

OWNER-CONTRACTOR AGREEMENT

Owner: Miami Trace Local School District Board of Education 3818 State Route 41 NW Washington Court House, OH 43160	Contract: <u>Single Prime Contract</u> Alternates: _____ Contractor: _____ Address: _____ _____ Phone: _____ Fax: _____ Date: _____
Project: 2019 Grandstand and Press Box Miami Trace High School 3722 State Route 41 NW Washington Court House, OH 43160	

The Owner, a political subdivision of the State of Ohio, and the Contractor have entered into this Owner-Contractor Agreement ("Agreement") as of the date set forth above. The Owner and the Contractor agree as follows:

1. WORK.

1.1 The Contractor shall furnish all the labor, services, materials, plant, equipment, tools, scaffolds, appliances, and all other things (collectively called the "Work") necessary for the timely and proper completion of the Work described in the specifications for the Project.

1.2 The Date for Substantial Completion of the Project is **August 2, 2019** ("Date for Substantial Completion"), unless otherwise agreed to in writing by the Owner. The Contractor shall at all times furnish sufficient skilled workers, materials, and equipment to perform the Work in strict conformance with the Contract Documents and to the entire satisfaction of the Owner, so as to complete the Project by the Date for Final Completion. All materials and equipment provided shall be new, free from all defects, fit for the purpose for which intended, and merchantable.

1.3 The Contractor shall assign a competent Project Supervisor. At the Owner's request, the Contractor shall replace the Project Supervisor, provided that the request is reasonable. The Owner's Representative shall not be responsible for the acts or omissions of the Supervisor or his assistants.

2. CONTRACT DOCUMENTS.

2.1 The Contract Documents consist exclusively of the Owner-Contractor Agreement, the Instructions to Bidders issued for the Project, the Contractor's Bid Form, the Drawings and Specifications for the Project, and Change Orders, all of which are incorporated into this Agreement. Contractor shall use the State of Ohio Subcontract Form for all subcontracted work.

3. DESIGN PROFESSIONAL; OWNER'S REPRESENTATIVE.

3.1 The Design Professional is SHP Leading Design, 250 Civic Center Drive, Columbus, Ohio 43215 (Telephone: 614.223.2124). The Design Professional's Representative is Josh Predovich, AIA, LEED AP.

3.2 Bill Franke is the Owner's Representative with respect to all matters involving the Owner.

3.3 Except as specifically stated to the contrary elsewhere in this Agreement, the Contractor shall direct all communications to the Owner through the Design Professional, although the President, Superintendent, and Treasurer of the Owner are also authorized to send written communications to the Contractor.

3.3 The Design Professional will monitor the progress of the Contractor's Work and will conduct regular inspections of the progress of the Work as provided in the Contract Documents.

3.4 The Contractor shall at all times provide the Design Professional and the Owner's Representative access to the Work.

4. TIME FOR COMPLETION AND PROJECT COORDINATION.

4.1 PROJECT TIME SCHEDULE. The Owner anticipates that Work on the Project will begin on June 17, 2019, and be completed by August 16, 2019, unless the Owner and Contractor agree to different commencement and completion dates.

4.2 TIME IS OF THE ESSENCE. THE DATES IN THE PROJECT TIME SCHEDULE ARE OF THE ESSENCE OF THIS AGREEMENT. THE CONTRACTOR SHALL PROSECUTE ITS WORK IN ACCORDANCE WITH THE PROJECT TIME SCHEDULE, INCLUDING ANY AMENDMENTS THERETO.

4.3 DELAYS AND ACCELERATIONS.

4.3.1 NOTICE OF DELAYS. The Contractor shall give the Owner written notice of any delay affecting its Work in the form and with the information specified in the Contract Documents within forty-eight (48) hours of the commencement of the delay; provided that the 48-hour notice shall be extended to ten (10) days for unusually severe weather conditions not reasonably anticipatable. The failure to give the required notice shall constitute an irrevocable waiver of the Contractor's right to seek an extension of time and/or additional compensation/damages for the delay. The Owner, in its sole and reasonable discretion, shall determine whether a delay shall entitle the Contractor to an extension of time. Any extensions of time shall only be granted pursuant to the procedures for Change Orders set forth in this Agreement.

4.3.2 ACCELERATION OF THE WORK. The Owner may require the Contractor to accelerate its Work by adding workers or working additional shifts, extended shifts or overtime, so that the Work is in final form before the Date for Final Completion. If the Owner requires the Contractor to accelerate its Work, the Contractor shall within five (5) days take the required action, and the Owner thereafter shall issue a Change Order increasing the Contract Sum to pay the Contractor for the Contractor's additional costs of accelerating its Work so that the Work is in final form before the Date for Final Completion. If there is a dispute as to whether the Contractor is entitled to a Change Order for accelerating its Work, the Contractor shall proceed to accelerate its Work without waiting for a Change Order or payment of any additional compensation, but may reserve its right to make a claim against the Owner for its additional costs incurred in accelerating its Work. The Contractor's additional costs for accelerating its Work shall be determined in accordance with Paragraph 4.3.3.

4.3.3 COMPENSATION FOR ACCELERATION OF THE WORK.

4.3.3.1 OWNER'S OBLIGATION TO PAY. The Owner shall pay the Contractor, as provided in this Paragraph, for the Contractor accelerating its Work so that its Work is in final form before the Date for Final Completion. The Owner shall not be required to compensate the Contractor for the Contractor's accelerating its Work so that the Work is in final form by the Date for Final Completion.

4.3.3.2 COMPENSATION FOR ACCELERATION OF THE WORK. To the extent that the Owner requires the Contractor to accelerate its Work so that the Work is in final form before the Date for Final Completion, the Owner shall pay the Contractor for the Contractor's additional costs of accelerating its Work, as determined in accordance with this Paragraph. The additional costs of accelerating the Work shall be (a) any premium for overtime, additional shift work, or extended shift work, (b) the cost of any additional supervision or general conditions required by the acceleration, (c) out of pocket cost of any additional equipment required for the acceleration, (d) to the extent the Contractor can document lost productivity due to the acceleration, the cost associated with such lost productivity, and (e) overhead, including home office overhead, and profit equal to ten percent (10%) of the total amount of the other items for which additional compensation is permitted under this Paragraph. The foregoing shall be the only additional compensation and/or damages the Contractor shall be entitled to receive for accelerating its Work so that it is complete before the Date for Final Completion. As a condition precedent to its recovery of additional compensation, the Contractor shall provide the Owner with full information about the costs of accelerating its Work in the form and format requested by the Owner.

5. CORRECTIVE ACTION. If the Owner determines that the Contractor 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 the Contractor is not on schedule, or is not otherwise performing its obligations under the Contract Documents, THE CONTRACTOR SHALL IMMEDIATELY, AND IN NOT LESS THAN TWO (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 THE OWNER, (2) PROCEED TO USE ITS BEST EFFORTS TO CORRECT SUCH DEFICIENCIES WITHIN THIRTY (30) DAYS OF SUCH NOTICE AND/OR, (3) IF THE OWNER INSTRUCTS THE CONTRACTOR TO TAKE SPECIFIED CORRECTIVE ACTION, SHALL 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 shall be taken and continued uninterruptedly without waiting to initiate any dispute under Paragraph 11 of this Agreement or the resolution of any dispute initiated under such paragraph.

6. CONTRACT SUM. The lump sum Contract Sum to be paid by the Owner to the Contractor, as provided herein, for the satisfactory performance and completion of the Project and all of the duties, obligations and responsibilities of the Contractor under this Agreement and the other Contract Documents will be **Dollars**

(\$_____). The Contract Sum includes all federal, state, county, municipal, and other taxes imposed by law, including but not limited to any sales, use, and personal property taxes payable by or levied against the Contractor on account of the Work or the materials incorporated into the Work. The Contractor shall pay any such taxes.

6.1 LIQUIDATED DAMAGES.

1. The Contractor shall have its work substantially completed (as Substantial Completion is defined in the Contract Documents) by the date stated in Paragraph 4.1; the timeline may be varied following award of the contract based upon the Contractor's ability to perform the work on a different timeline acceptable to the Owner. By entering into this Agreement, the Contractor agrees that the period for performing the Work is reasonable and that the Contractor's Work can be substantially complete by the date stated in this Agreement.
2. If the Contractor does not have its Work on the Project substantially complete by the date stated in Paragraph 4.1 or as otherwise agreed by the parties, the Contractor will pay the Owner (and the Owner may set off from sums coming due the Contractor) liquidated damages in the per diem amount stated in the following chart for each calendar day beyond the date of Substantial Completion as extended in accordance with the Contract Documents.

**LIQUIDATED DAMAGES – FAILURE TO ACHIEVE SUBSTANTIAL COMPLETION OF ITS WORK
BY ITS DATE FOR SUBSTANTIAL COMPLETION**

<u>Contract Amount</u>	<u>Dollars Per Day</u>
\$1.00 to \$50,000.00	\$ 250.00
\$50,000.01 to \$150,000.00	\$ 500.00
\$150,000.01 to \$500,000.00	\$ 1,000.00
\$500,000.01 to \$1,000,000.00	\$ 2,000.00

**LIQUIDATED DAMAGES – FAILURE TO ACHIEVE FINAL COMPLETION
OF ITS WORK WITHIN 30 DAYS OF ITS DATE FOR SUBSTANTIAL COMPLETION**

<u>Contract Amount</u>	<u>Dollars Per Day</u>
\$1.00 to \$50,000.00	\$ 50.00
\$50,000.01 to \$150,000.00	\$ 100.00
\$150,000.01 to \$500,000.00	\$ 200.00
\$500,000.01 to \$1,000,000.00	\$ 400.00

3. The Contractor acknowledges by signing this Agreement with the Owner that the amount of liquidated damages represent a reasonable estimate of the actual damages the Owner would incur if the work is not substantially complete by the foregoing date and that the damages that may result from the failure to substantially complete the work by the foregoing date are uncertain and difficult to ascertain. These liquidated damages are damages for loss of use of the Project, and the Contractor in addition to the liquidated damages will be obligated to indemnify and hold the Owner harmless from any claims, and if the Work on the Project is accelerated because of delay, for all costs related to the acceleration of the Work, as provided in the Contract Documents.

7. LIMITATION AND LIABILITY. The Owner's total liability under this Agreement shall be limited to the amount set forth in the Auditor's or Treasurer's certificate accompanying this Agreement. Under no circumstances shall the elected officials, officers, employees, board members, or agents of the Owner be personally liable for any obligations or claims arising out of or related to this Agreement.

8. PAYMENT AND RETAINAGE.

8.1 PAYMENT.

8.1.1 APPLICATIONS FOR PAYMENT. Payment applications shall be submitted on a monthly basis and shall reflect the amount of work completed as of the date the application for payment is submitted. On or before the date of the month specified by the Owner, the Contractor shall submit to the Owner,

through the Design Professional, an itemized payment application for such period in the following format and with one (1) copy of the following documentation:

- (a) Invoice for work performed and materials and equipment provided for the previous pay period;
- (b) Current list of the Contractor's Subcontractors and suppliers showing their respective contract sums, amount paid, and amount due;
- (c) A.I.A. Document G706a (Contractor's Affidavit of Release of Liens), or another form acceptable to Owner and Design Professional, with lien releases in a format approved by the Owner for all the Contractor's Subcontractors and suppliers current through the date of the Contractor's previous Application for Payment;
- (d) Such other supplemental information as the Owner may require. Such other information may include a schedule of all materials and equipment stored on site.

8.1.2 The Owner may withhold payment in whole or in part, and may demand that the Contractor refund amounts previously paid, to protect the Owner from loss because of:

- (a) The Contractor'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 the Owner;
- (b) The Contractor's default or failure to perform any of its obligations under another contract that it has with the Owner;
- (c) The filing of third party claims, or reasonable evidence that third party claims have been or will be filed;
- (d) The Work has not proceeded to the extent set forth in the application for payment;
- (e) Any representations made by the Contractor are untrue;
- (f) The failure of the Contractor to make payments to its Subcontractors;
- (g) Damage to the Owner's property or the property of another person or laborer;
- (h) The determination that there is a substantial possibility that the Work cannot be completed for the unpaid balance of the Contract Sum; and/or
- (i) Liens filed or reasonable evidence indicating the probable filing of such liens.

8.1.3 The Owner will pay the Contractor within thirty (30) days after receipt of the approved Contractor's payment application from the Design Professional, provided that the payment application has been properly submitted on a timely basis and is accompanied by all of the required documentation. The Owner may establish a cut-off date for the submission of the payment application.

8.2 RETAINAGE.

8.2.1 AMOUNT OF PAYMENTS. Subject to Paragraph 8.1, the amount of the payments to the Contractor shall be determined in accordance with the following paragraphs:

8.2.2 PAYMENTS FOR LABOR. Payments for labor incorporated into the Work will be at the rate of 92% of the amount set forth in the Contractor's payment application and approved by the Owner until the Work is 50% complete. When the Work is 50% complete, the payment for labor incorporated into the Work will be at the rate of 100% of the amount set forth in the Contractor's payment application and approved by the Owner.

8.2.3 PAYMENTS FOR MATERIALS AND EQUIPMENT. Payments for materials and equipment will be at the rate of 92% of the invoice cost of materials and equipment delivered to the Project site or other storage site approved by the Owner. The balance of the invoice cost will be payable when the materials or equipment are incorporated into the Work. Incorporated into the Work means such materials and equipment are installed and conform to the requirements of the Contract Documents. When payment is made on account of materials or equipment not yet incorporated into the Project, such materials and equipment will become the property of the Owner; provided that if such materials or equipment are stolen, destroyed, or damaged before being fully incorporated into the Project, the Contractor shall be required to replace them at its expense.

8.2.4 DOCUMENTATION. Upon request, the Contractor immediately shall supply the Owner with such information as may be requested so as to verify the amounts due to the Contractor, including but not limited to original invoices for materials and equipment and documents showing that the Contractor has

paid for such materials and equipment, and so as to verify that amounts due laborers, subcontractors, and materialmen have been paid to them.

8.3 FINAL PAYMENT.

8.3.1 The final application for payment shall be itemized, and the Contractor shall ensure that the final application for payment shall contain one (1) copy of each of the following documents, if not previously delivered to the Owner.

- (a) Items (a)-(d) in Paragraph 8.1.1;
- (b) A.I.A. Document G706a (Contractor's Affidavit of Release of Liens), or another form acceptable to Owner and Design Professional, with lien releases in a format approved by the Owner for each Subcontractor and supplier, current through the date of the Contractor's last application for payment;
- (c) Contractor's Certificate of Insurance;
- (d) Contractor's Workers' Compensation Certificate;
- (e) Consent of the Contractor's Surety to Payment;
- (f) An assignment to the Owner of all warranties obtained or obtainable by the Contractor from manufacturers and suppliers of equipment and materials incorporated into the Work by written instrument of assignment in a form acceptable to the Owner; and
- (g) Such other documentation as required by the Contract Documents, the Owner, or applicable law.

8.3.2 The making of Final Payment by the Owner shall not constitute a waiver of Claims by the Owner for the following:

- (a) Liens, Claims, security interests, or encumbrances arising out of the Contract Documents that are unsettled;
- (b) Failure of the Work to comply with the requirements of the Contract Documents;
- (c) Terms of special warranties required by the Contract Documents;
- (d) Claims for Indemnification;
- (e) Claims about which the Owner has given the Contractor written notice; or
- (f) Claims arising after Final Payment.

8.4 RETAINAGE ACCOUNT. The Owner and the Contractor agree that any retainage account required in connection with this Agreement may be an interest-bearing savings account established with a bank or building and loan association in the State of Ohio or other investment fund appropriate for deposit of school funds used by the Owner and that the depository shall be compensated for its services in accordance with the schedule approved by the Owner from income from the escrow account. The Owner will deposit retained funds into the interest-bearing account when the contract is 50% complete; from that point, the interest earned on the funds will accrue to the interest of the Contractor, subject to the Owner's prior right to the funds to complete the requirements of the Contract Documents. The Contractor will sign any documentation required by Owner related to the retainage account and will waive its right to interest on such account if the interest is insufficient to pay any fees and costs associated with the account.

9. CHANGE ORDERS.

9.1 A Change Order is a written instrument signed by the Owner, Design Professional, and the Contractor stating their agreement upon a change in the Work, the amount of the adjustment or the method for computing the amount of the adjustment of the Contract Sum, if any, and the extent of the adjustment in the Project Time Schedule, if any.

10. CLAIMS AND DISPUTES.

10.1 A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment, or interpretation of the terms of the Contract Documents, payment of money, extension of time, or other relief with respect to the terms of the Contract Documents, provided that the Owner's decision to adjust or withhold payment under Paragraph 9.1.3 shall not be considered a Claim. The responsibility to substantiate claims shall rest with the party making the Claim. The Contractor shall not knowingly (as "knowingly" is defined in the federal False Claims Act, 31 U.S.C. Section 3729, *et seq.*) present or cause to be presented a false or fraudulent Claim. As a condition precedent to making a claim, the Contractor shall submit an affidavit sworn to before a notary public or other person authorized to administer oaths in the State of Ohio and executed by an authorized representative of the Contractor, which states that:

The Claim which is submitted herewith complies with Paragraph 10.1 of the Owner-Contractor Agreement, which provides that the Contractor shall not Knowingly present or cause to be presented a false or fraudulent Claim.

10.2 Claims must be made by written notice and clearly labeled as a claim.

10.3 If the Contractor wishes to make a Claim for an increase in the Contract Sum, written Notice as provided herein shall be given before proceeding to execute the Work.

10.4 If the Contractor wishes to make a Claim for additional time, the Contractor shall include an estimate of cost and probable effect of delay on progress of the Work. In the event of continuing delay, only one Claim is necessary. If adverse weather conditions are the basis for a Claim for additional time, such claim shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled construction.

10.5 If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then the observing party shall give written notice to the other party promptly before conditions are disturbed and in no event later than forty-eight (48) hours after first observance of the conditions. If the conditions are materially different and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, the Owner will issue an appropriate Change Order.

10.6 The Contractor shall make all claims in writing within seven (7) days after the occurrence of the event giving rise to the Claim. Failure to do so shall be an irrevocable waiver of the Claim.

10.7 Within ten (10) days of its receipt of a written request, the Contractor shall make available to the Owner or its representative any books, records, or other documents in its possession or to which it has access relating to any Claim and shall require its Subcontractors, regardless of tier, and materialmen to do likewise.

10.8 If a Claim has not been resolved within fourteen (14) days after submission to the other party, unless agreed otherwise in writing by the parties, the Claimant's exclusive remedy is to file suit in the Common Pleas Court for the county in which the Project is located.

11. DEFAULT OF THE CONTRACTOR.

11.1 EVENTS OF DEFAULT. Each of the following constitutes an event of default of the Contractor:

11.1.1 The Contractor's failure to perform any of its obligations under the Contract Documents and to proceed to commence to correct such failure within two (2) business days after written notice thereof from the Owner or such lesser time as is provided in the Contract Documents, or

11.1.2 The Contractor's failure thereafter to use its best efforts to correct such failure, or

11.1.3 Except when an extension of time is granted in writing by the Owner, to correct such failure within thirty (30) days after receipt of written notice thereof.

11.1.4 The Contractor's failure to pay its obligations as they become due or the Contractor's insolvency.

11.2 OWNER'S REMEDIES. Upon the occurrence of an event of default the Owner shall have the following remedies, which shall be cumulative:

11.2.1 Order the Contractor to stop the Work, which the Contractor shall do immediately;

11.2.2 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 the Contractor;

11.2.3 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 the Contractor, all of which the Contractor hereby transfers and assigns to the Owner for such purpose, and to employ any person or persons to complete the Work, including the Contractor's employees, and the Contractor shall not be entitled to receive any further payment until the Work is completed; and/or,

11.2.4 All other remedies which the Owner may have at law or in equity or otherwise under the Contract Documents.

11.3 TERMINATION OF AGREEMENT. The termination of this Agreement shall be without prejudice to the Owner's rights and remedies, including without limitation the Owner's right to be indemnified by the Contractor.

11.4 PAYMENTS DUE CONTRACTOR. If the unpaid balance of the Contract Sum exceeds the cost of finishing the Project, including any costs, expenses or damages incurred by the Owner as a result of the event of default, including attorneys' and consultants' fees and the administrative expense of the Owner's staff, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The obligations under this Paragraph shall survive the termination of this Agreement.

12. DEFAULT OF THE OWNER.

12.1 EVENTS OF DEFAULT. The following constitutes the exclusive events of default of the Owner:

12.1.1 The failure of the Owner to perform any of its obligations under the Contract Documents and to correct such failure within thirty (30) days after receipt of written notice thereof from the Contractor specifying the default and the necessary corrective action.

12.1.2 The failure of the Owner to pay the Contractor as payment becomes due under this Contract.

12.2 CONTRACTOR'S REMEDY.

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

12.2.2 If the Owner fails to pay the Contractor as payment becomes due, the Contractor may, upon fifteen (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 the Owner under Para. 13.1.

13. SUSPENSION OR TERMINATION FOR THE CONVENIENCE OF THE OWNER.

13.1 SUSPENSION FOR THE CONVENIENCE OF THE OWNER.

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

13.1.2 An adjustment shall 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 shall be made to the extent that:

- (a) performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- (b) an equitable adjustment is made or denied under another provision of this Agreement.

13.2 TERMINATION FOR THE CONVENIENCE OF THE OWNER.

13.2.1 The Owner may, in its discretion and without cause, by written notice to the Contractor terminate this Agreement for the Owner's convenience.

13.2.2 Upon receipt of a written notice from the Owner terminating this Agreement without cause and for the Owner's convenience, the Contractor shall (i) immediately cease performing the Work, unless otherwise directed by the Owner, in which case the Contractor shall take the action directed by the Owner, (ii) take all reasonable and necessary action to protect and preserve the Work, and (iii) unless otherwise directed by the Owner, terminate all agreements with Subcontractors and suppliers.

13.2.3 If this Agreement is terminated without cause and for the Owner's convenience and there exists no event of the Contractor's default, as defined in this Agreement, the Owner will pay the Contractor (i) for Work performed under this Agreement up to the date the notice of termination is

received by the Contractor at the rates for Work performed under this Agreement, including overhead and profit up to the date of termination, (ii) for Work performed at the direction of the Owner on and after the date on which the notice of termination is received by the Contractor, as determined by the procedures applicable to Change Orders, (iii) for Work necessary to protect and preserve the Work, as determined by the procedures applicable to Change Orders, (iv) the reasonable and necessary costs of terminating the Contractor's agreements with Subcontractors and suppliers, and (v) other costs incurred by the Contractor directly as a result of the termination of this Agreement.

13.2.4 If this Agreement is terminated without cause for the Owner's convenience and there exists an event of the Contractor's default, as defined in this Agreement, the Contractor shall 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.

13.2.5 The termination of this Agreement shall be without prejudice to any rights or remedies that exist at the time of termination.

14. INSURANCE AND INDEMNIFICATION.

14.1 The Contractor shall maintain general liability insurance in the amount of \$500,000.00.

14.2 Insurance furnished by the Owner, if any, is not intended to and shall not cover equipment and materials before they are physically incorporated into the Work or tools. The Contractor shall bear the entire risk of loss with respect to tools, equipment, and materials.

14.3 The Owner and Contractor waive all rights against each other and against the Subcontractors, Sub-subcontractors, consultants, agents and employees of the other for damages, but only to the extent covered by property insurance during construction, except such rights as they may have to the proceeds of such insurance.

14.4 To the maximum extent permitted by law, the Contractor shall indemnify and hold harmless the Owner and the Owner's consultants, agents, and employees from and against all claims, damages, losses, and expenses, including but not limited to attorneys' and consultants' fees, arising out of or related to the performance of the Work, including but not limited to the failure of the Contractor to perform its obligations under the Contract Documents, 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 Contractor to perform in accordance with the Contract Documents, and/or claims related to the removal, handling, or use of any hazardous materials. The Owner may set off amounts equal to any sums for which it is entitled to be indemnified from the amounts otherwise due the Contractor under the Contract Documents. It is agreed that the cost of the Owner's staff in calculating any expenses under this Paragraph shall be at the rate of \$35.00 per hour.

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

15. WARRANTIES. 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, the Contractor warrants and guarantees that:

- (a) The Owner will have good title to the Work and all materials and equipment incorporated into the work will be new;
- (b) The Work and all materials and equipment incorporated into the Work will be free from all defects, including any defects in workmanship or materials;
- (c) The Work and all equipment incorporated into the Work will be fit for the purpose for which intended;
- (d) The Work and all materials and equipment incorporated into the Work will be merchantable; and,
- (e) The Work and all materials and equipment incorporated into the Work will conform in all respects to the Contract Documents.

Upon notice of the breach of any of the foregoing warranties or guarantees or any other warranties or guarantees under the Contract Documents, the Contractor, in addition to any other requirements in the Contract Documents, shall commence to correct such breach and all damage resulting therefrom within two (2) business days after written notice thereof, thereafter shall use its best efforts to correct such breach and damage to the satisfaction of the Owner and, except when an extension of time is granted in writing by the Owner, correct such breach and damage to the satisfaction of the Owner within thirty (30) days of such notice; provided that if such notice is given after final payment hereunder, such 48-hour period shall be extended to seven (7) days. If the Contractor fails to commence to correct such breach and damage, or to correct such breach and damage as provided above, the Owner, upon written notice to the Contractor and without prejudice to any of its other rights or remedies, may correct the deficiencies. The Contractor upon written notice from the Owner shall pay the Owner, within ten (10) days after the date of such notice, all of the Owner's costs and expenses incurred in connection with or related to such correction and/or breach, including without limitation the Owner's administrative, legal, and consulting expenses. The foregoing warranties and obligations of the Contractor shall survive the final payment and/or termination of this Agreement. If the Contractor fails to pay the Owner any amounts due under this Paragraph 17, the Contractor shall pay the Owner, in addition to the amounts due, a late payment fee of one and one-half percent (1.5%) per month for each month or part thereof that the payments are not paid when due.

16. GENERAL.

16.1 MODIFICATION. No modification or waiver of any of the terms of this Agreement or of any other Contract Documents shall be effective against a party unless set forth in writing and signed by or on behalf of a party, which in the case of the Owner shall require the signature of the Owner's President, Superintendent or Treasurer acting under the authority of a specific resolution of the Owner. Under no circumstances shall forbearance, including the failure or repeated failure to insist upon compliance with the terms of the Contract Documents, constitute the waiver or modification of any such terms. The parties acknowledge that no person has authority to modify this Agreement or the other Contract Documents or to waive any of its or their terms, except as expressly provided in this Paragraph.

16.2 ASSIGNMENT. The Contractor may not assign this Agreement without the written consent of the Owner, which the Owner may withhold in its sole discretion.

16.3 THIRD PARTIES. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or the Contractor.

16.4 LAW AND JURISDICTION. All questions regarding the validity, intention, or meaning of this Agreement or any modifications of it relating to the rights and obligations of the parties shall be construed and resolved under the laws of the State of Ohio. Any suit, which may be brought to enforce any provision of this Agreement or any remedy with respect hereto, shall be brought in the Common Pleas Court for the county in which the Project is located or other county court having subject matter jurisdiction, and each party hereby expressly consents to the jurisdiction of such court.

16.5 STATUTE OF LIMITATIONS. Regardless of any provision to the contrary, the statute of limitations with respect to any defective or non-conforming Work that is not discovered by the Owner shall not commence until the discovery of such defective or non-conforming Work by the Owner.

16.6 NOTICES. Notices, requests, or demands by either party shall be in writing, unless otherwise expressly authorized, and shall be personally served, forwarded by expedited messenger service, sent by facsimile transmission, or be given by registered or certified mail, return receipt requested, postage prepaid, and, in the case of the Owner, addressed to the address/FAX number set forth at the beginning of this Agreement marked "Urgent, deliver to the Superintendent," with a copy to the Treasurer, and, in the case of the Contractor, addressed to its address/FAX number set forth at the beginning of this Agreement. Any party may change its address/FAX number by giving notice hereunder. All notices, requests, and demands shall be deemed received upon receipt in the case of personal delivery or delivery by expedited messenger service, including leaving the notice at the address provided herein during normal business hours; upon the expiration of forty-eight (48) hours from the time of deposit in the United States mail; or, in the case of a notice given by facsimile transmission, upon the expiration of twenty-four (24) hours after the transmission is sent.

16.7 CONSTRUCTION. The parties acknowledge that each party has reviewed this Agreement and the other Contract Documents and has voluntarily entered into this Agreement. Accordingly, 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, the other Contract Documents, or any amendments or exhibits to it or them.

16.8 APPROVALS. Except as expressly provided herein, the approvals and determinations of the Owner shall be subject to the sole discretion of the Owner and will be valid and binding on the Contractor, provided only that they be made in good faith, *i.e.*, honestly. If the Contractor challenges any such approval or determination, the Contractor shall have the burden of proving by clear and convincing evidence that it was not made in good faith.

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

16.10 COMPLIANCE WITH LAWS AND REGULATIONS. The Contractor, at its expense, shall comply with all applicable federal, state, and local laws, rules, and regulations applicable to the Work.

16.11 PROJECT SAFETY. The Contractor shall follow all applicable safety and health regulations during the progress of the Project and shall monitor all of its employees and its subcontractors for compliance with such safety and health regulations. In undertaking the responsibilities set forth in this Paragraph, the Contractor does not assume any duty or responsibility to the employees of any Subcontractor or supplier, regardless of tier. The 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 the Contractor.

16.12 EQUAL OPPORTUNITY. The Contractor shall not, and it will ensure that its Subcontractors, regardless of tier, shall not, discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. Such action shall include but not be 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. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of nondiscrimination. The Contractor shall and will ensure that each of its Subcontractors shall, regardless of tier, state 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.

16.13 USE OF OWNER'S FACILITIES. The Contractor shall 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 the Owner:

- (a) use the Owner's cafeteria, rest rooms, or phones;
- (b) use or bring any alcoholic beverages, controlled substances, or firearms on any property owned by the Owner;
- (c) use any radios, tape or compact disc players, or sound amplification equipment; and
- (d) initiate or react to any visible or audible actions toward students, teachers, or staff members of the Owner. The Owner will not tolerate any such actions and any such action observed or made known to the Owner shall be dealt with severely.

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

16.14 PROPERTY TAX AFFIDAVIT. The Contractor's affidavit given under ORC Section 5719.024 is incorporated herein.

16.15 ENTIRE AGREEMENT. This Agreement and the other Contract Documents constitute the entire agreement among the parties with respect to their subject matter and will supersede all prior and contemporaneous, oral or written, agreements, negotiations, communications, representations, and understandings with respect to such subject matter, and no person is justified in relying on such agreements, negotiations, communications, representations, or understandings.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their properly authorized representatives as of the date first set forth above.

MIAMI TRACE LOCAL SCHOOL DISTRICT
BOARD OF EDUCATION

CONTRACTOR:

By: _____
(signature)

By: _____
(signature)

(printed name)

(printed name)

Title: _____

Title: _____

CERTIFICATE OF AVAILABILITY OF FUNDS
(O.R.C. Section 5705.41)

The undersigned, Chief Financial Officer of the Miami Trace Local School District (the "School District"), located in Washington Court House, Fayette County, Ohio, hereby certifies in connection with the Agreement to which this Certificate is attached that the amount required to meet the obligations under the contract, obligation, or expenditure for the services described in the attached agreement, has been lawfully appropriated for the purpose, and is in the treasury or in process of collection to the credit of an appropriate fund, free from any outstanding obligation or encumbrance.

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of _____, 2019.

Debbie Black, Chief Financial Officer
Miami Trace Local School District