

# Exhibit A – Terms & Conditions

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## Article 1 — Provider’s Responsibilities

§ 1.1. The Provider shall perform its services consistent with the professional skill and care ordinarily provided by professionals licensed to perform the Provider’s Services practicing in the same or similar locality of the Project with above-average experience in projects similar to the Project (the “Standard of Care”). The Provider shall perform its services as expeditiously as is consistent with its Standard of Care and the orderly progress of the Project.

§ 1.2. In providing the Provider’s Services, the Provider shall comply with all federal, state, and local laws, regulations, and orders applicable to the Provider’s Services and shall prepare any drawings, specifications, or other deliverable in conformity with all such statutes, regulations, ordinances, and orders, except to the extent that the Provider has advised the Owner in writing of an ambiguity in any such statutes, regulations, ordinances, and orders.

§ 1.3. Provider warrants and represents that the Provider and all of its subcontractors and subconsultants, if any, presently have, and will at all times while performing the Provider’s Services maintain: (i) all skills, experience, knowledge, staffing and resources necessary to perform the Provider’s Services, and (ii) all required licenses, accreditations, certifications and registrations necessary to perform the Provider’s Services.

§ 1.4. The Provider shall keep the owner apprised of its progress on the Project.

§ 1.5. The Provider shall provide copies of all deliverables to the Owner in the format and manner which the Owner reasonably requests, including, but not limited to, the submission of such deliverables via any project management software utilized by the Owner.

§ 1.6. **No Design Professional.** There is no Design Professional for this Project. All Design Professional services needed for the project shall be provided by Provider. In doing so, the Provider shall use its best efforts, best skills, and best judgment in providing architectural, engineering, and/or other design services for the Project in accordance with the professional standards and quality expected of design professionals licensed to practice in Ohio with experience with projects similar in design and function to that of the Project.

## Article 2 — Compensation & Payment

§ 2.1. Provider shall submit invoices to the Owner for Provider’s Services as set forth in the Agreement.

§ 2.2. Owner may withhold payment in whole or in part, and may demand that Provider refund amounts previously paid, to protect Owner from loss because of:

§ 2.2.1. Provider’s default or failure to perform any of its obligations under the Contract Documents, including but not limited to: failure to provide sufficient skilled workers; Work, including equipment or materials, which is defective or otherwise does not conform to the Contract Documents; failure to conform to the Project Time Schedule; and failure to follow the directions of or instructions from Owner;

§ 2.2.2. Provider’s default or failure to perform any of its obligations under another contract that it has with Owner;

§ 2.2.3. The filing of third party claims, or reasonable evidence that third party claims have been or will be filed;

§ 2.2.4. The Work has not proceeded to the extent set forth in the application for payment;

§ 2.2.5. Any representations made by Provider are untrue;

§ 2.2.6. The failure of Provider to make payments to its Subcontractors;

§ 2.2.7. Damage to Owner's property or the property of another person or laborer; or

§ 2.2.8. Liens filed or reasonable evidence indicating the probable filing of such liens.

§ 2.3. Owner will pay Provider within 30 days after Owner's approval of the Provider's invoice, provided that the payment application has been properly submitted on a timely basis and is accompanied by all of the requested documentation.

§ 2.4. If requested by the Owner, Provider shall submit all documentation so requested by the Owner to support the Provider's invoice.

§ 2.5. The making of any payment, including final payment, by Owner does not constitute a waiver of claims by Owner for the following:

§ 2.5.1. Liens, claims, security interests, or encumbrances arising out of the Contract Documents that are unsettled;

§ 2.5.2. Errors or omissions of the Provider in providing the Provider's Services;

§ 2.5.3. Other acts or omissions of the Provider which violate the Provider's Standard of Care; or the provision of the Provider's Services;

§ 2.5.4. Claims for Indemnification;

§ 2.5.5. Claims about which Owner has given Provider written notice; or

§ 2.5.6. Claims arising after Final Payment.

### **Article 3 — Insurance & Indemnification**

#### **§ 3.1. Provider's Insurance.**

§ 3.1.1. Provider shall secure and maintain through the full period of the Agreement, and for four (4) years following final completion of the Project, insurance in at least the following limits of coverage:

§ 3.1.1.1. Commercial General Liability, including completed operations, contractual liability, and protective liability insurance if any of the services or work provided are performed by others, in an amount of \$1,000,000 per occurrence and \$2,000,000 aggregate.

§ 3.1.1.2. Automobile Liability, covering all owned, non-owned, and hired automobiles used in connection with the Project, with a minimum limit of \$1,000,000 for bodily injury (including death) and \$1,000,000 combined single limit.

§ 3.1.1.3. Workers Compensation and Employers' Liability Insurance, as required by Ohio law.

§ 3.1.1.4. Professional Liability Insurance for protection of claims arising out of the performance of any design, commissioning, and/or engineering services performed or furnished by Provider for the Project for which the Provider may become legally liable, in a minimum amount of \$1,000,000 coverage, unless the Owner agrees to a lesser amount.

§ 3.1.2. Provider will, upon request, provide a certificate of such insurance coverage with the Owner or its authorized representative.

§ 3.1.3. The costs of insurance required for the Project and provided by Provider are included in the Provider's compensation.

§ 3.1.4. The Owner, and any other party reasonably requested by the Owner (the "Additional Insureds"), shall be named as an additional insured on the commercial general and automobile liability

policies.

**§ 3.1.5.** The Owner shall be given a minimum of thirty (30) days written notice by the provider of each insurance policy of any change in coverage, including cancellation.

**§ 3.2. Owner's Insurance.** Insurance furnished by Owner, if any, is not intended to and does not cover equipment and materials before they are physically incorporated into the Work or tools. Provider bears the entire risk of loss with respect to tools, equipment, and materials. Provider is responsible for damages to Owner's property and to adjacent property caused by or related to the Work or actions by Provider's employees or those of its subcontractors.

**§ 3.3. Indemnification.**

**§ 3.3.1.** To the maximum extent permitted by law, Provider shall indemnify and hold harmless the Owner and Additional Insureds, and the agents, and employees from and against all claims, damages, losses, and expenses, including but not limited to attorneys' and Providers' fees, arising out of or related to the performance of the Provider's Services, including but not limited to the failure of Provider to perform its obligations under the Agreement, any claims for bodily injury, sickness, disease, or death or to injury to or destruction of or loss of use of real or personal property, claims for additional storage and handling charges, liens against funds, claims related to the alleged failure of the Provider to perform in accordance with the Agreement, and/or claims related to the removal, handling, or use of any hazardous materials.

**§ 3.3.2.** Owner may set off amounts equal to any sums for which it is entitled to be indemnified from the amounts otherwise due Provider under the Agreement.

**§ 3.3.3.** In claims against any person or entity indemnified under this Contract by an employee of Provider, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligations under this Contract are not limited by a limitation on amount or type of damages, compensation, or benefits payable for Provider or Subcontractor under workers' compensation acts, disability benefits acts, or other employee benefits acts. Provider expressly waives any protection or immunity with respect to Workers' Compensation claims related to indemnification given under this Agreement.

**Article 4 — Warranties**

**§ 4.1.** In addition to any other warranties, guarantees, or obligations set forth in the Contract Documents or applicable as a matter of law and not in limitation of the terms of the Contract Documents, Provider warrants and guarantees that:

**§ 4.1.1.** Owner will have good title to the Work and all materials and equipment incorporated into the work will be new;

**§ 4.1.2.** The Work and all materials and equipment incorporated into the Work will be free from all defects, including any defects in workmanship or materials;

**§ 4.1.3.** The Work and all equipment incorporated into the Work will be fit for the purpose for which intended;

**§ 4.1.4.** The Work and all materials and equipment incorporated into the Work will be merchantable; and,

**§ 4.1.5.** The Work and all materials and equipment incorporated into the Work will conform in all respects to the Contract Documents.

**§ 4.2.** Upon notice of the breach of any of the foregoing warranties or guarantees or any other warranties or guarantees under the Contract Documents, Provider, in addition to any other requirements in the

Contract Documents, shall commence to correct such breach and all damage resulting therefrom within 2 business days after written notice thereof, thereafter shall use its best efforts to correct such breach and damage to the satisfaction of Owner and, except when an extension of time is granted in writing by Owner, correct such breach and damage to the satisfaction of Owner within 30 days of such notice; provided that if such notice is given after final payment hereunder, such 2-day period will be extended to 7 days.

**§ 4.3.** If Provider fails to commence to correct such breach and damage, or to correct such breach and damage as provided above, Owner, upon written notice to Provider and without prejudice to any of its other rights or remedies, may correct the deficiencies.

**§ 4.4.** Provider upon written notice from Owner shall pay Owner, within 10 days after the date of such notice, all of Owner's costs and expenses incurred in connection with or related to such correction and/or breach, including without limitation Owner's administrative, legal, and consulting expenses.

**§ 4.5.** The warranties and obligations of Provider in this Article 11 will survive the final payment and/or termination of this Agreement.

**§ 4.6.** If Provider fails to pay Owner any amounts due under this Article 11, Provider will pay Owner, in addition to the amounts due, a late payment fee of 1.5% per month for each month or part thereof that the payments are not paid when due.

#### **Article 5 — Corrective Action**

**§ 5.1.** If Owner determines that Provider is not cooperating or coordinating its work properly with its subcontractors, not supplying sufficient skilled workers, not cleaning up the Project, not furnishing the necessary materials, equipment, or any temporary services or facilities to perform the Work in strict conformance with the Contract Documents, or Provider is not on schedule, or is not otherwise performing its obligations under the Contract Documents, PROVIDER MUST IMMEDIATELY, AND IN NOT LESS THAN 2 BUSINESS DAYS AFTER NOTICE OF SUCH DETERMINATION, OR SUCH LESSER TIME AS MAY BE PROVIDED IN THE CONTRACT DOCUMENTS, (1) COMMENCE SUCH ACTION AS IS NECESSARY TO CORRECT THE DEFICIENCIES NOTED BY OWNER, (2) PROCEED TO USE ITS BEST EFFORTS TO CORRECT SUCH DEFICIENCIES WITHIN 30 DAYS OF SUCH NOTICE AND/OR, (3) IF OWNER INSTRUCTS PROVIDER TO TAKE SPECIFIED CORRECTIVE ACTION, IMMEDIATELY TAKE SUCH CORRECTIVE ACTION, including but not limited to increasing the number of skilled workers, providing temporary services or facilities, and cleaning up the Project. Such corrective action must be taken and continued uninterruptedly without waiting to initiate any dispute under Article 5 of this Agreement or the resolution of any dispute initiated under such section.

#### **Article 6 — Default of Provider**

**§ 6.1. Events of Default.** Each of the following constitutes an event of default of Provider:

**§ 6.1.1.** Provider's failure to perform any of its obligations under the Contract Documents and to proceed to commence to correct such failure within 2 business days after written notice thereof from Owner or such lesser time as is provided in the Contract Documents, or

**§ 6.1.2.** Provider's failure thereafter to use its best efforts to correct such failure, or

**§ 6.1.3.** Except when an extension of time is granted in writing by Owner, to correct such failure within 30 days after receipt of written notice thereof.

**§ 6.1.4.** Provider's failure to pay its obligations as they become due or Provider's insolvency.

**§ 6.2. Owner's Remedies.** Upon the occurrence of an event of default, Owner has the following remedies, which are cumulative:

§ 6.2.1. Order Provider to stop the Work, which Provider must do immediately;

§ 6.2.2. To perform through others all or any part of the Work remaining to be done and to deduct the cost thereof from the unpaid balance of the Contract Sum or, if the unpaid balance of the Contract Sum is inadequate, to demand reimbursement of amounts previously paid to Provider;

§ 6.2.3. To terminate this Agreement and take possession of, for the purpose of completing the Work or any part of it, all materials, equipment, scaffolds, tools, appliances, and other items belonging to or possessed by Provider, all of which Provider hereby transfers and assigns to Owner for such purpose, and to employ any person or persons to complete the Work, including Provider's employees, and Provider will not be entitled to receive any further payment until the Work is completed;

§ 6.2.4. To accept assignment of Provider's subcontracts for the Project, subject to any prior rights of the surety, if any, and, at Owners' sole discretion, to further assign the subcontracts to a successor Provider or other entity provided that (i) Owner terminates this Agreement for cause, and (ii) provides written notice of such assignment to both Provider and Subcontractor; and/or,

§ 6.2.5. All other remedies that Owner may have at law or in equity or otherwise under the Contract Documents.

**§ 6.3. Termination of Agreement.** The termination of this Agreement will be without prejudice to Owner's rights and remedies, including without limitation Owner's right to be indemnified by Provider.

**§ 6.4. Payments Due Provider.** If the unpaid balance of the Contract Sum exceeds the cost of finishing the Project, including any costs, expenses or damages incurred by Owner as a result of the event of default, including attorneys' and consultants' fees and the administrative expense of Owner's staff, such excess will be paid to Provider. If such costs exceed the unpaid balance, Provider is responsible to pay the difference to Owner. The obligations under this section will survive termination of this Agreement.

## **Article 7 — Default of Owner**

**§ 7.1. Events of Default.** The following constitutes the exclusive events of default of Owner:

§ 7.1.1. Failure of Owner to perform any of its obligations under the Contract Documents and to correct such failure within 30 days after receipt of written notice thereof from Provider specifying the default and the necessary corrective action.

§ 7.1.2. The failure of Owner to pay Provider as payment becomes due under this Contract.

**§ 7.2. Provider's Remedy.**

§ 7.2.1. Provider's sole and exclusive remedy for the default of Owner, other than the failure of Owner to pay Provider, will be to bring a suit for damages in the Common Pleas Court for the county in which the Project is located. Provider's right to exercise that remedy shall be subject to its giving Owner the required notices and following any other procedures required by the Contract Documents.

§ 7.2.2. If Owner fails to pay Provider as payment becomes due, Provider may, upon 15 days written Notice, stop the Work until payment of the amount owing has been received. An adjustment to the Contract Sum will be made as if the Work had been suspended for the convenience of Owner under Article 9.1.

## **Article 8 — Suspension or Termination for the Convenience of Owner**

**§ 8.1. Suspension for the Convenience of Owner.**

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

§ 8.1.2. An adjustment will be made for increases in the cost of performance of the Work, including profit and overhead on the increased cost of performance, caused by the suspension, delay or interruption, provided that the total cost of profit and overhead shall not exceed 10% of the amount of the increased cost not attributable to profit or overhead. No adjustment will be made to the extent that:

§ 8.1.2.1. performance is, was or would have been so suspended, delayed or interrupted by another cause for which Provider is responsible; or

§ 8.1.2.2. an equitable adjustment is made or denied under another provision of this Agreement.

## § 8.2. Termination for the Convenience of Owner.

§ 8.2.1. Owner may, in its discretion and without cause, upon three (3) business days written notice to Provider terminate this Agreement for Owner's convenience and without cause.

§ 8.2.2. Upon receipt of a written notice from Owner terminating this Agreement for Owner's convenience and without cause, Provider will (i) cease performing any or all portions of the Work on the dates provided in the Owner's written notice, (ii) immediately take all reasonable and necessary action to protect and preserve the Work, and (iii) unless otherwise directed by Owner in the Owner's written notice, terminate or assign all agreements with Subcontractors and suppliers.

§ 8.2.3. If this Agreement is terminated for Owner's convenience and without cause and there exists no event of Provider's default, as defined in this Agreement, Provider will be entitled to receive payment for Work properly executed, including reasonable costs for work necessary to protect and preserve the Work.

§ 8.2.4. If this Agreement is terminated for Owner's convenience and without cause and there exists an event of Provider's default, as defined in this Agreement, Provider will be entitled to receive only such sums as it would be entitled to receive following the occurrence of an event of default under this Agreement.

§ 8.2.5. The termination of this Agreement will be without prejudice to any rights or remedies that exist at the time of termination.

## Article 9 — Claims & Disputes

§ 9.1. **Notice of Claims.** Provider shall provide written notice to the Owner of any claim within five (5) days of occurrence of the event giving rise to the Provider's claim. The Provider hereby irrevocably waives any claim not brought in accordance with the provisions of this Article 5.

### § 9.2. Mediation.

§ 9.2.1. Any claim, dispute, or other matter in question arising out of or related to the Agreement shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 9.2.2. The parties will endeavor to mutually agree on a mediator or mediators and procedures to govern the mediation, or, in the absence of such agreement, the mediation shall be held in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect.

§ 9.2.3. The parties will share the mediator's fees equally.

§ 9.2.4. In the event the claim cannot be resolved by mediation, the claim may proceed to arbitration, as set forth below.

### § 9.3. Arbitration.

§ 9.3.1. Claims, disputes and other matters in question between the parties that are not resolved by

mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect.

**§ 9.3.2.** The parties' agreement to arbitrate herein shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

**§ 9.3.3.** The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

**§ 9.4. Settlement Offers.** The Provider initiates a claim, the Owner may make settlement offers to settle the Claim at any time up to the date of trial. Such settlement offers shall be subject to Rule 408 (Compromise and Offers of Compromise) of the Ohio Rules of Evidence. If at any stage of the litigation, including any appeals, the Provider's Claim is dismissed or found to be without merit, or if the damages awarded to the Provider on its Claim do not exceed the Owner's last settlement offer, the Provider shall be liable to the Owner and shall reimburse the Owner for all the Owner's attorneys' fees and expenses, and arising out of or related to such Claim since the date of such last settlement offer.

## Article 10 — Miscellaneous

**§ 10.1. Limitation on Liability.** Owner's total liability under this Agreement is limited to the amount set forth in the Treasurer's certificate at the end of this Agreement. Under no circumstances will the elected officials, officers, employees, board members, or agents of Owner be personally liable for any obligations or claims arising out of or related to this Agreement.

**§ 10.2. Project Safety.** Provider must follow all applicable safety and health regulations during the progress of the Project and monitor all of its employees and its subcontractors for compliance with such safety and health regulations. In undertaking the responsibilities set forth in this section, Provider does not assume any duty or responsibility to the employees of any Subcontractor or supplier, regardless of tier. Owner assumes no responsibility for the development, review, or implementation of the any project safety plan or for Project safety and has no authority to direct the means and methods of Provider.

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

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

**§ 10.5. Notices.** A Notice is any written notice to the Owner or the Provider.

**§ 10.5.1.** Notice to the Provider shall be deemed to have been duly served if delivered in person to an officer or any other official of the Provider or if delivered to or sent by registered or certified mail, return receipt requested, to the Provider's address provided in the Agreement.

**§ 10.5.2.** Notice to the Owner shall be deemed to have been duly served if delivered to or sent by registered or certified mail, return receipt requested, to the Owner's address provided in the Agreement.

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

**§ 10.7. Partial Invalidity.** If any term or provision of the Agreement is found to be illegal, unenforceable, or in violation of any laws, statutes, ordinances, or regulations of any public authority having jurisdiction, then, notwithstanding such term or provision, the Agreement will remain in full force and effect and such term will be deemed stricken; provided the Agreement will be interpreted, when possible, so as to reflect the intentions of the parties as indicated by any such stricken term or provision.

**§ 10.8. Assignment.** The Agreement shall not be assigned in whole or in part, including the right to payments, by the Provider without the Owner's prior written consent.

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

**§ 10.10. Captions.** The captions denoting each article of the Agreement and exhibits shall have no application in the interpretation thereof; the language of the Article shall be fully controlling.

**§ 10.11. Equal Opportunity.** Provider will not, and it will ensure that its Subcontractors, regardless of tier, do not, discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. Such action includes but is not limited to the following: employment, upgrading, demotion, transfer, recruitment or recruiting advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Provider agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of nondiscrimination. Provider is responsible to ensure that each of its Subcontractors, regardless of tier, states in all solicitations or advertisements for employees placed by them or on their behalf that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, or national origin.

**§ 10.12. Use of Owner's Facilities.**

**§ 10.12.1.** Provider will ensure that neither its employees, nor its Subcontractor's or material supplier's employees, regardless of tier, do any of the following without the express prior written consent of Owner:

**§ 10.12.1.1.** use Owner's cafeteria, rest rooms, or phones;

**§ 10.12.1.2.** use or bring any alcoholic beverages, controlled substances, or firearms on any property owned by Owner;

**§ 10.12.1.3.** use any radios, tape or compact disc players, or sound amplification equipment; and



**§ 10.12.1.4.** initiate or react to any visible or audible actions toward students, teachers, or staff members of Owner. Owner will not tolerate any such actions and any such action observed or made known to Owner will be dealt with severely.

**§ 10.12.2.** Provider must conspicuously post notice of the prohibitions listed in this section at the Project site in the same location as OSHA notices are required to be posted and shall verbally inform all of Provider's employees, and the employees of Provider's Subcontractors and materialmen, regardless of tier, of such prohibitions. The notice must be in a form acceptable to Owner.