delay, whether caused by any event of Force Majeure or other causes. If, with the prior notice and consent of the County, DBT takes action to minimize delays that are not the fault of DBT, then the GMP shall be adjusted to reflect reimbursements of the costs incurred in taking such actions.

10.7 Performance of Changed Work. If the parties are unable to agree on the final adjustment to the GMP applicable to a Change Order, and if directed by the County, then DBT shall proceed to perform such changed Work so long as DBT is paid on a time and materials basis in accordance with the pricing set forth in Exhibit N and provided that the scope of such work has been fully documented by a Change Order approved in writing by the County. If the parties cannot ultimately reach an agreement, then either party may refer the issue to dispute resolution as provided in this Agreement.

10.8 Price and Schedule Adjustments for Change Order Work. The price of any Work ordered by a Change Order shall be calculated on the basis set forth in Exhibit N unless otherwise agreed by the County and DBT. DBT shall, as soon as reasonably practical following a request therefor, furnish the County with detailed estimates, quotations or costs to be used in determining the amount of any proposed adjustment to the GMP. Each Change Order incorporating the agreed GMP adjustment shall be accompanied by a modified payment schedule reflecting such adjustment and each Change Order incorporating the agreed extension of the Guaranteed Substantial Completion Date shall be accompanied by a modified Construction Schedule reflecting such adjustment.

10.9 Constructive Acceleration. Notwithstanding anything in this Agreement to the contrary, if DBT is entitled to an extension of time pursuant to this Agreement and has made a timely and proper Claim therefor, but the County, nevertheless, requires DBT to perform without a change in the date required for Substantial Completion of the Work with the result that DBT is required to accelerate its performance of the Work, then the GMP shall be adjusted in accordance with this Article 10 to the extent of any increase in the reasonable direct costs incurred by DBT as a result of such constructive acceleration, plus a profit and overhead as set forth in Exhibit N. In no event shall DBT be entitled to any other compensation or recovery of any damages in connection with constructive acceleration, including consequential damages, lost opportunity costs, impact damages, loss of productivity claims, cumulative impact damages due to multiple Change Orders or similar remuneration. DBT shall accelerate its Work in the most cost efficient manner by employing extra shifts or additional crews before using overtime. The County shall have the right to approve DBT's proposed manner of acceleration. If the County requires that the Work be accelerated in lieu of an extension of time, it shall be on a best efforts basis and extension of time shall be given for any time not able to be recovered, and the GMP shall be adjusted to the extent of any increase in the reasonable direct costs incurred by DBT.

10.10 Fast Track. DBT acknowledges that the Project may be constructed on a "fast track" phased basis and that proposals for some portions of the Work will be obtained before design of the overall Project is complete. DBT represents that it has all requisite expertise in the "fast-track" method of construction and related "fast-tracking" practices and understands that said representation has served as a material inducement in the County's selection of DBT. DBT

hereby waives any and all Claims, rights and remedies it may otherwise have at law or in equity for claiming, or otherwise asserting, that it is entitled to extra compensation or damages of any kind, or to an extension to the Construction Schedule by reason, or as a result, of schedule changes or impacts (including the performance of "out-of-sequence" Work) necessitated to accommodate performance of the Work on a "fast-track" basis, and DBT shall so provide in all Subcontracts. DBT expressly recognizes that the "fast-track" method may require DBT to prepare, issue and analyze bid packages in excess of the number ordinarily required under standard construction practices and hereby agrees to prepare, issue and analyze the same, if and as needed, in a timely manner.



WARRANTY/CORRECTION OF WORK

11.1 DBT warrants and guarantees that all materials and equipment incorporated into the Project under this Agreement shall be of first quality and new unless otherwise specified, and that all Work will be free from faults or defects in materials or workmanship, and in strict accordance with requirements of the Contract Documents; provided, however, that all design services shall be held to the Standard of Care set forth in Section 3.1. DBT shall remove or correct without cost to the County (as a Cost of the Work subject to the GMP) all Work performed by it under this Agreement that the County reasonably finds to be defective in material or workmanship or not in conformance with Applicable Laws or the Contract Documents within a period of two years from the date of Substantial Completion or such longer term as is set forth in the Contract Documents. DBT also agrees to remove or correct without cost to the County (as a Cost of the Work subject to the GMP) any portions of the Work that may be damaged or destroyed by such Defective Work or by the removal or correction of such Defective Work.

11.2 If the County does not require Defective Work to be removed or corrected by DBT, then an equitable deduction from the GMP shall be made by agreement between DBT and the County. The County may withhold such sums as the County deems just and reasonable from amounts, if any, due DBT hereunder until the amount of any such deduction is agreed upon by the County and DBT, which shall be no more than the amount of the costs that DBT and its Subcontractors save in not performing the corrective Work. All such deductions from the GMP shall be evidenced by a Change Order, but no such deduction shall relieve DBT for any other obligations under the Contract Documents.

11.3 If DBT does not promptly and fully perform its obligations under Section 11.1 following its receipt of written notice from the County, then the County may perform or cause such obligations to be performed at the cost and expense of DBT (as a Cost of the Work subject to the GMP). The amount of such cost shall be deducted from the GMP by Change Order or, at the County's option, shall be indebtedness of DBT to the County, payable on demand. At the request of the County, and within 24 hours of DBT's receipt of written notice thereof, DBT shall respond to and commence work on any safety issue or matter significantly impacting the ability of the County to utilize the Project.

11.4 Nothing contained in this Article 11 shall be construed to establish a period of limitation with respect to any other obligation that DBT might have under the Contract Documents. The establishment of any time period after the date of Substantial Completion relates only to the specific obligation of DBT to correct the Work, and does not relate to the time within which DBT's obligation to comply with the Contract Documents may be sought to be enforced, nor the time within which proceedings may be commenced to establish DBT's liability with respect to its obligations.

11.5 The expiration of any warranty or guarantee or any obligation of DBT to correct Work shall not relieve DBT of the obligation to correct, at its own expense, any latent defect in the Work or deficiencies that are not readily ascertained, including defective materials and workmanship, defects attributable to substitutions for specified materials, and substandard performance of any of the Work otherwise not in compliance with the Contract Documents.

11.6 DBT shall collect all written guaranties, warranties, operations and maintenance manuals and equipment manuals from all Subcontractors and suppliers, and shall deliver them to the County, in a single, organized set of binders, upon Substantial Completion of the Project.

11.7 All warranties arising from DBT from this Article 11 and elsewhere in the Contract Documents shall run directly to the County. All warranties and guarantees of Subcontractors, manufacturers or suppliers shall run directly to DBT, the County, and shall otherwise be fully assignable to the County's designee (including any owner or tenant of the Project). The warranties provided in this Article 11 shall be in addition to and not in limitation of any other warranty or remedy arising by law or by the Contract Documents. DBT shall provide reasonable assistance to the County in enforcement of long-term warranties or guaranties from manufacturers or suppliers. DBT shall be reimbursed for such assistance as a Cost of the Work. DBT acknowledges that its warranty obligations under this Article 11 shall be separate from and in addition to all warranties provided by or through any Subcontractors.

11.8 The warranty of DBT provided in this Article 11 shall in no way limit or abridge the warranties of the suppliers of equipment and systems that are to comprise a portion of the Work and all of such warranties shall be in form and substance as required by the Contract Documents. DBT shall take no action or fail to act in any way that results in the termination or expiration of such third party warranties or that otherwise results in prejudice to the rights of the County under such warranties. DBT agrees to provide all notices required for the effectiveness of such warranties.

11.9 At ten (10) months and at twenty-two (22) months after the date of Substantial Completion, DBT shall, together with the County and such other parties as the County shall designate, inspect the Work to assure that it comports with the Contract Documents and all warranties and guarantees. DBT shall promptly correct any deficiencies noted during such inspection.

11.10 DBT agrees that all Work shall be warrantied for two (2) years from the date of Substantial Completion, regardless of when such Subcontractors complete their individual portion of the Work or receive final payment.

11.11 Following the correction or replacement of any of the Work, DBT shall correct any defects or deficiencies in the corrected or replaced materials and workmanship that are found within the longer of the balance of the initial two years warranty period or one (1) year after the date of correction or replacement, whichever is longer.

11.12 Limitation on Damages. To the fullest extent permitted by law, and notwithstanding any term or condition of this Agreement to the contrary, except in the case of gross negligence or intentional misconduct, the liability of DBT (and its joint venture partners and their respective parent, subsidiary and affiliated entities and their officers, directors, partners, and employees) to the County and any third party claiming by, through or under the County or this Agreement for any and all claims, losses, costs, direct, indirect, or consequential damages whatsoever arising out of or resulting from professional errors and omissions in the performance of architectural, engineering or related services by DBT and DBT's Consultants and subconsultants (whether such claims are asserted in the context of negligence, professional errors or omissions, strict liability or breach of contract or warranty, express or implied) shall not exceed the sum of the following: (a) Five Million Dollars (\$5,000,000), plus (b) with respect to professional errors and omissions for which any of DBT's Consultants or subconsultants are responsible, (i) the amount of insurance proceeds available under the professional liability policies of the respective Consultants and subconsultants of DBT (taking into account erosion of limits under such policies) to the extent paid after commercially reasonable efforts by DBT (which DBT shall agree to use) in pursuing such claims against such Consultants and subconsultants, and giving effect, as applicable, to adjudication of such claims by legal proceeding, determination of such claims by arbitration, or settlement of such claims subject to the reasonable approval of the County, less (ii) all costs and expenses incurred by DBT in connection with pursuing such claims. Notwithstanding the foregoing, it is acknowledged that Delay Liquidated Damages, as provided in Section 6.2 of this Agreement, are the County's sole remedy with respect to damages suffered by the County as a result of delay of Substantial Completion of the Work, and any Delay Liquidated Damages payable by DBT pursuant to Section 6.2 are not applied against the foregoing limitation, which is intended to apply to damage other than damages resulting from a delay of Substantial Completion of the Work.



TERMINATION OF THE AGREEMENT AND COUNTY'S RIGHT TO PERFORM DBT'S OBLIGATIONS

12.1 Suspension and Termination by DBT. If the County fails to pay, within thirty (30) days after due, any undisputed amounts that are due and owing to DBT under this Agreement, then DBT may, upon fourteen (14) days' written notice to the County, during which time the County fails to make such payment, suspend the Work. Thereafter, if the County fails to pay DBT any undisputed amounts due upon fourteen (14) days' written notice to the County and the County's continued failure to pay, DBT may terminate this Agreement and recover from the County payment for all Work executed and the portion of DBT's Fee earned prior to the date of termination (based on the percentage of Work completed as of such date), and all Cost of the Work actually and reasonably incurred by DBT as a result of such termination. The foregoing payment shall be the exclusive recovery to DBT and DBT hereby waives any other right of

recovery for damages by reason of termination, including anticipated profits or consequential damages.

12.2 County's Right to Perform DBT's Obligations and Termination by the County for Cause.

12.2.1 If DBT fails to properly and timely perform any of its obligations under this Agreement, the County may, after seven (7) days' written notice, during which period DBT fails to perform such obligations, without prejudice to and cumulative of any other remedy the County may have, make good such deficiencies. No action taken hereunder by the County shall be deemed a termination of this Agreement or relieve DBT from any consequences or liabilities arising from such actions or omissions. All costs and expenses incurred by the County in correcting such deficiencies shall be deducted from the GMP. If such costs and expenses exceed the unpaid balance of the GMP, DBT shall be liable for such excess.

12.2.2 If DBT is adjudged to be bankrupt, or if it makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, or if it fails to supply enough properly skilled workers or proper materials, or if it fails to make proper payment to Subcontractors or for materials or labor, or fails to comply with Applicable Laws, or if it otherwise breaches this Agreement, then the County may, without prejudice to any right or remedy and after giving DBT seven (7) days' written notice, during which period DBT fails to cure the violation (or to take adequate steps to promptly correct or cure the problem), terminate the employment of DBT and take possession of the Site and of all materials, equipment, tools, construction equipment and machinery thereon owned by DBT and may finish the Work by whatever reasonable method that the County may deem expedient. In such case, DBT shall not be entitled to receive any further payment until the Work is finished nor shall it be relieved from its obligations under this Agreement.

12.2.3 If the County terminates this Agreement and then completes the Work, and the unpaid balance of the GMP exceeds the cost of finishing the Work, including the County's additional costs, compensation for additional services of the County's consultants, and all losses, actual damages, costs and expenses, including attorney's fees, sustained or incurred by reason of DBT's failure to complete the Work, the County shall pay DBT only for the Work DBT actually performed. If such cost to the County to complete the Work exceeds such unpaid balance, then DBT shall pay the difference to the County upon demand. This obligation for payment shall survive the termination of this Agreement.

12.3 Termination For Convenience. In addition to any other rights the County may have at law or under this Agreement with respect to cancellation or termination, the County may, without cause, terminate this Agreement in whole or in part, if the County determines that a termination is appropriate for its convenience. The County shall terminate by delivering to DBT a notice of termination for convenience specifying the extent and the effective date of termination. The County shall, upon DBT executing such confirmatory assignments as the County shall request, accept and assume all of DBT's obligations under all Subcontracts executed in accordance with the terms of the Contract Documents that may accrue after the date of such termination and that DBT has incurred in good faith in connection with the Work. DBT

shall not be entitled to anticipated profits on Work unperformed or on materials or equipment unfurnished, but shall be entitled to the following as termination expenses: DBT's Fee earned prior to the effective date of termination, Cost of the Work performed through the effective date of termination and reasonable, documented and out-of-pocket demobilization costs.



INDEMNIFICATION

13.1 General. To the fullest extent permitted by law, DBT shall indemnify, defend and hold harmless the Indemnitees, from and against any and all Claims and Damages to the extent arising out of or resulting from (a) DBT's breach of this Agreement, (b) any penalties or fines levied or assessed for violation of any Legal Requirement, or costs resulting therefrom, arising out of performance of the Work by DBT, EOR, or any of their respective consultants, Subcontractors, Sub-subcontractors, or any agent, servant or employee of any one or more of them or any other person or entity for whose acts DBT may be liable, or (c) the negligent act, omission or other tortious conduct of DBT, EOR, or any of their respective consultants, Subcontractors, Sub-subcontractors, or any agent, servant or employee of any one or more of them or any other person or entity for whose acts DBT may be liable, provided that such suit, claim, damage, loss, cost, settlement, arbitration award 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). Should DBT damage its work or work performed by the County's forces, it shall immediately repair such damage at no cost to the County.

13.2 Patent Indemnification. DBT shall indemnify, defend and hold harmless the Indemnities from and against any and all claims whatsoever arising from or in any manner related to an infringement of patents or the improper use of other proprietary rights that may occur in connection with the performance of the Work and the ownership or use of the equipment and materials excepting, however, those arising from particular products, systems, materials or equipment specified in writing by the County.

13.3 Lien Indemnification. DBT shall indemnify, defend and hold harmless the Indemnitees from and against any and all Claims and Damages suffered, incurred or arising from mechanics' or materialmen's liens and any other claims for payment asserted against the Indemnitees, the Project, existing improvements on the Site, or any part thereof arising out of the Work, but only to the extent that DBT paid all undisputed amounts that are due and payable. The County shall have the right to retain out of any payment due or thereafter to become due to DBT 150% of the amount of any liens that have not been removed or bonded off, in order to protect the County against the costs of such liens.

13.4 Defense. Any defense to be provided by DBT pursuant to any indemnification provision of this Agreement shall be by counsel approved by the County. To the extent any of the Indemnitees incurs costs or expenses to enforce this indemnification (including attorneys' fees and expenses), DBT shall reimburse the Indemnitee for such costs and expenses.

13.5 County Indemnification. DBT acknowledges that as an Ohio political subdivision, the County is prohibited by law from agreeing to indemnify any person or entity, and agrees that no

provision of this Agreement or any other contract or agreement between DBT and the County may be interpreted to obligate the County to indemnify or defend DBT or any other party.

■ **INSURANCE/BONDS**

14.1 DBT Insurance Requirements. DBT shall purchase and maintain the following insurance policies (the "Insurance Policies"):

14.1.1 Professional Liability Insurance. Professional liability insurance for Claims and Damages that arise out of the professional services of DBT, Consultants and other professionals working on the Project. Policy limits for DBT, Consultants shall be as set forth on Exhibit L. In addition to the foregoing, the County may, in its discretion and as a Project expense outside the GMP, obtain OPPI coverage through DBT.

14.1.2 Workers' Compensation. Workers' compensation insurance meeting the statutory requirements of the State of Ohio and employers' liability insurance in limits not less than those set forth in Exhibit L.

14.1.3 General Liability. Commercial general liability insurance coverage for third party bodily injury or property damage claims (a) arising out of services performed by DBT prior to the start of construction for a combined single limit for bodily injury and property damage of not less than \$5,000,000 each occurrence, \$10,000,000 annual aggregate, (b) arising out of construction services performed on the Site after the start of construction for a combined single limit for bodily injury and property damage of not less than the limits set forth on Exhibit L, and (c) arising out of construction services performed on the Site after the date of Substantial Completion (for example, punch list or warranty work) for a combined single limit for bodily injury and property damage of not less than \$2,000,000 each occurrence/annual aggregate. The completed operations coverage under the commercial general liability insurance relating to construction services performed on the Site shall continue for a period of not less than five (5) years after Substantial Completion. All parties identified as Additional Insureds on Exhibit L shall be endorsed as additional insureds with respect to this coverage. The foregoing policy limits may be achieved by any combination of primary and excess policies so long as the overall minimum limits are procured.

14.1.4 Business Automobile Liability Insurance. Business automobile liability insurance covering all owned, non-owned and hired vehicles used in connection with this agreement in an amount not less than the limits set forth on Exhibit L. All parties identified as Additional Insureds on Exhibit L shall be endorsed as additional insureds with respect to this coverage.

14.1.5 Pollution Liability Insurance. Pollution liability insurance in an amount not less than the limits set forth on Exhibit L. All parties identified as Additional Insureds on Exhibit L shall be endorsed as additional insureds with respect to this coverage.

14.2 County Review. DBT shall provide to the County a copy of all Insurance Policies required by this Article 14 for the County's review, comment and approval. Neither approval of

nor failure to disapprove insurance policies furnished by DBT shall relieve DBT or its Subcontractors from responsibility to provide insurance as required by this Agreement.

14.3 Builder's Risk Insurance.

14.3.1 The County shall purchase and maintain builder's risk (or inland marine) insurance for direct physical loss or damage resulting from an insured peril to the building/bridge, structures and other improvements comprising all or part of the Project, including materials and equipment that are intended for incorporation into the Project, whether located at the Site, in storage, or in transit. The County shall maintain such policy in place until its standard casualty policy or self-insurance program is in place. The policy shall include (i) coverage for physical loss or damage from fire and other perils as are included under an "all risk" or "special form" policy; (ii) such endorsements as are commercially available and typically procured for construction projects of a scope and size similar to the Project, including coverage for flood, earthquake, boiler and machinery insurance, glass breakage, mold, and terrorism; and (iii) a waiver of subrogation against DBT, its Subcontractors and any other subcontractors of DBT (of any tier). Policy limits shall be equal to the replacement cost of the Project, subject to sub-limits commercially and reasonably available in the Ohio insurance market. DBT and its Subcontractors shall be named as additional insureds on the policy as their interests may appear. DBT and its Subcontractors shall be responsible, without reimbursement from the County, for any deductible up to \$25,000 per claim. The County shall be responsible for any deductible greater than \$25,000 per claim. Notwithstanding the foregoing, however, DBT shall be responsible for the full per claim deductible under the builder's risk policy in each instance if the loss is caused by the negligence of DBT, its Subcontractor, Sub subcontractor or others whose acts DBT may be liable. The County shall deliver to DBT evidence that such Builder's Risk coverage is in place prior to the commencement of any Work at the Project Site.

14.3.2 Prior to the commencement of construction, DBT shall provide a firm quote for providing the a builder's risk policy based upon the coverages and limits of liability set forth in Section 14.3, and shall deliver a copy of such quote and the policy form to the County. The County shall, in its discretion, select the builder's risk program that it deems to be in its best interests. If the County selects DBT's builder's risk program, then that program shall be described in detail and included in an amendment to this Agreement.

14.4 General Insurance Provisions. Each party shall provide to the other party written notice of any material changes to the Insurance Policies (in the case of DBT) or Builders Risk insurance (in the case of the County) within thirty (30) days prior to the date the change becomes effective, if practicable, but in no instance later than the date such changes become effective. Both the Insurance Policies and the Builders Risk insurance shall be obtained from financially sound insurance companies rated not less than A-;VII by A.M. Best & Company and authorized to do business in the State of Ohio. The Insurance Policies and certificates of insurance shall comply with the requirements set forth in Exhibit L.

14.5 Wrap-Up Program. The County and DBT shall jointly investigate the use of a "wrap-up" insurance program (the "Wrap-Up Program") to provide coverages for general liability insurance and workers' compensation (including employers' liability) insurance for the Project

with limits of liability consistent with those set forth on Exhibit M. Prior to the commencement of construction, DBT shall provide a firm quote for the cost of a Wrap-Up Program based upon the coverages and limits of liability set forth on Exhibit M, and shall deliver a copy of such quote and the policy form to the County. Any quoted rate for the Wrap-Up Program shall include the cost and expense of the necessary DBT's safety administrative and staffing to administer the safety program for the Project including on site safety management. The County may, in its discretion, elect to accept the Wrap-Up Program. If accepted, the Wrap-Up Program shall be included in an amendment to this Agreement.



OWNERSHIP AND USE OF INSTRUMENTS OF SERVICE

15.1 Ownership/License. DBT acknowledges, and shall require in its agreement with EOR that EOR acknowledges, that all Instruments of Service shall be the property of the County. In furtherance of the foregoing, DBT, for itself and on behalf of EOR and each of their respective Consultants, hereby unconditionally and irrevocably grants to the County an exclusive, royalty-free license to the Instruments of Service and the design concepts contained therein, including all patents, copyrights, trademarks, service marks and other intellectual property rights. DBT agrees that it shall obtain from EOR and each their respective Consultants a written confirmation to its consent to transfer such party's rights to effectuate the foregoing.

15.2 Limitations. DBT shall not use, and shall require EOR and their respective Consultants not to use, in the design of other projects any unique or distinctive architectural or aesthetic components or effects of the Project that, taken independently or in combination, would produce a result that is substantially similar in appearance to the Project or to any significant or unique design components of the Project. The County agrees that the Instruments of Service to be provided by DBT, EOR and their respective Consultants will contain certain standard component design details, which standard component details shall remain the property of the applicable party. These details are repetitive in nature, not Project-specific, are function rather than form-oriented, and were not developed for or identifiable with the Project. Continued use by DBT, EOR or their respective Consultants (as applicable) will not compromise the transfer to the County of the unique features of the design for this Project and will not result in a compromise of the County's ownership rights in the Instruments of Service. As such, nothing herein shall be construed as a limitation on DBT, EOR or their respective Consultant's (as applicable) absolute right to re-use such component design details, features and concepts on other projects, in other contexts or for other clients.

15.3 Use. The County shall have complete use of the Instruments of Service, including, without limitation, for marketing the Project, as well as for the further design, construction, maintenance, repair, modification, or expansion of the Project.



DISPUTE RESOLUTION

16.1 With respect to any Claim, prompt notice thereof shall be given to the other party and a record thereof shall be made in the monthly Project Report. At the next Project meeting

following delivery of such notice, DBT and the County shall reserve time at the end of such Project meeting to attempt to resolve such Claim at the field level through discussions between DBT's Senior Project Manager and the County's Representative. If a Claim cannot be resolved through DBT's Senior Project Manager and the County's Representative within thirty (30) days after the initial attempt, then, DBT's Senior Representative and the County's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such Claim. Prior to any meetings between the parties, the parties shall exchange relevant information that will assist the parties in resolving their Claim. If a party intends to be accompanied at a meeting by an attorney, the other party shall be given at least fourteen (14) days' notice of such intention and may also be accompanied by an attorney.

16.2 If, after meeting, the Senior Representatives determine that the Claim cannot be resolved on terms satisfactory to both parties, the parties shall, within fourteen (14) days after the meeting of the Senior Representatives, submit the Claim to non-binding mediation administered jointly by the parties to the mediation and otherwise in accordance with the Construction Industry Claim Resolution Procedures of the American Arbitration Association (AAA) then in effect. Unless otherwise agreed by the parties, the parties shall select one of the pre-qualified mediators set forth in Exhibit O to mediate any Claim. Within ten (10) days after the selection of the mediator, the parties and the mediator shall participate in a pre-mediation conference to determine the time and place of the mediation and the procedures that will govern the mediation. The cost and expense of the mediator shall be equally shared by the parties and each party shall submit to the mediator any information or position papers that the mediator may request to assist in resolving the Claim. The parties will not attempt to subpoena or otherwise use as a witness any person who serves as a mediator, will assert no claims against the mediator as a result of the mediation, and will hold the mediator harmless from claims by third parties arising out of or relating to the mediation provided for in this Section. Notwithstanding anything in the above to the contrary, if a Claim has not been resolved within one hundred twenty (120) days after the initial meeting between DBT's project manager and the County's Representative, then either party may elect to proceed under Section 16.5.

16.3 Failure of either party to comply with the provisions of this Article 16 shall be in contravention of the parties' express intention to implement this alternative means of dispute resolution and shall constitute a waiver by such party of any Claim with respect to which it fails to comply with the provisions of this Article 16 in any material respect.

16.4 In the event of any dispute arising by or between the County and DBT, including EOR and their respective consultants and Subcontractors, materialmen or suppliers, or any of them, each party shall continue to perform as required under the Contract Documents notwithstanding the existence of such dispute. In the event of such a dispute, the County shall continue to pay DBT as provided in the Contract Documents, excepting only such amount as may be disputed.

16.5 Unless the parties otherwise agree, if a Claim has not been settled or resolved within one hundred twenty (120) days after the initial meeting of DBT's project manager and the County's Representative, then either party shall notify the other party of its intent to pursue the Claim further. Within fourteen (14) days after receipt or delivery (as the case may be) of such

notice, the County shall send written notice to DBT specifying whether any unresolved Claim shall be resolved by either (a) litigation in a court of competent jurisdiction set forth in Section 19.1, or (b) arbitration, conducted through any nationally recognized arbitration provider, in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then currently in effect. Any such election shall be in the County's sole discretion. Upon such election, either party may then commence litigation or arbitration proceedings, as the case may be. All arbitration proceedings shall be held in Cleveland, Ohio. If the County fails to send the above referenced written notice within the required fourteen (14)-day period, then the County will be deemed to have elected to litigate the unresolved Claim.

16.6 A demand for arbitration shall be made within the time limits specified in this Article 16 and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations; provided, however, notwithstanding anything in the Contract Documents to the contrary, if any Claim has not been resolved to the mutual agreement of the parties within any applicable statute of limitation period, then either party may commence litigation on such Claim prior to the expiration of such period in order to preserve its rights.

16.7 Any arbitration arising out of or relating to this Agreement may include, by consolidation or joinder or in any other manner, other persons substantially involved in a common question of fact or law whose presence is required if complete relief is to be accorded in arbitration. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a Claim not described therein or with a person or entity not named or described therein. The agreement to arbitrate under this Article 16 shall be specifically enforceable under applicable law in any court having jurisdiction thereof. The award of the arbitrators may be entered as a judgment in any court of competent jurisdiction.

16.8 In the event of any dispute between the County and DBT, the prevailing party in any arbitration or litigation shall be awarded its reasonable attorneys' fees and costs, in addition to any other damages or other amounts to which it may be entitled.



SUCCESSORS AND ASSIGNS

17.1 The County and DBT, respectively, bind themselves, their partners, principals, successors, assigns and legal representatives to the other party to this Agreement, and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement.

17.2 DBT shall not assign or transfer any interest in this Agreement without the written consent of the County.

17.3 The County may assign this Agreement at any time with the consent of DBT, which consent shall not be unreasonably withheld or delayed (provided that DBT shall have no right of consent if DBT is in default hereunder at the time consent to assignment is requested). In

addition, any collateral assignment to lenders for the purposes of financing the Project shall not require the consent of DBT.

18
EXTENT OF AGREEMENT

18.1 Entire Agreement. This Agreement represents the entire and integrated agreement between the County and DBT and supersedes all prior negotiations, representations or agreements, either written or oral.

18.2 Third Party Rights. Nothing contained herein shall be deemed to give any third party any claim or right of action against the County or DBT that does not otherwise exist without regard to this Agreement. All covenants and indemnifications of DBT, and all rights and interests granted by DBT under this Agreement, are for the joint benefit of, and may be enforced by, the County.

19
MISCELLANEOUS PROVISIONS

19.1 Governing Law. This Agreement shall be governed by Ohio law, without regard to its conflicts of law principles. Any litigation under this Agreement shall be brought in any court having proper jurisdiction that is located in Cuyahoga County and the parties consent to personal jurisdiction and venue in such court.

19.2 Amendment. This Agreement may be amended only by written instrument signed by both the County and DBT.

19.3 Preparation. Preparation of this Agreement has been a joint effort of the parties and the resulting document shall not be construed more severely against one of the parties than against the other.

19.4 Captions. The captions contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Agreement or the intent of any provision contained herein.

19.5 Notices. Any notice, demand, offer or other written instrument required or permitted to be given pursuant to this Agreement shall be in writing signed by the party giving such notice and shall be hand delivered or sent by overnight courier, messenger or registered letter, email or fax, to the other party at the address set forth below:

If delivered to the County:

Cuyahoga County Executive
2079 East Ninth Street, 8th Floor
Cleveland, Ohio 44115
Fax: (216) 443-7178

With a copy to:

- (a) Cuyahoga County Department of Law
2079 East Ninth Street, 7th Floor
Cleveland, Ohio 44115
Attn: Director of Law
Fax: (216) 698-6464

- (b) Cuyahoga County Department of Law
2079 East Ninth Street, 8th Floor
Cleveland, Ohio 44113
Attn: Deputy Director – Risk Management
Fax: (216) 698-6464

- (c)

If delivered to DBT:

Attention: _____
Phone: _____
Fax: _____
Email: _____

With a copy to:

- (a) _____

Attention: _____
Phone: _____
Fax: _____
Email: _____

Each party shall have the right to change the place to which notice shall be sent or delivered by sending a similar notice to the others in like manner. The effective date of any notice issued pursuant to this Agreement shall be as of the addressee's receipt of such notice. Any notice

given by fax shall also be deposited in regular U.S. mail (or more expedient delivery) no later than the next business day after the fax was sent.

19.6 Severability. The invalidity of one or more phrases, sentences, clauses, sections or articles contained in this Agreement shall not affect the validity of the remaining portions of this Agreement so long as the material purposes of this Agreement can be determined and effectuated.

19.7 Attachments. All exhibits, schedules or other attachments referenced in this Agreement are incorporated into this Agreement by such reference as if fully rewritten herein and shall be deemed to be an integral part of this Agreement.

19.8 Independent Contractor. DBT is an independent contractor and shall not be deemed an agent, employee or partner of the County. Nothing contained in this Agreement shall be construed as constituting a joint venture or partnership between DBT and the County.

19.9 Counterparts. This Agreement may be executed in any one or more counterparts, including facsimile or electronic signature included in an Adobe PDF file, each of which, when so executed, shall be deemed an original, and all such counterparts together shall constitute the same instrument. Execution of this Agreement at different times and places by the parties shall not affect the validity thereof. This Agreement shall only be effective when signed by all parties

19.10 Facsimile Signatures. Signatures to this Agreement transmitted by facsimile shall be valid and effective to bind the party so signing. Each party agrees to promptly deliver an execution original to this Agreement with its actual signature to the other party, but a failure to do so shall not affect the enforceability of this Agreement, it being expressly agreed that each party to this Agreement shall be bound by its own facsimile signature and shall accept the facsimile signature of the other party to this Agreement.

19.11 Electronic Signature. The Parties agree that all documents requiring signatures by the County may be executed by electronic means, and that the electronic signatures affixed by the County to this Agreement shall have the same legal effect as if that signature was manually affixed to a paper version of this Agreement. The Parties also agree that the County is bound by the provisions of Chapter 304 of the Ohio Revised Code (the "ORC") as it pertains to electronic transactions under Chapter 1306 of the ORC, and the County will comply with its electronic signature policy.

19.12 Rights and Remedies. Except as may be otherwise expressly provided herein, all rights and remedies provided in this Agreement are in addition to all other rights and remedies available at law or in equity.

19.13 Authority. The County and DBT each has full power and authority to enter into this Agreement and each person signing on their respective behalf is authorized to do so.

[SIGNATURES ON NEXT PAGE]

DRAFT – Subject to change at County’s sole discretion.

This Agreement is entered into as of the Effective Date.

THE COUNTY OF CUYAHOGA, OHIO _____

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

DRAFT

EXHIBITS

<u>EXHIBIT A</u>	DBT's and EOR's Consultants
<u>EXHIBIT B</u>	CAE's Subconsultants
<u>EXHIBIT C</u>	General Conditions of the Contract for Construction
<u>EXHIBIT D</u>	Description of General Conditions Work
<u>EXHIBIT E</u>	Schedule of Values
<u>EXHIBIT F</u>	GMP Documents
<u>EXHIBIT G</u>	DBT's Key Personnel
<u>EXHIBIT H</u>	Form of Payment and Performance Bonds
<u>EXHIBIT I</u>	Wage/Salary Schedule of Labor in Direct Employ of DBT
<u>EXHIBIT J</u>	Rate Schedule of Project Staff Reimbursable as a Cost of the Work
<u>EXHIBIT K</u>	Description of the Project
<u>EXHIBIT L</u>	Schedule of Insurance and Bond Requirements
<u>EXHIBIT M</u>	Wrap-Up Insurance Coverages and Limits
<u>EXHIBIT N</u>	Change Order Pricing
<u>EXHIBIT O</u>	List of Pre-Qualified Mediators
<u>EXHIBIT P</u>	Master Project Schedule
<u>EXHIBIT Q</u>	Description of the Site

EXHIBIT A

DBT's and EOR's Consultants

[See attached]

EXHIBIT B

CAE's Subconsultants

EXHIBIT C

General Conditions of the Contract for Construction

EXHIBIT D

Description of General Conditions Work

EXHIBIT E

Schedule of Values

[This exhibit must include the breakdown of the GMP, including DBT's Fee, guaranteed maximum price for the General Conditions Work and Construction Contingency)]

EXHIBIT F

GMP Documents

[This exhibit must include the following: the list of drawings and specifications upon which the GMP is based, a narrative description of incomplete design details, allowance items, list of accepted alternates, unit prices]

EXHIBIT G

DBT's Key Personnel

EXHIBIT H

Form of Payment and Performance Bond

[To be provided]

EXHIBIT I

Wage/Salary Schedule of Labor in Direct Employ of DBT

EXHIBIT J

Rate Schedule of Project Staff Reimbursable as a Cost of the Work

EXHIBIT K

Description of the Project

EXHIBIT L

Insurance Requirements

DBT shall procure, maintain and pay premiums for the insurance coverage and limits of liability indicated below with respect to products, services, work and/or operations performed in connection with this Agreement.

1. **Mandatory Insurance Requirements**

The following three items (Worker's Compensation Insurance, Commercial General Liability Insurance, and Business Automobile Liability Insurance) are all mandatory requirements unless otherwise specified.

(a) **Worker's Compensation Insurance** as required by the State of Ohio. Such insurance requirement may be met by either purchasing coverage from the Ohio State Insurance Fund or by maintaining Qualified Self-Insurer status as granted by the Ohio Bureau of Workers Compensation (BWC).

For Contractors with employees working outside of Ohio, Worker's Compensation Insurance as required by the various state and Federal laws as applicable including Employers' Liability coverage with limits of liability not less than:

\$1,000,000 each accident for bodily injury by accident;
\$1,000,000 each employee for bodily injury by disease;
\$1,000,000 policy limit for bodily injury by disease.

Such insurance shall be written on the National Council on Compensation Insurance (NCCI) form or its equivalent.

(b) **Commercial General Liability Insurance** with limits of liability not less than:

\$1,000,000 each occurrence bodily injury & property damage;
\$1,000,000 personal & advertising injury;
\$2,000,000 per project aggregate;
\$2,000,000 products/completed operations aggregate.

Such insurance shall be written on an occurrence basis on the Insurance Services Office (ISO) form or its equivalent.

(c) **Business Automobile Liability Insurance** covering all owned, non-owned, hired, and leased vehicles. Such insurance shall provide a limit of not less than \$1,000,000 combined single limit (bodily injury & property damage) each accident;

Such insurance shall be written on an occurrence basis on the Insurance Services Office (ISO) form or its equivalent.

(d) **Umbrella/Excess Liability Insurance** with limits of liability not less than:

\$10,000,000 each occurrence

\$10,000,000 per project aggregate

\$10,000,000 products/completed operations aggregate

Such insurance shall be written on an occurrence basis and shall sit in excess of the limits and terms set forth in the preceding items (a)-(c).

(e) **Contractor's Equipment Insurance** covering all risk of physical damage to equipment provided for use by Contractor.

(f) **Professional Liability/Errors & Omissions Liability Insurance** providing coverage for claims arising out of the provision of design, architectural, engineering and/or other professional services with a limit of liability not less than:

\$5,000,000 per claim;

\$5,000,000 aggregate.

Such insurance may be written on either an occurrence or claims-made basis. However, if written on a claims-made basis, the claims-made retroactive date on the policy shall be prior to the commencement of any design, architectural, engineering or other professional activity related to this Agreement. DBT and DBT's Consultants shall maintain professional liability insurance to protect against claims arising out of the performance of its professional services. DBT's professional liability insurance shall have the minimum limits set forth above, and DBT shall maintain such insurance throughout the duration of the Project and for a period of not less than five (5) years after the date of Substantial Completion.

(g) **Contractor's Pollution Liability Insurance** with a limit of liability not less than:

\$1,000,000 per claim;

\$1,000,000 aggregate.

Such insurance may be written on either an occurrence or claims-made basis, however, if written on a claims made-basis, the claims-made retroactive date on the policy shall

be prior to the commencement of any work related to this Contract.

(h) **Railroad Protective Insurance** with a limit of liability per the requirement of each Railroad affected by the project.

(i) **Completed Operations Liability Insurance.** DBT shall maintain the completed operations coverage for at least five (5) years following Substantial Completion of the Work.

(j) **Employment-Related Practices Liability** (covering employment practices liability exposures, such as liability arising from discrimination, wrongful termination, sexual harassment, coercion, and other workplace causes of action and torts)
\$5,000,000 Each Occurrence and General Aggregate

Insurance Coverage Terms and Conditions

1. The insurance policies of Design-Builder required for the Agreement, with the exception of the Professional Liability and Workers' Compensation Insurance, shall each name the "County of Cuyahoga, Ohio any additional entities designated by the County, and their respective employees" as Additional Insureds and shall contain the following provisions:

- (i) Thirty (30) days prior notice of cancellation or material change;
- (ii) A waiver of subrogation wherein the insurer(s) waives all rights of recovery against the COUNTY.

2. The insurance required for the Agreement shall be provided by insurance carrier(s) licensed to transact business and write insurance in the state(s) where operations are performed and shall carry a minimum A.M. Best's rating of A VII or above.

3. These insurance provisions shall not affect or limit the liability of Design-Builder stated elsewhere in the Agreement or as provided by law.

4. Design-Builder shall require any and all of its subcontractors to procure, maintain, and pay premiums for the insurance coverages and limits of liability outlined above with respect to products, services, work and/or operations performed in connection with the Agreement.

5. The County reserves the right, acting reasonably, to require insurance coverages in various amounts or to modify or waive insurance requirements on a case-by-case basis whenever it is determined to be in the best interest of the County. If any such changes result in additional cost for Design-Builder, Design-Builder shall be entitled to an equitable adjustment in its

compensation to the extent of such increase.

6. Design-Builder shall furnish a Worker's Compensation Certificate and Certificate of Insurance evidencing the insurance coverages required herein are in full force and effect. Acceptance of a non-conforming certificate of insurance by the County shall not constitute a waiver of any rights of the parties under the Agreement.

Indemnification

1. Design-Builder hereby indemnifies, defends and holds harmless the County and its respective officers, officials, directors, board members, employees, and agents, from and against all claims, damages, losses, liens, causes of action, suits, judgments and expenses (including attorney's fees and other costs of defense), of any nature, kind or description, to the extent caused by (a) the negligent errors or omissions in any drawings or specifications, other documents, or Design-Builder negligent performance under the Agreement, or from the negligent performance, errors and omissions of its officers, owners, principals, subcontractors, employees, and agents, or (b) breach or default by Design-Builder under any terms or provisions of the Agreement.
2. Design-Builder acknowledges that, as a political subdivision of the State of Ohio, the County does not indemnify any person or entity. Design-Builder agrees that no provision of the Agreement or any other contract or agreement between Design-Builder and the County may be interpreted to obligate the County to indemnify or defend Design-Builder or any other party.
3. The Insurance and Indemnification Sections of this Article 2 shall survive the completion of the Services to be performed hereunder and the termination of this Agreement.

EXHIBIT M

Wrap-Up Program

[Wrap-Up Program Limits To be provided]

EXHIBIT N

Change Order Pricing

1. The increase or decrease in the GMP shall be determined in one of the following ways and, unless otherwise approved or directed by the County, in the precedence of the order listed:

(a) by an accepted unit price proposed in the GMP Documents.

(b) by a lump sum cost acceptable to the County, based on DBT's detailed, itemized breakdown of the actual basic costs, with allowance for DBT's profit and overhead, as provided for under Section 3 below.

(c) by mutually agreeable unit prices for the Work, with allowance for DBT's profit and overhead, computed in a similar manner as provided for in Section 3 below.

(d) on the actual Cost of the Work, as determined by payroll records and paid receipts, plus allowances for DBT's profit and overhead as set forth in Section 3 below.

2. Except for unit prices included in the GMP Documents, and unless otherwise approved by the County, for proposed changes in the Work DBT shall submit an itemized list of quantities with the applicable unit cost and extended price for each, in such form and detail as required by the County.

3. The amount that will be allowed for overhead, profit or markup shall be as follows, expressed as a percentage of the actual basic cost of the change:

	Overhead	Profit	Subcontract Markup
(a) To DBT for Work performed with its own forces	___%	___%	___%
(b) To DBT for Work performed by other than its own forces	0%	0%	___%

With respect to Subcontract Work, the total profit and overhead shall not exceed 5% of the cost of such work for each allowable tier.

4. Material costs shall be at the actual costs to DBT or Subcontractor. Upon request, DBT (or Subcontractor) shall submit evidence to substantiate the costs. Materials shall be quoted at trade discount prices, with quantity discounts also applied where the quantities warrant. In any proposal with material credits, the credit shall be based on the actual contract cost for the material (including trade and quantity discounts) less than any charge actually incurred for handling or returning a material that has been delivered.

5. Except as set forth in Section 10.5, the percentages allowed for overhead, profit or markup under Section 3 above shall be deemed to include: (1) field and office supervision and administration, including the field superintendent; (2) general insurance, except that listed as the labor burden; (3) use of small tools; (4) shop burden; (5) estimating and administrative costs; (6) indirect costs related to the Work, including impact costs resulting from the performance of cumulative Change Orders; and (7) any other costs resulting from the change not expressly enumerated as a Cost of the Work, including general requirements that are directly attributable to the change shall be considered Cost of the Work (*e.g.*, protection, clean-up, reproduction and safety).

6. Except for changes based on unit prices included in the Agreement, costs changes shall be computed by determining the actual Cost of the Work to which the overhead may be added, then the profit figures may be added and finally adding any applicable sales tax on materials.

7. Subcontractors shall compute their costs in the same way, but the maximum percentage for overhead, profit or other markup cannot exceed 5%.

8. For changes involving extra cost by a Subcontractor and DBT, the markup shall be applied directly to the Subcontractor's price with the overhead and profit figure applied only to the Work DBT performs with its own forces.

9. For changes involving both extra and credit amounts, the overhead, profit or markup, as the case may be, shall be applied only to the net difference where the extra exceeds the credit.

10. For changes resulting in a net credit on the basic costs, an allowance for overhead, profit or markup on the net difference shall be credited to the County using the percentages set forth in Section 3 above.

11. On changes where the value or extent of Work cannot be reasonable pre-determined or agreed upon, the County may authorize Work to proceed on an agreed upon cost plus basis, not to exceed a pre-determined maximum amount. In such cases, the basic costs and mark-up for overhead, profit and markup will be in accordance with this Exhibit.

12. Unit prices proposed in the GMP Documents are not subject to further profit, overhead or markup adjustments, nor the conditions of Sections 2 through 11 above. The GMP will be adjusted by the direct extension of the number of units and the unit cost price.

EXHIBIT O

List of Pre-Qualified Mediators

EXHIBIT P

Master Project Schedule

[Include Schedule, and specifically identify, all critical County-responsible milestone dates]

EXHIBIT Q

Description of the Site

