

## CONSTRUCTION AGREEMENT

This Agreement (the “Agreement”) is made and entered into this 24th day of April, 2023, by and between Merritt Contracting LLC (“Contractor”), who desires to provide construction services as set forth in Exhibit A (the “Work”) to the City of Lebanon, Indiana (the “Owner”) for Mass Earthwork Operations at the proposed Stone Eater Bike Park (the “Project”) for the sum of \$ 518,924.00 (the “Contract Sum”).

### ARTICLE 1 CONTRACT DOCUMENTS

1.1 Contract Documents Defined. The Contract Documents (the “Contract Documents”) consist of this Agreement, the Project Request for Proposals or Invitation for Bids, Project Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents referenced in this Agreement, and Modifications issued after execution of this Agreement. Where any provision of the Contract Documents between the Owner and the Contractor is inconsistent with any provision of this Agreement, this Agreement shall govern.

1.2 Contractor Investigation. The Contractor represents that it has investigated the nature, locality, and site of the Project and the conditions and difficulties under which the Work is to be performed, and enters into this Agreement on the basis of its own investigation and evaluation and not in reliance upon any opinions or representations of the Owner.

1.3 Intent of the Contract Documents. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work, including all incidental work necessary for the completion of the Work even though not specifically described in the Contract Documents. The Contract Documents are complementary; what is required by one shall be as binding as if required by all. The organization and arrangement of the Contract Documents shall not control the Contractor in dividing the work among the subcontractors or in establishing the extent of work to be performed by a subcontractor. The terms “knowledge,” “recognize,” and “discover,” and their respective derivatives, when used in reference to the Contractor, shall be interpreted to mean that which the Contractor knows (or should know), recognizes (or should recognize), and discovers (or should discover) in exercising reasonable care and skill.

1.4 Inconsistencies or Conflicts. The Contractor shall promptly call to the attention of the Owner any discrepancy or conflict in the Contract Documents which affects the Work. In the event of a conflict or discrepancy in the Contract Documents, the Owner shall determine which takes precedence. The Agreement shall take precedence over the other Contract Documents, figure dimensions shall take precedence over scale measurements, large scale details shall take precedence over small scale drawings, and drawings of a later date shall take precedence over those of an earlier date.

1.5 Defined terms. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

1.6 Applicable Law. This Agreement shall be governed by the laws of the state of Indiana. The Contractor shall be lawfully licensed, if required, in the jurisdiction where the Project is located. The

Contract Documents shall confer no benefit, right, or remedy upon subcontractors to make claims against the Owner.

## ARTICLE 2 CONSTRUCTION

2.1 Coordination and Supervision. The Contractor shall coordinate, supervise and direct the Work and shall cooperate with the Owner in scheduling and performing the Work to avoid conflict, delay or interference with the work of separate contractors. The Contractor shall be responsible for all construction means, methods, techniques, sequences and procedures. The Contractor shall notify the Owner in writing of any deficiencies in any other work prior to the commencement of the Work. Any unreported deficiencies shall be deemed accepted by the Contractor and shall become the responsibility of the Contractor.

2.2 Superintendent. The Contractor, as soon as practicable after award of the Agreement, shall furnish in writing to the Owner the name and qualifications of a proposed superintendent. The Owner may reply within fourteen (14) days to the Contractor in writing stating (1) whether the Owner has reasonable objection to the proposed superintendent or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the fourteen (14) day period shall constitute notice of no reasonable objection. The Contractor shall not employ a proposed superintendent to whom the Owner has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

2.3 Employees. The Contractor shall be responsible for its employees, laborers, subcontractors, material suppliers, equipment lessors, agents and representatives. The Contractor shall remove from the Project any person or entity under the Contractor's control which the Owner considers unsatisfactory. The Contractor shall assure harmonious labor relations to prevent delay, disruption or interference to the Project, and shall prevent strikes, slowdowns, work interruptions, jurisdictional disputes and other labor disputes relating to the Work.

2.4 Representative. The Contractor shall designate a single representative assigned to the Project who shall be responsible for attending all weekly and other meetings, monitoring schedules and coordinating all activities. The Contractor's representative shall have the authority to commit and bind the Contractor.

2.5 Meetings and Reports. The Contractor shall furnish to the Owner periodic progress reports on the Work in such form as requested by the Owner, including information on the status of materials and equipment which may be in the course of preparation, manufacture or transit. Regularly scheduled progress meetings shall be held weekly, unless otherwise directed.

2.6 Permits, Fees and Notices. The Contractor shall secure and pay for all permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work. The Contractor shall comply with all laws, ordinances, rules, regulations and orders in effect in the state and locale of the Project and of any public authority having jurisdiction over the Work. If the Contractor performs any Work which the Contractor knows, or should know, is contrary to such laws, ordinances, rules, regulations, or orders, the Contractor shall assume full responsibility and bear all costs attributable thereto. The Contractor shall comply with, and assume financial responsibility for, all applicable federal, state and local tax laws, social security acts, unemployment compensation acts and workers' compensation acts. Except as otherwise provided by the Contract Documents, the Contractor shall pay all royalties and license fees relating to the Work. The Contractor shall defend all suits or claims for infringement of patent

rights that may be brought against the Owner relating to the Work, and the Contractor shall be liable for all of the Owner's related losses, costs and expenses, including attorney's fees.

2.7 Submittals. The Contractor shall timely prepare, review, approve and submit to the Owner or Owner's representative all shop drawings, product data and samples required by the Contract Documents ("Submittals"). By submitting Submittals, the Contractor represents that it has verified all related materials, field measurements and field construction criteria for conformity with the requirements of the Contract Documents. The Contractor shall not be relieved of responsibility for any deviation from the Contract Documents by the approval of Submittals. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review and approval of that submittal. With each submittal, Contractor shall give the Owner or Owner's representative specific written notice of any variations, that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawing's or Sample Submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Owner or Owner's representative for review and approval of each such variation.

2.8 Submittal Schedule. The Contractor shall prepare a submittal schedule, promptly after the execution of this Agreement and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Owner or Owner's representative's approval. The Owner or Owner's representative's approval shall not unreasonably be delayed or withheld. Owner or Owner's representative will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Owner or Owner's representative. Owner or Owner's representative's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Owner or Owner's representative reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals. Owner or Owner's representative's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents.

2.9 Site Access. The Contractor is responsible for its Project site access. The Contractor shall take reasonable action to keep roads and other areas on and adjacent to the Project site in good working order and condition and free from obstructions which might present a hazard to or interfere with traffic or the public, and shall provide adequate barricades, signs and other devices for traffic guides and public safety. When construction operations necessitate the closing of traffic lanes, the Contractor shall be responsible for arranging such closing in advance with authorities having jurisdiction over the lanes. The Contractor shall confine operations at the Project site to areas permitted by law, ordinances, permits and the Contract Documents. The Owner will agree to performing typical street sweeping operations at the site frontage on a regular basis, not to exceed 2 times per week.

2.10 Cutting and Patching. All cutting of structural members shall be performed by the subcontractor responsible for the involved structural work, subject to the review and approval of the Construction Manager, if any, and the structural engineer, if any. The Contractor shall not cut or otherwise alter the work of any separate contractor without the written consent of the Owner.

2.11 Cleaning Up. The Contractor shall at all times keep the Project free from the accumulation of waste materials caused by the Contractor's operations. Upon completion of the Work, the Contractor shall remove all waste materials and the Contractor's tools, equipment, machinery and surplus materials. If the

Contractor fails to clean up, the Owner may do so and the cost shall be charged to the Contractor, including transportation and storage costs, and administrative costs for achieving the same.

2.12 Temporary Facilities. The Contractor shall provide, maintain, and remove all temporary offices, structures, sheds and storage facilities and all related utilities, gas, telephone, and water. Storage areas for the use of the Contractor may be designated by the Owner. No materials or equipment shall be stored except in areas approved by the Owner.

2.13 Subcontractors. Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable, shall furnish in writing to the Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The list of names shall state specifically the portion of the Work to be undertaken or supplied by each and that person's or entity's contract price for that portion of the Work. The Owner will promptly reply to the Contractor in writing stating whether or not the Owner has reasonable objection to any such proposed person or entity. The failure of the Owner to object to any person or entity on the list within ten (10) days shall constitute notice of no reasonable objection. The Contractor shall not contract with a proposed person or entity to whom the Owner has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

2.13.1 The Contractor shall require each subcontractor, to the extent of the Work to be performed by the subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety, which the Contractor, by the Contract Documents, assumes toward the Owner. Each subcontract agreement shall preserve and protect the rights of the Owner under the Contract Documents with respect to the Work to be performed by the subcontractor so that subcontracting thereof will not prejudice such rights. The Contractor shall make available to each proposed subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the subcontractor will be bound.

2.13.2 The Contractor shall not change a subcontractor, person or entity previously selected if the Owner makes reasonable objection to such substitute.

2.13.3 Each subcontract for a portion of the Work is assigned by the Contractor to the Owner provided that (1) assignment is effective only after termination of this Agreement by the Owner for cause and only for those subcontract agreements which the Owner accepts by notifying the subcontractor and the Contractor in writing, and (2) assignment is subject to the prior rights of the surety, if any, obligated under bond relating to this Agreement. Upon such assignment to the Owner, the Owner may further assign the subcontract to a successor or other entity. If the Owner assigns the subcontract to a successor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor obligations under the subcontract.

2.14 Uncovering of Work. If any portion of the Work is covered contrary to the request of the Owner or the requirements of the Contract Documents, it shall be uncovered for observation and replaced at the Contractor's expense. If any portion of the Work has been covered which the Owner has not specifically requested to observe before it was covered, either may direct the Work to be uncovered by the Contractor. If the uncovered Work is in accordance with the Contract Documents, the cost of uncovering

and replacement shall, by Change Order, be reimbursed to the Contractor. If such Work is not in accordance with the Contract Documents, the cost shall be borne by the Contractor.

2.15 Correction of Work. The Contractor shall, at its expense, correct all Work rejected by the Owner, as defective or as failing to conform to the Contract Documents. If the Contractor fails to correct defective or non-conforming Work within two (2) days after receipt of written notice from the Owner, the Owner may make good the deficiencies and the cost shall be charged to the Contractor. If payments due the Contractor are not sufficient to cover the cost, the Contractor shall pay the difference to the Owner.

2.16 Warranty. The Work shall be executed in accordance with the Contract Documents and in a workmanlike manner. In addition to the Contractor's obligations to correct defective or non-conforming Work provided by law or as set forth in the Contract Documents, the Contractor warrants to the Owner that materials and equipment furnished by the Contractor shall be of good quality and new unless otherwise required or permitted by the Contract Documents, the Work will be free from defects and will conform to the requirements of the Contract Documents, and the Work will comply with all applicable laws, building codes, rules and regulations. Substitutions not properly approved and authorized shall be considered non-conforming. If, within one (1) year after the date of Substantial Completion of the Work, or by the terms of a special warranty required by the Contract Documents, any of the Work is found to be defective or non-conforming with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of a written notice from the Owner unless the Owner has previously given the Contractor a written acceptance of such condition. The Contractor's warranty excludes defects or damages caused by normal wear and tear during normal usage, and improper or insufficient maintenance and abuse. The foregoing warranty is in addition to all special or extended warranties required by the Contract Documents or otherwise received from the Contractor or any subcontractor, material supplier or manufacturer.

2.16.1 The one (1) year period for correction of defective or non-conforming Work does not constitute a limitation period with respect to the enforcement of the Contractor's other obligations under the Contract Documents and the foregoing warranty shall not affect, limit or impair the Contractor's responsibility for defects in the Work, resulting from their negligence, which do not appear within the applicable warranty period. The Contractor shall immediately correct and cure, at the Contractor's expense, any defects, resulting from their negligence, which are reported to the Contractor.

2.16.2 The Contractor shall indemnify the Owner against all claims, damages and expenses, including attorney's fees, incurred by the Owner as a result of the Contractor's failure to abide by its warranty obligations.

2.16.3 Neither the acceptance of the Work nor any payment shall constitute a waiver of any claims against the Contractor for defective or nonconforming Work, whether latent or apparent, or otherwise act to release or discharge the Contractor from liability.

2.16.4 As a condition precedent to Final Payment, the Contractor shall furnish the Owner, in form acceptable to the Owner, a signed affidavit verifying that the Work has been completed in accordance with the Contract Documents.

2.17 Indemnification. To the fullest extent permitted by law, the Contractor shall defend and indemnify the Owner, and its agents and employees, from and against all claims, damages, and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of the Work, but only to the extent caused by the failure to abide by this Agreement or by the negligent acts or omissions of the Contractor, its laborers, employees, subcontractors, suppliers and anyone for those acts they may be liable. The indemnification obligation under this Section shall not be limited by the amount or type of

damages, compensation or benefits payable by or for the Contractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

2.18 Bonds. Intentionally left blank.

2.19 Separate Contractors. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site. The Contractor shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor.

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

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

2.19.3 The Owner shall be reimbursed by the Contractor for costs incurred by Owner which are payable to a separate contractor because of delays, improperly timed activities, or defective construction by the Contractor. The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the Owner or separate contractors.

2.20 Approvals. The Owner shall render decisions and give approvals to the extent required by the Contract Documents. Before performing the Work, the Contractor shall inform the Owner in writing of any information that is necessary for the Contractor's performance of the Work. The Owner's approval or acceptance of, or payment for, any of the Work shall not be construed or operate as a waiver of any right under this Agreement or of any cause of action arising out of the performance of this Agreement.

### **ARTICLE 3 THE CONTRACT TIME**

3.1 Project Schedule. The timing of all Work and material and equipment deliveries shall conform to the Project Schedule, supplied to the Owner, by the Contractor and regularly updated.

3.2 Contractor's Schedule. Within five (5) days of the execution of this Agreement, the Contractor shall prepare a detailed CPM schedule within the constraints of the Project Schedule, including the stated Substantial Completion date and Milestone Dates. The Contractor's schedule shall include a detailed breakdown of the planned duration, start date and completion date for each activity and estimated dates for delivery of submittals, materials and equipment.

3.3 Acceleration. If the Contractor should (1) fail, refuse or neglect to supply a sufficient number of workers or deliver materials or equipment with such promptness as to prevent delay in the progress of the Work; (2) fail to commence and diligently prosecute the Work and proceed to the point to which the Contractor should have proceeded in accordance with the Project Schedule in order to achieve Substantial Completion in accordance with the Project Schedule; (3) fail to commence, prosecute, finish, deliver or install

the different portions of the Work in accordance with the Project Schedule, or (4) fail in the performance of any of the material covenants of the Contract Documents, the Owner shall have the right to direct the Contractor to prepare a written plan, for the Owner's approval, to accelerate the Work to comply with the Project Schedule, including, without limitation, providing additional labor, expediting deliveries of materials and equipment, performing overtime and/or resequencing the Work, without adjustment to the Contract Sum. Upon the Owner's approval of the acceleration plan, the Contractor shall accelerate the Work in accordance with the plan.

3.4 Delay Caused by Contractor. If the Work or the Project is delayed, disrupted or interfered with by any act or omission of the Contractor or any person or entity for whom the Contractor is responsible or by acts, omissions, events, or occurrences that are not excusable to the Contractor pursuant to the terms of the Contract Documents, the Contractor shall (1) be assessed liquidated damages if provided for in this Agreement, or (2) if liquidated damages are not provided for in this Agreement, the Contractor shall compensate the Owner for, and indemnify the Owner against all damages, losses and expenses, including attorney's fees, proximately covered by such delay.

3.5 Delay to Contractor's Work. If the Contractor is delayed at any time in the progress of the Work by any act or neglect of the Owner or a separate contractor, or by changes order in the Work, labor disputes, fire, unreasonable acts or omissions of governmental authorities having jurisdiction over the Project, adverse weather conditions not reasonably anticipatable, unavoidable casualties, or other causes beyond the Contractor's control, or any delay authorized by the Owner, the Contract Time shall be extended by Change Order for the period of time lost on the critical path of the Project Schedule. The Contract Time shall not be extended due to inadequate construction forces or the failure of the Contractor to place orders for equipment or materials sufficiently in advance to assure timely delivery. The Owner's exercise of its rights under the Contract Documents, including but not limited to changes in the Work, regardless of the extent or number of such changes, shall not be construed as delay, disruption or interference with the Work.

3.5.1 Any claim for an extension of the Contract Time shall be made in writing to the Owner no later than ten (10) days after the commencement of the occurrence giving rise to the claim; otherwise it shall be waived. The Contractor shall provide the Owner with an estimate of the probable effect of such occurrence on the progress of the Work.

3.5.2 The Contractor may receive an increase in the Contract Sum on the basis of delay, but only if an increase is expressly agreed to by the Owner, in its sole discretion, and only for and to the extent of an increase in the Contractor's General Conditions caused by a delay to the critical path of the Project Schedule and caused by the Owner, a separate contractor, a suspension of the Work by the Owner, or a concealed or unknown condition under Section 7.4, but only if the Contractor timely submits a written claim to the Owner in accordance with applicable provisions of this Agreement. Otherwise, the Contractor's sole remedy for any delay in the commencement, prosecution, or completion of the Work, disruption to or interference with the performance of the Work, loss of productivity, or other similar claims, whether or not foreseeable, shall be an increase in the Contract Time unless caused by acts constituting intentional interference by the Owner with the Contractor's performance of the Work where such acts continue after the Contractor's written notice to the Owner of such interference. The Owner's exercise of its rights to make changes in the Work, to suspend the Work or to require the correction of damaged, defective or non-conforming Work shall not under any circumstances be construed as intentional interference. In no event shall the Contractor be entitled to any compensation or the recovery of any damages in connection with any such claims, including consequential or incidental damages, lost opportunity costs, impact damages, or other similar remuneration. If the Contractor submits a progress report indicating, or the Contractor otherwise expresses an intention to achieve, completion of the Work prior to any completion date required by this

Agreement or expiration of the Contract Time, no liability of the Owner to the Contractor for any failure of the Contractor to so complete the Work shall be created, implied or permitted.

3.6 Work Suspension. The Owner may suspend the Work upon two (2) days' written notice to the Contractor. The Contractor shall resume the Work as directed by the Owner. If the Project is resumed after being suspended for more than ninety (90) days, the Contract Sum shall be equitably adjusted or terminated by the Owner.

#### **ARTICLE 4 PAYMENTS AND COMPLETION**

4.1 Schedule of Values. Before the first Application for Payment, the Contractor shall submit to the Engineer a schedule of values and a complete billing breakdown on AIA Form G-703, or similar form acceptable by the Owner, prepared in such form and supported by such data as the Owner may require. If approved by the Owner, these documents shall be used as the basis for the Contractor's Applications for Payment. Each subsequent Application for Payment must be accompanied by an updated billing breakdown. Pay applications received by the 1<sup>st</sup> Monday of each month shall be paid by the 4<sup>th</sup> Monday of each month.

4.2 Applications for Payment. Based upon Applications for Payment submitted by the Contractor, the Owner shall make progress payments to the Contractor as provided below and elsewhere in the Contract Documents. The period covered by each Application for Payment shall be one calendar month ending on the last day of the month. In addition to other required items, each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner: (1) A duly executed and acknowledged sworn statement setting forth the names of all subcontractors, design professionals and material suppliers with whom the Contractor has contracted, the amount of each contract, the amount requested for each in the Application for Payment, and the amount to be paid to each from such progress payment, together with an executed lien waiver from the Contractor and subcontractors, and (2) all other information and documentation required by the Contract Documents or the Owner. Submission of an Application for Payment shall constitute a representation by the Contractor that (1) the Work covered by the Application for Payment has been completed in accordance with the Contract Documents, (2) the current payment shown is now due, (3) except as set forth in the Application for Payment, no additional amounts are due, (4) all amounts have been paid by the Contractor for Work for which previous payments have been received, (5) the Contractor has complied with and paid all amounts due under federal, state, and local tax laws, including social security, unemployment compensation and workers' compensation laws, and (6) the remaining balance of the Contract Sum is sufficient to complete the Work free and clear of all liens and encumbrances.

4.3 Progress Payments. The amount of each progress payment shall be computed as follows: (1) Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the total Contract Sum allocated to that portion of the Work in the schedule of values, (2) add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the Project site by the Contractor for subsequent incorporation in the Project or, if approved in advance by the Owner, suitably stored off the Project site at a location agreed upon in writing, , and (3) subtract the aggregate of previous payments made to or on behalf of the Contractor.

4.4 Payments by Contractor. The Contractor shall pay for all labor, materials, equipment and services through the period covered by the previous payment received and shall furnish satisfactory evidence, including (as a condition precedent to payment) releases, sworn statements, and lien waivers on forms acceptable by the Owner, but the Contractor shall remain fully liable for all such material and equipment until incorporated in the Project. The Owner has the right to request written evidence from the Contractor



that the Contractor has properly paid subcontractors and material and equipment suppliers. If the Contractor fails to furnish such evidence within seven (7) days, the Owner shall have the right to contact the subcontractors and material and equipment suppliers to ascertain whether they have been properly paid. The Owner shall have no obligation to pay or to see to the payment of money to subcontractors and material and equipment suppliers, except as may otherwise be required by law. If any payment claim or lien is made or filed with or against the Owner or the Project, the Contractor shall, within twenty (20) days of the filing of the lien or submission of the claim, satisfy, discharge or bond-off the claim or lien, cause the Owner to be dismissed from any action which may be brought in connection with a claim or lien, and compensate the Owner for and indemnify the Owner against any and all losses, damages, and expenses, including attorney's fees, sustained or incurred.

4.5 Payment Withholding. The Owner may withhold payment from the Contractor, in whole or in part, or, because of subsequently discovered evidence, may nullify the whole or a part of an Application for Payment previously approved or require the Contractor to refund payment(s) previously made to the Contractor, to such extent as may be necessary, in the Owner's opinion, to protect the Owner from loss, including attorney's fees and damages, because of:

4.5.1 Defective or non-conforming Work;

4.5.2 Third party liens or claims filed or evidence indicating the probable filing of liens or claims;

4.5.3 failure of the Contractor to make payments to its laborers, employees, subcontractors, material suppliers or equipment lessors;

4.5.4 damage to the Owner, or a separate contractor;

4.5.5 evidence that the Work will not be completed for the unpaid balance of the Contract Sum;

4.5.6 evidence that the Work will not be completed within the Contract Time or a Milestone Date achieved timely;

4.5.7 failure of the Contractor to comply with the safety requirements of this Agreement or to carry out the Work in accordance with the Contract Documents; and/or

4.5.8 failure of the Contractor to maintain the insurance required pursuant to the Contract Documents.

When the above reasons for withholding payment are removed, payment will be made for amounts previously withheld with the next Application for Payment that includes such amounts. The Owner may, at its sole option, issue joint checks to the Contractor and to any subcontractor and material or equipment suppliers, and the Owner may, but is not obligated to, make direct payment on behalf of the Contractor to any subcontractor and material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered, and charge such payments against the Contract Sum.

4.6 Substantial Completion. When the Owner considers the Work, or a designated portion thereof, to be Substantially Complete, the Contractor shall, with its next Application for Payment, request payment for the unpaid balance of the Contract Sum, less sums necessary, in the Owner's opinion, to cover items to be completed or corrected by the Contractor and as otherwise permitted by Section 4.5. The Owner

shall prepare for the Contractor a list of items to be completed or corrected. The failure to include an item on the list shall not act to waive the rights of the Owner or otherwise alter the responsibility of the Contractor to complete the Work in accordance with the Contract Documents.

4.7 Final Payment. Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made to the Contractor within thirty (30) days after:

4.7.1 The Work has been fully completed in strict accordance with the Contract Documents;  
and

4.7.2 The Contractor has furnished (1) a general release of all liens and claims and a final lien waiver on forms acceptable to the Owner, (2) the number of copies of record drawings required by the Contract Documents, and (3) all Operational/Instructional/ Maintenance Manuals, warranties, and any other close-out documents required by the Contract Documents.

As a condition precedent to the issuance of final payment, the Contractor, if required, shall submit evidence satisfactory to the Owner that all indebtedness relating to the Work has been satisfied.

4.8 Interest. Unless otherwise expressly provided in the Contract Documents, payments due and unpaid under the Contract Documents shall bear no interest. If interest is expressly provided for in the Contract Documents or required by applicable law, then such interest shall apply only with respect to liquidated and non-disputed payments, and shall only accrue from and after the tenth (10<sup>th</sup>) day following the Owner's receipt of a notice containing an express statement by the Contractor of its intention to assess interest. In the event the Owner is entitled to withhold payment under the Contract Documents, or in the event of a good faith dispute between the Owner and the Contractor, no interest shall accrue.

## **ARTICLE 5 PROTECTION OF PERSONS AND PROPERTY**

5.1 Contractor Responsibility. The Contractor shall take all reasonable safety precautions with respect to the Project. In addition, the Contractor shall comply with the safety requirements of all applicable laws, ordinances, rules, regulations and orders of public authorities having jurisdiction over the Project. The Contractor shall also designate a competent person who shall be responsible for the implementation of the safety requirements of this Agreement, and who shall cooperate with the other Contractors to the extent necessary to insure Project safety. Each Contractor shall remain the controlling employer responsible for the safety programs and precautions to be controlled by such Contractors. The Owner's responsibilities shall not extend to direct control over or charge of the acts or omissions of the Contractors, subcontractors, their agents or employees or any other persons performing the work and not directly employed by the Owner. A safety representative employed by the Owner, or an insurer may, from time to time, conduct safety surveys and submit their findings. The Contractor shall, at its expense, implement any abatement procedures recommended by such safety representatives.

5.2 Hazardous Substances. A "Hazardous Substance" is any substance or material identified as hazardous under any federal, state or local law or regulation, or any other substance or material that may be considered hazardous or otherwise subject to statutory or regulatory requirement governing handling, disposal and/or cleanup. Hazardous substances shall not be used without the prior written consent of the Owner, and the Contractor shall be responsible for Hazardous Substances brought to the site by the Contractor unless such Hazardous Substances were expressly required by the Contract Documents. The Owner shall not be responsible for Hazardous Substances brought to the Project site by the Contractor or its subcontractors. The Contractor shall defend, indemnify and hold the Owner harmless from and against any

and all direct claims, damages, losses, costs and expenses, including but not limited to attorneys' fees, arising out of or relating to the use or storage of Hazardous Substance for the execution of the Work.

## ARTICLE 6 INSURANCE

6.1 Liability and Employment Insurance. The Contractor shall purchase and maintain insurance for protection against all claims that arise out of or result from the Contractor's Work and operations, whether performed by the Contractor or anyone for whose acts the Contractor may be liable, including the following types with the following limits:

Worker's Compensation.	Required.
Employer's Liability covering all employees, volunteers, temporary employees and leased workers.	\$1,000,000 each accident, \$1,000,000 disease each employee, and \$1,000,000 disease policy limits.
Commercial General Liability (form CG 00 01 or its equivalent), for bodily injury and property damage including personal injury, premises/operations, broad form property damage, independent contractors, products and completed operations (with limits of \$3,000,000 and coverage for a minimum period of two (2) years after Substantial Completion), including (1) explosion, collapse, shoring, grading and or underground property damage hazards, (2) damages or injury arising from defective Work, including costs to repair or replace damaged Work, and (3) contractual liability coverage (the Commercial General Liability insurance may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability Policy).	\$3,000,000 per occurrence

Commercial Automobile Liability, including owned, non-owned and hired	\$1,000,000 combined single limit for bodily injury and property damage.
Applicable only if the Contractor's Work includes demolition, environmental remediation, earthwork, or Storm Water Pollution Protection Plan implementation – Contractor's Pollution Liability for bodily injury, property damage, clean-up costs, and associated legal costs, including coverage for any claim, suit, or demand brought by any third party or on behalf of any governmental agency or authority. The Contractor's Pollution Liability Policy shall also include (1) non-owned disposal site coverage, and (2) mold/microbial matter coverage.	\$3,000,000 per occurrence.

6.1.1 Insurers and Policies. The insurance shall be procured from companies licensed to do business in the state in which the Project is located. The insurers must have a minimum AM Best rating of AVIII. All insurance procured or maintained by the Contractor shall be primary. Any insurance maintained by the Owner shall be considered excess and non-contributory. Coverage shall be on an occurrence basis, except for pollution liability which may be on a claims made basis. Except with respect to bodily injury and property damage included within the products and completed operations hazards, the aggregate limit shall apply per project to the Contractor's Work. The Contractor waives all rights against the Owner and separate contractors for damages covered by the Contractor's insurance (the Contractor shall cause its insurers to recognize and consent to such waiver of rights). The Contractor shall permit the Owner to examine the actual policies upon request.

6.1.2 Evidence of Insurance. Certificates of Insurance acceptable to the Owner shall be submitted to the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance, and as a condition precedent to be paid any amounts by the Owner. The Contractor shall provide at least thirty (30) days' prior written notice to the Owner before any insurance required by this Article 6 is cancelled or not renewed. The commercial general liability, automobile liability, pollution liability, and any umbrella or excess liability policies shall name, and the Certificates shall evidence, the Owner as additional insureds on a primary and non-contributory basis during the Contractor's ongoing and completed operations. The Contractor agrees to waive any and all rights of subrogation against the additional insureds (and cause its insurers to recognize and consent to such waiver of rights).

6.1.3 Subcontractors. The Contractor shall cause its subcontractors to procure insurance satisfying the requirements of this Article and naming the Owner as additional insured under their commercial general liability, automobile liability, and any umbrella or excess liability policies. Any such insurance shall be on a primary basis. Any insurance maintained by the Owner shall be considered excess.

6.1.4 Remedies. If the Contractor fails to maintain any insurance required by this Article 6, the Contractor shall be in default and the Owner shall have the right, but not the obligation, to purchase the insurance at the Contractor's expense, stop the Work and require the Contractor to vacate the Project site, withhold all payment, and/or terminate this Agreement. The failure by the Owner to demand the

Certificates or to identify a deficiency in the evidence of insurance provided by the Contractor shall not be construed as a waiver of the Contractor's obligation to maintain the insurance required by this Article 6.

6.1.5 Property Insurance. The Owner may purchase and maintain property insurance written on a Builder's Risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus approved Change Orders. This insurance shall include interests of the Owner, the Contractor, and the subcontractors on the Project, as their interests may appear. The insurance shall include insurance against the perils of fire (with extended coverage) and physical loss or damage including without limitation, theft, vandalism, malicious mischief, transit, collapse, flood, windstorm, earthquake, testing and debris removal, including demolition occasioned by enforcement of any applicable legal requirements. The property insurance may exclude (1) underground value, (2) land value, grading or filling and cost of excavation, (3) lawns, trees, shrubs and plants, and (4) those portions of walks, roadways and other paved surfaces which are more than 25 feet from the Project. If the Contractor makes a claim covered by the Builder's Risk or property insurance policy maintained in connection with the Project, the Contractor shall be responsible for, and shall permit the proceeds of its claim to be reduced by, the amount of the deductible required under the Builder's Risk or property insurance policy irrespective of the cause or nature of the occurrence giving rise to the claim.

6.1.6 The Builder's Risk property insurance policy shall not include coverage for any tools, apparatus, machinery, scaffolding, hoists, forms, staging, shoring, equipment, materials and supplies that are not incorporated into the completed construction, and the Contractor and subcontractor shall make its own arrangements for any insurance it may require to protect such items. The Contractor shall provide property and equipment insurance for the full value of all materials and equipment stored off-site or in transit, unless Owner issues a specific written waiver of this requirement. The Contractor waives all claims and all rights of subrogation (and shall causes its insurers to recognize and consent to such waiver of rights) against the Owner for loss of, or damage to, the Contractor's tools, equipment, materials, and supplies.

6.1.7 Any loss covered under the Builder's Risk property insurance policy shall be made payable to the Owner as trustee for the insureds as their interests may appear, subject to any applicable mortgage or loan clause. Insurance proceeds will be distributed in accordance with an agreement reached between the interested parties. Any disagreement concerning the distribution of proceeds shall be resolved in accordance with Article 8.

6.1.8 The Owner and the Contractor waive all rights against (1) each other and any of their subcontractors, agents and employees, and (2) separate contractors and any their subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by Builder's Risk or other property insurance applicable to the Work, except such rights as they may have to proceeds of such insurance. The Contractor shall require similar waivers of its subcontractors, agents and employees (and cause its insurers and their insurers to recognize and consent to such waiver of rights).

6.2 Recommendations of Insurers. The Contractor and the Owner shall cooperate and comply with all reasonable requirements and recommendations of the insurers and insurance brokers issuing or arranging for issuance of the insurance policies required by this Article, including requirements and recommendations relating to safety, insurance program administration, claims reporting and investigation, and audit procedures.

## **ARTICLE 7 CHANGES IN THE WORK**

7.1 Modifications. The Owner may make changes in the Work by issuing a Modification. A "Modification" is a Change Order or other written directive to the Contractor signed and issued by the Owner

or its representative. All changes in the Work shall be performed under the applicable conditions of the Contract Documents.

7.2 Change Orders. The Contract Sum and the Contract Time shall be changed only by Change Order. A Change Order signed by the Owner and the Contractor conclusively establishes the Contractor's agreement therewith, including the adjustment in the Contract Sum and the Contract Time. The Contractor shall submit a properly itemized Change Order proposal covering additional or deleted Work. The proposal shall be itemized for the various components of the Work and, if requested by the Owner, segregated by labor, material, and equipment in a detailed format satisfactory to the Owner and advise the Owner of the anticipated impact on the Contract Time and Milestone Dates. Details to be submitted include detailed line item estimates showing detailed materials quantity take-offs, material prices by item and related labor hour pricing information and extensions (by line item). The Contractor's Change Order proposal shall be submitted within seven (7) days of the Owner's request, unless the Owner reduces, or extends, such period of time due to the circumstances involved. The Contractor's failure to so advise the Owner within the specified time period shall constitute a waiver of the Contractor's right to an increase in the Contract Time or the Contract Sum.

7.2.1 Pricing. The adjustment to the Contract Sum resulting from a Modification shall be determined by a lump sum amount agreed upon, itemized and supported by sufficient substantiating data to permit evaluation, or

7.2.2 Unit prices stated in the Contract Documents or subsequently agreed upon. As an alternative to lump sum Change Order Proposals, the Owner may elect to have changed Work performed on a cost plus fee basis. Upon written notice to proceed, the Contractor shall perform such authorized changed work at actual cost with an agreed upon "do-not-exceed" price for the work to be performed. Such directions to the Contractor by the Owner shall be confirmed in writing. The Owner shall not be liable for any charges in excess of the do-not-exceed price. Daily timesheets of all Contractor's employees and subcontractors working on the Project will be required to be submitted to the Owner or Owner's representative for both labor and equipment used by the Contractor for time periods during which changed Work is performed on a cost plus fee basis. Daily timesheets must break down the paid hours worked by the Contractor's employees and subcontractors showing both base contract Work as well as changed Work performed by each employee. If such proposals are not received in a timely manner, if the proposals are not acceptable to Owner, or if the changed Work should be started immediately to avoid damage or delay to the Project, the Owner may direct the Contractor to proceed with the changes without waiting for the Contractor's proposal or for the formal Change Order to be issued. The Contractor shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. "Costs" shall be limited to the reasonable cost of materials (including sales tax and delivery), labor (including social security, unemployment insurance, and fringe benefits required by agreement or custom), workers' compensation insurance, bond premiums, the rental value of equipment and machinery, and additional costs of supervision and field office personnel directly attributable to the Modification.

7.3 Subcontract Buy-Outs. The Contractor shall not engage in the practice of inflating Change Order proposals (generally known as buyouts) by submitting subcontractor prices to the Owner that are higher than the Contractor's actual known subcontract costs. Each component of a proposed Change Order affecting the Contract Sum shall be supported by an underlying cost element and documentation evidencing actual costs. Where a subcontract price has been obtained that is lower than what was submitted in an original proposed Change Order (for whatever reason or through whatever means), the Contractor shall pass along such savings to the Owner. If the lower price is obtained prior to the execution of a Change Order, such

savings shall be incorporated into the proposed Change Order prior to execution. If a Change Order has already been executed, a deductive Change Order shall be issued in favor of the Owner for the difference.

7.4 Concealed Conditions. The Contractor represents to the Owner that the Contractor (1) is experienced and skilled in the construction of structures and improvements of the type described in the Contract Documents, and (2) has, by careful examination, satisfied itself as to and has taken into account the nature, location and character of the Project site, including, without limitation, the surface and subsurface (by review of available reports and information), condition of the Project site and all structures and obstructions thereon, both natural and man-made, and all surface and subsurface (to the extent reasonably identified by review of available reports and information), water conditions of the Project site and surrounding area and the nature, location and character of the general area in which the Project site is located. Should concealed, unknown subsurface conditions be encountered in the performance of the Work and such conditions either (1) differ materially from the conditions indicated by the Contract Documents and should not have been known to the Contractor given the foregoing representations by the Contractor, or (2) are of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in Work given the foregoing representation by the Contractor, the Contract Sum shall be equitably adjusted by Change Order upon written claim by the Contractor, if made within twenty (20) days after the first observance of the conditions. However, surveys and other documents describing the physical characteristics, legal limitations or utility locations for the Project site that are not identified as Contract Documents are for informational purposes only and the Owner shall not be liable for inaccuracies or omissions therein, nor shall any inaccuracies or omissions in such items relieve the Contractor of its responsibility to perform the Work in accordance with the Contract Documents.

7.5 Audits. The Owner and the Engineer shall be permitted to review, audit and copy the Contractor's records relating to Change Order proposals, Change Orders and changed work (whether based on lump sum, unit prices, or costs) upon reasonable notice and during normal business working hours throughout the term of this Agreement and for a period of three (3) years after final payment or longer if required by law. "Records" shall include any and all information, materials and data of every kind and character (hard copy as well as computer readable data) that may, in the Owner's or the Engineer's judgment, have any bearing on or pertain to the pricing of changed, added or deleted Work and the accuracy of the Contractor's representations regarding pricing and claims information submitted by the Contractor. If an audit or examination in accordance with this Section discloses overcharges by the Contractor, the cost of the audit shall be immediately reimbursed by the Contractor in addition to the overcharges.

7.6 Forms. The form and content of all reoccurring documents (i.e. Change Order proposals, Change Orders, Field Orders, reports and timesheets) may be designated by the Engineer, and the Contractor agrees to use such forms.

## **ARTICLE 8 DISPUTE RESOLUTION**

8.1 Claims. The Contractor shall make all claims for an increase in the Contract Sum or the Contract Time in accordance with the Contract Documents and in strict compliance with the procedures provided below. If the Contractor claims that it is entitled to additional sums or time, for any reason whatsoever, the Contractor shall give the Owner written notice of the claim within ten (10) days after the occurrence giving rise to the claim or within ten (10) days after the Contractor first recognizes the condition giving rise to the claim, whichever is later. The notice of the claim shall set forth the circumstances giving rise to the claim, and to the extent reasonably available, facts, documents, backup data and other information supporting the claim and the relief sought. Failure by the Contractor to provide timely written notice of the claim shall result in a waiver of the claim. Within thirty (30) days after providing written notice of a claim, the Contractor shall submit complete support for the claim including without limitation documents, backup

data and other information supporting the claim, the relief sought, and those persons with knowledge of the claim. No additional sums shall be paid to the Contractor, and no additional time shall be granted or recognized, unless the Contractor has received a written Change Order signed by the Owner. VERBAL CHANGES OR EXTRAS SHALL NOT BE VALID OR ENFORCEABLE.

## 8.2 Disputes.

8.2.1 If a dispute arises out of or relates to the Project, the Work, the Contract Documents or this Agreement or any breach thereof, the parties shall endeavor to settle the dispute first through direct discussions between the parties' representatives who have the authority to settle the dispute. If the parties' representatives are not able to promptly settle the dispute, the executives of the parties, who shall have the authority to settle the dispute, shall meet within twenty-one (21) days after the dispute first arises. If the dispute is not settled within seven (7) days from the referral of the dispute to the parties' executives, the parties shall submit the dispute to mediation in accordance with Section 8.2.2.

8.2.2 If the dispute cannot be settled pursuant to Section 8.2.1, the parties shall endeavor to settle the dispute by mediation under the current Indiana Dispute Resolution Rules before recourse to litigation. Either party may terminate the mediation at any time after the first session, but the decision to terminate shall be delivered in person by the party's representative to the other party's representative.

8.2.3 If the dispute cannot be settled pursuant to Sections 8.2.1 or 8.2.2, all controversies, claims, disputes and other matters in question arising out of or relating to the Project, the Work, the Contract Documents, or this Agreement or any breach thereof shall be settled by a court of competent jurisdiction, in the Superior Courts of Boone County, Indiana, and such court shall have the sole and exclusive jurisdiction over the action or proceeding, unless otherwise agreed to in writing by the Owner. In the event litigation is needed to enforce or defend actions related to the project the Contract Documents, or this Agreement, the Owner shall be entitled to recover its costs, expenses, and reasonable attorneys' fees as a result of such actions.

8.3 Limitations Period. The Contractor shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work.

8.4 Waiver of Consequential Damages. The Contractor waives all claims against the Owner and its representatives for consequential damages arising out of or relating to this Agreement. This waiver includes damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work. This waiver is applicable, without limitation, to all consequential damages due to the termination of this Agreement.

8.5 Continued Performance. The Contractor shall continue performance of the Work, if directed by the Owner, in the event of a dispute; the existence of a dispute shall not justify delay or suspension of the



Work by the Contractor. Failure to so proceed shall constitute a material breach of this Agreement by the Contractor, regardless of the ultimate outcome of the dispute.

## ARTICLE 9 TERMINATION

9.1 Default. If, in the opinion of the Owner, the Contractor fails to provide a sufficient number of properly skilled laborers or adequately supervise the Work, or fails in any material respect to prosecute the Work according to the Project Schedule, cause delay to, disruption of, or interference with the work of the Owner, or any separate contractor, or fails in any material respect to comply with any other provisions of the Contract Documents, makes a general assignment for the benefit of creditors, has a receiver appointed, becomes insolvent or files for protection under the Bankruptcy Code (collectively, "Default"), the Owner may, after forty-eight (48) hours written notice from the Owner to the Contractor:

9.1.1 take such steps to correct, cure or overcome the Default as the Owner deems expedient, and charge all expenses, losses, costs and damages, including attorney's fees, to the Contractor; or

9.1.2 terminate this Agreement.

Upon Default, the Owner may exclude the Contractor from the site and take possession of all materials, equipment, tools and construction equipment and machinery thereon owned or leased by the Contractor. If the Owner terminates this Agreement, the Owner may finish the Contractor's Work by whatever method the Owner deems expedient. If the unpaid balance of the Contract Sum exceeds the expense of finishing the Contractor's Work and other losses, costs and damages incurred by the Owner, and the Construction Manager, including attorney's fees, such excess shall be paid to the Contractor. If such expense and other losses, costs and damages, including attorney's fees, exceed the unpaid balance of the Contract Sum, the Contractor shall pay the difference to the Owner.

9.2 For Convenience. The Owner may, at any time, terminate this Agreement for its convenience. Upon receipt of written notice of termination, the Contractor shall cease operations as directed by the Owner in the notice, take actions necessary, or as the Owner may direct, for the protection and preservation of the Work, and terminate all existing contracts and purchase orders. Provided the Contractor is not in Default, the Contractor shall receive, as full compensation, its actual, necessary, and reasonable costs of performing the Work to date of termination, plus a reasonable markup for overhead and profit on Work performed. The Contractor shall make its records available for the Owner's review. In the event any termination of the Contractor for Default is later determined to have been improper, the termination shall automatically convert to a termination for convenience, and the Contractor shall be limited in its recovery strictly to the compensation provided for in this Section.

## ARTICLE 10 MISCELLANEOUS PROVISIONS

10.1 Assignment. The Owner may assign this Agreement, subject to the prior rights of sureties, if any. In such event, the assignee shall assume the Owner's rights and obligations under this Agreement. The Contractor shall not assign this Agreement.

10.2 Negotiation of Agreement. This Agreement has been negotiated by the parties hereto, each individually, or through each party's respective counsel. The parties agree that the normal rule of

construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments hereto.

10.3 Severability. If any one or more of the provisions contained in this Agreement shall be invalid, illegal, or unenforceable in any respect, the validity, legality, or enforceability of the remaining provisions contained therein shall not in any way be affected or impaired.

10.4 Written Notice. Written notice shall be deemed to have been duly served if delivered in person or sent by (1) registered or certified mail or FedEx Overnight Delivery to the address shown on the signature page of this Agreement, (2) facsimile with confirmed receipt, or (3) electronic transmission, including transmission via e-mail to the e-mail address shown on the signature page of this Agreement, with a hard-copy delivered by U.S. Mail within seven (7) days after the electronic transmission.

10.5 APRA. Contractor acknowledges this Agreement, the Contract Documents, Contractor's submittals, and other documents related to the Project may be subject to Indiana's Access to Public Records Act, Ind. Code § 5-14-3-1 *et seq.* Contractor consents to disclosure of all Project documents.

10.6 No Third Party Beneficiary Rights. The Contract Documents shall confer no right, benefit or remedy, either intended or incidental, upon the Contractor's subcontractors, laborers, material suppliers or equipment lessors to enforce the Contract Documents against the Owner or to make any claim against the Owner.

10.7 Representation. The Contractor represents and warrants the following to the Owner (in addition to any other representations and warranties contained in the Contract Documents) as a material inducement to the Owner to execute this Agreement, which representations and warranties shall survive the execution of the Agreement, any termination of the Agreement, and the final completion of the Work:

10.7.1 The Contractor and, to the best of its knowledge, its subcontractors, are financially solvent, able to pay all debts as they mature and are possessed of sufficient working capital to complete the Work and perform all obligations hereunder;

10.7.2 The Contractor is able to furnish the tools, materials, supplies, equipment and labor required to complete the Work and perform its obligations hereunder;

10.7.3 The Contractor is authorized to transact business in the State and locale of the Project and is properly licensed by all necessary authorities having jurisdiction over it, the Work and the Project;

10.7.4 The Contractor's execution of the Agreement is within its duly authorized powers; and

10.7.5 The Contractor is a sophisticated contractor which possesses a high level of experience and expertise in the business administration, construction and superintendence of projects of the size, complexity and nature of the Project and will perform the Work with the care, skill and diligence of such a contractor.

10.8 Anti-Corruption Laws and Sanctions. For purposes hereof, (1) "Anti-Corruption Laws" means all laws applicable to pertinent party from time to time concerning or relating to bribery or anti-corruption; (2) "Sanctions" means all applicable economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. federal government, including those administered by the Office of Foreign Assets Control, the United States Department of Treasury ("OFAC") or the U.S.

Department of State or (b) the United Nations Security Council, the European Union, any European Union member state in which the pertinent party or any of its subsidiaries conduct operations or Her Majesty's Treasury of the United Kingdom; and (3) "Sanctioned Person" means, at any time, (a) any person or entity listed in any Sanctions-related list of designated persons or entities maintained by OFAC, the U.S. Department of State, or by the United Nations Security Council, the European Union or any European Union member state in which the pertinent party or any of its subsidiaries conducts operations or (b) unless otherwise authorized by OFAC, any person or entity operating, organized or resident in any country or territory which is itself the subject or target of any full-scope (non-list based) Sanctions or (c) any person or entity owned 50 percent or more by persons or entities described in the foregoing clauses (a) or (b). Contractor represents and warrants that neither it nor any of its subsidiaries, nor to its knowledge, their respective directors, officers, employees or agents, is a Sanctioned Person. Contractor further represents and warrants that it and its subsidiaries, and to its knowledge, their respective directors, officers, employees and agents, comply in all material respects with all Sanctions and with all Anti-Corruption laws, now or hereafter in effect. Contractor will use reasonable efforts to notify Owner in writing if any of the foregoing representations and warranties are no longer true or have been breached or if Contractor has a reasonable basis to believe that they may no longer be true or have been breached. In the event of any violation of this section by Contractor, Owner will be entitled to immediately terminate this Agreement and take such other actions as are permitted or required to be taken under law or in equity.

**The rest of this page intentionally left blank**

**Signature page follows.**

IN WITNESS WHEREOF, and intending to be legally bound hereby, each of the Parties through their authorized agent has set their hand and seal as follows:

Dated: \_\_\_\_\_

City of Lebanon, Indiana

By: \_\_\_\_\_

Name Printed: \_\_\_\_\_

Its: \_\_\_\_\_

Address:

E-Mail:

Contractor

Dated: \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

Name Printed: \_\_\_\_\_

Its: \_\_\_\_\_

Address:

E-Mail:

**Exhibit A**

**Scope of Work**



Merritt Contracting, Inc.  
 900 South State Road 39  
 Lebanon, IN 46052  
 www.merrittcontracting.com  
 Phone: 765-483-0947

# Proposal

"Proudly Standing Behind Our  
 Work with Confidence and  
 Integrity"

**Date:**

**Bid ID:** 2023077

**Alt ID:**

**Estimator:** CaseyLetz

To:	Project:
City of Lebanon Utilities Attn: Kevin Krulik One Municipal Plaza 401 S. Meridian Street Lebanon, IN 46052	Lebanon Landfill Cap Improvements

### General Conditions/Assumptions

1. Due to volatility in market pricing, proposal expires after 30 days. Bid sent on 03/23/2023
2. Proposal based on prints by A&F Engineering. dated 03/14/2022 for earthwork
3. Fill and Place Material as we bring it in
4. Project will be completed using GPS machine control
5. Sweeping excluded.
6. Granular material to maintain haul roads will be supplied by others.
7. Includes traffic control per sheet 3 and 4 on North State Road 52 plans.
8. Includes setting control points and As-Builts of utilities

### Exclusions

1. Engineering, Permits, Testing & Inspection Fees.
2. Spill prevention for this subcontractor's scope of work only.
3. Removal of Erosion Control Measures.
4. Removal of Construction Drive / Staging Area / check dam
5. Erosion Control (Temporary Seeding, Permanent Seeding, Mulching, Inlet Protection, etc.)
6. Cleaning & Televising of existing Sanitary & Storm Sewer lines.
7. Moving of Existing Gas Lines.
8. Installation of gas line
9. Installation of conduit crossings.
10. Asphalt Pavement, curbs, sidewalks and handicap ramp installation
11. Street Signage
12. SWPPP Boards & Weekly Event Reporting
13. Asphalt / curb / sidewalk restoration
14. Private Utility Locates
15. Silt Fence
16. Sweeping
17. Import of more material (if needed) to balance site.

Reference	Description	Quantity	UOM	Extended Price
<b>01-003 Traffic Control</b>				
	Traffic Control	1.0000	EA	
<b>Total 01-003 Traffic Control</b>				<b>64,755.00</b>
<b>01-004 Earthwork</b>				
	Site Control, Topo Existing	1.0000	EA	
	Clearing and Compaction Shoulder for Trucks	5,400.0000	SF	
	Fill	70,000.0000	CY	
	Fine Grade Heavy Duty Asphalt Path	102,675.0000	SF	
	Widening Entrance and Access Road	10,000.0000	SF	
	Rough Grade Remainder of Site/Maintain Haul Roads	2,590,450.0000	SF	
<b>Total 01-004 Earthwork</b>				<b>355,011.00</b>
<b>01-005 Pond Earthwork and Drainage</b>				
	Emergency Spillway	1,200.0000	SF	



Merritt Contracting, Inc.  
 900 South State Road 39  
 Lebanon, IN 46052  
 www.merrittcontracting.com  
 Phone: 765-483-0947

# Proposal

"Proudly Standing Behind Our  
 Work with Confidence and  
 Integrity"

**Date:**

**Bid ID:** 2023077

**Alt ID:**

**Estimator:** CaseyLetz

<b>To:</b>	<b>Project:</b>
City of Lebanon Utilities Attn: Kevin Krulik One Municipal Plaza 401 S. Meridian Street Lebanon, IN 46052	Lebanon Landfill Cap Improvements

Reference	Description	Quantity	UOM	Extended Price
	Cut (Pond)	19,374.0000	CY	
	Fill	19,374.0000	CY	
<b>Total 01-005 Pond Earthwork and Drainage</b>				<b>99,158.00</b>

<b>Proposal Total:</b>	<b>518,924.00</b>
------------------------	-------------------

Acceptance	
Accepted by:	_____
Title:	_____
Date:	_____